

MEMORANDUM OF AGREEMENT

Between

Eddy-Lea Energy Alliance, LLC and Holtec International

This Memorandum of Agreement (this "MOA") is made and entered into as of the 4th day of MARCH, 2015 by and between Eddy-Lea Energy Alliance, LLC ("ELEA"), a limited liability company duly organized and existing under and by virtue of the laws of the State of New Mexico, having its principal place of business at 400-2 Cascades Avenue, Suite 201, Carlsbad, NM 88220, and Holtec International ("Holtec"), a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, having its headquarters at Holtec Center, 1001 N. US Highway 1, Jupiter, Florida 33477 (each a "Party" and together the "Parties").

WHEREAS, Holtec is a designer, supplier, and NRC certificate holder of storage, transport, and dual-purpose spent nuclear fuel systems for managing the back-end needs of light water reactors, and is a world leader in turnkey supply and installation of autonomous passive used nuclear fuel storage facilities; and

WHEREAS, Holtec desires to own and operate an interim storage site which is supported by the local communities, counties and State of New Mexico to provide utilities and DOE a site to temporarily store High Level Waste ("HLW") and Spent Nuclear Fuel ("SNF") until such time as a deep geologic repository becomes available in the United States; and

WHEREAS, Holtec has licensed an innovative underground fuel storage system referred to as HI-STORM UMAX which provides the utmost protection of public health and safety under all natural hazards and potential terrorism events; and

WHEREAS, Holtec has been successfully deploying the HI-STORM UMAX technology, and has been invited to install the HI-STORM UMAX system at the seismically stringent site of San Onofre in Southern California; and

WHEREAS, Holtec has extensive experience in storage and maintenance of spent nuclear fuel; and

WHEREAS, ELEA is a limited liability company organized under a joint powers agreement between Eddy County, Lea County, the City of Carlsbad and the City of Hobbs to provide economic development in the region; and

WHEREAS, ELEA represents communities that are receptive to non-emissive

nuclear installations that create well-paying long-term jobs; and

WHEREAS, the U.S. government has adopted the recommendation of establishing one or more Consolidated Interim Storage ("CIS") facilities in the near future; and

WHEREAS, ELEA believes that it offers an ideal site and a supportive populace for a non-emissive and safe CIS facility; and

WHEREAS, ELEA is committed to establishing a new CIS facility that is consistent with the recommendation of the Blue Ribbon Commission on America's Nuclear Future ("BRC") and that meets ELEA's goal of economic development; and

WHEREAS, Holtec has extensive experience in designing and licensing away-from-reactor storage facilities, having served as the technology supplier for the PFS, LLC project in Skull Valley, Utah and the "Central Store" project in Ukraine; and

WHEREAS, Holtec is seeking a partner to make available an interim storage facility that is fully licensed by the NRC and consistent with the BRC recommendations; and

WHEREAS, Holtec's CIS technology is capable of hosting all types of available HLW and SNF waste containers deployed currently in the U.S.; and

WHEREAS, Holtec's CIS technology is equally well suited to storing Defense High-Level Waste; and

WHEREAS, Holtec and ELEA desire to establish a relationship that will enable ELEA to contract with Holtec for the development of a CIS facility in New Mexico that will be fully licensed for SNF and HLW storage by the NRC; and

WHEREAS, ELEA has acquired a parcel of land in Lea County for the purpose of establishing a CIS; and

WHEREAS, Holtec represents that it possesses an underground fuel storage technology licensed by the NRC that the company can use to secure regulatory approval for a CIS.

NOW, THEREFORE, this MOA will serve as a statement of the mutual intent of Holtec and ELEA to work together to establish a state-of-the-art CIS facility on ELEA's property in Lea County.

1. Definitions.

“BRC” means the Blue Ribbon Commission on America’s Nuclear Future formed by President Obama to provide recommendations for the solution to the back-end of the nuclear fuel cycle.

“CIS” means consolidated interim storage that is consistent with the intent of the BRC.

“DHLW” means defense high level waste.

“DOE” means the U.S. Department of Energy.

“ELEA” means the Eddy-Lea Energy Alliance, LLC.

“GNEP” means the Global Nuclear Energy Partnership.

“HLW” means high level waste, including spent nuclear fuel and “Greater Than Class C” waste.

“Project” means the CIS in New Mexico envisaged under this MOA, including a manufacturing facility that may be added at a later date.

“Site” means all or a portion of the land owned by ELEA in Lea County.

“SNF” means spent nuclear fuel.

2. ELEA Authority.

The Parties acknowledge that, notwithstanding its status as a limited liability company, ELEA is substantially a governmental agency, and its powers and authority with respect to the Site cannot exceed in any respect the powers and authority of its four local government members under the Local Economic Development Act, Ch. 5, Art. 10 NMSA 1978 (“LEDA”). The Parties further acknowledge that the transfer of the Site from ELEA to Holtec will require the approval of each of ELEA’s four members pursuant to LEDA ordinances, and the subsequent approval of the New Mexico State Board of Finance (the “SBOF”) pursuant to Section 13-6-2.1 NMSA 1978.

3. Substantial Principles of Cooperation.

3.01 The Parties shall initially enter into an agreement under which ELEA shall provide Holtec all relevant information in ELEA’s possession concerning the Site, and shall allow Holtec access to the Site to ascertain the suitability of the Site for the Project. The agreement shall allow Holtec to conduct such drilling and other subsurface investigations as Holtec shall reasonably require.. ELEA shall make no representations or warranties about the suitability of the Site for Project purposes.

- 3.02 If the Site, in Holtec's sole opinion, is satisfactory for the Project, then the Parties shall cooperate in the joint negotiation and drafting of a LEDA project participation agreement (the "PPA"), as well as a corresponding LEDA project application (the "Application"). The Parties agree to undertake the negotiating and drafting process of the PPA and the Application diligently, and to respond to one another within 15 days of each iteration of changes to the drafts. The Parties will use their best efforts to complete the PPA and the Application within six months of the signing of this MOA. Pursuant to NMAC 1.5.23.9, the PPA will be subject to SBOF approval, and will include (i) a provision for conveyance of title to the Site to Holtec, (ii) a mortgage, reconveyance option, guarantee or other security to ensure Holtec's performance, (iii) an indemnity of ELEA from all claims arising from Holtec's activities, (iv) a timetable with deadlines for the accomplishment of key milestones in the development of the Project, including pertinent licensing and financing requirements. Consideration for transfer of the Site shall be wholly in the form of timely accomplishment of the development of the Project, hiring goals, and/or such other measures of economic development as the Parties may determine.
- 3.03 The Parties will submit the Application and proposed PPA for approval by each of ELEA's members. Upon such approval, the Parties will execute the PPA, and will thereafter submit an application for approval of the PPA to the SBOF. The Parties will seek to enter into the PPA no later than August 31, 2015.
- 3.04 Notwithstanding SBOF approval, title of the Site will not transfer to Holtec until the NRC issues a safety evaluation report on Holtec's licensing application for the HI-STORM UMAX CIS system.
- 3.05 ELEA acknowledges that Holtec may wish to seek, following SBOF approval of the PPA and transfer of the Site to Holtec, the issuance of an industrial revenue bond (an "IRB") by Lea County in order to secure certain tax benefits for the Project. ELEA will provide such assistance as it may to Holtec to secure the issuance of an IRB; however, Holtec acknowledges that neither ELEA nor any of its other three members has any legal power to compel Lea County to issue an IRB, and that any such issuance will be on such grounds and conditions as are agreeable to Lea County.
- 3.06 The PPA may include a provision under which ELEA will have the option of reclaiming ownership of the Site in the event that Holtec does not meet the PPA milestones for development of the Project, or otherwise breaches the PPA. ELEA will not, however, be obligated to accept a reversion of the Site. The PPA shall include a provision under which Holtec will have the option to disclaim any ownership of the Site and transfer ownership

back to ELEA in the event of any latent defects including, but not limited to, environmental contamination, or if the Site is not suitable for the Project.

- 3.07 ELEA will provide all GNEP information developed for the Site and adjacent property to Holtec.
- 3.08 Holtec will bear all costs associated with applying for and obtaining an NRC license for the Project. Holtec anticipates the time required to secure an NRC license will be from four to six years, and that the cost of licensing will be in the range of 60 to 80 million dollars, depending on the extent of local or state support or opposition.
- 3.09 Holtec will be the NRC licensee and owner of the CIS.
- 3.10 Holtec will consider locating a local manufacturing facility adjacent to the CIS once business volume justifies a business case for local manufacturing.
- 3.11 As long as the Project is continuing to advance satisfactorily, Holtec will extend support to ELEA in its efforts to insure that the interests of the Project are not harmed by a competing project in the State. Neither Party will sponsor or promote the development of a competing CIS project in the State of New Mexico or in a state bordering the State of New Mexico.
- 3.12 ELEA will work exclusively with Holtec for development of the CIS project contemplated by this Agreement. ELEA shall take all reasonable actions to persuade national, state and local governmental officials, DOE, the NRC, the State of New Mexico, ELEA's members, and the local communities to support the Project and its licensing, including, without limitation, participating in meetings with governmental officials and the public. ELEA's support will continue through all stages of the Project.
- 3.13 Neither ELEA nor Holtec will divulge the details of the negotiation and preparation of the Application or the PPA to third parties. Holtec acknowledges, however, that the final Application and the final PPA will be available for public review, and that the approval of these documents by ELEA's members, and the approval of the PPA by the SBOF, will occur in public hearings. Otherwise, ELEA will not disclose Holtec's confidential information, as further provided in Section 4.
- 3.14 Holtec will provide travel expenses as well as promotional/educational expenses for ELEA personnel at the discretion of Holtec when so approved by Holtec and deemed to be necessary for the benefit of the Project. ELEA personnel shall not be obligated to travel outside of New Mexico, absent reimbursement by Holtec of such travel expenses.

- 3.15 ELEA and Holtec will jointly petition the DOE (as the *only customer*) to store HLW and SNF at the Project. The site-specific licensing application effort will begin after (i) the DOE or a private financing entity by or through utilities producing nuclear power gives its concurrence for such request and (ii) Holtec has submitted the final safety analysis report for the HI-STORM CIS. The license application will include an environmental report, a quality assurance report and a safety analysis report along with all necessary supporting safety analysis documentation.
- 3.16 The Part 72 application for certifying the cask system under Subpart K will be begun by Holtec as soon as Holtec has made a preliminary environmental suitability determination based on the data provided by ELEA and ELEA has secured preliminary support for the Project from the state and local institutions that may be influential in the success of the Project.
- 3.17 Holtec and ELEA will work together to expand the mission of the Project to include interim storage of DHLW.
- 3.18 ELEA will provide full support to Holtec in the Holtec's efforts to secure partial federal support of the Project to reduce the financing burden on Holtec.

4. Proprietary Information

- 4.01 The Parties, and their respective agents, affiliates and representatives, shall hold in confidence, and shall not disclose to any person, except as provided below, any Proprietary Information (as defined below). Each Party shall use the Proprietary Information of the other Party only for the purpose of evaluating the Project and preparing the Application and the PPA, and shall not use or exploit such Proprietary Information for its own benefit, or for the benefit of another, without the other Party's prior written consent. The Parties shall disclose Proprietary Information received under this MOA only to such employees, contractors or other individuals or entities who have a need to know such Proprietary Information in the course of the performance of their duties and who agree in writing to protect the confidentiality of such Proprietary Information.
- 4.02 The term "Proprietary Information" shall mean all financial, operating, proprietary, scientific and technological information, corporate records and books, trade secret assets or other confidential or proprietary information designated as such in writing by the Parties. Any document considered to be Proprietary Information will be marked "confidential" in order to notify the other Party of the status of the document.

- 4.03 The confidentiality and non-disclosure obligations of the Parties specified herein shall not apply, and the Parties shall have no further obligations to each other, with respect to any Proprietary Information to the extent such Proprietary Information:
- i. is generally known to the public at the time of disclosure;
 - ii. was in the receiving Party's possession prior to the date of this MOA otherwise than as a result of the receiving Party's breach of any legal obligation owed by the receiving Party to the disclosing Party.
- 4.04 Each receiving Party shall, upon the earlier of (i) the request of the disclosing Party; (ii) the termination of discussions and negotiations among the Parties; or (iii) the Termination Date (defined below), return to the disclosing Party all documents and other tangible manifestations of Proprietary Information received by the receiving Party pursuant to this MOA (and all copies and reproductions thereof). Notwithstanding the foregoing, without the prior written consent of the disclosing Party, which it has no obligation to give, the receiving Party shall have no right to make or receive copies of reproductions of any Proprietary Information which it is given the opportunity to review.
- 4.05 Notwithstanding the contrary provisions of this Section 4, either Party may disclose Proprietary Information to the extent required by applicable law (including, without limitation, the disclosure described in Section 3.13); provided, however, that in the event a Party receives a disclosure request under color of applicable law, it shall promptly notify the other Party of the request and shall reasonably cooperate with the other Party's reasonable efforts to contest such disclosure, which cooperation shall include delaying disclosure as reasonably and lawfully requested by the other Party.
- 4.06 The Parties shall remain owners of any intellectual property right and/or know-how developed or acquired by each one of them and made available to the other Party within the scope of this MOA.
- 4.07 No license to either Party, under any trade secret, trademark, patent, or copyright, or applications that are now or may hereafter be owned by a Party, is either granted or implied by the conveying of information to the other Party. No representation, warranty, assurance, or guarantee shall apply with respect to any information which may be submitted or exchanged by the Parties with respect to the infringement of trade secrets, trademarks, patents, copyrights, or any other right of privacy, or other rights of third persons.
5. No-Shop Provision. In consideration of the mutual covenants and understandings

set forth in this MOA, the Parties agree that, through the earlier of (i) the Termination Date (as defined in Section 6 below) or (ii) the date on which either Party notifies the other, in writing, of its intent not to continue to pursue the proposed Project (the "No-Shop Period"), neither Party will, directly or indirectly, solicit, initiate, entertain or encourage any proposals or offers from any third party relating to the development or management of a nuclear waste storage or disposal project anywhere within the State of New Mexico or a state bordering the State of New Mexico (the "No-Shop Territory"). Each Party will promptly inform the other, in writing, of any third party inquiries or proposals received by it related to the development or management of a nuclear waste storage or disposal project in the No-Shop Territory during the No-Shop Period. The covenants in this Section 5 shall be fully applicable to any and all discussions that each Party may be conducting on the date of this MOA with any third parties prior to the execution date of this MOA.

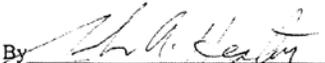
6. Termination of Memorandum of Agreement. In the event the Parties fail to enter into the PPA on or before August 31, 2015, the understandings contained in this MOA, unless extended by mutual written agreement of the Parties (as so extended, if at all, the "Termination Date"), shall terminate and be of no further force or effect, except for Section 4, which shall survive the termination of this MOA. The Parties agree to negotiate in good faith and use commercially reasonable efforts to arrive at a mutually acceptable form of PPA and to obtain the approval of ELEA's members for the PPA and the Project. Either Party may, in its sole discretion, abandon the proposed Project and terminate this MOA for any reason and at any time, prior to executing the PPA. If the Parties enter into the PPA on or before August 31, 2015, then this MOA shall automatically terminate in all respects upon the execution of the PPA.
7. Governing Law. This MOA shall be governed by and construed in accordance with the laws of the State of New Mexico, without reference to the conflicts of laws provisions thereof.
8. Expenses. Except as otherwise provided in Section 3.14, each Party shall bear its own costs and expenses incurred in connection with this MOA and the negotiation of the Application and the PPA, including without limitation attorney's expenses, regardless of whether or not the PPA is approved and executed.
9. Binding Effect. Except for the provisions of Sections 4, 5, 7, 8 and 9, each of which shall be deemed to be an agreement and binding on the Parties, it is understood that this MOA describes only the agreements the Parties contemplate going forward with and does not constitute nor give rise to any legally binding commitment or obligation, nor does this MOA constitute an offer of any security.
10. Notices.

All notices hereunder shall be given by letter addressed, except as each may

change its address pursuant hereto, as follows:

Holtec	ELEA
Holtec International Holtec Center One Holtec Drive Marlton, New Jersey 08053 Attention: Pierre Oneid	Carlsbad Dept. of Development John Waters 400-2 Cascades Avenue, Suite 201 Carlsbad, NM 88220 Attention: John Heaton And Lea County Economic Development Dept. _____ Hobbs, NM Attention: Johnny Cope

IN WITNESS WHEREOF, the Parties hereto have duly executed this MOA in duplicate affixing their signature,

EDDY-LEA ENERGY ALLIANCE, LLC	HOLTEC INTERNATIONAL
By  Name: <u>John A. HEATON</u> Its: <u>Chairman</u>	By  Name: <u>PIERRE ONEID</u> Its: <u>Sr. VP & CHIEF NUCLEAR OFFICER</u>