

## LAND PURCHASE OPTION AGREEMENT

This Land Purchase Option Agreement (this “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between Eddy-Lea Energy Alliance Limited Liability Company, a New Mexico limited liability company (“ELEA”), and Holtec International, a Delaware corporation (“Holtec”).

### RECITALS

A. ELEA is a New Mexico limited liability company organized under a joint powers agreement between Eddy County, Lea County, the City of Carlsbad and the City of Hobbs (collectively, the “Members”) for the purpose of promoting energy-related economic development for the benefit of the residents of the Members.

B. Holtec has developed a system for monitored retrieval storage of spent nuclear fuel (“SNF”) and high-level waste (“HLW”), which it calls the Holtec International Storage Module Underground Maximum Capacity, or “HI-STORM UMAX” system.

C. In 2009, ELEA purchased a parcel of undeveloped property in Lea County (the “Property”) for \$1 million with the intent of donating the Property to a private party, pursuant to the Local Economic Development Act, Sections 5-10-1 to 5-10-13 NMSA 1978 (“LEDA”), for use as a Global Nuclear Energy Partnership (“GNEP”) facility. The Property comprises approximately 960 acres, and is more specifically described in Exhibit A hereto.

D. The GNEP program was subsequently cancelled, and ELEA has now determined that its economic development mission would be best served by selling the Property to Holtec for no less than fair market value, contingent upon Holtec achieving the Option Start Date (as defined below) or exercising the Early Option (as defined below) to purchase the Property.

E. It is Holtec’s intend to obtain a license from the Nuclear Regulatory Commission (the “NRC”) and upon successful completion of an agreement with the Department of Energy and/or one or more utility companies to store spent nuclear fuel, construct and operate the HI-STORM UMAX system on the Property (the “Project”)

F. The Members have each authorized, by ordinance, this Agreement and the disposal of the Property to Holtec as provided herein, as follows: Eddy County by Ordinance O-\_\_\_\_\_, adopted on \_\_\_\_\_; Lea County by Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_; the City of Carlsbad by Ordinance \_\_\_\_\_, adopted on \_\_\_\_\_; and the City of Hobbs by Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_.

## AGREEMENT

Section 1. Effective Date. This Agreement shall not be effective until, and shall be immediately effective upon, approval of this Agreement by the State Board of Finance pursuant to NMAC 1.5.23.9 and Holtec's satisfactorily completing due diligence with regard to any mineral rights owners of the Property. (the "Effective Date"). ELEA agrees to assist Holtec by providing sufficient information regarding the current mineral right owners of the Property.

Section 2. Licensing; Storage Contracts.

(a) Promptly following the Effective Date, Holtec shall commence preparation of a site-specific license application (the "NRC Application") under the provisions of the Code of Federal Regulations (CFR) Chapter 10, Part 72 for a license (the "License") to operate the Property as an interim storage facility (the "Facility"), and to obtain a favorable draft Safety Evaluation Report pursuant to 10 C.F.R. § \_\_\_\_\_ 72 \_\_\_\_\_ (the "Draft SER"). Holtec shall use best efforts to cause the NRC to expeditiously issue the Draft SER. No later than three years following the Effective Date, Holtec shall submit the NRC Application to the NRC, and shall thereafter use its best efforts to obtain issuance of the License.

(b) Holtec will use reasonable efforts to negotiate an agreement with the Department of Energy ("DOE") for the interim storage of HLW and/or SNF on the Property (the "DOE Agreement") and/or negotiate an agreement with one or more power utilities for the storage of HLW and/or SNF on the Project (the "Utility Agreement", and together with the DOE Agreement, the "Storage Agreements").

(c) The date on which Holtec has (i) obtained the License, (ii) entered into either the DOE Agreement or the Utility Agreement, and (iii) in Holtec's sole judgment, secured financing for the initial construction of the Project, shall be the "Option Start Date". Holtec shall cause the Option Start Date to occur not later than thirteen years after the Effective Date unless otherwise extended by the parties.

Section 3. Property Purchase Option. Upon the occurrence of the Option Start Date, Holtec shall have the option to purchase the Property. Holtec shall exercise the purchase option by delivering written notice thereof (the "Option Exercise Notice") to ELEA no later than 90 days after the Option Start Date.

Section 4. Property Purchase Price. Within 60 days after delivery of the Option Exercise Notice, ELEA and Holtec shall select an MAI appraiser and such appraiser shall determine the fair market value of the land portion of the Property, excluding the value of any improvements, including, but not limited to, the License, or alterations made by Holtec with the consent of ELEA (the "Land Value"). If ELEA and Holtec are unable to agree upon the appraiser, each will select its own MAI appraiser (who shall be paid by that party), and such appraisers shall each independently determine the Land Value. If the lower appraisal is at least 90% of the higher appraisal, the "Land Value" shall be the average of such two appraisals. If the lower appraisal is not at least 90% of the higher appraisal, the two appraisers shall select a third MIA appraiser, and the third appraiser shall determine the Land Value. The cost of either the agreed upon appraiser or the third appraiser shall be shared equally by the parties. The purchase

price for the Property (the “Purchase Price”) shall be the greater of (i) \$1 million or (ii) the Land Value.

Section 5. Property Purchase Closing. The closing of the purchase of the Property (the “Closing”) will occur within 90 days of the determination of the Purchase Price. The Purchase Price shall be paid at closing, in cash or a cash equivalent. ELEA shall convey the Property to Holtec by quitclaim deed.

Section 6. Early Purchase Option.

(a) Holtec shall have the option to purchase the Property at any time prior to the Option Start Date (the “Early Option”) by delivering written notice thereof (the “Early Option Notice”) to ELEA. Within 60 days after delivery of the Early Option Notice, the parties shall proceed to have the Purchase Price determined using the procedure described in Section 4, and shall transfer the Property for the Purchase Price (the “Early Purchase”) as provided in Section 5.

(b) If, following the Early Purchase, Holtec determines in its sole reasonable decision that completion of the Project is not feasible, then ELEA shall have the option of purchasing the Property, including all improvements thereon, for the Purchase Price that was paid by Holtec for the Early Purchase (the “Repurchase Price”), subject, however, to such environmental and other investigations as ELEA may reasonably require. The cost of such investigations may be deducted from the Repurchase Price.

Section 7. Cooperative Promotion of Facility.

(a) At Holtec’s request, ELEA will take reasonable actions to support and promote the approval, licensing, construction and operations of the Facility, including the following:

(i) ELEA shall take all reasonable actions to persuade national, state and local governmental officials, the DOE, the NRC, the State of New Mexico, ELEA’s Members, and the local communities to support the Facility and its licensing, including, without limitation, participating in meetings with governmental officials and the public. ELEA’s support will continue so long as this Agreement is in force.

(ii) ELEA will assist Holtec in its efforts to petition and/or negotiate with the DOE (or any other potential utility customer) to store HLW and SNF at the Facility.

(iii) Holtec and ELEA will work together to expand the mission of the Facility to include interim storage of defense high-level waste.

(iv) ELEA will provide full support to Holtec in Holtec’s efforts to secure partial federal support of the Facility to reduce the financing burden on Holtec.

(b) Neither Holtec nor ELEA will sponsor or promote the development of any competing central interim storage project for SNF or HLW in the State of New Mexico or in a state bordering the State of New Mexico.

(c) With regard to the performance by ELEA of its obligations under this Section 7, ELEA shall be responsible only for the in-state travel and office expenses of ELEA board members and employees. ELEA personnel shall not be obligated to travel outside of New Mexico, and ELEA shall not be obligated to incur other expenses of any description except as provided in the preceding sentence, absent reimbursement or, at ELEA's option, payment in advance, by Holtec of such expenses.

Section 8. Revenue Sharing. Holtec shall pay ELEA the rate of local government reimbursement negotiated in good faith with the DOE or utility, which rate shall not be less than 30% of gross revenues; provided, however, that ELEA may approve, in its sole discretion, a rate less than 30%. Holtec will keep ELEA informed of all material issues relating to the negotiation of the local government reimbursement, and two of ELEA's board members shall be allowed full participation in the negotiation of the local government reimbursement. The reimbursement payments shall be made monthly, within 20 days after the end of each calendar month; provided that if Holtec does not receive a Storage Agreement payment in a given month, then the payment due to ELEA shall be paid within 20 days after Holtec receives such Storage Agreement payment. The parties anticipate that ELEA will be required to pay a percentage of each reimbursement payment to the State of New Mexico. After subtracting the portion that ELEA must pay to the State, the remainder of each payment under this Section 8 may be reduced by up to 50% (each, a "Reduction"), until the total of all such Reductions is an amount equal to the Purchase Price. (For example, if the first payment obligation is \$500,000, and the State share is 60%, then Holtec may reduce the actual payment by \$100,000 (i.e.,  $(\$500,000 - \$300,000)/2$ )). ELEA and its agents shall be provided such access to the Facility's records as is reasonably necessary to confirm the correct calculation of the revenue sharing payments. ELEA acknowledges ELEA shall be solely responsible for any and all fees paid to the State of New Mexico as a result of this Project and that Holtec shall have no obligation whatsoever to pay the State of New Mexico as a part of the revenue sharing of this Agreement.

Section 9. Termination.

(a) This Agreement shall automatically terminate if Holtec has not delivered the Option Exercise Notice no later than 90 days after the Option Start Date.

(b) Holtec may, by written notice to ELEA, terminate this Agreement at any time prior to Closing.

(c) Unless terminated as provided in Subsection 9(a) or Subsection 9(b), or terminated as the result of a breach, this Agreement shall continue so long as the Property is used for the Facility.

Section 10. Assignment. With the consent of ELEA (which consent shall not be unreasonably refused), Holtec may assign this Agreement to a third party.

Section 11. Industrial Revenue Bonds. The parties acknowledge that Holtec may request Lea County (the "County") to issue an industrial revenue bond (an "IRB") for the Facility, in which case Holtec will deed the Property to the County, and the County will immediately lease the Property back to Holtec under an IRB lease and purchase agreement. ELEA consents to such an IRB transaction; provided, however, such IRB transaction shall not effect ELEA's rights under Section 8 hereof.

Section 12. Amendments. This Agreement may be amended only by a written instrument signed by all the parties, and then only to the extent of such instrument. Any amendment affecting the terms of the transfer of the Property from ELEA to Holtec shall not be effective without the prior consent of the State Board of Finance.

Section 13. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon ELEA and Holtec, and their respective successors and assigns.

Section 14. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof; provided, however, that if enforcement of this Agreement absent such invalid or unenforceable provisions would destroy an essential purpose of this Agreement, then this Agreement shall be deemed modified to the extent necessary to make it valid or enforceable consistent with the true intent hereof.

Section 15. Recording. This Agreement and every assignment and modification hereof, or an appropriate and sufficient memorandum thereof, and each deed or instrument of conveyance contemplated hereunder, shall be recorded in the office of the County Clerk of Lea County, New Mexico.

Section 16. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument.

Section 17. Notices. All notices required under this Agreement shall be deemed to be properly sent if in writing, signed by the party or agent sending them, and (i) delivered personally, (ii) sent by registered or certified mail, or (iii) sent by a recognized overnight express courier service, addressed to ELEA or Holtec, as the case may be, at the following addresses, and such notices shall be effective on the date of receipt thereof:

If to ELEA:

Eddy-Lea Energy Alliance

\_\_\_\_\_

Attn.: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

with a copy to:

Rodey Law Firm  
201 Third St., Suite 2200  
Albuquerque, NM 87102  
Attention: Alan Hall  
Phone: (505) 768-7203

Fax: (505) 768-7395

If to Holtec:

Holtec International  
1001 N US Highway 1  
Jupiter, FL 33477  
Attn.: Pierre Oneid  
Phone: (561) 745-7772  
Fax: (856) 797-0922

with a copy to:

Holtec International  
One Holtec Drive  
Marlton, NJ 08053  
Attn.: Andrew R. Ryan, Esq.  
Phone: (856) 797-0900  
Fax: (856) 797-0922

Any party may, by notice to the other party, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 18. Title; Headings. The title and headings of the articles, sections and subdivisions of this Agreement have been used for convenience only and will not modify or restrict any of the terms or provisions of this Agreement.

Section 19. Applicable Law. The validity, construction and effect of this Agreement will be governed by New Mexico law applicable to agreements made and to be performed in New Mexico, without regard or effect given to conflict of law principles or rules that would require the application of the laws of any other jurisdiction.

Section 20. Further Actions. At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement. ELEA shall, upon the request of Holtec, execute and deliver such instruments as Holtec may reasonably request, including but not limited to amendments to this Agreement, to obtain or renew the License or any consent of any other governmental authority for the operation of the Facility, or to maintain Holtec's compliance with such government requirements or the DOE Agreement and/or the Utility Agreement; provided, however, that such instruments do not materially adversely affect ELEA's rights under this Agreement.

Section 21. Event of Default; Remedies. A failure by a party to perform any of its obligations under this Agreement for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the breaching party by the non-breaching party, or, if such failure cannot reasonably be remedied within 30 days, failure by the breaching party to commence the remedy within such period and to pursue the same diligently to completion, shall constitute an "Event of Default". Upon the occurrence of an Event of Default, the non-breaching party may exercise any and all remedies available at law.

Section 22. No Pecuniary Liability of ELEA. Holtec shall bear all of the expense, direct, indirect and contingent, of the licensing, construction and operation of the Facility. Neither ELEA nor any of its Members shall have any liability for any costs or obligations pertaining to or arising out of the licensing, construction or operation of the Facility.

Section 23. Release and Indemnification.

(a) Holtec releases ELEA, ELEA's members, and all officials, officers, employees and agents of the ELEA and ELEA's members (collectively, the "Indemnitees") from, agrees that the Indemnitees will not be liable for, and agrees to indemnify and hold the Indemnitees harmless from and against any and all liabilities, claims, suits, costs and expenses that are or may be imposed upon, incurred or asserted against the Indemnitees on account of: (i) any loss or damage to property or injury to or death of or loss by any person caused by Holtec's willful misconduct or negligence in investigating the Property prior to the Closing; (ii) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation, use or demolition of the Facility (iii) any storage activities at, on, in, under or about the Property; (iii) any other loss, claim, damage, penalty, liability, disbursement, litigation expense, attorneys' fees, experts' fees or court costs arising out of or in any way relating to clauses (i) and (ii); and (iv) any claim, action or proceeding brought with respect to the matters set forth in clauses (i), (ii) and (iii) above.

(b) Holtec releases the Indemnitees from, agrees that the Indemnitees shall not be liable for, and agrees to indemnify and hold the Indemnitees harmless from and against any and all claims, suits, judgments, fines, penalties, assessments, natural resource damages, response costs (such as the cost of any testing, sampling, medical or other monitoring, cleanup, or other required response action), costs necessary to bring the Property or the Facility into compliance with Environmental Laws (as defined below) and other liabilities, together with attorneys' fees and experts' fees, costs and expenses which are or may be imposed upon, incurred by, or asserted against the Indemnitees resulting from or in any way connected with the use, handling, mixing, generation, storage, manufacture, refining, release, transportation, treatment, disposal or other release or presence, at, in, on, under or from the Property, of any Hazardous Material (as defined below), SNF, other radioactive substance, oils, asbestos in any form or conditions, or any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of the Environmental Laws, or any other applicable federal, state or local law, regulation, ordinance or requirement relating to or imposing liability or standards of conduct concerning any Hazardous Material, hazardous, toxic or dangerous waste, substance or materials, all as now in effect or hereafter amended from time to time.

(c) As used in this Section 23, (i) "Environmental Laws" means any laws, statutes, regulations, orders or rules pertaining to health or the environment that are applicable from time to time to the Property or the Facility, and the construction, installation, operation, use and decommissioning of, and storage at, the Property or the Facility, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the Water Quality Act of 1987, the New Mexico Water Quality Act, the New Mexico Hazardous

Waste Act, the New Mexico Air Quality Control Act and the New Mexico Radiation Protection Act, and (ii) "Hazardous Material" means (A) "hazardous materials," "hazardous substances," and "hazardous wastes" as defined in the Environmental Laws, and (B) any other material regulated under the Environmental Laws.

(d) If a claim is made or any action is brought against one or more of the Indemnitees based upon the matters described in Subsections 23(a) or (b) above and in respect of which indemnity is sought against Holtec pursuant to Subsections 23(a) or (b) above, the Indemnatee seeking indemnity shall, within ten days of being notified of an action against it, notify Holtec, in writing, and Holtec shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by Holtec and approved in writing by the Indemnatee (provided that such approval by the Indemnatee shall not be unreasonably withheld or delayed), the payment of the reasonable expenses of such counsel, and the right of the Indemnatee to participate in negotiations and to consent to settlement. If any Indemnatee is advised in a written opinion of independent counsel (i) that there may be legal defenses available to such Indemnatee that are adverse to or in conflict with those available to Holtec, or (ii) that the defense of such Indemnatee should be handled by separate counsel, Holtec shall not have the right to assume or cause the assumption of the defense of such Indemnatee, and Holtec shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnatee, provided such counsel is approved in writing by Holtec (which approval shall not be unreasonably withheld or delayed), in assuming its own defense. If Holtec shall have failed to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Indemnatee within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnatee shall be paid by Holtec. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnitees shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnatee or Indemnitees unless the employment of such counsel has been specifically authorized in writing by Holtec. Holtec shall not be liable for any settlement of any such action effected without the written consent of Holtec, but if settled with the written consent of Holtec, or if there is a final judgment for the plaintiff in any such action with or without consent, and after all appeals have been taken and final orders or dismissals entered, Holtec agrees to indemnify and hold harmless the Indemnitees from and against any loss or liability by reason of such settlement or judgment.

(e) The indemnifications set forth in this Section 23 are intended to and will include the indemnification of all Indemnitees. The indemnification is intended to and will be enforceable by the Indemnitees to the full extent permitted by law.

(f) No release or indemnity is given under this Section 23 due to the exercise by any of ELEA's members of its police powers or in the performance of any essential governmental function; and provided further that there shall be excluded from the scope of this release and indemnity any liability, claims, costs and expenses imposed upon, incurred or asserted against an Indemnatee to the extent resulting from or arising out of the willful misconduct or negligence of the Indemnatee.

(g) If a court of competent jurisdiction determines that the provisions of Sections 56-7-1 or 56-7-2 NMSA 1978, as amended, are applicable to this Agreement or any claim arising under this Agreement, then any agreement in this Agreement to indemnify, hold harmless, insure, or defend another party will not extend to (i) liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents. Notwithstanding anything in this Lease to the contrary, this Lease shall be subject to all other limitations of Sections 56-7-1 and 56-7-2 NMSA 1978.

Section 24. Survivals. Sections 6 through 24 of this Agreement shall survive the Closing. Sections 22 and 23 shall survive the termination of this Agreement.

(remainder of page deliberately left blank)

IN WITNESS WHEREOF, ELEA and Holtec have executed this Agreement on the date stated above.

**EDDY-LEA ENERGY ALLIANCE, LLC**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HOLTEC INTERNATIONAL**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of New Mexico            )  
  ) ss.  
County of \_\_\_\_\_        )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of Eddy-Lea Energy Alliance, LLC, a New Mexico limited liability company.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

State of \_\_\_\_\_        )  
  ) ss.  
County of \_\_\_\_\_        )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of Holtec International, a Delaware corporation.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Exhibit A

Legal Description of the Property

- A. The surface estate only of Section 13, Township 20 South, Range 32 East, N.M.P.M.
- B. Tract I: The surface estate only of a tract of land located in the Southwest Quarter of Section 17, Township 20 South, Range 33 East, N.M.P.M. and more particularly described as beginning at the Southwest corner of said Section 17, thence S89°59'E, 1322.50 feet; thence N0°3'W, 1320 feet; thence N89°59'W, 1322.50 feet; and thence S0°3'E, 1320 feet to the point of beginning; and
- Tract II: The surface estate only of Lots 2, 3 and 4; the East Half of the West Half (E 1/2 W 1/2); and the South Half of the Southeast Quarter (S 1/2 SE 1/4), all in Section 18, Township 20 South, Range 33 East, N.M.P.M.