

Memorandum of Understanding Between

EDF Renewables Distributed Solutions, Inc. and the Town of Middlebury

This Memorandum of Understanding (the “MOU”), dated as of the ____ of _____, 2018, sets forth the terms of an agreement between EDF Renewables Distributed Solutions, Inc., a Delaware Corporation (formerly known as Distributed Solutions, “Distributed Solutions”) with its principal place of business located at 67 Merchants Row, Rutland Vermont and the Town of Middlebury, Vermont (“the Town”), collectively the “Parties,” in connection with Distributed Solutions’ designing, permitting, and constructing a 4.99 megawatt (“MW”) AC solar installation and 2 MW battery storage project in the Town of Middlebury (the “Project”) on property owned by the Estate of Ruth F. Quesnel with a street address of 81 Middle Road South, Middlebury, Vermont and comprised of 111.3± acres of bare land (the “Property”). The Property has been assigned SPAN#387-120-12485. The Project is more specifically depicted and described on the 45 Day Notice Site Plan, Proposed Solar Array and Battery Pack System, prepared by Krebs & Lansing Consulting Engineers, Inc. dated March 5, 2018 attached hereto as Exhibit 1 (“Proposed Site Plan”).

WHEREAS, Distributed Solutions intends to file with the Vermont Public Utility Commission (“PUC”) a petition and associated prefiled testimony and exhibits (the “248 Petition”) requesting a Certificate of Public Good (“CPG”) pursuant to 30 V.S.A. § 248 for the construction, operation and maintenance of the Project; and

WHEREAS, the Parties expect that the Project will be beneficial to the Town by providing increased renewable energy resources and associated revenues to the citizens of the Town, provided the Project is constructed and operated substantially as depicted on the Proposed Site Plan and as herein agreed and in a manner that does not cause undue adverse impacts; and

WHEREAS, the Town has reviewed the Proposed Site Plan and has addressed with Distributed Solutions the currently known and outstanding issues between the Parties related to the Project as depicted on the Proposed Site Plan.

THEREFORE, in consideration of the above premises and the agreements and covenants set forth below, the Parties hereby agree as follows:

1. Best Efforts: Distributed Solutions shall use its best efforts to design, permit, and construct the Project by December 31, 2019 substantially as depicted and set forth in the Proposed Site Plan (Exhibit 1).
2. Submission of MOU to PUC: Distributed Solutions shall submit this MOU to the PUC in conjunction with the 248 Petition as an exhibit to Distributed Solutions’ direct prefiled testimony and will request that it be made part of the evidentiary record and that any CPG issued by the PUC shall be subject to its terms and conditions. The Town shall not object to the submission of this MOU by Distributed Solutions as part of the 248 Petition proceeding and shall not otherwise object to the issuance of a CPG provided that the Project is, in all

material respects, substantially as represented in the Proposed Site Plan (Exhibit 1) and provided that the CPG requires compliance with the terms and conditions of this MOU.

3. Orderly Development: Provided the provisions of this MOU are implemented as conditions to the Project's CPG, the Parties agree that the Project will not unduly interfere with the orderly development of the region or cause an undue adverse effect on the aesthetics or natural beauty of the area, and the Project is otherwise consistent with the Middlebury Town Plan (12/11/2012).
4. Access and Local Roads:
 - (a) Project construction, repair, maintenance and decommissioning access for all large vehicular traffic (12,000 lbs. per axle or more) shall only utilize the Northern Access Road at the Route 7 curb cut and access point at the northern most part of the Property. All large vehicular traffic associated with the Project shall not, unless permitted in writing, exceed applicable road weight limits and all Project activities and construction shall thereafter only utilize the Northern and Southern Access Roads as depicted on the Proposed Site Plan and that portion of Old Middle Road referenced in §4(b)(ii) below as specified herein.
 - (b) The Northern Access Road and the Southern Access Road shall, at all times, be constructed, maintained and used by Distributed Solutions and its subcontractors in the locations generally depicted on the Proposed Site Plan.
 - (c) Access to the Property for construction, repair or maintenance for the life of the Project and through completion of decommissioning via Halladay Road and Old Middle Road, which bisects the site, shall, except as noted above, be limited to small vehicular traffic (12,000 lbs. or less).
5. Work in the Public Right-of-Way of Old Middle Road: The Parties acknowledge that portions of Old Middle Road will, as referenced in ¶4(b)(ii) above, be used to access portions of the Project and will require improvements to accommodate Distributed Solutions' access to those portions of the Project. Distributed Solutions shall, at its expense, be solely responsible for constructing, repairing and maintaining those improvements necessary for the Project for the life of the Project and through decommissioning. Prior to undertaking any construction or work within the right-of-way of Old Middle Road, Distributed Solutions shall complete and submit a right-of-way permit and applicable fees with the Town pursuant to 19 V.S.A. §1111 and the Middlebury Ordinance Regarding Work in the Public Right-of-Way ("Ordinance"), as amended. It is hereby acknowledged by Distributed Solutions that any and all construction, repair, maintenance or decommissioning activities within the 3-rod right-of-way of Old Middle Road during the life of the Project including, but not limited to, (1) improvements or repairs to the traveled surface of Old Middle Road; (2) the installation of curb cuts to or across Old Halladay Road; (3) the installation of utilities or Project facilities or connections within the right-of-way of Old Middle Road and (4) any necessary surface water drainage systems associated with the Project or Distributed Solutions' use of

Middle Road shall be constructed and maintained in compliance with the Ordinance administered by the Town's Public Works Operations Director as the same may be amended from time to time. It is acknowledged by Distributed Solutions that it shall be its sole responsibility to provide winter maintenance along Old Middle Road if required to access the Project. It is further acknowledged that Old Middle Road is currently a Class 4 town highway with a presumed width of 3-rods and that it is a public right-of-way which must remain unobstructed by Distributed Solutions and its agents and contractors at all times.

6. Insurance and Bond Requirements/Repairs: Distributed Solutions shall, at all times during construction and any operation of the Project which involves use, maintenance or repairs to the right-of-way of Old Middle Road, maintain insurance and post any bond in amounts and as required by the Ordinance and directed by the Public Works Operations Director and pay any associated permit fees. Distributed Solutions shall, for the life of the Project and until decommissioning, be solely responsible for paying any and all expenses related to its use, improvements, repairs or maintenance within the right-of-way of Old Middle Road and shall, further, be responsible for any and all damages to Old Middle Road and Halladay Road caused by or related to Distributed Solutions activities or the Project. Upon written notification to Distributed Solutions that damage of any kind has been caused to Middlebury's public rights-of-way by Distributed Solutions or any of its agents or contractors, Distributed Solutions shall, within seven (7) working days, initiate and complete repairs to the right-of-way. Should Distributed Solutions fail to initiate the reasonable and necessary repairs as reasonably directed, or if the necessary repairs are of an emergent nature, Middlebury may then effectuate the repairs and Distributed Solutions shall be responsible for all costs, expenses and in kind services necessary to repair the right-of-way including, but not limited to, any attorney's fees and costs related to the collection of any amounts due and owing for the repairs.
7. Underground Utility Line: The proposed interconnection of the Project to the existing electric utility grid shall be installed underground.
8. Training for Emergency Services Providers: Distributed Solutions shall provide the Town's emergency service providers, including police, fire and public works personnel serving the Town, with appropriate training in responding to potential emergencies that may rise during construction or operation of the Project. Training shall be coordinated with the Town Clerk and the Chief of the Middlebury Fire and Police Departments.
9. Town Installation: Distributed Solutions shall develop, permit, and construct, at its own expense, a net metering solar system or electrical charging station to be owned by the Town (the "Town Installation"), so long as the total combined development, design, and construction costs collectively do not exceed \$40,000.
 - a. If the Town elects for the Town Installation to be a solar project, Distributed Solutions shall use its best efforts to file a net-metered application for the Town Installation under 30 V.S.A § 248 within 90 days of its filing for the Project.

- b. Prior to commencement of construction of the Project, the Parties will agree on a location for the Town Installation on property owned by the Town. In the event that siting the Town Installation on Town-owned land is impossible or impractical due to utility interconnection issues or otherwise, Distributed Solutions shall work with the Town to identify an alternative location.
- c. Distributed Solutions will use best efforts to begin construction of the Town Installation within four (4) months of the start of construction of the Project, subject to seasonal construction constraints and any required state and/or local approvals for the Town Installation. In the event that Distributed Solutions is unable to develop the Town Installation according to one of the arrangements set forth in the prior paragraph by December 31, 2019, Distributed Solutions shall make a one-time payment of \$40,000 to the Town, and Distributed Solutions' obligations under this Paragraph 9 shall be deemed satisfied in full.
- d. All equipment warranties for equipment used in the Town Installation (Inverters – 10 years), (photovoltaic modules – 25 year warranty to 80% of original capacity), (Racking – 20 years), to the extent transferrable, shall be transferred to the Town upon completion of Town Installation construction.
- e. Distributed Solutions may retain properly licensed subcontractors for the performance of portions of the Work. The Town shall not be responsible or liable for any work performed by, or any acts or omissions, of any subcontractor. Distributed Solutions shall fully and promptly pay, when due under the applicable subcontracts, all undisputed amounts payable to its subcontractors. Distributed Solutions shall cause its subcontractors not to create or place any liens, security interests, or other encumbrances on the Town Installation, other than mechanic's liens or similar liens or security interests arising by operation of law for the sole purpose of securing Distributed Solutions' obligation to pay a subcontractor for work performed hereunder. The Town shall not be deemed by virtue of this MOU to have any contractual obligation to, or relationship with, any subcontractor.
- f. Distributed Solutions understands that the Town will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers' compensation, or other benefits or services ordinarily available to Town employees.
- g. In all aspects of its obligations to construct the Town Installation under this MOU, Distributed Solutions shall function as an independent contractor and not an employee or agent of the Town and no employee-employer relationship between Distributed Solutions and the Town shall be deemed created as a result of this MOU.

- h. Prior to the filing of any permit application related to the Town Installation, Distributed Solutions shall submit to the Town for review a complete set of permit application materials for the Town's review and comment.
 - i. The Town shall designate where environmental attributes associated with the Town Installation shall be transferred, whether to GMP in order to qualify for the highest possible net metering "solar adder," pursuant to PUC Rule 5.100, or to be retained by the Town.
 - j. Decommissioning costs of the Town Installation, if any, shall be borne by the Town.
 - k. Notwithstanding the above provisions of Paragraph 9(a)-(j), Distributed Solutions and the Town shall mutually consider, in good faith, the development, permitting and construction by Distributed Solutions of a larger solar project option, to be exercised by the Town on mutually agreeable terms that suits the Town's energy and land use goals while providing an equivalent value of \$40,000 to the Town. The Town and Distributed Solutions shall, in good faith, explore these options and the Town shall notify Distributed Solutions of its desire to exercise its option to proceed with an alternative solar project as agreed within 45 days of Distributed Solutions filing its CPG application for the Project.
10. Municipal Taxes and Supplemental Payments: Distributed Solutions shall pay all municipal taxes that are due under state law for the Project as a solar electric generation facility over the life of the Project and until decommissioning is complete (and approved, if required) by the PUC or its successor agency. For each tax year in which the Project's annual municipal property tax due to the Town, not including any amounts due the State of Vermont, is less than \$40,000 per year, Distributed Solutions shall make a supplemental non-tax payment to the Town in an amount that is equal to \$40,000, less the annual tax due based on the assessed value of the Project. In the event that the total annual property tax due from Distributed Solutions based on the assessed value of the Project is in excess of \$40,000 in any given tax year, Distributed Solutions shall not be relieved of paying municipal property taxes for the Project for the full amount due including any amounts that are in excess of \$40,000. This MOU sets neither the tax rate nor the Project value in a manner that affects the Town's grand list and thus shall not constitute, and shall not be interpreted by any person to constitute, a tax stabilization agreement as that term is defined in 24 V.S.A. § 2741, 32 V.S.A. § 5404a, or in any other provision of the Vermont Statutes Annotated. Further, this provision is not, in any way, to be construed in a manner that limits or exempts any property tax due that is assessed against the real property on which the Project is located which is acknowledged by the Parties to be a separate taxable parcel.
11. Pollinator Habitat: Distributed Solutions shall design and plant a seed mix for use in the Project area that is suitable for and supports pollinator friendly habitat, based upon the guidelines developed by the University of Vermont, which approval shall not be unreasonably withheld.

12. 24-Hour Emergency Contact Number: Distributed Solutions shall arrange for and make public a 24-hour emergency contact number during all periods of Project construction, and thereafter for the life of the Project so that any complaints or emergency issues involving or concerning the Project may be promptly reported and an appropriate response promptly made by Distributed Solutions.
13. Issuance of a Certificate of Public Good: The obligations of the parties under this MOU shall be contingent upon the issuance of a CPG for the Project which incorporates the terms of this MOU and in such a timeframe and containing such conditions that the Project is commercially feasible, and, Distributed Solutions chooses in its sole discretion to go forward and construct the Project. Distributed Solutions shall notify the Town of its intent to proceed or not proceed with the Project in writing within ninety (90) days of the issuance of a CPG. In the event notice to proceed is not so received by Distributed Solutions within ninety (90) days, this contract and the obligations of the parties as referenced herein, shall be deemed null and void.
14. Assignment
 - a. Distributed Solutions shall have the right to freely assign this MOU to an entity that files the 248 Petition for the Project with the PUC, or to an entity that is the holder of the CPG for the Project, so long as such assignee assumes all of Distributed Solutions' rights and obligations under this MOU as of the effective date of the assignment and the assignee has the demonstrated financial ability to honor the MOU's terms and conditions. Distributed Solutions shall notify the Town thirty days prior to the effective date of any such assignment, but otherwise consent of the Town shall not be required. Any assignment in violation of this provision shall be void *ab initio*.
 - b. Any assignment other than as provided in subsection a. above shall require the prior consent of the Town, which shall not be unreasonably withheld.
15. Execution in Counterparts: The MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
16. Controlling Law; Jurisdiction: The MOU shall be governed by Vermont law. Jurisdiction with respect to any dispute hereunder shall be exclusively submitted to tribunals and courts with subject matter jurisdiction in the State of Vermont.
17. Modification: The MOU may be modified only upon mutual written agreement of the Parties.
18. Legal Authority to Execute MOU: Each party to the MOU has the legal authority to execute and deliver the MOU and to perform the undertakings entered into hereunder.

Each signatory below is duly authorized by all necessary corporate or Town action, as the case may be, to enter into the MOU.

19. Indemnification and Hold Harmless: Distributed Solutions shall defend, indemnify and hold harmless the Town from any and all claims, disputes, and legal or regulatory actions that may be brought against the Town by any contractor, subcontractor, or other firm or person alleging nonpayment for services rendered or materials furnished to Distributed Solutions or for any claims that may be brought against the Town based upon Distributed Solutions' negligent acts or omissions, or Distributed Solutions' willful misconduct during the life of the Project and until decommissioning is completed as required under any CPG issued by the PUC. Notwithstanding the foregoing, Distributed Solutions shall not be obligated to indemnify the Town for any claim resulting solely from the Town's negligent acts or omissions or the Town's willful misconduct or for any actions by the Town that are in derogation of the Town's obligations under law or this MOU.
20. Insurance: During project construction, Distributed Solutions shall carry liability insurance in an amount no less than \$5,000,000, shall name the Town as an additional insured, and will ensure that the general contractor for the Project carries liability insurance in such commercially-reasonable amounts to cover property damage claims. Proof of such insurance shall be provided to the Town, prior to commencement of Project construction.
21. Decommissioning: At the end of the Project's useful life, Distributed Solutions shall decommission the Project in accordance with the decommissioning plan to be submitted to and approved by the PUC. Distributed Solutions shall maintain sufficient financial resources to put the decommissioning plan into effect at all times during the life of the Project.
22. Mutual Obligations: The parties acknowledge that this MOU and the mutual obligations contained herein are premised on the common understanding that the Project will be built substantially as it is depicted on the effective date of this MOU as set forth in the Proposed Site Plan (Exhibit 1). If Petitioner makes any changes to the Project prior to the PUC's issuance of a CPG, or if the PUC orders changes to the Project that materially alters the Project as represented on the Proposed Site Plan or that could materially impact any of the Town's or Distributed Solutions' rights under this MOU, the Parties shall thereafter negotiate in good faith to amend this MOU as necessary to accommodate those changes, provide that the Town, in its sole discretion, concludes that the Project, as amended, remains beneficial to the Town. Should the Parties fail to reach an agreement to amend this MOU, this MOU shall, at the option of either Party, be deemed null and void and without effect, shall thereafter not constitute any part of the record in the section 248 proceeding, and shall not be used for any other purpose. Should a Party so elect and the MOU is rendered null and void and without effect, the Parties shall be placed in the position that they enjoyed in the section 248 proceeding before entering this MOU including the right to seek intervenor status in any PUC proceeding pursuant to PUC Rule 2.100.
23. Material Change to MOU: The Parties have each made specific compromises to reach this MOU. This MOU is expressly conditioned upon the PUC's acceptance of all of its provisions, without material change or condition. If the PUC does not accept this MOU

without material change or condition, the MOU shall, at the option of either Party, be deemed null and void and without effect, shall not constitute any part of the record in this proceeding, and shall not be used for any other purpose. Should either Party so elect and the MOU is deemed null and void and without effect, the Parties shall be placed in the position that they enjoyed in any permit proceeding before entering this MOU including the right of the Town to seek intervenor status in the PUC proceeding pursuant to PUC Rule 2.100.

24. Entire Agreement: This Agreement represents the entire agreement between the Parties.
25. Modification/Mutual Consent: This Agreement may be modified only upon mutual written agreement of the Parties.
26. MOU Termination: This MOU and the obligations of the Parties hereunder shall terminate and be of no further effect if a CPG is not issued by the PUC permitting the construction of the Project within two (2) years from the date of the execution of this MOU or if the Project is not substantially constructed within three (3) years from the date of the execution of this MOU.
27. Any notice as stated in this Agreement shall be deemed delivered on the date said notice is deposited in the U.S. Mail by certified mail at the following addresses:

Global Resource Option, Inc.
205 Billings Farm Road, Bldg. 4
White River Jct., VT 05001

Town of Middlebury
c/o Town Manager
77 Main Street
Middlebury, VT 05753

[Signature page follows]

The Parties have caused this Memorandum of Understanding to be executed as of this ____ day of _____, 2018.

Town of Middlebury

By:

Name:

Title:

EDF Renewables – Distributed Solutions, Inc.

By:

Name:

Title: