

Memorandum of Understanding Between
Global Resource Options, 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 Global Resource Option, Inc. (dba “groSolar”) and the Town of Middlebury, Vermont (“the Town”), collectively the “Parties,” in connection with groSolar’s designing, permitting, and constructing a 4.99 megawatt (“MW”) AC solar installation and 2 MW battery storage project in the Town of Middlebury on property located at the corner of Old Middle Road and Halladay Road (the “Project”).

WHEREAS, groSolar 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 believe the proposed Project can provide benefits to the Town, while at the same time be constructed and operated in a manner that does not cause undue adverse impacts; and

WHEREAS, the Parties, having had an opportunity to review and assess the parameters of the proposed Project, have resolved all outstanding issues between them related to the Project.

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

1. groSolar shall use its best efforts to design, permit, and construct the Project by December 31, 2019.
2. groSolar shall submit this MOU to the PUC in conjunction with the 248 Petition as an exhibit to groSolar’s 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.
3. So long as 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 Town Plan.
4. Access and Local Roads: goSolar’s primary construction access for large vehicular traffic shall be off Route 7. Access via Old Middle Road, which bisects the site, shall be limited to smaller vehicular traffic during construction and operation of the Project. The Parties understand that portions of Old Middle Road may require improvements to accommodate access to the Project, which groSolar shall be solely responsible for. Any improvements to Old Middle Road as required for Project access shall be designed and constructed in accordance with the Town of Middlebury’s authority over town road rights-of-way pursuant to 19 V.S.A. § 1111.

5. Training for Emergency Services Providers: groSolar shall provide the emergency service providers serving the Town with appropriate training on responding to potential emergencies that may rise during operation of the Project. Training shall be coordinated with the Town Clerk and the Chief of the Middlebury Fire Department.
6. Municipal Taxes: groSolar shall pay all municipal taxes that are due under state law for the Project as a solar electric generation facility. For every tax year in which the Project's municipal tax bill is less than \$40,000 per year, groSolar shall provide a supplemental non-tax payment to the Town so that the total annual amount paid by groSolar to the Town is equal to \$40,000; provided, however, that groSolar shall not be relieved of paying municipal property taxes that may be due under applicable law for the Project 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.
7. Pollinator Habitat: groSolar shall design and plant a seed mix for use in the Project area that is suitable for and supports pollinator friendly habitat.
8. 24-Hour Emergency Contact Number: groSolar shall arrange for and make public a 24-hour emergency contact number for the facility so that any emergency issues at the facility may be promptly reported.
9. groSolar's obligations under this MOU shall be contingent upon the issuance of a Certificate of Public Good for the Project in such a timeframe and containing such conditions that the Project is commercially feasible, and, groSolar chooses in its sole discretion to go forward and construct the Project.
10. Assignment
 - a. groSolar 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 groSolar's 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. groSolar 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.
11. 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.

12. The MOU shall be governed by Vermont law. Any disputes arising under this MOU shall be resolved by the PUC.
13. The MOU may be modified only upon mutual written agreement of the Parties.
14. 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.
15. groSolar 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 groSolar or for any claims that may be brought against the Town based upon GroSolar's negligent acts or omissions, or groSolar's willful misconduct. Notwithstanding the foregoing, groSolar shall not be obligated to indemnify the Town for any claim resulting 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.
16. During project construction, groSolar 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.
17. At the end of the Project's useful life, shall decommission the Project in accordance with the decommissioning plan to be submitted to the PUC. Petitioner shall maintain sufficient financial resources to put the decommissioning plan into effect.
18. This MOU pertains only to the Project as it is proposed at the effective date of this MOU. 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 could materially impact any of the Town's or groSolar's rights under this MOU, the Parties shall negotiate in good faith to amend this MOU as necessary. 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 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.
19. This MOU shall not be construed as a waiver as to jurisdiction or otherwise having precedential impact on any future proceeding involving either Party, except as necessary to implement this MOU or to enforce an order of the PUC resulting from this MOU.

20. 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 this proceeding before entering this MOU.

21. Further Assurances. Each Party hereto agrees to promptly to execute, deliver, file, or record such agreements, instruments, testimony, certificates or other documents and to do and perform such other and further acts and things as may be reasonably necessary or proper to consummate the transactions contemplated hereby and to carry out the provisions of this MOU.

[Signature page follows]

January 2018 Draft MOU from groSolar

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

Town of Middlebury

By:

Name:

Title:

Global Resource Options, Inc. (dba “groSolar”)

By:

Name:

Title:

January 2018 Draft MOU from groSolar