

**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., a Delaware Corporation with its principal place of business located at 205 Billings Farm Road, Building 4, White River Jct., Vermont (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 (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 located at the corner of Old Middle Road and Halladay Road (the “Project”).~~ The solar installation and battery 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 Solar Plan”).

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 expect that ~~believe~~ the ~~proposed~~ Project will be beneficial ~~can provide benefits~~ to the Town by providing increased renewable energy resources and associated revenues to the citizens of the Town, provided the Project is ~~while at the same time be~~ constructed and operated substantially as depicted on the Proposed Solar Plan and as herein agreed and in a manner that does not cause undue adverse impacts; and

WHEREAS, the Town Parties, having ~~had an opportunity to~~ reviewed the Proposed Solar Plan and having further addressed ~~and assess the parameters of the proposed Project, have resolved all the currently known and~~ outstanding issues between them Parties related to the Project as depicted on the Proposed Solar 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: groSolar 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 Solar Plan (Exhibit 1).
2. Submission of MOU to PUC: 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 and conditions. The Town shall not object to the submission of this

MOU by groSolar 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 Solar Plan (Exhibit 1) and provided that the CPG incorporates the terms and conditions as stated in this MOU.

3. Orderly Development: Provided~~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 Middlebury Town Plan (12/11/12).

4. Access and Local Roads:

(a) ~~groSolar's primary~~ Project construction, repair, maintenance and decommissioning access for all large vehicular traffic (\_\_\_\_\_ lbs. or more) shall only utilize the Northern Access Road at the ~~be-off~~ 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 Solar 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 groSolar and its subcontractors in the locations depicted on the Proposed Solar Plan and in such a manner that the roads are at least 100 feet from any adjacent or abutting properties and 100 feet from any existing public highway except, only as follows:

(i) Where the Northern Access Road intersects with U.S. Route 7 as depicted on the Proposed Solar Plan and as approved and permitted by the Vermont Agency of Transportation ("VTRANS");

(ii) At the southern end of the Northern Array as depicted on the Proposed Solar Plan from a point where the Northern Access Road intersects with the Old Middle Road, then westerly to a point where the Southern Access Road commences, which is comprised of a distance of 596.60'±; and

(iii) At two (2) locations where the Southerly Access Road intersects with and crosses the right of way of the Old Middle Road as depicted on the Proposed Solar 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 smaller vehicular traffic (                   lbs. or less). ~~during construction and operation of the Project.~~

5. Work in the Public Right-of-Way of Old Middle Road: The Parties acknowledge understand that portions of Old Middle Road will, as referenced in ¶4(b)(ii) above, be used to access portions of the Project and will ~~may~~ require improvements to accommodate groSolar's access to those portions of the Project, ~~which~~ groSolar shall, at its expense, shall be solely responsible for constructing, repairing and maintaining those improvements 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, groSolar 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. ~~Any improvements to Old Middle Road as required for Project access shall be designed and constructed in accordance with the Town of Middlebury's~~ It is hereby acknowledged by groSolar 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 groSolar's use of Middle Road shall be constructed and maintained as directed by the Public Works Operations Director and in compliance with the Ordinance as the same may be amended from time to time. It is acknowledged by groSolar that it shall be its sole responsibility to provide winter maintenance along Old Middle Road 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 groSolar and its agents and contractors at all times.
6. Insurance and Bond Requirements/Repairs: groSolar 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 Direction and pay any associated permit fees. groSolar shall, for the life of the Project and until decommissioning, as provided in the Project CPG, 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 groSolar's activities or the Project. Upon written notification to groSolar that damage of any kind has been caused to Middlebury's public rights-of-way by groSolar or any of its agents or contractors, groSolar shall, within seven (7) working days, initiate and complete repairs to the right-of-way. Should groSolar 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 groSolar 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. ~~authority over town road rights-of-way pursuant to 19 V.S.A. § 1111.~~

7. Underground Utility Line: The proposed interconnection of the Project to the existing electric utility grid along Halladay Road shall be installed underground.

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~~5.8.~~ Training for Emergency Services Providers: groSolar shall provide ~~the Town's~~ the 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.

~~6.9.~~ Municipal Taxes and Supplemental Payments: groSolar 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 has been certified by the PUC or its successor agency. For ~~each~~ every tax year in which the Project's annual municipal property tax due to the Town, not including any amounts due the State of Vermont, bill is less than \$40,000 per year, groSolar shall ~~make provide~~ a supplemental non-tax payment to the Town ~~in an so~~ that amount that the total annual amount paid by groSolar to the Town is equal to \$40,000, less the annual tax due based on the assessed value of the Project; provided, however, that In the event that the total annual property tax due from groSolar based on the assessed value of the Project is in excess of \$40,000 in any given tax year, groSolar shall not be relieved of paying municipal property taxes ~~that may be due under applicable law~~ 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.

~~7.10.~~ 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 as approved by the Town, which approval shall not be unreasonably withheld.

~~8.11.~~ 24-Hour Emergency Contact Number: groSolar 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 ~~for the facility~~ so that any complaints or emergency issues involving or concerning ~~at the Project facility~~ may be promptly reported and an appropriate response promptly made by groSolar.

- 9.12. Issuance of a Certificate of Public Good: The groSolar's obligations of the parties under this MOU shall be contingent upon the issuance of a ~~Certificate of Public Good~~ 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, groSolar chooses in its sole discretion to go forward and construct the Project. groSolar 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 groSolar within ninety (90) days, this contract and the obligations of the parties as referenced herein, shall be deemed null and void.
- 10.13. Assignment: This Agreement constitutes the binding agreement of the parties hereto and is enforceable against each party, its successors and assigns, in accordance with its terms. This Agreement may not be assigned without the consent of the non-assigning parties, which consent shall not be unreasonably withheld, conditioned or delayed.
- ~~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.a. Any assignment other than as provided in subsection a. above shall require the prior consent of the Town, which shall not be unreasonably withheld.~~
- 11.14. 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.
- 12.15. Controlling Law; Jurisdiction: The MOU shall be governed by Vermont law. Jurisdiction with respect to any dispute hereunder shall lie with the federal and state courts of the State of Vermont. Any disputes arising under this MOU shall be resolved by the PUC.
- 13.16. Modification: The MOU may be modified only upon mutual written agreement of the Parties.
- 14.17. 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.

~~15.~~18. Indemnification and Hold Harmless: 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 during the life of the Project and until decommissioning is completed as required under any CPG issued by the PUC.

Notwithstanding the foregoing, groSolar 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.

~~16.~~19. Insurance: 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.~~20. Decommissioning: At the end of the Project's useful life, groSolar shall decommission the Project in accordance with the decommissioning plan to be submitted to and approved by the PUC. ~~groSolar Petitioner~~ shall maintain sufficient financial resources to put the decommissioning plan into effect at all times during the life of the Project.

~~18.~~21. 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 ~~This MOU pertains only to the Project as it is depicted~~ proposed ~~at~~ on the effective date of this MOU as set forth in the Proposed Solar 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 Solar Plan or that could materially impact any of the Town's or groSolar's 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 5.100.

~~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.~~

~~20,22.~~ 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 this proceeding before entering this MOU including the right of the Town to seek intervenor status in the PUC proceeding pursuant to PUC Rule 5.100.

~~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.~~

23. Entire Agreement: This Agreement represents the entire agreement between the Parties.

24. Modification/Mutual Consent: This Agreement may be modified only upon mutual written agreement of the Parties.

25. 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.

26. 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:

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

By:

Name:

Title: