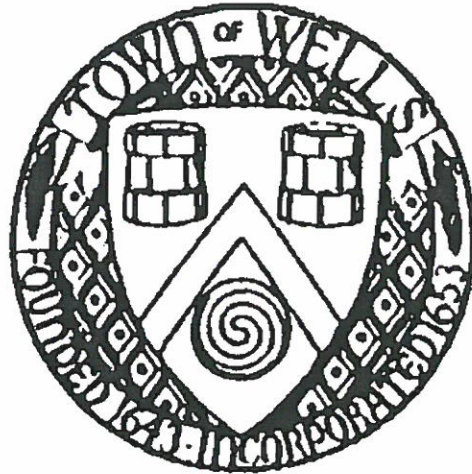


# TOWN OF WELLS



## Annual Town Meeting

June 11, 2019

Tuesday, June 11 – 8:00AM to 8:00PM

*Warrant and Plans for the Fiscal Year 2020*

Town of Wells  
Town Office  
208 Sanford Road  
Wells, Maine 04090

BULK RATE  
U.S. POSTAGE PAID  
WELLS, ME 04090  
PERMIT NO. 3  
CARRIER ROUTE - SORT

**POSTAL PATRON**

**ARTICLE 16. LEASE OF TOWN PROPERTY FOR SOLAR FACILITIES:** Shall the Town vote to: (1) lease two parcels of Town-owned land, namely the “Landfill Site” (comprised, collectively, of Tax Map 34, Lots 006-EXE, 006-A-EXE, 006-A-1-EXE, 006-B-EXE, 006-9-EXE, 006-10-EXE, 007-EXE) and the “Gravel Pit Site” (comprised, collectively, of Tax Map 48, Lots 002-EXE, 003-EXE, 004-EXE, 005-EXE and Tax Map 49, Lots 001-EXE, 002-EXE, 007-EXE, 011-A-EXE) to Walden Renewables Development, LLC (“Walden Renewables”) for the purposes of constructing and operating solar photovoltaic facilities thereon (the “Solar Facilities”), as outlined in a Memorandum of Understanding dated March 19, 2019 between the Town and Walden Renewables; (2) authorize the Board of Selectmen, after a public hearing, to enter said Lease; and (3) authorize the Board of Selectman to take all steps reasonable and necessary to complete said Lease, including negotiating and executing documents?

Board of Selectmen Recommends YES (5 in Favor / 0 Against)

**Explanation:** Walden Renewables approached the Wells Energy Committee following the Town’s attendance at a Northeast Solar Conference in 2018, the purpose of which was for land owners to meet with solar developers to discuss land prospects and interest in developing utility grade projects. The Town representatives met with a dozen companies showcasing the parcels listed above. Only Walden Renewables followed up and met with the full Wells Energy Committee following the fall 2018 conference. Walden Renewables constructs and operates renewable energy projects, including solar facilities throughout the Northeast. Walden Renewables seeks to lease two Town-owned sites for a period of thirty years (with two possible five-year extensions). If this Article is approved, Walden Renewables intends to install arrays of solar photovoltaic panels, (which convert sunlight into electricity) on both sites, along with related equipment and infrastructure, for the purpose of generating clean electricity and/or energy storage in the range of 10-megawatts.

The two sites are: (1) the Town’s 9B “Landfill Site,” adjacent to the Maine Turnpike, which is approximately 47 acres; and (2) the “Gravel Pit Site,” which is approximately 50 buildable acres located off the Crediford Road. Neither site is currently being used by the Town. The 9B Landfill has been a Brownfield Site on which this type of low impact development is encouraged. The Old Gravel Pits have been closed for decades and abut the Great Heath. Solar array development is low impact and environmentally friendly.

The annual rent for the Landfill Site would be the greater of \$10,000 or \$650 per acre. The annual rent for the Gravel Pit site would be the greater of \$20,000 or \$650 per acre. The annual rent for both sites would escalate at a rate of 2% per year. Additional rent would be charged in the event that Walden Renewals exercises the five-year extensions. Other income will be from taxes with payment of \$5,000 per megawatt AC of the licensed operating capacity, which for a 10-megawatt project would be approximately \$50,000 per year.

A copy of the MOU (outlining the Key Lease Terms) is posted together with this warrant as Appendix 3 and is hereby incorporated by reference. Note that said MOU provides an outline only and any Lease that is ultimately negotiated may differ in form and content.

**APPENDIX 3**

**Memorandum of Understanding**

This Memorandum of Understanding (this "MOU"), entered into and made effective, as of the \_\_\_\_ day of 2019, is by and between Walden Renewables Development LLC ("Walden"), a Delaware limited liability company with offices at 155 Fleet Street, Portsmouth, NH 03801 and 40 Worth Street, 10<sup>th</sup> Floor, New York, NY 10013, and the Town of Wells Maine, a Maine body corporate and public having a business office 208 Sanford Road, Wells, Maine 04090 (the "Town"). Walden and the Town are sometimes referred to herein individually as a "Party", and collectively as the "Parties".

**WHEREAS**, Walden is a renewable energy development company that develops, finances, constructs, owns, operates and sells renewable energy projects, including without limitation solar photovoltaic projects; and

**WHEREAS**, the Town is the owner of certain real property known as the "Landfill Site" and the "Gravel Pit Site", and more particularly described in Paragraphs 1 and 2 below (the Landfill Site and the Gravel Pit Site are sometimes hereinafter collectively referred to as the "Properties"), which it desires to lease to Walden for the development, construction and operation of a distinct utility scale solar photovoltaic project on each of the Landfill Site and the Gravel Pit Site (each, a "Project", and together, the "Projects"), subject to the terms and conditions contained herein and further subject to the Town Meeting Approvals, as defined herein, and the execution of Final Leases, as defined herein, for each of the Properties;

**WHEREAS**, Walden desires to lease the Properties from the Town subject to the terms and conditions contained herein and further subject to the Town Meeting Approvals and the execution of the Final Leases for each of the Properties.

NOW THEREFORE, in consideration of the mutual promises and covenants made herein, and with the intent to be legally bound hereby, the Parties agree as follows:

1. Property #1, consisting of eleven (11) contiguous parcels of real property located in the Town of Wells, County of York, State of Maine and identified on the Wells Tax Maps as the following tax map / lot numbers (the "Landfill Site"):

- 0034-006-EXE
- 0034-006-A-EXE
- 0034-006-A-1-EXE
- 0034-006-B-EXE
- 0034-006-9-EXE
- 0034-006-10-EXE (excluding existing municipal and police storage garage)
- 0034-007-EXE
- 0034-006-4
- 0034-006-5
- 0034-006-6
- 0034-006-7

Walden desires to develop a solar photovoltaic electric generating and/or energy storage facility (including, without limitation, solar panels, batteries, foundations, racks, wiring, inverters, above and below ground electrical lines, transformers, control houses, fencing and other ancillary equipment) ("Solar Facility") on all or portions of the above referenced parcels and possibly additional adjacent lands owned by others. Neither Walden nor the Town makes any representations or warranties to the other as to the ultimate suitability of any portion of the Landfill Site for Walden's intended purposes, or as to any Planning Board or other approval which may ultimately be required to develop the Landfill Site. Walden makes no representations or warranties

to the Town that the Solar Facility can or will be constructed on the Landfill Site or that the Solar Facility can or will generate any minimum or maximum amount of electrical energy. The decision if, when and to what extent that construction of the Solar Facility and the generation of electrical energy will occur on the Landfill Site shall be solely in Walden's discretion.

2. Property #2, consisting of four (4) contiguous parcels of real property located in the Town of Wells, County of York, State of Maine and identified on the Wells tax maps as the following tax map / lot numbers (the "Gravel Pit Site"):

- 0049-001-EXE
- 0049-002-EXE
- 0049-007-EXE
- 0049-011-A-EXE

Walden desires to develop a Solar Facility on all or portions of the above referenced parcels and possibly additional adjacent lands owned by others. Neither Walden nor the Town makes any representations or warranties to the other as to the ultimate suitability of any portion of the Gravel Pit Site for Walden's intended purposes, or as to any Planning Board or other approval which may ultimately be required to develop the Gravel Pit Site. Walden makes no representations or warranties that a solar facility can or will be constructed on the Gravel Pit Site or that the Solar Facility can or will generate any minimum or maximum amount of electrical energy. The decision if, when and to what extent that construction of the Solar Facility and the generation of electrical energy will occur on the Gravel Pit Site shall be solely in Walden's discretion.

3. Town Meeting Approvals. The Parties acknowledge and agree that the execution of a Final Lease for each of the Landfill Site and Gravel Pit Site shall be subject to: (a) the Town Board of Selectmen receiving the authority to enter into such Final Lease by the Town body through an article to be placed on the warrant for Town Meeting on June 11, 2019; and (b) Town Meeting approving a warrant article proposing a change to the definition of Public Utility, which is currently an allowed use in both zoning districts in which the Properties exist, to include the development, construction, operation and maintenance of utility scale solar photovoltaic generation and/or storage systems (together, the "Town Meeting Approvals"). The Town shall use good faith efforts to obtain the Town Meeting Approvals. In the event that one of both of the warrant articles constituting the Town Meeting Approvals fails to pass, this MOU shall terminate as to the Project(s) for which the Town has failed to obtain the Town Meeting Approvals upon written notice from the Town to Walden of the same and the Parties shall have no further obligation hereunder with respect to such Project(s).

4. Good Faith Negotiations. The Parties agree to use good faith efforts to enter into a mutually agreeable, commercially reasonable, long-term solar lease agreement for each of the Properties within thirty (30) days of the ratification of the Town Meeting Approvals (each, a "Final Lease" and together, the "Final Leases") and to continue to use good faith efforts to enter into any other definitive agreements, including easements, license agreements, and tax agreements, that the Parties deem reasonably necessary or beneficial thereafter. To the extent the Parties are unable, despite using good faith efforts, to enter into a Final Lease for any Project within said thirty (30) period, they agree to continue to negotiate for up to an additional forty-five (45) day period. Unless agreed otherwise in writing, if the Parties are unable, despite using good faith efforts, to conclude negotiations and enter into a Final Lease for any Project within said seventy-five (75) day period, then this MOU shall automatically terminate as to such Project(s) at 11:59 p.m. ET on the seventy-fifth (75<sup>th</sup>) day and the Parties shall have no further obligations hereunder with respect to such Project(s), with the exception of the Confidentiality provisions set forth in Paragraph 10, which shall survive for a period of two (2) years after termination of this MOU.

5. Exclusivity and Diligence Rights. Walden and the Town agree to negotiate toward a Final Lease for each of the Properties during the term of this MOU (the "Exclusive Period"). Subject to the indemnity provisions elsewhere in this agreement, Walden shall also have the right to enter, or have its authorized agents

MOU) until such time as both Parties have executed and (if applicable) ratified one or more Final Leases, at which point only those terms that are required to be disclosed with respect to that executed agreement may be disclosed. Notwithstanding anything else in this Section to the contrary, information which is otherwise public, or known to either Party at the time of this MOU, or independently developed by either Party at any time, or obtained by either Party without breaching this agreement, shall not be confidential and shall not be governed by this Section.

11. Assignment, Successors and Assigns. Neither Party shall assign this MOU without the consent of the other Party. The benefits of this MOU shall inure to the respective successors and assigns of the Parties and their representatives, and the obligations and liabilities assumed in this MOU by the Parties shall be binding upon their respective successors and assigns. Notwithstanding anything in the immediately preceding sentence to the contrary, the Parties understand that the Walden entity that ultimately enters into Final Leases and final definitive agreements may be a wholly owned subsidiary of Walden and that, in such an instance, Walden need not seek consent to such assignment from the Town on the condition that Walden has provided an affidavit of its local counsel attesting that such entity is wholly owned by Walden.

12. Consent or Waiver. No alteration, consent, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in a writing signed by each of the Parties. No failure or delay of either Party in enforcing its rights hereunder shall act as a waiver hereof, nor shall any single or partial exercise preclude any other or further exercise of any other right set forth herein.

13. Entire Agreement. This MOU embodies the entire agreement and understanding of the Parties and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

14. Titles and Headings. Titles and headings used in this MOU are for convenience only and shall not be used to limit, expand or interpret the language used hereunder.

15. Severance. In the event a court of competent jurisdiction determines that any term or provision hereof is invalid or unenforceable: (i) the remaining terms and provisions herein shall be unimpaired and shall remain in full force and effect; and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that becomes closest to expressing the intention of such invalid or unenforceable term or provision.

16. Indemnity. Walden agrees to indemnify, defend and hold the Town and its agents, employees, invitees or licensees harmless for, from and against all claims, lawsuits, causes of action, liabilities, damages, costs and expenses (including, without limitation, reasonable courts costs, litigation expenses and reasonable attorneys' fees), including by way of example and not limitation, any injury or damage (including any third party tort claim or government claims, fines or penalties) incurred by the Town or its agents, employees, invitees or licensees, arising out of or resulting from the exercise of Walden's rights under this MOU or Walden's presence on the Properties during the Exclusive Period. Nothing in this MOU shall be construed as a waiver of the Town's right to assert any and all defenses in response to claims made against the Town, its officers, agents, or employees pursuant to the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.) or any other privileges or immunities as may be provided by law.

(Signature Page to Follow)

enter, onto each of the Properties during the Exclusive Period to conduct non-invasive surveys and studies to advance pre-development activities, including, without limitation, wetland, aerial, peat and other environmental surveys, re-development evaluations, and topographic and boundary surveys that it deems necessary or appropriate ("Diligence Surveys"). Any expense incurred by Walden in undertaking the Diligence Surveys prior to the Town Meeting Approvals and the execution of the Final Leases shall be at Walden's sole expense and risk. In consideration of the time and expense that Walden will devote to the negotiations, Diligence Surveys and evaluation contemplated by this MOU, the Town agrees that during the Exclusive Period it shall not, directly or indirectly: (a) solicit or accept any offer from, or submit any proposal to, any person or entity other than Walden relating to a lease, license, or similar agreement for the Properties (an "Alternative Proposal"); (b) participate in any negotiations with, or furnish any non-public information to, any person or entity other than Walden regarding any Alternative Proposal; or (c) enter into any agreement or understanding, whether oral or in writing, with respect to an Alternative Proposal.

6. Costs. Each party shall pay for their own costs incurred in association with this MOU and the efforts contemplated by each Party, including any costs in negotiating the Final Leases and any other definitive agreements contemplated hereby. The Parties agree that the key terms of the Final Leases shall be substantially in the form attached hereto as Exhibit A (the "Key Lease Terms"). Notwithstanding anything in this paragraph to the contrary, Walden agrees that it shall make the following payments to the Town under this MOU: (i) a one-time payment, payable within seven (7) days of the execution of this MOU, of \$6,250.00 to the Town as a prepayment of anticipated direct out of pocket costs it has incurred, or will incur, in connection with the professional analysis of this MOU and any actions necessary to undertake the substance hereof, including legal costs and environmental and engineering review of the Properties (the "Town Expense Prepayment"); and (ii) an additional one-time payment of \$6,250.00 to the Town as a reimbursement of direct out of pocket costs it has incurred in connection with the MOU or its negotiations to enter into Final Leases, payable within seven (7) days of the effective date of the Final Leases (the "Town Expense Reimbursement"); it being expressly understood by the Parties that Walden shall have no obligation to make the Town Expense Reimbursement or any portion thereof to the Town if the Parties are unable, despite good faith efforts, to enter into Final Leases for the Properties in accordance with the terms and conditions of this MOU.

7. No Partnership or Joint Venture. The Parties hereto do not intend to create a partnership or joint venture by virtue of this MOU. No Party shall owe any fiduciary duty to any other Party by virtue of this MOU.

8. Equitable Relief. It is agreed that money damages would not be a sufficient remedy for any breach of this MOU by a Party or by its representatives. Accordingly, each Party shall be entitled to seek specific performance, injunctive relief, or any other forms of equitable relief as a remedy for any breach of this MOU by the other Party or the other Party's representatives; provided, however, that such remedies shall not be deemed to be the exclusive remedies for a breach of this MOU, but shall be in addition to all other remedies available at law or equity. NEITHER PARTY SHALL BE LIABLE FOR DAMAGES THAT THE BREACHING PARTY COULD NOT REASONABLY HAVE FORESEEN UPON ENTRY INTO THIS MOU. THE FOREGOING PROVISION SHALL NOT PROHIBIT WALDEN OR THE TOWN FROM SEEKING GENERAL CONTRACT AND/OR CONSEQUENTIAL DAMAGES OR EQUITABLE RELIEF FOR A BREACH OF THIS MOU.

9. Governing Law. This MOU shall be governed by and construed in accordance with the substantive laws of the State of Maine, without reference to its conflicts of laws principles.

10. Confidentiality. The Parties agree that the terms of this MOU shall be kept in strict confidence and shall not be disclosed in any form to any third parties without the prior written consent of the disclosing Party, which consent may be conditioned or withheld in each Party's sole discretion. During negotiations, the terms and conditions of any proposed lease, Final Lease, or other business arrangement between Walden and the Town shall also be treated as confidential information and not disclosed to the public or any other third party (except those professionals or contractors either party engages to assist in reviewing or implementing the terms of this

**EXHIBIT A**

**Key Lease Terms**

**I – Lease Term and Rent.** Each Final Lease will consist of three distinct periods:

- Development Period.** The Development Period commences on the Effective Date of the Final Lease and continues through the Commercial Operations Date (“**COD**”) of the Project (being the date upon which the Solar Facility has been interconnected to a transmission system and is capable of generating and transmitting electrical energy continuously and reliably to such transmission system in connection with commercial sales (excluding, however, electric energy delivered to such transmission system in connection with testing, start-up or commissioning)). During this period Walden is conducting environmental and engineering studies, performing both on an offsite due diligence and pursuing all permits, interconnection agreements and off-take agreements necessary to construct and operate the Project. All development costs will be paid by Walden. A nominal lease rent payment shall be made to the Town during this period while Walden is expending considerable at-risk capital. The Development Period shall be for an initial period of three (3) years with up to two (2) one-year Development Period Extensions. Walden shall pay \$2,500 for the first three-year period (payable in advance within 7 days of the Effective Date of the Final Lease); and \$750 for each one-year extension, payable in advance within 7 days of any such extension.
- Operations Period.** The Operations Period shall consist of an initial term of 30 years, commencing on the COD and shall include up to two five (5) year Operations Period Extensions. During the Operations Period, the amount of rent is the sum of the Minimum Annual Gravel Pit Rent and the Minimum Annual Landfill Rent (subject to the annual percentage increases set forth in the bullet points below for any base term or the First Extension of Second Extension). Operations Period Lease Rates are as follows:

**For the Gravel Pit Site**

- Years 1-30: The greater of twenty thousand dollars (\$20,000) (“**Minimum Annual Gravel Pit Rent**”) or \$650 per acre (said acreage to be calculated from the “as built” surveys of the Projects using the perimeter fence or other outermost improvement on the land) per year, either amount escalating at a rate of 2.0% per year;
- Years 31-35 (First Extension): an increase of 10% from the last annual per acre rate and then escalating at 2.0% per year;
- Years 36-40 (Second Extension): an increase of 10% from the last annual per acre rate and then escalating at 2.0% per year;
- All Operations Period lease payments shall be made quarterly in advance.

**For the Landfill Site**

- Years 1-30: The greater of ten thousand dollars (\$10,000) (“**Minimum Annual Landfill Rent**”) or \$650 per acre (said acreage to be calculated from the “as built” surveys of the Projects using the perimeter fence or other outermost improvement on the land) per year, either amount escalating at a rate of 2.0% per year;
- Years 31-35 (First Extension): an increase of 10% from the last annual per acre rate and then escalating at 2.0% per year;
- Years 36-40 (Second Extension): an increase of 10% from the last annual per acre rate and then escalating at 2.0% per year;
- All Operations Period lease payments shall be made quarterly in advance.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives as of the date first written above.

TOWN OF WELLS, MAINE

WALDEN RENEWABLES  
DEVELOPMENT

BY: Jonathan L. Carter  
Its: Town Manager  
DATE: 3/21/19

BY: \_\_\_\_\_  
Its: \_\_\_\_\_  
DATE: \_\_\_\_\_

For example, if the Project on the Gravel Pit Site occupies 50 acres of land as shown on the final "as-built" survey of the Project, the annual lease payment in year one will be \$32,500.00 and total lease payments over the first 30 years will be \$1,318,462.00.

- **Decommissioning Period.** The Decommissioning Period shall commence at the end of the useful life of the Solar Facility and shall last for a period of one year. During the Decommissioning Period, Walden will be required, at its sole cost, to complete all decommissioning obligations, which include removal of all property and equipment on leased premises, including any buried equipment to a depth of 24" and restore the site to its original condition, reasonable wear and tear excepted, all in accordance with a decommissioning plan developed by a professional engineer licensed in Maine and Maine law. Additionally, Walden shall be required to provide decommissioning funding assurance in the form of a decommissioning bond or irrevocable letter of credit which shall be in place in the following amounts and at the following times:
  - 5 years after COD – 25% of estimated decommissioning cost
  - 10 years after COD – 75% of estimated decommissioning cost
  - 15+ years after COD – 100% of estimated decommissioning cost, to be updated every three years based on a new estimate

**III – Other Key Lease Terms.** In addition to the term, payments and rights / obligations outlined above, the Final Lease shall contain other key terms that protect the Parties and clearly define each Party's respective responsibilities:

- **Indemnification in Final Lease.**

A. The following indemnification language shall be included in any Final Lease for the Landfill Site, subject to such commercially reasonable additions and modifications in the Final Lease as the Parties shall mutually agree.

**Knowledge.** To the extent used in relation to any representation, warranty, covenant, or any other understanding presented by or derived from the Landlord, "Knowledge" means the actual (not constructive) knowledge of the Town Manager of the Town of Wells (and not of any other employee, officer, or agent of the Landlord), without any special investigation or review, and without any inference of actual knowledge to be drawn from information which might otherwise be public knowledge.

**General Indemnity.** Each Party shall indemnify, defend and hold harmless the other Party and its trustees, shareholders, members, managers, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments (collectively, "Losses"), incurred by or on behalf of any of the foregoing indemnified parties in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death or bodily injury, to any Person, but only to the extent caused by (i) the negligence or willful misconduct of the indemnifying Party, its agents or employees or others under the indemnifying Party's control or (ii) an Uncured Default of the indemnifying Party. Notwithstanding the foregoing, the indemnity provided under this Section shall not extend to Losses to the extent attributable to the negligence or willful misconduct of an indemnified party; and provided further, that notwithstanding anything herein to the contrary, nothing in this Lease shall be construed as a waiver of Landlord's right to assert any and all defenses in response to claims made against Landlord, its officers, agents, or employees pursuant to the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.) or any other privileges or immunities as may be provided by law.

**Environmental Indemnity.** Tenant shall not violate, and shall indemnify Landlord against, any claims, costs, damages, fees, or penalties arising from a violation by Tenant or Tenant's agents or contractors of any federal, state, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release, or threatened release, discharge, disposal, transportation, or presence on or under the Leased Property of any substance, material, or waste that is now or hereafter classified as hazardous or toxic, or that is regulated under current or future federal, state, or local laws or regulations ("Hazardous Materials"). Landlord represents and warrants that, to the best of Landlord's knowledge, but without special investigation of any kind, Landlord's Property is in material compliance with all Environmental Laws. "Environmental Laws" means any and all federal, state, local, and foreign environmental, health and/or safety-related laws, ordinances, codes, rules, regulations (as interpreted by judicial and administrative decisions) relating to protection of the environment, health and safety, and natural resources. Environmental Laws includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sec. 6901 et seq., the Environmental Protection Title of the General Statutes of Maine ("Environmental Code"), and the common law. No liability shall arise in Tenant from the mere discovery of facts or conditions existing or pertaining to Landlord's Property.

The parties agree that Tenant shall not be liable for any conditions on Landlord's Property (a) arising from or related to acts or omissions occurring prior to the Effective Date of the Lease; or (b) occurring after the Effective Date of the Lease that arise from or are related to Landlord's negligence or willful misconduct. Tenant shall use commercially reasonable efforts to ensure that critical infrastructure of the Landfill are not disturbed in connection with Tenant's activities on the Leased Property, provided such efforts shall neither cause a violation, nor cause a set of circumstances which, given the passage of time, would cause a violation, of any Environmental Laws.

The Parties understand and agree that solely by virtue of Tenant's acceptance of this Lease and the demise of the Leased Property, its entry upon the Landfill in accordance with the provisions of this Lease, its use of the Leased Property in accordance with the provisions of this Lease for the Permitted Use, or its performance of any other lawful act permitted to be undertaken hereunder, neither Tenant nor any of its respective members, partners, officials, agents, contractors, employees, lenders, directors, officers, successors or assigns shall be deemed by Landlord to have, in any way, become an "Operator" of the Landfill (as such term is defined in 06-096 CMR 410), or shall be deemed by Landlord to have assumed any liability or obligation for the operation, closure, maintenance, monitoring or repair of the Landfill, or with respect to materials of any type or description (including Hazardous Materials, landfill gas and other pollutants) deposited, stored or received on or within the Landfill by any person, contractor or subcontractor prior to the Effective Date and, to the extent not resulting from any act or omission of Tenant, during the Term.

Notwithstanding anything in this Section to the contrary, nothing in this Lease shall be construed as a waiver of Landlord's right to assert any and all defenses in response to claims made against Landlord, its officers, agents, or employees pursuant to the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.) or any other privileges or immunities as may be provided by law.

B. The following indemnification language shall be included in any Final Lease for the Gravel Pit Site, subject to such commercially reasonable additions and modifications in the Final Lease as the Parties shall mutually agree:

**General Indemnity.** Each Party shall indemnify, defend and hold harmless the other Party and its trustees, shareholders, members, managers, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including

Project. For example, if Walden has installed 10 MW AC of solar generation (at either of both sites) and the calculated annual taxes due are less than \$50,000 (10 MW x \$5,000 per MW AC), then Walden shall pay the taxes when due and within thirty (30) days of the final annual tax bill payment. Walden shall pay the positive difference between \$50,000.00 and the actual annual tax amounts for the tax year. If the Parties negotiate a tax increment financing district agreement, credit enhancement agreement, or similar agreement, Walden agrees that such agreements will ensure the Town receives a net payment per year of no less than \$5,000 per MW AC. The parties agree that tax assessments for any battery installation or any other personal property at either site will be assessed separately at the time of installation.

- Landfill. With respect to the Landfill Site, the Parties shall enter into a commercially reasonable Landfill Operating Agreement or like agreement to be executed simultaneously with the Final Lease for the Landfill Site, setting forth each Party's respective rights and obligations with respect to the operation, closure, maintenance, monitoring or repair of the Landfill during the term of the Lease.
- Gravel Pit. With respect to the Gravel Pit Site, the parties agree that Walden shall have the right to excavate, move, grade, stockpile and utilize any aggregate (or other soils, sands, loams and similar substrates) present on the site in any manner necessary to construct, maintain, operate or decommission the Solar Facility. Walden expressly acknowledges and agrees, however, that the aggregate shall remain the property of the Town and Walden shall not remove any such aggregate from the Gravel Pit Site. Further, to the extent that Walden uncovers or rebate aggregate at the Gravel Pit Site, but does not use said aggregate as part of its site work, the Town shall be permitted to remove such aggregate from the Gravel Pit Site provided that such removal shall not unreasonably interfere with the construction, maintenance, operation or decommissioning of the Solar Facility on the Gravel Pit Site.
- Maine Tort Claims Catch-All. The following language shall appear as a catchall in the Lease: "Notwithstanding anything contained anywhere in this Lease to the contrary, nothing in any provision of this lease or any exhibit hereto shall be construed as a waiver of Landford's right to assert any and all defenses in response to claims made against Landlord, its officers, agents, or employees pursuant to the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.) or any other privileges or immunities as may be provided by law."

reasonable attorneys' fees), causes of action, suits or judgments (collectively, "Losses"), incurred by or on behalf of any of the foregoing indemnified parties in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (i) the negligence or willful misconduct of the indemnifying Party, its agents or employees or others under the indemnifying Party's control or (ii) an Unexcused Default of the indemnifying Party. Notwithstanding the foregoing, the indemnity provided under this Section shall not extend to Losses to the extent attributable to the negligence or willful misconduct of an indemnified party; and provided further, that notwithstanding anything herein to the contrary, nothing in this Lease shall be construed as a waiver of Landlord's right to assert any and all defenses in response to claims made against Landlord, its officers, agents, or employees pursuant to the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.) or any other privileges or immunities as may be provided by law.

**Environmental Indemnity.** Landlord shall indemnify, defend and hold harmless the Tenant and its trustees, shareholders, members, managers, officers, employees, agents, representatives and independent contractors from and against Losses arising from or out of any environmental condition on the Leased Property that is caused by Landlord or any of its employees, invitees, agents, contractors or subcontractors after the Effective Date of the Lease. Tenant shall indemnify, defend and hold harmless the Landlord and its trustees, shareholders, members, managers, officers, employees, agents, representatives, and independent contractors from and against Losses arising from or out of any environmental condition on the Leased Property that is caused by Tenant or any of its employees, invitees, agents, contractors or subcontractors after the Effective Date. Notwithstanding the foregoing, the indemnity provided under this Section by a Party shall not extend to Losses to the extent caused by the other Party or the indemnified parties of the other Party; and provided further, that notwithstanding anything herein to the contrary, nothing in this Lease shall be construed as a waiver of Landlord's right to assert any and all defenses in response to claims made against Landlord, its officers, agents, or employees pursuant to the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.) or any other privileges or immunities as may be provided by law.

**Transfer of Assignment.** Walden shall be restricted from transfer or assignment of the Final Lease to an unaffiliated entity without the prior consent of the Town (such consent not to be unreasonably withheld, conditioned or delayed), ensuring that the Town always knows it has a credible counterparty. Transfer or assignment of the Final Lease to an affiliated entity shall be governed by substantially the same terms and conditions set forth in Section 11 of the MOU.

**Insurance.** Walden will maintain comprehensive general liability and property liability insurance with liability limits of not less than \$1,000,000.00 for injury to or death of one or more persons in any one occurrence, with an annual aggregate limit of no less than \$2,000,000.00, and Walden shall maintain adequate casualty insurance for damage or destruction to its improvements situated on the Leased Property.

**Taxes.** The Final Lease shall specify that all incremental increases in property tax that arise out of Walden's use of the Properties (including, without limitation, a change of tax classification of the leased premises from tax-exempt to another tax classification) shall be paid by Walden. If Walden shall wish to seek a tax increment financing agreement or other understanding with the Town at any time during the term of the Final Lease regarding taxation with respect to the Solar Facility and/or to achieve other objectives, the Town shall negotiate such agreement or other understanding with Walden in good faith. The Parties further acknowledge that all laws of the State of Maine now in effect or hereafter enacted with respect to taxation of property shall be applicable. In the event that the property taxes due result in annual aggregate tax payments to the Town of an amount less than \$5,000 per MW AC (where "MW AC" shall mean the total rated alternating current nameplate capacity of the Solar Facility), Walden agrees that it shall make up the difference between the amount due (if any, even if otherwise exempted or excluded by future legislation) and \$5,000 per MW AC via a voluntary payment for the life of the

- **Bonded Indebtedness In FY'20**

**The following is a summary of outstanding bonds payable: General Long-Term Debt:**

All installment Debt (Notes, Mortgages, Credit CaADDRESS & TO WHOM PAYABLEPHONE NUMBER			ORIGINAL AMOUNT	ORIGINAL DATE	CURRENT BALANCE	INTEREST RATE(%)	MATURITY DATE	Principal	Interest	Total Due
<b>TOTAL FIXED CHARGES FY'20</b>										
BNY Mello	525 William Place	38th Fl	\$3,000,000	10/1/2013		2.73	11/1/2019	\$300,000	\$30,000	\$330,000
Roads	Pittsburg, PA	15259					5/1/2020		\$25,500	\$25,500
US Bank	Boston		\$14,250,000	10/1/2019		2.63	11/11/2019		\$274,287.50	\$274,287.50
							5/1/2020	\$274,287.50		\$274,287.50
<b>TOTAL FIXED CHARGES FY '20</b>								<b>\$574,288</b>	<b>\$329,788</b>	<b>\$904,075</b>
<b>TOTAL FIXED CHARGES FY19</b>								<b>\$430,000</b>	<b>\$832,081</b>	<b>\$1,262,081</b>
<b>Difference</b>										<b>(\$358,006)</b>

\* Seawall Last Payment in FY'19; Road Bond last Payment in FY'25 and Public Safety 2038

- **New FY'20 Financial Warrant Articles include the following:**

**Hiring a 40 Hour Daytime Firefighter:** The Fire Department, through the Fire Chief, has expressed concern with the increased number of daytime calls and back to back calls that end up causing response problems as a result of insufficient staffing. This is the time of day that the Call Firefighters are at their thinnest in ability to respond because of work obligations and being out of town. Presently, there are three Staff Firefighters on a shift and the new position would provide a fourth person on a daytime shift during a five-day, 40-hour week in addition to the Chief.

- **Authorization to Sell Municipal Land:** The Town purchased the 15-acre parcel on Route 109 for the primary site of the new Fire Substation complex. During the process of siting the building, it was determined that the land's site development cost would be expensive. Accordingly, the Board of Selectmen suggested investigating a possible less costly site at the Public Works parcel on Route 9, North Berwick Road. At a Special Town Meeting in November 2018, voters approved relocating the Fire Substation site if the Board of Selectman found it to be more cost effective and beneficial to do so. After conducting a siting analysis, it was determined by the Selectmen that the Public Works parcel was more cost effective and beneficial than the Route 109 site in the long-term. As a result, the location of the Fire Substation was moved to the Public Works parcel, which is currently under construction. The original site located on Route 109 is no longer required for the project and can be sold.

- **Lease of Town Property for Solar Facilities:** Walden Renewables, a solar utility grade development company, approached the Wells Energy Committee following the Town's attendance at a Northeast Solar Conference in 2018, the purpose of which was for land owners to meet with solar developers to discuss land prospects and interest in developing utility grade projects. The Town representatives met with a dozen companies showcasing the parcels listed above. Only Walden Renewables followed up and met with the full Wells Energy Committee following the fall 2018 conference. Walden Renewables constructs and operates renewable energy projects, including solar facilities throughout the Northeast. Walden Renewables seeks to lease two Town-owned sites for a period of thirty years (with two possible five-year extensions). If this Article is approved, Walden Renewables intends to install arrays of solar photovoltaic panels, (which convert sunlight into electricity) on both sites, along with related equipment and infrastructure, for the purpose of generating clean electricity and/or energy storage in the range of 10-megawatts.

The two sites are: (1) the Town's 9B "Landfill Site," adjacent to the Maine Turnpike, which is approximately 47 acres; and (2) the "Gravel Pit Site," which is approximately 50 buildable acres located off the Crediford Road. Neither site is currently being used by the Town. The 9B Landfill has been a Brownfield Site on which this type of low impact development is encouraged. The Old Gravel Pits have been closed for decades and abut the Great Heath. Solar array development is low impact and environmentally friendly.

The annual rent for the Landfill Site would be the greater of \$10,000 or \$650 per acre. The annual rent for the Gravel Pit site would be the greater of \$20,000 or \$650 per acre. The annual rent for both sites would escalate at a rate of 2% per year. Additional rent would be charged in the event that Walden Renewals exercises the five-year extensions. Other income will be from taxes with payment of \$5,000 per megawatt AC of the licensed operating capacity, which for a 10-megawatt project would be approximately \$50,000 per year.

- **Articles 17 - 25 Zoning Amendments:** The Board of Selectmen with the Planning Board have reviewed housekeeping type amendments to the zoning ordinance that should be reviewed and can be found in the Warrant book in the Appendices.
- **Article 26 Zoning Amendment - Adult Business Establishments:** This amendment came at the last possible moment to be on the ballot from a business wanting to open on Route One that provided sales of adult merchandise which was considered inappropriate for the retail area and any other location in Wells. However, the Town Attorney citing constitution law cases indicated that the Town could not block adult business establishments and so the zoning amendment establishes the definition of adult business establishments and allows them only in the Light Industrial area of Town.

The Town Meeting Warrant Booklet is extremely informative regarding the budget. A great deal of appreciation goes to the Town Manager's Administrative Assistant for publishing the document, with help from many who have worked on the FY'20 Budget. Following the Town Meeting Vote, a FY'20 Work Plan is prepared and presented to the Board of Selectmen for acceptance. It is then published to the Website, available at Town Hall and updated quarterly.

## **PUBLIC HEARINGS**

The Board of Selectmen will be holding a formal public hearing on the proposed FY'20 Budget on April 2, 2019 and Informational sessions at their meetings on May 7 & 21, and June 4, 2019 at 7PM. Information on the Budget will also be available at the Town Offices, the Wells Public Library and the Town's website ([www.wellstown.org](http://www.wellstown.org)). I would encourage you to participate in the public informational sessions and vote in the Town Elections and Town Meeting Referendum on June 11th.

Jon Carter  
Town Manager

