

AGREEMENT FOR PROVISION OF AUDITING SERVICES

This Agreement is entered into this fifteenth day of December, 2014 between the Town of Wayland, Massachusetts, a body politic and corporate of the Commonwealth of Massachusetts (the "Town"), with offices at 41 Cochituate Road, Wayland, Massachusetts 01778, and Melanson Heath & Company, P.C., an entity organized under the laws of the Commonwealth of Massachusetts having a usual place of business at 10 New England Business Center Drive, Suite 107, Andover, Massachusetts 01810 (the "Contractor").

In consideration of the mutual agreements by the parties contained herein, the Town and the Contractor agree as set forth below.

ARTICLE 1. CONTRACT DOCUMENTS

1.1 The Contract Documents consist of this Agreement and the other documents and specifications enumerated below or referred to in such other documents or specifications. The Contract Documents are all as fully a part of this Agreement as if attached to this Agreement or repeated herein. The Contract Documents are as follows with terms used herein having the meanings assigned to such terms in such Contract Documents:

Request for Proposals for Annual Audit Services dated August 26, 2014, including any specifications and Contractor's proposal entitled "Proposal for Annual Audit Services for the Years Ended June 30, 2015 - 2017" submitted on September 30, 2014.

ARTICLE 2. SCOPE OF WORK

2.1. The Contractor shall perform annually a Comprehensive Annual Financial Report (CAFR) audit of the Town of Wayland financial statements including presentation of comparative financials as of June 30, 2015; June 30, 2016; and June 30, 2017 and for the years then ended. The Contractor shall also perform annually an audit of the financial statements associated with the Town's operations. Each annual audit shall be performed in accordance with generally accepted auditing standards and the standards for financial audits contained in Government Auditing Standards (most recent revision) issued by the Comptroller General of the United States 2011. The Contractor shall plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, including examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation, and issuing a report thereon. The work of the Contractor shall conform to the terms of the Specifications. The Contractor shall annually provide the Town with thirty (30) copies of the combined financial statements, together with auditors' reports, which shall be spiral or otherwise bound.

2.2. The Contractor shall, in connection with each annual audit, perform tests and report on the Town's compliance with applicable laws, regulations, contracts, and grants.

2.3. The Contractor shall, in connection with each annual audit, review the Town's internal control structure and assess control risk, report on material weaknesses noted, and inform and confer with management and the Members of the Board of Selectmen and other boards so designated regarding recommendations.

2.4. The Contractor shall provide from time to time, during the term of this Agreement, advice and consultation with respect to accounting matters and shall, at the request of the Town Administrator, provide brief written responses with respect to appropriate procedures and appropriate interpretations of the Contractor's reports.

2.5. The Contractor shall, in connection with each annual audit, schedule and participate in conferences, meetings, and briefings in accordance with the Specifications.

2.6. The Contractor shall perform special assignments at the request of the Town Administrator. Special assignments may include audits or reviews of specified accounts or projects. No such assignment shall be performed, nor shall the Contractor be entitled to receive compensation therefore, unless the Town Administrator has authorized the assignment in advance, in writing, specifying the scope of the activity and the total compensation.

2.7. The Contractor shall provide a Comprehensive Annual Financial Report (CAFR) at the request of the Town.

ARTICLE 3. COMPENSATION

3.1. The Contractor shall provide a Comprehensive Annual Financial Report (CAFR) at the request of the Town, as specified in Paragraph 2.7.

The Contractor's compensation for all services rendered in connection with Paragraphs 2.1 through 2.7 of this Agreement, are inclusive of all fees and expenses as follows:

<u>Fiscal Year Ended</u>	<u>Comprehensive Annual Financial Report (CAFR)</u>
June 30, 2015	\$44,500.00
June 30, 2016	\$45,000.00
June 30, 2017	\$45,500.00

3.2. Compensation for any special assignment shall be based upon a project fee for such assignment. Prior to the commencement of any special assignment, the Contractor shall propose to the Town in writing a project budget, including the Contractor's proposed fee (expressed as a total dollar amount), and all other expenses, together with a proposed work plan and timetable for executing the assignment. The Town Administrator may approve the proposal, return the proposal for revisions, or reject the proposal. In no event shall the Contractor be entitled to compensation or reimbursement for any service or expense unless undertaken in accordance with a

project budget (or amendment thereto) which has been approved in writing by the Town Administrator.

3.3. Within fourteen (14) days after the execution of this Agreement, and annually thereafter, the Contractor shall submit to the Town Administrator a schedule for payment, reflecting the Contractor's best estimate of monthly work flow for the ensuing year. Such schedule shall be subject to review and approval by the Town Administrator, such approval not to be unreasonably withheld. Such schedule, when approved by the Town Administrator, shall be incorporated in this Agreement and used as a basis for payment to the Contractor, provided that such payment schedule shall be adjusted as reasonably determined by the Town Administrator in the event that there shall be a change in the work plan or timelines thereunder, or in the event that the actual level of effort required of the Contractor during any period differs materially from the anticipated level of effort for such period upon which such schedule was based.

3.4. The Contractor shall submit to the Town Administrator a monthly invoice setting forth the amount due for the preceding month (a) for services rendered in connection with Paragraphs 2.1 through 2.7; and (b) for special assignments, if any. Each invoice shall include a detailed breakdown of each amount and the sum of all prior payments. The Town Administrator shall review each such invoice and may make such exceptions or adjustments as may be necessary to bring such invoice into conformity with the terms of this Agreement. Within thirty (30) days after submission of each such invoice, the Finance Department shall make payment to the Contractor in the amount approved, subject to Paragraph 3.5.

3.5. The Town shall not be obligated to make any payment to the Contractor hereunder if and to the extent that the Contractor is in material default of its obligations hereunder; or any part of such payment is attributable to services which are not performed in accordance with this Agreement, provided that payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement.

ARTICLE 4. FURTHER RESPONSIBILITIES OF CONTRACTOR

4.1. The Contractor shall perform its services hereunder as expeditiously as is consistent with the standards of professional skill and care required by Paragraph 4.6. The Contractor shall adhere to the time lines set forth in the Specifications and each approved work plan. Time is of the essence of this Agreement. Time lines may be modified by mutual agreement of the parties. If the Contractor is hindered or delayed in the commencement or progress of the work by any act or omission of the Town, or unforeseeable causes beyond the control and not caused in whole or in part by fault or negligence of the Contractor, the Contractor shall be entitled to an extension of time reasonably needed to complete the work or portion thereof affected by the delay, provided the Contractor shall give prompt written notice of the delay, stating the causes and proposing a modification of the affected time lines.

4.2. The Contractor shall defend, indemnify, and hold harmless the Town of Wayland, its officers and employees from and against any and all claims, demands, actions, including

actions for personal injury or wrongful death, actions for property damage, and any other types of claims asserted by third persons alleging a violation of law or for any other cause, arising from or related to the Contractor's performance, acts, or operations relating to this Agreement; provided, however, that this obligation to defend, indemnify and hold harmless shall not apply, as to any liability, loss, expense or claim, to the extent the Contractor demonstrates that such liability, loss, expense or claim (a) is caused by the Town; (b) is attributable to misrepresentations by the management of the Town in any written communication to the Contractor on which the Contractor has relied in performing its services; or (c) is a liability, loss, expense or claim for which the Contractor is prohibited from indemnifying a client under any standard or ruling of the American Institute of Certified Public Accountants.

4.3. The Contractor shall maintain throughout the duration of this Agreement Errors and Omissions coverage in an amount not less than \$1 million. In the event that the Contractor represents that it is self-insured, the Contractor shall provide evidence satisfactory to the Town Administrator which reasonably establishes that the Contractor has assets to support the amount self-insured. The Contractor shall provide Certificates of Insurance coverage as listed below and shall be provided by insurer(s) licensed to do business in the Commonwealth of Massachusetts. Said insurance shall be provided at the Contractor's expense and shall be in full force and effect during the full term of this Contract.

Certificates evidencing that such insurance are in full force and effect shall be delivered to the Town simultaneously with the final execution of this contract, and renewal certificates will be provided annually throughout the contract term. Failure to do so shall constitute a material breach of this contract and be grounds for immediate termination.

The Contractor's Liability Policies shall be so written that the Town of Wayland shall be named as **"Additional Insured"** and that the Town will be notified of cancellation at least thirty (30) days prior to the effective date of such cancellation, and shall include:

1. Workers' Compensation Insurance as required by law
2. General Liability of at least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit
3. Vehicle Liability of at least \$1,000,000 Bodily Injury and Property Damage Liability per accident

4.4. The Contractor shall maintain in confidence all business information pertaining to the Town which becomes available to the Contractor in connection with its services under this Agreement. All data and information developed by the Contractor in the performance of this Agreement shall become the property of the Town and shall not be disclosed by the Contractor without the prior express written approval of the Town Administrator, nor shall the Contractor make any use of such data or information for any purpose other than the fulfillment of the Contractor's obligations pursuant to this Agreement. All right, title and interest, including copyright, to all data, information and other work product generated or created pursuant to this Agreement, shall be and remain in the Town.

Notwithstanding anything herein to the contrary, the Contractor shall be entitled to retain ownership and control of its working papers to the extent required by professional standards promulgated by the American Institute of Certified Public Accountants. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process requiring the production of materials subject to this Paragraph 4.4, the Contractor shall promptly notify the Town Administrator so as to provide the Town an opportunity to prevent production, and shall thereafter be entitled to comply with such subpoena or process to the extent required by law.

4.5. The parties acknowledge that the services to be performed under this Agreement require a special relationship of trust, cooperation, and good faith between them. The Contractor therefore agrees that he shall not accept engagements adverse to the interests of the Town in the subject matter of this Agreement.

4.6. The Contractor agrees that the performance of services under this Agreement shall conform to the professional standards promulgated by the American Institute of Certified Public Accountants and any other generally applied ethical and professional standards established by appropriate authorities.

4.7. The Town may terminate this Agreement, without affecting any coverage secured by the Contractor hereunder, if the Town Administrator finds that the Contractor has failed to establish the existence of or maintain assets to support the amount of self-insurance claimed.

ARTICLE 5. NON-DISCRIMINATION

5.1. The Contractor shall not, in connection with the performance of work under this Agreement, discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age, sex, handicap, or disability. The Contractor shall post in conspicuous places in the Contractor's offices located within the Commonwealth of Massachusetts, available for employees and applicants for employment, such notices as are provided by the Massachusetts Commission Against Discrimination setting forth the provisions of the Fair Employment Practices law of the Commonwealth.

5.2 The Contractor shall ensure that all employees, including supervisory employees, assigned to provide services under this Agreement within any facility of the Town shall have been instructed, prior to such assignment, regarding laws and regulations against harassment and other forms of discrimination based on sex, race, color, religion, creed, national origin, age, disability, and sexual orientation. The Contractor shall provide each such employee assigned to perform work under this contract with a copy of the Town's personnel policies prohibiting discriminatory behavior (or with a copy of the Contractor's own such policies, if substantially to the same effect). The Contractor shall ensure that its employees do not engage in any form of behavior which would contribute to a hostile work environment for employees of the Town or other contractors of the Town, and, shall, upon becoming aware of any such behavior through notice from the Town or otherwise, take prompt and effective corrective action.

ARTICLE 6. PROJECT MANAGER; ACCOUNT STAFFING

6.1. The Contractor shall, in conformity with the Request for Proposals and the Contractor's Qualifications Statement, designate a project manager and project staff, and shall not substitute any individuals therefore unless such individuals meet the requirements stated in the Request for Proposals. The Contractor shall notify the Town Administrator in writing in advance of proposed changes in the project manager and project staff, and such changes shall be subject to the approval of the Town Administrator, provided such approval shall not be unreasonably withheld. The project manager shall be available and responsible for giving prompt attention and regard to the requests, inquiries and instructions of the Town Administrator relating to the fulfillment of this Agreement.

6.2. The Contractor acknowledges that continuity in the staffing of the work to be performed under this Agreement will contribute significantly to the efficient prosecution of such work. The Contractor agrees to exercise its best efforts to maintain continuity in the staffing of such work throughout the term of this Agreement. In the event of any changes in such staffing, the Contractor shall be responsible for ensuring that newly assigned staff members are fully briefed, by the Contractor's staff, as to the Town's accounting procedures.

ARTICLE 7. NOTICES

7.1. The Contractor shall provide all notices and invoices in connection with the performance of this Agreement to the Town Administrator at 41 Cochituate Road, Wayland, MA 01778 or to such other individual as the Town Administrator may from time to time in writing direct. The Town Administrator shall provide all notices and claims to the project manager designated by the Contractor or to such other individual or individuals as the Contractor may set forth in claim procedures provided to the Town Administrator. All notices shall be in writing.

ARTICLE 8. DEFAULT; TERMINATION

8.1. The occurrence of any of the following events shall be a default under this Agreement: (a) the Contractor shall file a voluntary petition in bankruptcy or proceedings in bankruptcy shall be instituted against it and shall not be dismissed within 120 days after filing, or any court shall take jurisdiction of the Contractor and its assets, pursuant to proceedings brought under the provisions of any federal reorganization act, or a receiver of the Contractor's assets shall be appointed, or an assignment shall be made for benefit of creditors, or the Contractor shall permanently be prevented by any final action of any federal or state authority from conducting or operating its business;

(b) the Contractor shall fail to perform, keep or observe any term, covenant or condition herein contained which, because of its character, would immediately jeopardize the Town's interest;

(c) the Contractor shall fail to perform, keep or observe any other term, covenant, or

condition herein contained within thirty (30) days after notice from the Town;

(d) the Contractor abandons in whole or in part its services provided for by this Agreement or becomes unable to perform its services under this Agreement; or

(e) any other event expressly identified as a default or material breach or a ground for termination under this Agreement shall occur.

8.2. Upon the occurrence and continuance of a default, the Town may terminate this Agreement by giving notice to the Contractor, may exercise any other legal or equitable right or remedy which it may have, or both. In the event of such termination, the Town may, but need not, procure, upon such terms and in such manner as it may deem appropriate, services similar to those provided for hereunder without prejudice to any other rights and remedies for default the Town may have. The Contractor shall be liable to the Town for reasonable additional costs for such similar services.

8.3. The Town Administrator may terminate this Agreement without cause by delivery of written notice to the Contractor at least seven (7) days prior to the date of termination. In the event of termination pursuant to Paragraph 8.2 or this Paragraph 8.3, the Contractor shall deliver to the Town any and all work or work in progress produced under this Agreement prior to its termination, and the Town shall, upon receipt of such work, pay the Contractor the reasonable value of said work less any set-off for damages caused by the Contractor in the event that the termination was for cause as set forth above.

ARTICLE 9. TERM

9.1. This Agreement shall commence on May 1, 2015, and shall continue through March 31, 2018.

ARTICLE 10. MISCELLANEOUS

10.1. The Contractor's rights, duties and obligations under this Agreement may not be assigned, transferred, subcontracted or delegated without the express prior written approval of the Town in its sole discretion.

10.2. The Contractor is engaged under this Agreement as an independent contractor and not as an agent, employee or partner of the Town.

10.3. No member, director, officer, joint venturer, beneficiary, consultant, volunteer, participant, employee, agent or representative of the Town shall be personally liable to the Contractor under any term or provision of this Agreement for the Town's payment obligations or otherwise, or because of any breach hereof, the Contractor agreeing to look solely to the assets of the Town for the satisfaction of any liability hereunder. In no event shall the Town be liable to the Contractor except for payment for services rendered pursuant to and in accordance with this Agreement, nor shall the Town ever be liable to the Contractor for indirect, incidental, special or consequential damages.

10.4. This Agreement shall be governed by and construed and enforced in accordance

with the laws of the Commonwealth of Massachusetts.

10.5. This Agreement may be amended only by a written instrument executed by the Town and the Contractor.

10.6. The Contractor shall familiarize its employees assigned to perform services under this Agreement with the provisions of Massachusetts General laws, Chapter 268A (the Massachusetts conflict-of-interest law) and the Town's Policy & Procedures Manual as said manual relates to gifts and gratuities from "interested parties."

The Town's obligations under this Agreement are subject to appropriation.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals to this Agreement on the day and date first above specified.

For the Town of Wayland

Nan Balmer, Town Administrator

Date: _____

Approved as to Form by Town Counsel:

Mark Lanza, Town Counsel

Approved as to Availability of Funds:

Brian Keveny, Finance Director

Appropriation No: 10135002-52100

FOR MELANSON HEATH & COMPANY, P.C.

Scott C. McIntire, CPA
Vice President

Date: