

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") dated this 14<sup>th</sup> day of November, 2012 (the "Effective Date"), between MASSACHUSETTS DEVELOPMENT FINANCE AGENCY, a Massachusetts body politic and corporate established and existing under Chapter 23G of the Massachusetts General Laws, having its principal place of business at 160 Federal Street, Boston, Massachusetts 02110 ("MassDevelopment"), the CITY OF HOLYOKE, a Massachusetts municipal corporation having its principal place of business at 536 Dwight Street, Holyoke, Massachusetts 01040 (the "Municipality"), the HOLYOKE HOUSING AUTHORITY, having its principal place of business at 475 Maple Street, Holyoke, MA 01040 (the "HHA") and the MASSACHUSETTS HOUSING PARTNERSHIP, a Massachusetts municipal corporation having its principal place of business at 160 Federal Street, Boston, MA 02110 (the "MHP").

### RECITALS

WHEREAS, the Board of Directors of MassDevelopment have identified certain strategic initiatives for which MassDevelopment shall expend internal staff and financial resources to advance;

WHEREAS, one strategic initiative concerns the provision of predevelopment planning services to selected municipalities of the Commonwealth of Massachusetts;

WHEREAS, MassDevelopment has adopted a set of criteria to apply in determining whether to assist a municipality with its predevelopment planning efforts;

WHEREAS, MassDevelopment has determined that the Municipality's efforts to advance job creation and economic development in the Municipality would benefit from certain predevelopment planning services from MassDevelopment;

WHEREAS, this Agreement is entered into for the purpose of assisting the Municipality and the HHA in predevelopment planning regarding Lyman Terrace and the area bounded by Lyman Street, Front Street, Dwight Street and High Street, located in Holyoke, MA (the "Site") to promote job creation and economic development (the "Project");

WHEREAS, the Municipality and HHA and MassDevelopment and MHP, agree that MassDevelopment and MHP may provide certain services in connection with the Project as further described in Exhibit A attached hereto ("Services"); and

WHEREAS, the Municipality, HHA, MHP and MassDevelopment intend by this Agreement to establish clearly articulated responsibilities expressly agreed upon by all parties.

## AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Services. MassDevelopment and MHP shall provide the Municipality and HHA with certain predevelopment planning services (the "Services") required to advance economic development and housing opportunities in connection with the Project as further described in Exhibit A attached hereto and incorporated herein by reference. Nothing herein shall be interpreted as expanding the scope of the Services beyond services related to the Project. The Services may be modified or amended upon mutual written agreement of the parties.

2. Contracts. In carrying out the Services, MassDevelopment and MHP may contract or subcontract with third parties, in their sole discretion and without the need to obtain prior approval from the Municipality and/or HHA, but consistent with any applicable procurement laws, rules or regulations, for goods and services, design services and other consulting services for all activities that MassDevelopment or MHP deems necessary or desirable in the course of performing the Services.

3. Municipality Obligations. The Mayor of the Municipality (or his/her designee) and the chief planning officer or economic development officer for the Municipality (or his/her designee) shall meet with MassDevelopment's Project Manager and/or other MassDevelopment or MHP staff as needed. The Municipality's Project Manager (as identified in Section 6) shall assist MassDevelopment and MHP and its consultants to access the information/assistance of other municipal agencies or staff, as necessary. The Municipality shall work diligently with MassDevelopment and MHP in coordinating and resolving any issues that may arise in connection with the Services. The Municipality will make appropriate provisions to provide MassDevelopment and MHP and their contractors with existing information reasonably determined by MassDevelopment and MHP to be necessary for the orderly performance and completion of the Services, including, without limitation, any drawings, records, surveys, photographs, documents and data related to the Site and/or the Services. MassDevelopment and MHP shall be entitled to place reasonable reliance on the accuracy and completeness of such information furnished by the Municipality.

4. HHA Obligations. The Executive Director (or his/her designee) shall meet with MassDevelopment's Project Manager and MHP or other MassDevelopment or MHP staff as needed. The HHA's Project Manager (as identified in Section 6) shall assist MassDevelopment and MHP and its consultants to access the information/assistance of staff, as necessary. HHA shall work diligently with MassDevelopment and MHP in coordinating and resolving any issues that may arise in connection with the Services. HHA will make appropriate provisions to provide MassDevelopment and MHP and their contractors with existing information reasonably determined by MassDevelopment and MHP to be necessary for the orderly performance and completion of the Services, including, without limitation, any drawings, records, surveys, photographs, documents and data related to the Site and/or the Services, provided, however, that HHA cannot provide individual

tenant information. MassDevelopment and MHP shall be entitled to place reasonable reliance on the accuracy and completeness of such information furnished by the HHA. HHA shall assist MassDevelopment and MHP and their consultants in the provision of the Services as more fully outlined in Exhibit A

5. MHP Obligations. MHP and its consultants shall work with MassDevelopment and its consultants in the provision of the Services as more fully outlined in Exhibit A.

6. Project Personnel. MassDevelopment and the Municipality have designated the following persons to serve as Project Managers to support effective communication between MassDevelopment and the Municipality and to report on the Project's progress:

For MassDevelopment:

Rhonda Spector

Telephone: 617 330 2000

Email: [Rspector@massdevelopment.com](mailto:Rspector@massdevelopment.com)

For Municipality:

Marcos Marrero

Telephone: (413) 322-5575

Email: [MarreroMA@ci.holyoke.ma.us](mailto:MarreroMA@ci.holyoke.ma.us)

For HHA:

Matthew Mainville

Telephone: 413 539 2220

Email: [mmainville@holyokehousing.org](mailto:mmainville@holyokehousing.org)

For MHP:

Rita Farrell

Telephone: 413 253 7339

Email: [rfarrell@mhp.net](mailto:rfarrell@mhp.net)

7. Ownership and Use of Materials. All materials produced by MassDevelopment or its contractor(s) under this Agreement, including, without limitation, disks, plans, specifications, reports, manuals, pamphlets and articles, shall be the joint property of MassDevelopment, Municipality and HHA. MassDevelopment shall not be liable for any claims or damages arising out of the use of the materials by the Municipality or HHA or any third party. The materials may not be relied upon or given to any third party without the express written consent of MassDevelopment, unless otherwise required by law.

8. Responsibilities. In consideration of the Services, MassDevelopment and the Municipality shall have the following responsibilities:

(a) MassDevelopment: MassDevelopment shall be responsible for the following tasks:

1. In partnership with the Municipality, HHA, MHP and third party consultants, complete the consulting services outlined in Exhibit A to this Agreement.

2. Retain, manage and oversee any third party consultants retained by MassDevelopment in performance of such consultants' work. All consultants will be required by agreement to carry insurance appropriate to the services that they provide.

3. Fund the third party consultants work up to but not to exceed \$50,000 in MassDevelopment's sole discretion ("Services Fee"). In no event shall MassDevelopment be expected to spend more than \$50,000 on behalf of the Municipality and/or in connection with the consulting services. MassDevelopment's participation in the Project does not obligate any further action or financial assistance by MassDevelopment with respect to the Municipality or the Project.

4. Ensure that any third party consultants' work is carried out in a professional and competent manner.

5. Contract or subcontract for additional consulting services as needed, in MassDevelopment's sole discretion.

6. Attend any necessary meetings or site visits with the Municipality, HHA and MHP and any consultants performing the predevelopment planning services.

(b) MHP: MHP shall be responsible for the following tasks:

1. In partnership with the Municipality, MassDevelopment and HHA, and third party consultants, complete the consulting services outlined in Exhibit A to this Agreement.

2. Retain, manage and oversee any third party consultants retained by MHP in performance of such consultants' work.

3. Ensure that any third party consultants' work is carried out in a professional and competent manner.

4. Contract or subcontract for additional consulting services as needed, in MHP's sole discretion.

5. Attend any necessary meetings or site visits with the Municipality,



MassDevelopment or HHA and any consultants performing the predevelopment planning services.

(c) Municipality: Municipality shall be responsible for the following tasks:

1. Cooperate with MassDevelopment and MHP and any consultants, including, without limitation, providing access to information, access to the Site and facilitating meetings with municipal officials as needed.

2. Provide MassDevelopment and MHP and any consultants with a single point of contact who shall be responsible for acquiring necessary information, providing access to the Site, submitting reports and setting up any necessary meetings with the Municipality. Such single point of contact can be the person or persons named in section 4 of this Agreement or such other person as designated in writing by the Municipality.

(d) HHA: HHA shall be responsible for the following tasks:

1. Cooperate with MassDevelopment and MHP and any consultants, including without limitation, providing access to information, access to the Site and facilitating meetings with housing authority officials as needed.

2. Provide MassDevelopment and MHP and their consultants with a single point of contact who shall be responsible for acquiring necessary information, providing access to the Site, submitting reports and setting up any necessary meeting with HHA. Such single point of contact can be the person or persons named in section 6 of this Agreement or such other person as designated in writing by HHA.

9. Term. The term of this Agreement shall commence upon the Effective Date established above and shall expire at midnight on June 30, 2013, unless terminated prior thereto or the parties agree in writing to extend the term of this Agreement.

10. Independent Contractor. MassDevelopment shall act as an independent contractor pursuant to this Agreement, and nothing herein shall create an agency relationship between the Municipality, HHA, MHP and MassDevelopment. Furthermore, MassDevelopment understands that it has no authority to make or imply any commitments which are binding upon the Municipality, HHA or MHP.

11. Compliance with Laws. In connection with this Agreement, MassDevelopment shall, and shall require all of its employees, contractors, and agents to comply with all federal, state, and local laws, regulations, rules, ordinances and orders of any kind which are applicable to MassDevelopment's performance of the Services.

12. MassDevelopment Liability

(a) In no event shall MassDevelopment be held liable with respect to:

- (i) any contract entered into with a third party by the Municipality, HHA or MHP relating to the subject matter of this Agreement or otherwise; or
- (ii) any recommendations, proposals, suggestions, comments, or actions taken or omitted in connection with this Agreement, unless MassDevelopment is grossly negligent.

(b) MassDevelopment and MHP shall have no obligation to perform any Services with internal staff resources or to incur any costs if the Municipality or HHA shall unreasonably fail to provide MassDevelopment and MHP with material information required to perform the Services herein after written receipt of notice of said failure and a reasonable opportunity to cure.

(c) MassDevelopment shall have no obligation to perform any particular Service if it determines, in its sole discretion, that doing so is beyond the scope of this Agreement or is otherwise unadvisable or impractical.

13. Assignability. The parties agree not to assign any rights or interests arising under this Agreement or make any person a third party beneficiary of this Agreement, without obtaining, on each occasion, the prior consent of the other party, which consent may be withheld for any reason or for no reason, in such party's sole and absolute discretion.

14. Nature of Relationship. The parties acknowledge that MassDevelopment is providing services solely for public purposes pursuant to Chapter 23G of the Massachusetts General Law and that no agency, partnership, joint venture or other ownership relationship is intended to be or is created by this Agreement, except as is expressly set forth herein, and that MassDevelopment's participation in this Agreement in no way obligates any further action or financial assistance by MassDevelopment or MHP with respect to the Site, the Municipality, or HHA. Furthermore, the parties understand and agree that the ultimate feasibility or economic viability of the Site, or any other project arising out of this Agreement is not being guaranteed or assured by MassDevelopment, MHP, the Municipality, or HHA. Notwithstanding the foregoing, the parties acknowledge they have a special relationship with a duty of loyalty and a duty to act in good faith toward each other.

15. Notices. All notices shall be in writing and shall be deemed given when delivered by hand or when deposited in the United States Postal Service via certified or registered first class mail, return receipt requested, or via overnight delivery with confirmation of process and shall be addressed as follows:

To MassDevelopment:	MassDevelopment 160 Federal Street, 7 <sup>th</sup> Floor Boston, Massachusetts 02110 Attention: Executive Vice President—Real Estate
With a copy to:	MassDevelopment 160 Federal Street, 7 <sup>th</sup> Floor Boston, MA 02110 Attention: General Counsel
To the Municipality:	City of Holyoke 536 Dwight Street Holyoke, MA 01040 Attn.: Office of the Mayor
With a copy to:	Holyoke Office of Planning and Economic Development One Court Plaza Holyoke, MA 01040 Attn.: Director
To HHA:	Holyoke Housing Authority 475 Maple Street Holyoke, MA 01040 Attn.: Executive Director
With a copy to:	Priscilla F. Chesky, Esq. Lyon & Fitzpatrick LLP 14 Bobala Road Holyoke, MA 01040
To MHP:	Massachusetts Housing Partnership 160 Federal Street Boston, MA 02110 Attn.: Executive Director
With a copy to:	Massachusetts Housing Partnership 160 Federal Street Boston, MA 02110 Attn: General Counsel

Either party may change any of its notification information for the purpose of this section by giving the other party prior notice thereof in accordance herewith.

16. Default and Termination. This Agreement may be terminated:

(a) At any time, upon the mutual written agreement of MassDevelopment, and the Municipality.

(b) At the option of either MassDevelopment or the Municipality, for any reason or no reason, upon no less than fifteen (15) days' written notice to the other party at its address set forth herein.

(c) By any party, upon the other party's failure to perform or observe any of its obligations under this Agreement, after a period of thirty (30) days or the additional time, if any, that is reasonably necessary to promptly and diligently cure such failure, after such defaulting party receives notice from the non-defaulting party setting forth in reasonable detail the nature and extent of the failure and identifying the applicable provisions of this Agreement.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict-of-law rules.

18. Entire Agreement. This Agreement supersedes all earlier letters, conversations, purchase orders, proposals, memoranda and other written and oral communications, and it contains all the terms agreed on by the parties, with respect to the subject matter hereof, and no changes in, additions to, or subtractions from, this Agreement will be binding on the parties unless in writing and signed by MassDevelopment, the Municipality, HHA and MHP.

19. Authority to Enter Agreement. Each signatory to this Agreement represents and warrants to the other that it has full power, and has taken all necessary action, to authorize the execution, delivery and performance of this Agreement, and this Agreement constitutes the legal, valid and binding obligation of such party enforceable in accordance with its terms.

20. Severability. If any term or provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable the remainder of this Agreement or the application thereof to any circumstance other than that to which it is invalid or unenforceable shall not be affected thereby.

21. Dispute Resolution. The parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved in the daily management and implementation of this Agreement shall in the first instance be the subject of informal negotiations between the Mayor, the Executive Vice President-Real Estate for MassDevelopment, the Executive Director of the Holyoke Housing Authority and the Executive Director of the Massachusetts Housing Partnership who shall use their respective best efforts to resolve such dispute. In the event that the parties cannot resolve a dispute by such informal negotiations, the parties agree to submit the dispute to mediation. Within forty five (45) days following the date on which the dispute was first identified, the parties shall propose and agree



upon a neutral and otherwise qualified mediator. In the event that the parties fail to agree upon a mediator, the parties shall request the American Arbitration Association to appoint a mediator. The mediation shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The parties shall be responsible for equal shares of the costs associated with locating and obtaining the services of a mediator (the "Mediation Costs"). The period for mediation shall commence upon the appointment of the mediator and shall not exceed thirty (30) days, unless such time period is modified by mutual agreement. In the event that (i) the actual Mediation Costs exceed \$ 5,000, or (ii) the period for mediation exceeds the thirty (30) day period specified above, then any party shall have the option to withdraw from all mediation proceedings without penalty, and the parties may seek redress in whatever forum may be available to them under applicable law. Notwithstanding the foregoing, in the event that the nature of the parties' dispute is such that one or more parties are likely to suffer irreparable harm, such party or parties may seek immediate judicial relief without resorting to the mediation process described above.

22. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

EXECUTED as a sealed instrument as of the Effective Date.

MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY

\_\_\_\_\_  
Approved as to Form  
Agency Counsel

By: \_\_\_\_\_  
Name:  
Title:

CITY OF HOLYOKE

By: Alex Morse  
Name: Alex Morse  
Title: Mayor


HOLYOKE HOUSING AUTHORITY

By: Rosalie M. Deane  
Name: Rosalie M. Deane  
Title: Executive Director

upon a neutral and otherwise qualified mediator. In the event that the parties fail to agree upon a mediator, the parties shall request the American Arbitration Association to appoint a mediator. The mediation shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The parties shall be responsible for equal shares of the costs associated with locating and obtaining the services of a mediator (the "Mediation Costs"). The period for mediation shall commence upon the appointment of the mediator and shall not exceed thirty (30) days, unless such time period is modified by mutual agreement. In the event that (i) the actual Mediation Costs exceed \$ 5,000, or (ii) the period for mediation exceeds the thirty (30) day period specified above, then any party shall have the option to withdraw from all mediation proceedings without penalty, and the parties may seek redress in whatever forum may be available to them under applicable law. Notwithstanding the foregoing, in the event that the nature of the parties' dispute is such that one or more parties are likely to suffer irreparable harm, such party or parties may seek immediate judicial relief without resorting to the mediation process described above.

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Approved as to Form  
Agency Counsel

MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY

By:   
Name:  
Title:

CITY OF HOLYOKE

By:   
Name: Alex MORSE  
Title: Mayor

HOLYOKE HOUSING AUTHORITY

By: \_\_\_\_\_  
Name:  
Title: Executive Director

MASSACHUSETTS HOUSING PARTNERSHIP

By:   
Name: CLARK L. ZIEGLER  
Title: Executive Director

<b>City of Holyoke and Holyoke Housing Authority</b>												
High Street Corridor & Lyman Terrace												
October 16, 2012												
<b>PROJECT SCOPE OF WORK &amp; TIMELINE</b>												
<b>Exhibit A - Scope of Services</b>												
<b>Task 1. Information, Data Collection and Critical Path</b>												
Gather and Review existing studies, interview building owners												
Review current market data for downtown including demographic data												
Determine acceptable and feasible development/redevelopment alternatives												
Determine Financial feasibility of alternatives - MHP												
<b>City, Housing Authority, Community Meetings</b>												
Site tour, meeting with City and Housing Authority to confirm Scope of Work												
Tenant meeting to update on study groundwork and goals												
<b>Deliverable : Summary of Findings and Recommendations</b>												
Conference call with City and HHA - evaluate findings and recommendations - review draft survey												
<b>Survey of Lyman Tenants - HHA</b>												
<b>Task 2. Lyman Tenace Building and Site Analysis</b>												
Analyze existing building stock (assumes maintaining some buildings, to be adjusted if necessary)												
Establish possible redevelopment strategies												
Establish financial feasibility of strategies - MHP												
<b>City, Housing Authority, Community Meetings</b>												
Meeting with City and Housing Authority to review findings												
<b>Deliverable : 2 or 3 Options for Lyman Terrace</b>												
<b>Task 3. Urban Framework and High Street Residential Development</b>												
Feasibility of rehabilitating upper-floor uses MHP - financial												
Off-site housing options - MHP - financial												
Urban design alternatives to enhance and encourage additional development												
<b>City, Housing Authority, Community Meetings</b>												
Meet with adjacent property owners and representatives of other local efforts												
Meet with City and HHA												
Meet with tenants												
<b>Deliverable: Design options for development</b>												
<b>Task 4. Community Outreach</b>												
<b>Meetings</b>												
Initial Outreach meeting - City, HHA, Residents, property owners, business owners												
Community Meeting - Concepts												
Community Meeting - Preferred option(s)												
<b>Final Report</b>												
* All dates are approximate. Meetings will be held based upon availability of all parties.												