

## **PRE-DEVELOPMENT SERVICES AGREEMENT** **FOR THE ANNAPOLIS MARKET HOUSE**

This Pre-Development Agreement for the Annapolis Market House Project (the "Agreement"), when duly executed, shall constitute an agreement between the City of Annapolis (the "City") and Gone To Market LLC ("GTM") (jointly, the "Parties"), entered into the 4th day of November, 2010 and effective as of October 1, 2010. The Parties agree that GTM shall provide Pre-Development Services from October 1, 2010 to January 1, 2011 (the "Pre-Development Term"), subject to the appropriation and availability of funds. Payments to GTM will be authorized through the issuance by the City of a purchase order to GTM (the "Purchase Order"). The Purchase Order may be amended and increased by the City as necessary during the term of this Agreement.

I. **PRE-DEVELOPMENT SERVICES.** GTM shall provide the following Pre-Development services during the Pre-Development Term:

A. **Design, Engineering, Permitting**

(a) GTM shall lead bi-weekly team meetings and administer the design of the retail plan as it relates to design, circulation, amenities and graphics for the Annapolis Market House. GTM shall manage and coordinate the architectural design and engineering work ("A+E Work") to develop schematic plans for the retail areas of the Market House based upon merchandising considerations specifically addressing the layout of tenant areas and public areas, traffic patterns, general design treatments, servicing, storage, mechanical layout and interface with other project components, subject input from and approval by the City. All A+E Work, including but not limited to schematic plans, the tenant layout, traffic patterns, mechanical layout, product specifications etc., shall be the property of the City. GTM will provide copies of the A+E Work Product at least monthly throughout the Pre-Development Term.

(b) GTM will provide a cost estimate for architectural and engineering work that must be approved in advance by the City. The parties expect that architectural and engineering expense shall not exceed \$30,000, unless approved in writing in advance by the City.

(c) GTM will perform the A+E Work with GTM personnel and/or identify and select qualified third party contractors, subject to final approval by the City. In selecting A+E contractors, GTM shall bid the scope of work, negotiate and award the contracts and supervise said work. Third party contractors will be under contract to GTM, and will be paid by GTM for their services.

(d) The City shall reimburse GTM for A+E Work according to the compensation conditions defined below, subject to the maximum allowable payment specified in the Purchase Order. The City will reimburse GTM thirty (30) days after receipt of an A+E invoice from GTM, provided that the invoice is accompanied by documentation from third party contractors itemizing work performed and documenting

the reasonableness of and the basis for the fees charged (such as hourly rates, fixed-fee charges, services rendered, itemized expenses, etc.).

(e) The City shall provide, within five (5) business days following any submission of the above referenced A+ E Work, its approval to proceed, and/ or required changes and/or additional review that will be required prior to Final Approval defined in subparagraph (f) below.

(f) Upon written final approval by the City of the A+E Work (“Final Approval”), GTM shall obtain the necessary permits for use of the Market House and the required building renovation.

(g) Upon Final Approval of the A+E Work, the City shall seek bids from general contracting firms for the construction and remodeling work of the Market House.

(h) GTM shall provide to the City the capacity and desired performance specifications for the HVAC equipment with sufficient capacity to condition the interior space of the Market House, consistent with the tenant occupancy GTM proposes and anticipates.

(i) The City shall manage the bid process for the HVAC equipment.

**B. Merchandizing, Marketing, Business Plan projections**

(a) GTM shall develop and provide to the City a merchandising plan indicating the specific proposed location, size, configuration and merchandise category for each tenant space and proposed kiosks, carts, advertising and other retail and commercial activities.

(b) GTM shall provide within 20 days following execution of this Agreement, a preliminary Market House operating budget showing, at a minimum, a five (5) year profit and loss projection.

(c) GTM shall develop a listing of prospective tenants, indicating projected rent and other economics of occupancy.

(d) GTM shall produce a marketing book to promote and attract prospective tenants to the Market House.

(e) GTM shall oversee development of the architectural design guidelines for tenant improvements.

(f) GTM shall actively market the availability of Market House retail space and make presentations to prospective tenants.

(g) GTM shall submit to City for review all offers to lease space made and/or received by GTM and recommend to City whether to accept offers submitted by or on behalf of prospective Tenants.

(h) If and when the City provides GTM with written authorization to proceed with pre-leasing and/or leasing activities, GTM shall:

(1) Submit to the City Attorney for review and approval, all proposed lease documents and/or license documents, one or more of which documents may provide for short term use of Market House space to allow vendors to prove business viability prior to entering into agreements of longer duration; and

(2) Submit to the City monthly leasing status reports which shall include: space leased to date, leases awaiting execution, proposals awaiting evaluation, and a list of prospective vendors.

## II. **COMPENSATION**

A. As compensation for Pre-Development Services, the City agrees to pay GTM a professional fee of \$9,500.00 per month and prorated for any partial month.

B. In addition to the above professional fee, GTM shall be reimbursed for all reasonable, documented out-of-pocket project expenses, incurred after the starting date of October 1, 2010, such as delivery service, postage, communication, marketing materials, and preparation and reproduction of project materials. Total out-of-pocket expenses shall not exceed \$3,000 unless approved in advance by the City. Also the City agrees to pay for relevant documented architectural and engineering work product, incurred after the starting date of October 1, 2010, consistent with proposals, estimates and/or contracts approved by the City during the Pre-Development Term.

## III. **TERMINATION**

A. **Advance Notice.** Either party may terminate this Agreement for any reason with 15 days advance written notice.

B. **Termination by GTM.** If GTM terminates this Agreement, the City shall have no duty to pay GTM for services rendered on or after the fifteenth (15th) day on which GTM gave notice of termination.

C. **Termination by the City.** If the City terminates the Agreement due to a default by GTM in the performance of its obligations hereunder, the City shall owe no further compensation to GTM hereunder as of the date of notice of termination. If the City terminates this Agreement for any reason other than a default by GTM in the performance of its obligations hereunder, then GTM will receive payment for the balance of the Pre-Development Term.

#### IV. MISCELLANEOUS

A. **Entire Agreement.** The Parties do hereby agree that this Agreement is the complete agreement between the Parties and no warranties, inducements, or representations exist except as stated in this Agreement.

B. **Modification and Waiver.** A modification or waiver of any provision of this Agreement must be made in writing, and executed with the same formality as this Agreement. Failure to insist on strict performance of any provision of this Agreement shall not be construed as a waiver of any rights based on subsequent default of the same or similar nature.

C. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Maryland.

D. **Severability.** In case any one or more of the provisions contained in this Agreement or any document, instrument, or agreement required hereunder should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired thereby.

E. **Notices.** Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by hand delivery or by Federal Express or other similar overnight delivery service, postage prepaid, addressed to the City or to GTM at the appropriate address set forth below or to such other address as may be hereafter specified by written notice by the City or by GTM. Notice shall be considered given as of the date of delivery by hand delivery or one (1) business day after delivery to Federal Express or similar overnight delivery service.

**If to the City:**

**City Manager  
City of Annapolis  
160 Duke of Gloucester Street  
Annapolis, Maryland 21401  
Telephone No.: (410) 263-7825**

**cc: City Attorney  
City of Annapolis  
160 Duke of Gloucester Street  
Annapolis, Maryland 21401  
Telephone No.: (410) 263-7954**

**If to GTM:**

**NOW THEREFORE**, the parties do hereby acknowledge their Agreement to the terms and conditions set forth herein having the signatures and seals of the duly authorized agents affixed hereto on the dates shown below.

**AGREED AND ACCEPTED**, this \_\_\_ day of  
November, 2010

**AGREED AND ACCEPTED** this \_ day of  
November, 2010

**CITY OF ANNAPOLIS**

**GONE TO MARKET, LLC**

By: \_\_\_\_\_  
The Honorable Joshua J. Cohen, Mayor

By: \_\_\_\_\_  
Lehr Jackson, Managing Partner

**ATTEST:**

By: \_\_\_\_\_  
Regina C. Watkins-Eldridge, City Clerk

**Business Terms & Conditions  
Recommended For Approval:**

By: \_\_\_\_\_  
Douglas E. Smith,  
Advisor to the Mayor for Development

**Approved for Financial Sufficiency:**

By: \_\_\_\_\_  
Michael Mallinoff, City Manager

**Approved for Legal Sufficiency:**

By: \_\_\_\_\_  
Karen M. Hardwick, City Attorney