

**WATER DISTRIBUTION INFRASTRUCTURE DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF TOLEDO
AND
FIS 1 LLC**

This Water Distribution Infrastructure Development Agreement (the "Agreement") for public improvements is entered into by and among the City of Toledo, an Ohio municipal corporation, with an address of One Government Center, Suite 2200, Toledo, Ohio, 43604 ("City") and FIS 1 LLC, an Ohio domestic limited liability company, with an address of 401 S. Washington Square, Suite 102, Lansing, Michigan 48933 ("Developer"). As used herein, "Parties" refers to, collectively, City and/or Developer.

Recitals

WHEREAS, Developer has committed to invest an estimated \$60,500,000.00 in the redevelopment of the historic Fort Industry Square ("Project"). The Project Site generally consists of the property bounded by Summit Street, Jefferson Avenue, Water Street, and Owens Corning Parkway as more specifically shown and described in Exhibit A ("Project Site").

WHEREAS, the Project will further the development of the City and represents an important economic development opportunity for the City, involving both public and private investment which will generate new jobs on the Project Site.

WHEREAS, in addition to the redevelopment of Fort Industry Square, the Project consists of the construction of a new 12-inch, 210 linear foot public waterline within the public right-of-way or adjacent City easement ("Public Improvements").

WHEREAS, the Public Improvements are necessary as part of the Project.

WHEREAS, the City, in accordance with Toledo Municipal Code Section 933.11 maintains a Water Distribution Infrastructure Development Fund to support development such as this Project.

WHEREAS, the City is supportive of the Project and pursuant to Ordinance ____ enacted on _____ has authorized this Agreement and \$105,000.00 in financial support for public improvements necessary to the success of the Project.

NOW THEREFORE, in consideration of the mutual covenants and promises contained therein, the City and Developer agree as follows:

SECTION 1
FORT INDUSTRY SQUARE PROJECT OVERVIEW AND DEFINITIONS

- 1.1. **Project Site.** The Project Site generally consists of the property bounded by Summit Street, Jefferson Avenue, Water Street, and Owens Corning Parkway as more specifically shown and described in Exhibit A (“Project Site”).
- 1.2. **Project.** The Project consists of the redevelopment of a collection of historic buildings commonly referred to as Fort Industry Square. The Project will convert the vacant buildings into 93 market rate residential units and 65,000 square feet of commercial space.
- 1.3. **Public Improvements.** The Project public infrastructure improvements (“Public Improvements”) are comprised of the construction and installation of a waterline within the Project Site, all in accordance with approved plat and site plan as approved by the Toledo Plan Commission and Toledo Department of Public Utilities, and the drawings and specifications approved by the City Division of Engineering Services. All Public Improvements shall be constructed in the public right-of-way, or on property that shall be dedicated or conveyed to the City as public right-of-way.

SECTION 2
RESPONSIBILITIES OF THE DEVELOPER

- 2.1. **Construction of Project.** The Developer agrees to acquire the necessary property and construct the Project on the Project Site as defined in Section 1. Project construction shall be completed within one (1) year of the execution of this Agreement. Developer’s construction of Project shall be in accordance with all terms and conditions of zoning, plats, site plans.
- 2.2. **Grant of Access.** Developer shall grant access, or secure a grant of access to, and on, the Project Site to the City as may be necessary for the purpose of conducting any inspections of the Project as authorized under Ohio law and/or the Toledo Municipal Code.
- 2.3. **Investment.** Developer shall invest or cause to be invested not less than sixty million, five hundred thousand dollars (\$ 60,500,000.00) in the construction of the Project.
- 2.4. **Jobs Creation Requirement.** Developer estimates that the Project shall result in 827 construction jobs during the construction period and 432 new, permanent, full-time equivalent jobs within three years after the completion of the Project.
- 2.5. **Licenses and Permits.** The Developer shall ensure that all construction work on the Project is permitted and carried out in accordance with Federal, State of Ohio and City of Toledo laws and regulations. Developer shall obtain all necessary, licenses, consents, approvals, permits, entitlements and other authorizations required under applicable laws (including without limitation Environmental laws), from each governmental authority as applicable in connection with the acquisition, construction, installation, equipping, improvement and occupancy of the Project.

- 2.6. **Construction of Public Improvements.** Developer agrees that it shall construct and install the Public Improvements in accordance with Section 4 of this Agreement and all applicable City, State and Federal laws and regulations and shall be and act as the construction agent for the City with respect to all Public Improvements constructed on or within existing City property, roadway or right-of-way or in an easement dedicated to the City. Developer shall be responsible for all costs related to the design, engineering, construction and installation of the Public Improvements that are not eligible costs as defined in Section 5 or that exceed the maximum amount of dollars appropriated and authorized for expenditure for the purposes as approved by Toledo City Council under Ord. _____ and as specified in Section 3. Notwithstanding the foregoing, the parties anticipate that completion of the Public Improvements will not require acquisition of any property not owned by either the Developer or City as of the effective date of this Agreement, and if such further acquisitions are required, the Developer shall acquire such property at its sole expense. Developer shall grant the City any easements or other property rights necessary to ensure the City's ownership rights in the Public Improvements upon completion of construction and installation.
- 2.7. **Other.** Developer shall have such other responsibilities as specified in any other section of this Agreement.
- 2.8. **Delegation of Duties.** Developer may execute any of its obligations under this Agreement by through agents, contractors, employees or attorneys-in-fact; provided however, that no such delegation shall limit or reduce in any way Developer's duties and obligations under this Agreement.

SECTION 3

RESPONSIBILITIES OF THE CITY

- 3.1. **Design Review & Approval for Public Improvements.** The City shall work cooperatively with Developer and its Engineer to timely review the Engineer's design, plans, specifications, schedule and cost estimates for the Public Improvements in a manner that reasonably endeavors to meet the proposed timelines for the construction and completion of the Public Improvements. The City shall approve, prior to construction, the plans, designs, specifications and drawings for the Public Improvements, subject to such changes, requirements or other terms as are consistent with Ohio law, the Toledo City Charter, Toledo Municipal Code and City policy related to standards of design, construction or installation related to public roads, water lines and sanitary and storm sewer infrastructure as solely determined by the City's Department of Public Utilities, Division of Engineering Services.
- 3.2. **Grant of License for Access.** Subject to the terms and conditions for this Agreement, during the construction period of the Project, the City shall grant Developer a license over City owned real property as may be necessary to access and provide security for the Project in accordance with Section 6. Developer to complete construction, installation, equipping and improvement of the Project, including the Public Improvements. If Project construction requires that public access to any public right-of-way or street be closed for a period of

time, Developer shall submit such request for closure at least 10 days in advance to the City Department of Public Services, Division of Transportation, which will not unreasonably be withheld by the City.

- 3.3. **Inspections.** City shall perform such inspections related to the Project as required by law and with respect to the Public Improvements.
- 3.4. **Reimbursement for Public Improvements.** The City shall, upon the satisfactory construction of the Public Improvements in accordance with all terms and conditions of this Agreement, and upon receipt of invoices supported by sufficient documentation of eligible expenses and payments to contractors, reimburse Developer for its eligible expenses for construction and installation of the Public Improvements up to the maximums specified in this Section 3.4.
 - 3.4.1. *Water Distribution Infrastructure Improvements.* City shall reimburse Developer for eligible expenses associated with the construction and installation of public waterline improvements as approved by the City's Division of Engineering Services up to a maximum amount of one-hundred and five thousand dollars (\$105,000).
 - 3.4.2. *Eligible Utility Expenses.* In accordance with Toledo Municipal Code Sections 933.11, the City shall reimburse construction and materials costs for waterline improvements constructed in the right-of-way or in an easement dedicated to the City. For existing lines, eligible costs include connection fees and the cost of connecting to the line in the right-of-way or in a dedicated easement. The following costs are not eligible for reimbursement:
 - i. Utility infrastructure costs that were incurred prior to the Toledo City Council's approval of assistance under Ord. _____ enacted on _____; and
 - ii. Engineering, design, permit and inspection costs; and
 - iii. Costs for running a utility connection from the City right-of-way or easement to a structure on private property.
- 3.5. **Acceptance of Property/Public Improvements.** The Developer shall provide and the City shall accept, in accordance with law, transfers of property owned by the Developer as may be necessary to facilitate construction, completion and dedication of the Public Improvements.
- 3.6. **Operation and Maintenance of Public Improvements.** Upon lawful approval and acceptance of the Public Improvements by the City, the water lines and sanitary and storm sewer lines in the public right-of-way, and public roadway shall be owned, operated and maintained by the City.

SECTION 4
PUBLIC IMPROVEMENTS

- 4.1. **Property Costs.** All costs related to the acquisition of property for the Project to be used for the Public Improvements, which is not otherwise owned by the City, and is to be transferred by the Developer to the City upon completion of the Public Improvements in accordance with Sections 1.5 and 2.4 of this Agreement, including costs for vacating and dedicating right-of-ways, easements, platting, and any necessary transfers of property for dedication for public use, if any, shall be paid by the Developer without recourse to the City.
- 4.2. **Design and Engineering, Bid Costs.** All costs for engineering, design, drafting of plans and specifications, construction cost estimates, Project Budget and Project Schedule, and bidding as necessary for construction of the Public Improvements, except as may be provided directly by the City of Toledo Engineering staff, shall be paid for by the Developer without recourse to the City.
- 4.3. **Plans and Specifications.** The Developer shall require its Engineer to prepare a full set of plans and specifications, cost estimates, and bid documents where applicable, for the construction and installation of Public Improvements and to submit such documents for review and acceptance to the City Division of Engineering Services. All plans and designs shall be in conformance with applicable City of Toledo standards, requirements and construction specifications for roads, water lines, storm and sanitary sewers, including provision of the following: *ODOT Construction & Material Specifications, 2019*; *City of Toledo Part 'A' Standards, 2020*; *City of Toledo Construction Standards, 2020*; and *City of Toledo Infrastructure Design & Construction Requirements, 2014*.
- 4.3.1. Upon receiving approval from the Department of Public Utilities, Developer shall, if required by any environmental covenants, orders or agreements, submit the plans for the approval of the Ohio EPA or any other regulatory agency having jurisdiction over the improvements.
- 4.3.2. As an aid to keeping the Project on schedule, the Developer shall require its Engineer to prepare and periodically, upon request by the City, updates plans, designs and specifications, budget and schedule information for the Public Improvements to the City Division of Engineering Services for discussion and review.
- 4.3.3. Upon approval of the plans, designs and specification for the Public Improvements, no subsequent amendment to, or change in, any one or more of the plans, designs or specifications shall be made by the Developer or its employees, agents, or contractor(s) without prior written consent of the City.
- 4.4. **Damage to Existing Public Improvements.** Developer shall be responsible, and agrees to repair at its cost, any damage to existing public infrastructure occurring as a result of Developer or Developer's employees,' agents,' contractors,' or their respective subcontractors,' employees' or agents' actions.

- 4.5. **Changes to Existing Public Improvements.** Notwithstanding the provisions of Section 4.6, Developer shall have the right to make or cause to be made, alterations to existing public infrastructure only to the extent that such alterations have been expressly approved by the City and are consistent with and made in accordance with plans, designs, and/or drawings as approved by the City Department of Public Utilities. Developer shall be responsible, and agrees to repair at its cost, any damage to existing public infrastructure occurring as a result of Developer or Developer's employees', agents', contractors', or their respective subcontractors', employees' or agents' actions.
- 4.6. **City Access/Correction of Materials Non-compliance with Plans.** Developer shall allow the City and its agents, at all times during normal business hours, the right of entry and free access to the Project Site, to inspect all work done, labor performed and materials furnished related to the Public Improvements, and to require to be replaced or otherwise corrected any material or work that materially fails to comply with the respective approved plans, designs and specifications for the Public Improvements at the sole cost of Developer or its agents, employees, or contractor(s).
- 4.7. **Licenses and Permits.** Developer shall obtain all necessary, licenses, consents, approvals, entitlements and other authorizations required under applicable laws (including, without limitation, the Toledo City Charter, Toledo Municipal Code and Environmental laws).
- 4.8. **Bonds.** The Developer shall secure and provide such bonds as may be required by the City Department of Public Utilities in accord with the requirements of the Toledo Municipal Code related to the installation of public utilities and improvements in the public right-of-way.
- 4.9. **Construction Costs.** Developer shall be responsible for all costs related to design, engineering, construction and installation of the Public Improvements, except that the City shall provide such financial support as specified in Section 3.4 of this Agreement.
- 4.9.1. Developer shall be responsible for maintaining books and records with respect to the construction and installation of the Public Improvements and to provide records and invoices to the City for reimbursement of costs under section 3.4.
- 4.10. **Construction Contracts:** After receipt of all necessary approvals and permits, Developer shall construct, directly or by way of contract, the Public Improvements in accordance with the approved plans, applicable provisions of Toledo, Ohio or federal law and the terms of this Agreement. Developer shall be solely responsible for contracting for the construction and installation of the Public Improvements, subject to the following requirements.
- 4.10.1. Developer agrees to competitively bid and award upon a lowest and best basis any construction contracts for construction and installation of those Public Improvements impacting any public right-of-way or street or construction in its adjacent right-of-way. Developer's competitive bid process shall provide for public notice of bids.
- 4.10.2. Developer shall, or shall require that its contractor(s), enter into a Project Labor

Agreement with the Northwest Ohio Building and Construction Trades Council (“NWOBTC”) with respect to the construction of the Public Improvements in accordance with requirements of Toledo Municipal Code section 187.12(d).

- 4.10.3. Developer shall ensure that its contractors pay prevailing wages for the construction and installation of the Public Improvements.
- 4.10.4. Developer agrees to work with the City’s Division of Diversity and Inclusion with a goal of providing opportunities to Disadvantaged Business Enterprises (“DBE”) in conjunction with the construction and installation of the Public Improvements.
- 4.10.5. Developer shall submit documentation to City of eligible expenses and payment to contractors for the construction of the Improvements.
- 4.11. **City Ownership Upon Completion.** Developer shall grant the City, by execution and delivery of necessary instruments in recordable form, any easements or other property rights necessary to ensure the City’s ownership rights in the Public Improvements upon completion of construction and installation of the Public Improvements.

SECTION 5

CONSTRUCTION ACCESS

- 5.1. **City Access.** At certain times during the construction of the Project by the Developer, the City, its employees, agents and contractors, shall, at no cost to the City, have a temporary license, right of way, access, ingress and egress, and use of the Project site, as reasonably necessary, and as specified in Section 4.6 related to the Public Improvements, to carry out its public obligations, including inspection of the Project, subject to all other terms and conditions of this Agreement.
- 5.2. **Developer Access.** During the construction of the Project, including the Public Improvements, the Developer, its employees, agents, and contractors shall at no cost to the Developer, have a temporary license, right-of-way, access, ingress and egress, and use of that portion of the Project Site owned, transferred or dedicated to the City for the Public Improvements, to the extent reasonably necessary, solely for the equipping, construction and installation of the Project and the Public Improvements, and the provision of necessary security during the construction period, subject to all other terms and conditions of this Agreement.
- 5.3. **Coordination.** The Parties shall coordinate with each other regarding construction schedules and site access and use.
- 5.4. **Compliance with Plans.** In no event shall the Parties undertake any alterations of the Project Site that differ from the approved project plans or otherwise deviate from the plans in a manner that impacts the overall Project’s compliance with approved plans or the property of the other party, except upon the prior written approval of the other party.
- 5.5. **Standard of Conduct.** Each party accessing the property of the other shall at all times

conduct its work in a good, safe and workmanlike manner, in conformity with commercially reasonable standards, and in accordance with all applicable laws, rules, ordinances and regulations.

SECTION 6
WARRANTIES, LIABILITY, INDEMNIFICATION AND INSURANCE

- 6.1. **Title to Property.** The Developer agrees that upon its transfer of title or dedication to the City of any property pursuant to this Agreement, all title to such property shall be free and clear of all liens and legal encumbrances except as may be agreed to by the City and the Developer agrees to provide title work evidencing such at its sole cost.
- 6.2. **Environmental Indemnification.** Except as otherwise limited by law or the provisions of this Agreement, the Developer agrees to indemnify and hold harmless City from and against any and all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by City, resulting from or relating to Hazardous Materials or Wastes (as hereinafter defined) upon the any property transferred or dedicated by the Developer to the City pursuant to this Agreement. For purposes hereof, "Hazardous Materials or Wastes" means any hazardous or toxic materials, pollutants, chemicals, or contaminants, including, without limitation, asbestos, polychlorinated biphenyls and asbestos or all materials defined as hazardous wastes or substances under any applicable local, state or federal laws, rules or regulations. It is understood and agreed that the foregoing undertaking to indemnify and hold harmless City shall arise only upon the assertion against City of any claim relating to the presence of Hazardous Materials or Wastes upon property transferred or dedicated to City that was introduced onto such property before acquisition of title by City, except that this indemnification shall not apply to claims relating to any Hazardous Materials that result solely from an action or inaction by the City. The indemnification set forth in this paragraph shall survive expiration or termination of this Agreement.
- 6.3. **Construction of Project.** The Developer shall indemnify, hold harmless and defend the City against for all claims, liabilities, damages or losses of any kind or nature against the City arising out of or related to the negligence, actions, errors or omissions or willful misconduct of the Developer, its employees, agents and contractors related to the construction of the Project, including the Public Improvements. This requirement shall not be deemed to limit Developer's or City's ability to recover any such costs against third parties.
- 6.4. **City's Obligations for Public Improvements.** Subject to applicable law, including Ohio Revised Code Chapter 2744, the City shall be solely liable for all claims, liabilities, damages or losses of any kind or nature arising out of or related to the actions or omissions of the City, its employees, agents and contractors related the Public Improvements. The requirements of this paragraph shall not be deemed to limit Developer's or City's ability to recover any such costs against third parties.
- 6.5. **Insurance.** The Developer shall obtain, or cause each contractor providing services related to the design, construction or installation of the Public Improvements to obtain and

maintain insurance, naming the City as an additional insured, and submit evidence of such insurance meeting the following coverage requirements.

- 6.5.1. Comprehensive general liability insurance, including auto, for property damage and personal injury or death, with limits of liability of at least \$2,000,000 per occurrence and with a deductible not in excess of \$10,000, and workers' compensation insurance (including employer's liability insurance), for all employees, of any construction manager, agent, contractor or subcontractor engaged on or with respect to the Public Improvements portion of the Project, or in the design, construction, equipping or installation, of the Public Improvements, in such amounts as are established by law.
- 6.5.2. Developer shall require that its Engineer providing the design, plans and specifications for the Improvements shall have professional liability insurance in a minimum amount of \$1,000,000 per occurrence and aggregate or \$2,000,000 claims made; that the City shall be named as a certificate holder; and that a certificate of insurance evidencing such coverage shall be provided to the City.
- 6.5.3. Developer shall incorporate the requirements of this section 6.5 in all of the respective contracts for any work related to the design, construction or installation of the Public Improvements, and require all contractors for any part of such work to incorporate such requirements in any subcontracts involving work on the construction and installation of the Public Improvements, other than for than subcontracts for standard commercial supplies or raw materials.
- 6.6. **Damages for Inadequate Contract Performance.** In the event either party fails to perform its obligations as set forth in this Agreement, neither party shall be liable to the other for any amounts representing loss of income, or indirect, incidental, consequential, exemplary or punitive damages of the other party, except that this provision does not limit or restrict the operation of the indemnification provision under Sections 6.2 and 6.3 or the provision in case of default under paragraph 7.2.1 of this Agreement.
- 6.7. **Representation.** The Developer represents and warrants that it has not entered into agreements or commitments which conflict with its obligations under this Agreement, or with the rights granted to City herein.
- 6.8. **Survival.** The provisions of this Section 6 shall survive the termination of this Agreement.

SECTION 7
TERM AND TERMINATION

- 7.1. Term of Agreement.** The effective date of this Agreement shall be as of the date of the execution of this Agreement by the Mayor of the City of Toledo as indicated below and shall continue for a period of four years.
- 7.2. Termination for Default.** Either party may terminate this Agreement in writing, if the other party fails to materially fulfill its obligations under this Agreement in a timely manner (an “Event of Default”). However, no such termination may be effected unless such Event of Default remains uncured for thirty (30) days after the party declaring the Event of Default provides written notice of such Event of Default and intention to terminate in accordance with the terms of this Agreement; provided, however, that if such Event of Default is reasonably susceptible of cure, but cannot be cured within such thirty (30) day period, then, so long as the defaulting party promptly commences cure and thereafter diligently pursues such cure to completion, then the cure period provided for herein shall be extended for a reasonable period not to exceed an additional 90 days within which the defaulting party may complete such cure.
- 7.2.1.** In the event of default by the Developer, such that Developer fails to substantially complete the Project, Developer shall be liable to the City in an amount equal to the amount the City reimbursed Developer for construction and installation of the Public Improvements.

SECTION 8
PROPRIETARY INFORMATION, NON-DISCLOSURE AND PUBLIC RECORDS

- 8.1. Applicability of Sunshine Law to the City of Toledo.** Developer acknowledges that City is subject to Ohio Revised Code (R.C.) Section 149.43 (“The Public Records Act”) that requires political subdivisions of the State to grant public access to information about the affairs of government and the official acts or public officials and employees. Disclosure under the Public Records Act is subject to certain exemptions, including an exemption that protects trade secret information from release. “Trade secrets” are protected by the operation of R.C. sections 1333.61 to 1333.69 (the “Trade Secrets Act”). The Trade Secrets Acts, Section 1333.61(D) defines “trade secret” as follows:

“Trade secret” means information, including the whole or any portion of phase of any scientific, or technical information, design, process, procedure, formula, pattern, compilation, program device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally know to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

8.2. **Confidential Information.** Developer and City acknowledge that in the course of the performance of their respective obligations pursuant to this Agreement, each party may obtain confidential information and/or trade secret or proprietary information of the other party or its affiliates or customers.

8.2. **Non-disclosure by City.** The City will not share with or convey to any person, entity or governmental agency information provided by Developer that is considered and identified to be a trade secret by Developer and that may be included in the “trade secret” definition under the Trade Secrets Act, unless disclosure is required by law or Developer gives prior written approval for such disclosure. In the event that the City is required to disclose any information Developer considers to be a trade secret pursuant to applicable law, prior to disclosing such information, the City shall notify Developer in writing. City shall not be obligated to maintain in confidence any information that is not a trade secret including information that is publicly known or becomes publicly known through no fault of the City, or that comes to the City from a third party in a manner not in violation of any obligation of confidentiality by such third party to Developer.

8.3. **Non-disclosure by Developer.** Developer agrees to use only for the purposes of this Agreement, and not to disclose to third parties without permission from City, information Developer receives from City relating to public utility infrastructure or such other shared information specified by City as confidential information which is not a not a public record under the Ohio Revised Code. Developer shall not be obligated to maintain in confidence any information that is considered a public record under the Ohio Revised Code or any information that is publicly known or becomes publicly known through no fault of Developer, or that comes to Developer from a third party in a manner not in violation of any obligation of confidentiality by such third party to City. Developer will notify City if it receives a request for information pertaining to this Agreement or in the event that it discloses confidential information to any third party.

8.4. **Acknowledged Public Record.** Developer and City acknowledge that this Agreement with all attachments and exhibits is and shall be a public record subject to disclosure. Developer and City acknowledge that all applications made to the City related to zoning, plan approvals, permits, grants, tax incentives, and information, invoices and reimbursement for costs of Public Improvements by City are and shall be public records subject to disclosure.

SECTION 9
MISCELLANEOUS

9.1. **Equal Employment Opportunity.** Each party agrees that it will not discriminate against any customer, employee or applicant for employment because of race, religion, color, sex, age, national origin or disability.

9.2. Compliance with Law. Each party agrees that it will perform its obligations under this Agreement in accordance with all applicable laws, rules and regulations now or hereinafter in effect. The Authority shall procure and maintain at its cost, or cause to be procured or maintained, all licenses, permits, and other similar authorization required for construction and completion of the Project.

9.3. Notice. Any notice or other communications required or permitted under this Agreement will be in writing and will be deemed sufficiently given when delivered in hand, via overnight express delivery with signature required, or three (3) days after being mailed by first-class United States mail, postage prepaid, and in each instance addressed as follows:

If to the City, to: Department of Economic Development
City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
Attn: Commissioner of Economic Development

With a copy to: Department of Law
City of Toledo
One Government Center. Ste. 2250
Toledo, Ohio 43604
Attn: Law Director

If to the Developer to: FIS 1 LLC
401 S. Washington Square, Suite 102, Lansing, MI 48933
Lansing, Michigan 48933
Attn.: President

9.4. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.

9.5. Interpretation and Governing Law. This Agreement has been reached as a result of arm's length negotiations with each party represented by counsel, and therefore no presumption of draftsmanship shall be used in interpreting this Agreement, but it shall be construed as though prepared by both parties. This Agreement shall be governed by and interpreted under the laws of the State of Ohio, and any action or proceeding arising from this Agreement shall be commenced in a court of competent jurisdiction located in Lucas County, Ohio.

9.6. No Third Party Beneficiaries. This Agreement shall not grant any status or right to any third party, including specifically any owner of any property, to make any claim as a third party beneficiary, or for deprivation of any right, violation of any vesting or rights, or inverse or other condemnation. This Agreement is for the sole benefit of the parties hereto.

- 9.7. Employees and Liabilities.** This Agreement shall not be construed as creating an employer-employee relationship, a partnership or a joint venture. It is understood that persons engaged or employed by the City or the Developer, respectively, as employees, agents, or independent contractors with respect to the Public Improvements and the Project shall be engaged or employed solely by the respective party. Each party is alone responsible for the work, direction, compensation and personal conduct of their respective employees, agents or independent contractors. Nothing in this Agreement shall impose any liability or duty upon a party to persons, firms, or corporations employed or engaged by the other party in any capacity whatsoever, unless otherwise specifically provided for herein.
- 9.8. Entire Agreement, Amendment.** The Agreement contains all representations and the final understanding of the Agreement between the parties and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral. No changes to this Agreement shall be valid unless made by a written amendment executed by the parties, except as provide herein.
- 9.9. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- 9.10. Captions.** Captions in this Agreement are included for convenience of reference only, are not a part of this Agreement, and will not be used in interpreting or construing this Agreement.
- 9.11. Waiver.** The waiver by any party of, or the failure of such party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any other term, covenant or condition, or subsequent breach of the same, or any other, term covenant or condition.
- 9.12. Force Majeure.** Neither party shall be required to perform any term, condition or covenant in this Agreement so long as such performance is prevented by any cause not reasonably within the control of that party and which by the exercise of due diligence that party is unable, wholly or in part, to prevent or overcome. For purposes of this Agreement, “force majeure” shall mean the occurrence acts of God, flooding, strikes, lockouts or other labor trouble, materially adverse weather conditions, fire or other casualty, governmental preemption in connection with a national emergency, any rule, order or regulation of any governmental agency or any department or subdivision thereof, or inability to secure materials or labor because of any such emergency, rule, order, regulation, war, civil disturbance or other emergency, cause or event beyond the reasonable control of the Force Majeure Claimant.
- 9.13. Counterparts.** This Agreement may be executed in one or more counterparts each of which, when assembled together, shall constitute one and the same original.
- 9.14. Authority to Act.** The signatory or signatories hereto on behalf of each Party warrant and represent that they have been duly authorized to execute this Agreement and legally bind their respective Party hereto.

9.15. Exhibits Incorporated. The following exhibits are incorporated by reference:

Exhibit 1 – Drawing of Project Site

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their duly authorized signatories on or as of the date written below.

CITY: City of Toledo, an Ohio Municipal Corporation

DEVELOPER: FIS 1 LLC

BY: _____
Wade Kapszukiewicz, Mayor

By: _____

Name: _____

Title: _____

Date

Date

APPROVED AS TO CONTENT:

Director of Economic Development Date

Director of Public Utilities Date

APPROVED AS TO FORM:

Department of Law Date

Exhibit A

Project Site

