

**ORDINANCE NO. 2015- 2**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A  
SECOND AMENDMENT TO THE INFRASTRUCTURE  
AGREEMENT WITH RIVERS CROSSING POWER, LLC,  
RELATING TO TAX INCREMENT FINANCING, AND  
DECLARING AN EMERGENCY.**

**WHEREAS**, Section 5709.40, et seq., of the Ohio Revised Code (the “TIF Statutes”) authorizes municipal corporations to participate in a public improvement financing method known as tax increment financing; and

**WHEREAS**, the Council of the Village of South Lebanon (the “Village”) has previously approved the execution and delivery of an Infrastructure Agreement with Rivers Crossing Power, LLC (the “Developer”) to provide for the payment of the Purchase Price for certain Public Improvements constructed by the Developer (as previously amended, the “Infrastructure Agreement”); and

**WHEREAS**, the Village and the Developer, having entered into the Infrastructure Agreement as of June 1, 2007, and amended by a First Amendment to Infrastructure Agreement dated as of November 1, 2007, now desire to make certain additional modifications thereto by means of a Second Amendment to Infrastructure Agreement (the “Amendment”);

**NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF SOUTH LEBANON, STATE OF OHIO**, at least two-thirds of all members elected thereto concurring:

**SECTION 1.** The Amendment in the form on file with the Village Council is hereby approved, subject to such minor changes, insertions or omissions as may be approved without further action of the Council by the Village Solicitor approval as to form and execution by the Mayor and Village Fiscal Officer, such approval to be conclusively evidenced by his execution

of said documents, in order to effectuate the purposes of this Ordinance; and the Mayor and Village Fiscal Officer are hereby authorized to execute and acknowledge the same for and on behalf of the Village. Said document is hereby ordered to be filed in the office of the Village Fiscal Officer, labeled Exhibit A, and said document is ordered to be recorded with this Ordinance in the official records of the Village.

**SECTION 2.** That this Council hereby finds and determines that all formal actions of Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council; and that all deliberations of this Council, and of any of its committees that resulted in such formal actions, were taken in meetings open to the public, in compliance with all legal requirements including, without implied limitation, Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That the Village Fiscal Officer is hereby directed to file a certified copy of this Ordinance with the County Auditor of the County of Warren, Ohio.

**SECTION 4.** That this Ordinance is hereby declared to be an emergency measure and shall take effect immediately upon its adoption for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village and for the further reason that the Village must proceed with the construction of certain of the Public Improvements at the earliest possible date in order to provide Public Improvements necessary to permit the continued development of the Project Parcels, thereby improving traffic flow, and potential eliminating traffic, stormwater and other hazards to the residents of the Village.

**SECTION 5.** That the Village Fiscal Officer is hereby directed to cause a summary of this Ordinance to be published.

**SECTION 6.** That this Ordinance shall take effect and be in full force when passed and approved according to law.

Adopted this 15<sup>th</sup> day of January, 2015.

Attest: Sharon Louallen  
Sharon Louallen, Fiscal Officer/Clerk

Lionel H. Lawhorn  
Lionel Harold Lawhorn, Mayor

Rules Suspended: / /2015 (if applicable)	Effective Date – / /2015
Vote - <u>5</u> Yeas <u>   </u> Nays	
First Reading – / /2015	Effective Date – / /2015
Second Reading – n/a	
Third Reading – n/a	
Vote - <u>   </u> Yeas <u>   </u> Nays	

Approved as to form:

BRUCE A. MCGARY  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: Bruce A. McGary  
Date: January 15, 2015

CERTIFICATE

The undersigned Village Fiscal Officer of the Village of South Lebanon, Ohio, hereby certifies that the foregoing is a true copy of Ordinance No. 2015- 2, duly adopted by the Council of the Village on January 15, 2015.

IN TESTIMONY WHEREOF, witness my hand and official seal this 15<sup>th</sup> day of January, 2015.


  
\_\_\_\_\_  
Sharon Louallen  
Village Fiscal Officer

EXHIBIT A

FORM OF AMENDMENT

SECOND

AMENDMENT TO INFRASTRUCTURE AGREEMENT

This SECOND AMENDMENT TO INFRASTRUCTURE AGREEMENT (this “Amendment”) is made and entered into as of the 1st day of January, 2015, between the VILLAGE OF SOUTH LEBANON, OHIO (the “Village”), a village and political subdivision organized and existing under the Constitution and the laws of the State of Ohio (the “State”), and RIVERS CROSSING POWER, LLC, an Ohio limited liability company, and its successors and assigns as herein permitted (the “Developer”), under the following circumstances:

WHEREAS, the Village and the Developer entered into a certain Infrastructure Agreement, dated as of June 1, 2007 and as amended by a First Amendment to Infrastructure Agreement dated as of November 1, 2007 (the “Infrastructure Agreement”);

WHEREAS, unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings given to such terms by the Infrastructure Agreement;

WHEREAS, Exhibit A to the Infrastructure Agreement describes the Public Improvements that that were to be constructed to facilitate the development of the Project and Exhibit E to the Infrastructure Agreement sets forth a Budget, as previously supplemented, for the Public Improvements;

WHEREAS, certain of the Public Improvements described in Exhibit A to the Infrastructure Agreement and the Budget, as previously supplemented, have not been completed and the Village and the Developer desire to provide for the completion of those Public Improvements as well as the construction of additional Public Improvements (together, the “2015 Public Improvements”), all as more fully set forth in the supplemental budget set forth in Exhibit A hereto (the “Supplemental Budget”);

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the Village and the Developer covenant, agree, and bind themselves as follows:

- Definitions. All capitalized terms used herein shall have the same meaning as used in the Infrastructure Agreement, unless expressly otherwise indicated.
- Budget. Exhibit E to the Infrastructure Agreement is hereby supplemented according to the Supplemental Budget attached hereto as Exhibit A.
- Completion Date. The date for the completion of the 2015 Public Improvements for purposes of Sections 2.2 and 3.6 of the Infrastructure Agreement is December 31, 2015.
- Amendment to Section 4.3(c) and (d) of the Infrastructure Agreement. The third paragraph of Section 4.3(c) of the Infrastructure Agreement and Section 4.3(d) of the

Infrastructure Agreement are hereby deleted. The Developer acknowledges and agrees that it shall not be entitled to any excess Service Payments for the payment of the Costs of Work for the 2015 Public Improvements or for any other purpose notwithstanding anything in the Service Payment Agreement to the contrary. The Developer further acknowledges and agrees: (a) that the Developer must construct the 2015 Public Improvements in accordance with the terms of the Infrastructure Agreement, (b) that the aggregate Purchase Price to be paid by the Village for the 2015 Public Improvements is \$1,775,000, (c) that the Developer's right to the payment of the aggregate Purchase Price for the 2015 Public Improvements is subject to its compliance with the terms of the Infrastructure Agreement and the issuance of additional TIF Obligations (the "2015 TIF Obligations"), (d) that the Developer must pay all Costs of Work for the 2015 Public Improvements in excess of the aggregate Purchase Price specified in subsection (b), and (e) that, under the Maintenance Agreement, the Developer is responsible for the maintenance of the Streetscape Elements of the Roadway Improvements, each as defined in the Maintenance Agreement, that are included in the 2015 Public Improvements. The Village acknowledges and agrees that it shall be entitled to the payment of Village Costs except for the costs of issuance of the 2015 TIF Obligations that are payable from the proceeds thereof.

- No Conveyance to Village of Interest in Portions of the Site. The Parties agree that the 2015 Public Improvements will be constructed on, as applicable, the Public Roadway and Utility Easement, the Sanitary Sewer Easement and the Storm Sewer Easement, and that no further Conveyances will be required pursuant to Section 2.4 of the Infrastructure Agreement.

- Additional Public Improvements. Exhibit B hereto sets forth certain additional Public Improvements (the "Additional Public Improvements") and the estimated budget therefor that the Village and the Developer desire to construct when additional TIF Obligations can be issued, if ever, under the terms of the Service Payment Agreement and the Tax Incentive Agreement (as defined in the Service Payment Agreement). To the extent that additional TIF Obligations can be issued to finance all or any portion of the Additional Public Improvements, the Village and the Developer will enter into another amendment to the Infrastructure Agreement to establish a final budget for those Additional Public Infrastructure Improvements. Notwithstanding anything in the foregoing to the contrary, subject to compliance with the applicable provisions of the Code and the delivery of an approving opinion of bond counsel, the Developer and the Village may enter into a further amendment to the Infrastructure Agreement to provide for the payment of costs of the Additional Public Improvements from the 2015 TIF Obligations.

- References to Trust Indenture and Trustee. The Parties agree that all references in the Infrastructure Agreement to the Trust Indenture and the Trustee shall also refer to the Paying Agent Agreement and Paying Agent, respectively, in connection with the issuance of TIF Obligations in the form of notes.

- No Other Changes. Except as expressly set forth herein, this Amendment is intended solely to effect the implementation of the Supplemental Budget for the Public Improvements described therein as indicated above, and does not otherwise purport to amend, alter or modify any other portion of the Infrastructure Agreement.

- Counterparts; Captions. This Amendment may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Amendment. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Amendment.

- Severability. In case any section or provision of this Amendment, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Amendment, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Amendment or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Amendment, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

All illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

[Signature page follows]

IN WITNESS WHEREOF, the Village and the Developer have caused this Amendment to be executed in their respective names by their duly authorized officers, all as of the date hereinbefore written.

THE VILLAGE OF SOUTH LEBANON, OHIO,  
pursuant to Ordinance/Resolution No. 2015-2

By: Lionel H. Lawhorn  
Lionel Harold Lawhorn, Mayor

By: Sharon Louallen  
Sharon Louallen, Village Fiscal Officer

RIVERS CROSSING POWER, LLC

By: [Signature]  
Its: Authorized Agent

APPROVED AS TO FORM:

BRUCE A. McGARY  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: [Signature]  
Date: January 22 2015

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CERTIFICATE OF POSTING

I, Sharon Louallen, Fiscal Officer of the Village of South Lebanon, Ohio do hereby certify I posted a true and accurate copy of this ordinance or resolution, summary of ordinance or resolution, or statement, order, proclamation, notice or report at five public places within the Village as authorized by Section 731.25 of the Ohio Revised Code and Ordinance 98-08 of Village of South Lebanon, Ohio.

2-3-15 [Signature]  
Date Sharon Louallen  
Fiscal Officer  
Village of South Lebanon,  
Ohio



EXHIBIT A  
Supplemental Budget

<u>Work Item Description</u>	<u>Status</u>	<u>Estimated Costs</u>
S.R. 48 Overlay	Barrett Contract	\$ 355,724
ADD for ODOT-Approved Vinyl Fence	Barrett C/O	\$ 8,000
Public Storm Detention Basin Modifications Rivers East	Estimate	\$ 110,000
Corwin Nixon Extension / Traffic Signals	Ford Bid	\$ 487,053
Rivers West Public Utilities	Ford Bid	\$ 465,900
NB left Turn Lane Extension (150') on S.R. 48 to I-71 SB Ramp	Estimate	\$ 131,380
Surveyor, Engineer & Other Consultants	Estimate	\$ 167,806
Contingency	6%	\$ 93,483
Project Management	5%	\$ 77,903
<b>TOTAL AMOUNT</b>		<b>\$1,897,249</b>

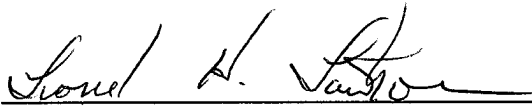
EXHIBIT B

Additional Public Improvements

<u>Work Item Description</u>	<u>Status</u>	<u>Estimated Costs</u>
Additional WB Left Turn Lane on I-71 NB Ramp at S.R. 48	Estimate	\$ 174,743
Further TIS/IMS - Required Improvements	Estimate	\$ 3,000,000
Surveyor, Engineer & Other Consultants	Estimate	\$ 382,474
Contingency	15%	\$ 476,211
Project Management	5%	\$ 158,737
<b>TOTAL AMOUNT</b>		<b>\$ 4,192,165</b>

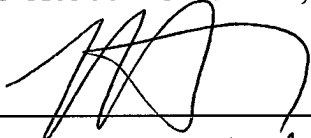
IN WITNESS WHEREOF, the Village and the Developer have caused this Amendment to be executed in their respective names by their duly authorized officers, all as of the date hereinbefore written.

THE VILLAGE OF SOUTH LEBANON, OHIO,  
pursuant to Ordinance/Resolution No. \_\_\_\_\_

By:   
Lionel Harold Lawhorn, Mayor

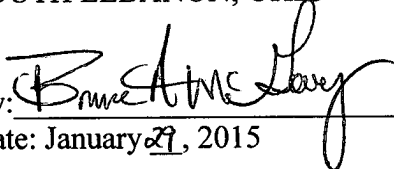
By:   
Sharon Louallen, Village Fiscal Officer

RIVERS CROSSING POWER, LLC

By:   
Its: Authorized Agent

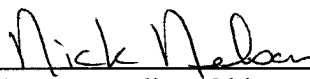
APPROVED AS TO FORM:

BRUCE A. MCGARY  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: January 29, 2015

RECEIPT

The undersigned County Auditor of the County of Warren, Ohio, hereby acknowledges that there was filed with him or her on this 4<sup>th</sup> day of ~~January~~ <sup>\* February</sup>, 2015, by the Village Fiscal Officer of the Village of South Lebanon, Ohio (the "Village"), a certified copy of Ordinance No. 2015- 2 of the Village.

  
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County Auditor Ohio  
County of Warren 