

## ASSIGNMENT, ASSUMPTION & AMENDMENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION & AMENDMENT AGREEMENT (this "**Assumption**"), dated as of 5:00 p.m. on \_\_\_\_\_, 2013 (the "**Effective Time**"), is entered into and executed and delivered by and among City of Gillette, a Wyoming \_\_\_\_\_, whose address is 201 E. 5<sup>th</sup> Street, Gillette, WY 82717 ("**Assuming Party**") and Strong Capital VI-B, LLC, a Texas Limited Liability Corporation (hereinafter "**Strong**");

### RECITALS

WHEREAS, Strong, or their respective predecessors in interest, and a third party (the "**Counterparty**") entered into one or more agreement(s), as amended or supplemented prior to the date hereof, and described on **Exhibit A** attached hereto and made a part hereof (collectively, the "**Agreement**");

WHEREAS, the Assuming Party desires to assume and perform the obligations of the Counterparty to the Agreement and desires to deliver to Strong such instruments as are required to evidence the assumption of all obligations of Strong's counterparty pursuant to the Agreement;

WHEREAS, the parties hereto desire to amend the Agreement in connection with the execution and delivery of this Assumption in order to, among other things, modify amend and supplement certain payment (including without limitation payment amounts and certain payment terms), liability and indemnification provisions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration in hand paid and delivered, the receipt, adequacy and legal sufficiency of which are hereby acknowledged by the Assuming Party and Strong, the party does hereby agree as follows:

1. Assumption. The Assuming Party, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assumes all of the Counterparties' right, title, benefit, privileges and interest in, to and under the Agreement, subject to the terms, conditions and limitations set forth therein and assumes and agrees to be bound by and to perform and observe fully and faithfully all of the covenants, stipulations, terms, provisions, duties, obligations and conditions contained in said Agreement to be performed and observed by the Counterparty, and assumes and agrees to timely pay and perform, honor, discharge and satisfy all duties, obligations and liabilities of the Counterparty arising out of or relating to the Agreement (the "**Assumed Rights and Liabilities**").

2. Administrative Processing Fee. The Assuming Parties shall pay to Strong an administrative processing fee in the amount of Five Hundred and no/100 Dollars (\$500.00) upon the execution and delivery of this Assumption by check.

3. Amendments to Agreement. The Agreement is hereby amended to include the following provision(s):

The sections indicated in the "Rental Section" column of **Exhibit A** shall be deleted in their entirety and replaced with the following:

(a). "As partial consideration for the permission herein given, Assuming Party shall pay to Strong, as rental the sum of One Hundred Thirty-Two and 87/100 Dollars (\$132.87), per annum (the "**Annual Rental Amount**"), payable annually in advance and subject to annual adjustment. Acceptance by Licensor of rental in advance shall not be construed as a waiver by Licensor of its right to terminate as set forth on the "Termination Section" column of **Exhibit A**.

(b). CPI Factor Adjustments. The annual rental amount shall automatically and without notice to Licensee, be adjusted, upwards only, on each anniversary of the Effective Time of this Assignment by the CPI Factor as indicated on the Consumer Price Index, Urban Wage Earners and Clerical Workers, U.S. City Average, All Items (1982-84=100) (the "**Consumer Price Index**"), published by the United States Department of Labor, Bureau of Labor Statistics, or any successor or substitute index published as a replacement for the Index by any United States Governmental agency, or by a minimum of three percent (3%). The "**CPI Factor**" is the percentage of adjustment stated in the Consumer Price Index (indicated in the previous sentence) established during the last available twelve-month period immediately preceding each anniversary of the date of this Assumption, adjusted to the nearest one-tenth of one percent.

(c.) Interest. All amounts due hereunder shall bear interest from the date when due until paid at a rate of eighteen percent (18%) per annum. Such interest shall be governed by the laws of Texas, without regard to conflicts of laws principles, and in no event will interest exceed the maximum amount permitted by such laws.

(d.) Dispute Resolution. Subject to the provisions of subsections (3)(c)(iii) and (3)(c)(iv), any dispute, controversy or claim arising from or in connection with the Agreement, an alleged breach of the Agreement or the relationship of the parties under the Agreement, whether based on contract, tort, common law, equity, statute, regulation, order or otherwise (a "**Dispute**") shall be resolved as follows:

(i) Informal Resolution. Except as otherwise provided herein, the parties will attempt to resolve any Dispute through informal negotiations before proceeding to arbitration as provided below. Negotiations for an informal resolution of a Dispute shall be initiated by written request from the party requesting negotiations to the other party. Upon sending and receipt of a request for negotiations, each party to the Dispute will appoint a designated representative. The task of the designated representatives will be to meet for the purpose of endeavoring to resolve such Dispute. The designated representatives shall have the authority to make binding decisions and/or commitments on behalf of the party they represent. The designated representatives shall meet as often as they reasonably deem necessary to resolve the Dispute without the necessity of any formal limitations. Formal proceedings (including arbitration) for the resolution of a Dispute may not be commenced until the earlier of: (A) the designated representatives mutually concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely or (B) the expiration of the thirty (30) day period immediately following the date of the initial written request to negotiate the Dispute.

(ii) Arbitration. Failing informal resolution the Dispute shall be finally settled by binding arbitration under the Commercial Arbitration Rules established by the American Arbitration Association which are in effect when the arbitration is initiated. The parties hereby agree that the Federal Arbitration Act will apply to any Dispute. Any party may initiate an arbitration following failure of informal resolution by filing a demand for arbitration with the American Arbitration Association at its office in Dallas, Texas, and simultaneously delivering a copy of such demand to the parties involved in the Dispute. The delivery of a demand for arbitration shall have the same effect as the filing of a civil action in a court of competent jurisdiction for purposes of all statutes of limitations applicable to the claims covered by the Dispute. Unless otherwise agreed by the parties, the arbitration hearing shall be conducted in Dallas, Texas before a single arbitrator, acting under the Commercial Rules of the American Arbitration Association, except as modified herein. The arbitrator shall be a business attorney in practice for at least 20 years, with substantial experience in the negotiating and drafting of business agreements and versed in Texas law. If the amount in controversy equals or exceeds \$1,000,000 then three (3) arbitrators shall be required (in such case each party shall select one arbitrator and such arbitrators shall select a third arbitrator). Unless the parties agree to



a mutually acceptable arbitrator within thirty (30) days of a demand for arbitration the arbitrator shall be selected by the American Arbitration Association. The arbitrator shall be bound by the provisions of the Agreement, including the governing law provision. It is the intent of the parties that the arbitration shall be conducted in an efficient, economical and expeditious manner. Accordingly, the parties and the arbitrator shall meet in a pre-hearing conference as promptly as practicable after selection of the arbitrator to establish the scope and extent of discovery and the schedule of the arbitration. If the parties cannot agree as to the scope of discovery, then discovery shall be limited to that which is necessary to a fair resolution of the Dispute, in the judgment of the arbitrator. Unless the parties otherwise agree or the arbitrator determines that it is impracticable, discovery shall be completed within 60 days after the pre-hearing conference, and the hearing on the merits shall be held within 90 days after the pre-hearing conference. The decision of the arbitrator as to all matters involved in the Dispute shall be set forth in a written award, which shall state the relief granted and a brief statement of the reasons for same. The award shall be binding and conclusive upon the parties to this Agreement, subject only to challenges on grounds provided in the Federal Arbitration Act. The arbitrator shall issue the award within thirty (30) days after the completion of the arbitration hearing and shall deliver such decision to the parties involved in the Dispute. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction, subject to the provisions of subsection (iii) below. The non-prevailing parties shall pay the reasonable expenses (including attorneys' fees) of the prevailing parties and the arbitrator fee and administrative expenses associated with the arbitration.

(iii) *Civil Actions Permitted For Certain Purposes.* Notwithstanding the provisions of subsections (i) and (ii) of this Section, a party may initiate a civil action in court for the purposes of (A) enforcing the dispute resolution provisions of this Assumption, (B) judgment upon, and enforcement and collection of, an arbitral award and (C) obtaining provisional relief such as a temporary restraining order, temporary injunction, garnishment, attachment and similar relief available under applicable law, without first requesting informal dispute resolution or initiating arbitration. The parties agree that exclusive jurisdiction and venue for any such civil action shall be in the state courts in and for Dallas County, Texas or the United States District Court for the Northern District of Texas (Dallas Division) as well as to all appellate courts to which an appeal may be taken from such trial court. The parties agree not to commence any suit, action or proceeding contemplated by this subsection except in the courts specified in the preceding sentence. Each of the parties to this Agreement expressly waives, to the fullest extent permitted by law, the right to move to dismiss or transfer any action brought in such courts on the basis of any objection to personal jurisdiction, venue or inconvenient forum in any of such courts. Notwithstanding the provisions of this subsection, the merits of any Dispute shall be resolved by arbitration.

(iv) *Excluded Disputes.* The following matters are excluded from the Dispute resolution requirements of this Section: (A) a cross-claim pursuant to an indemnification obligation set forth in this Agreement in a proceeding filed by a third party; (B) a dispute regarding ownership, infringement or violation of intellectual property rights; and (C) any formal proceedings commenced to avoid expiration of any applicable limitations period, to preserve a superior position with respect to other creditors or to seek temporary, preliminary or permanent injunctive relief. The filing of a court action to enable the recording of a notice of pending action, receivership, or injunction shall be permitted.

4. Full Force and Effect; Entire Agreement; Amendment. Except as otherwise expressly provided in this Assumption, all other terms, conditions and provisions of the Agreement remain in full force and effect without amendment or modification. In the event of any conflict, inconsistency or incongruity between any provision of this Assumption (including without limitation **Exhibit B** attached hereto) and any provision of the Agreement, the provisions of the Agreement shall govern and control. This Assumption embodies the entire agreement among the parties relating to the subject matter hereof and may be amended only by an instrument in writing executed by an authorized officer of each party hereto. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such condition(s) or obligation(s).

5. Severability. If any term, provision, covenant or restriction of this Assumption is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Assumption shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6. Governing Law; Interpretation. This Assumption shall be construed and interpreted in accordance with the laws of the State of Texas, without regard to conflicts of law principles. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms "successors and assigns" shall include the heirs, administrators, executors, successors, and assigns, as applicable, of any party hereto. For purposes of construction, this Assumption will be deemed to have been drafted by all parties hereto. This Assumption shall be binding and shall inure to the benefit of the parties and their respective successors and assigns.

7. Acknowledgements. The Assuming Party hereby acknowledges the title in and to the licensed area and Assumed Rights to be good and agrees never to assail or resist said title. The consummation of the assumption of the Assumed Rights and Liabilities pursuant to this Assumption shall be deemed the Assuming Party's acknowledgement that it has had an adequate opportunity to make such legal, factual and other inspections, inquiries and investigations as it deems necessary, desirable or appropriate with respect to the Assumed Rights and Liabilities. Except as otherwise expressly set forth in this Assumption and the documents or instruments executed in connection herewith the Assuming Party shall not be entitled to and shall not rely upon Strong's or Strong's agents with regard to, and Strong will not make any representation or warranty with respect to the legal status of the Assumed Rights and Liabilities or the condition of title to the Assumed Rights and Liabilities or the nature, status and extent of any right-of-way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction, or any other matter affecting the Assumed Rights and Liabilities. Assuming Party is assuming the Assumed Rights and Liabilities "as is and where is" with all faults.

8. Additional Terms. The parties hereto agree to the terms and conditions set forth on **Exhibit B**, attached hereto and made a part hereof.

[Signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Assumption to be executed in duplicate as of the date first above written.

**Assuming Party:**

**CITY OF GILLETTE**

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

**Strong:**

**RAILROAD MANAGEMENT COMPANY, LLC**  
As agent for Strong Capital VI-B, LLC

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