

**ASSIGNMENT, ASSUMPTION &  
AMENDMENT AGREEMENT**

**THIS ASSIGNMENT, ASSUMPTION & AMENDMENT AGREEMENT** (this "*Assumption*"), dated as of August 20, 2020 (the "*Effective Date*"), is entered into and executed and delivered by and among City of Senoia, a(n) Georgia municipality whose address is 80 Main Street, Senoia, GA 30276 ("*Assuming Party*" or "*Licensee*"), and Strong Capital X LLC, a Texas limited liability company (hereinafter "*Strong*" or "*Licensors*");

**RECITALS**

WHEREAS, Strong, or its 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, 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, Assuming Party certifies to Strong that Assuming Party is the lawful owner of the facilities referenced in the Agreement and Assuming Party succeeded to all rights granted to, and obligations assumed by, the original licensee under the Agreement;

WHEREAS, the parties hereto desire to (a) effect a novation by means of this Assumption and substitute Assuming Party as a party to the Agreement and (b) 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 other payment terms) and other 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 parties do 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*"). In consideration of the covenants and agreements of the Assuming Party herein contained, Strong does hereby give its consent and agree to the aforesaid assumption.

2. Administrative Processing Fee. The Assuming Party shall pay to Strong an administrative processing fee in the amount of ONE THOUSAND AND 0/100 DOLLARS (\$1,000) upon the execution and delivery of this Assumption by check or wire transfer of immediately available funds.

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

The sections indicated in the "License Fee 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 an annual license fee, the sum stated in the "License Fee Amount" column of **Exhibit A**, payable annually in advance and subject to annual adjustment. Acceptance by Licensor (or any successor in interest) of the license fee in advance shall not be construed as a waiver by Licensor (or any successors in interest) of its right to terminate as set forth on the "Termination Section" column of **Exhibit A**.

(b) CPI Factor Adjustments. The annual license fee amount shall automatically and without notice to Licensee, be adjusted, upwards only, on each anniversary of the Effective Date of this Assumption 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 Effective Date of this Assumption, adjusted to the nearest one-tenth of one percent. If the Consumer Price Index has changed so that the base year differs from that used in this paragraph, the Consumer Price Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics to the 1982-84 base. If the Consumer Price Index is discontinued or revised during the term of the Agreement, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if Consumer Price Index had not been discontinued or revised.

(c) Late Fees and Interest. In the event Assuming Party fails to pay the license fee on or before the due date, Assuming Party shall pay a late charge equal to five percent (5%) of the unpaid amount. After thirty (30) days, 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 New York, without regard to conflicts of laws principles, and in no event will interest exceed the maximum amount permitted by such laws.

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 and any provision of the Agreement, the provisions of this Assumption 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. Interpretation. 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. The parties hereto intend and agree that this Assumption shall effect a novation and substitute Assuming Party as a party to the Agreement. The parties acknowledge and agree that Norfolk Southern Railway, (hereinafter referred to as "Railway") is an intended third-party beneficiary of this Assumption and of Assuming Party's assumption of the Assumed Rights and Liabilities. This Assumption shall be binding and shall inure to the benefit of the parties and their respective successors and assigns; provided, however, that Assuming Party shall not assign the Agreement or this Assumption without the prior written consent of Licensor (or any successors in interest).

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' agreement 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 and the Agreement premises. 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, the Agreement premises or the condition of title to the Assumed Rights and Liabilities or the Agreement premises 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 or the Agreement premises. Assuming Party is assuming the Assigned Rights and Liabilities "as is and where is" with all faults.

8. Insurance.

(a) Without limiting in any manner the liability and obligations assumed by Licensee under any other provision of the Agreement, and as additional protection to Railway, Licensee shall, at its expense, procure and maintain with insurance companies satisfactory to Railway, the insurance policies described below:

(i) Prior to commencement of installation or maintenance of the facilities or entry on Railway's property, Licensee, or its contractor if it employs one, shall procure and maintain for the course of said installation and maintenance, a general liability insurance policy naming Railway as an additional insured, and containing products and completed operations and contractual

liability coverage, with a combined single limit of not less than \$1,000,000.00 for each occurrence.

(ii) Prior to commencement of any subsequent maintenance of the facilities during the term of the Agreement, Licensee, or its contractor if it employs one, shall furnish Railway with an original Railroad Protective Liability Insurance Policy naming Railway as the named insured and having a limit of not less than a combined single limit of \$2,000,000.00 each occurrence and \$6,000,000.00 aggregate.

(b) All insurance required under preceding subsection (a) shall be underwritten by insurers and be of such form and content as may be acceptable to Railway. Prior to commencement of installation or maintenance of the facilities or an entry on Railway's property, Licensee, or its contractor if it employs one, shall: furnish to Railway's Risk Manager, Three Commercial Place, Norfolk, Virginia 23510-2191 (or such other representative and/or address as subsequently given by Railway to Licensee in writing), for approval, the original policy described in subsection a(ii).

9. Indemnification. Licensee hereby agrees to indemnify and save harmless Railway, its officers, directors, agents employees and other parties to the Agreement(s), from and against any and all liabilities, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injury (including death) and property damage to whomsoever or whatsoever occurring (hereinafter collectively called "Losses") that arise in any manner from (a) the installation, construction, maintenance, operation, presence or removal of, or the failure to properly install, construct, maintain, operate or remove, the Facilities, or (b) any act, omission or neglect of Licensee, its agents, servants, employees or contractors in connection therewith, unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway.

*[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 Senoia**

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

**Strong:**

**Railroad Management Company IV LLC**  
As agent for Strong Capital X LLC

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

**EXHIBIT A**

Agreements between Strong Capital X LLC and City of Senoia:

License No.	Audit No.	Folder No.	Location City	Location County	Location State	License Fee Section(s)	Annual License Fee Amount	Termination Section
NS143761	RNP5110-002	22316	SENOIA	COWETA	GA	First three lines in second paragraph of Section One	\$514.54	Section Six