

RESOLUTION NO. 12-133

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING A LICENSE FEE AMENDMENT WITH STRONG CAPITAL I FUNDING, LP

WHEREAS, the City of Paso Robles and Southern Pacific Company entered into a License Agreement dated August 28, 1969, and amended by a Supplemental Agreement, dated December 26, 1969 (collectively, the "Agreement") allowing the City to construct, maintain and operate a 16-inch water main and one 16-inch water main crossing underneath property owned by Southern Pacific; and

WHEREAS, Union Pacific Railroad was a successor-in-interest to Southern Pacific and Southern Pacific subsequently assigned to Strong Capital I Funding, LP, a Delaware corporation ("Strong"), all of the benefits, privileges, rights and interest of Union Pacific under the Agreement except for certain retained rights; and

WHEREAS, the Agreement requires that the City pay an annual license fee (License Fee") ; and

WHEREAS, Strong recently notified City that, due to a re-evaluation of comparable land sale values, the License Fee would increase from \$5,653.83 in 2011-2012 to \$16,050 for 2012-2013; and

WHEREAS, in order to avoid unexpected and significant annual increases in the License Fee, the parties have agreed that City could prepay the License Fee for a term of thirteen (13) years at a discounted rate;

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. The City Council hereby approves the License Fee Amendment, in substantially the form attached to this resolution as Exhibit "A," and authorizes the City Manager to execute such License Fee Amendment, subject to any minor technical, clarifying and non-substantive changes as approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Paso Robles on this 7th day of August, 2012 by the following vote:

AYES: Steinbeck, Hamon, Gilman, Strong, Picanco
NOES:
ABSENT:
ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk

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WHEREAS, Union Pacific Railroad was a successor-in-interest to Southern Pacific and Southern Pacific subsequently assigned to Strong Capital I Funding, LP, a Delaware corporation ("Strong"), all of the benefits, privileges, rights and interest of Union Pacific under the Agreement except for certain retained rights; and

WHEREAS, the Agreement requires that the City pay an annual license fee (License Fee"); and

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AYES: Steinbeck, Hamon, Gilman, Strong, Picanco

NOES:

ABSENT:

ABSTAIN:



Duane Picanco, Mayor

ATTEST:



Caryn Jackson, Deputy City Clerk

EXHIBIT A

LICENSE FEE AMENDMENT

This License Fee Amendment (“**Amendment**”) is made and entered into as of June 27, 2012 by and between Strong Capital I Funding, LP, a Delaware Limited Partnership, (“**Strong**”) and **City of Paso Robles**, a California municipal corporation (“**Licensee**”).

RECITALS

A. Licensee and Southern Pacific Company, a predecessor in interest to the Union Pacific Railroad Company (“**Union Pacific**”) entered into a License Agreement, dated August 28, 1969, and amended by a Supplemental Agreement, dated December 26, 1969, (“collectively, the “**Agreement**”) allowing Licensee to construct, maintain and operate a 16-inch water main 3,210 feet in length and one 16-inch water main crossing.

B. Union Pacific assigned Strong all of the benefits, privileges, rights and interest of Union Pacific under the Agreement except for certain retained rights.

C. The Agreement provides that Licensee is to pay an annual license fee (“License Fee”). Strong recently undertook an evaluation of land valuations which would have resulted in a significant increase to the annual fee to be paid by Licensee.

D. In order to provide certainty for budgeting purposes to Licensee for a period of time, Strong has proposed, and Licensee is willing to accept, that Licensee prepay the annual license fee for a term described herein, at a discounted rate.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensee and Strong hereby agree as follows:

1. Contemporaneous with the execution and return of this Amendment, Licensee shall pay Strong, the sum set forth in Exhibit “A” (“**Discounted Prepaid License Fee**”) by Certified Check.

2. In consideration of the payment of the Discounted Prepaid License Fee, Licensee shall not be obligated to pay rental payments under the Agreement with respect to the period (the “**Paid-Up Period**”) from the “**Effective Date**” until the “**Paid-Up Date**” (both defined on **Exhibit A**); provided, that Licensee is not relieved from the obligation, if any, under the Agreement to pay Union Pacific for services provided by Union Pacific, to reimburse Union Pacific for amounts paid by Union Pacific, pay Union Pacific any administrative charges for modifications to the Agreement, or to pay any rentals that are or will become due for any periods before or after, but not during, the Paid-Up Period.

3. If at any time between the Effective Date and the Paid-Up Date, Strong conducts an evaluation to determine if license fees under the Agreement, including that which would apply to Licensee in the absence of this Amendment, should be adjusted, Strong shall notify Licensee in writing of such evaluation and what the License Fee would be in the absence of this Amendment. Notwithstanding the foregoing, no later than one (1) year prior to the Paid-Up Date, the parties shall negotiate the license fee that would apply after the Paid-Up Date.

4. All notices that are given pursuant to the Agreement, as amended by this Amendment, shall be in writing. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card. Notices delivered by the United States Express Mail, Federal Express, Airborne Express or another overnight courier that provides next business day delivery (the “Express Courier”) shall be deemed given on the next business day after deposit of the same with the Express Courier. If any notice is transmitted by facsimile (fax) transmission or similar means, the same shall be deemed received or delivered upon the transmission thereof, provided a copy is also given via personal delivery or deposited with the Express Courier by no later than the next business day after such facsimile transmission. If notice is given or received on a Saturday, Sunday or legal holiday, or on a business day after 5:00 P.M., it shall be deemed given or received on the next

business day. For purposes of notice, the addresses of the parties are as follows, which may be changed by five (5) days prior written notice:

If to Strong: Strong Capital Funding I LP
5910 North Central Expressway, Suite 1580
Dallas, Texas 75206
Tel: 214-750-6808
Fax: 214-750-6844

If to Licensee: City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446
Attn: -- Public Works Director
Tel: 805-237-3961
Fax: 805-237-3904

5. Except as specifically amended or added in this Amendment, all of the other terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on June 27, 2012.

“Strong”
Railroad Management Company, LLC
As agent for Strong Capital I Funding, LP

“Licensee”
City of El Paso de Robles, a municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: James L. App
Title: City Manager
Date: _____

EXHIBIT A

License No.	Audit No.	Folder No.	Location City	Location County	Location State	Effective Date	Paid Up Period	Discounted Rental
0237553	S161045	153729	PASO ROBLES	SAN LUIS OBISPO	CA	8/28/2012	8/28/2025	\$107,000.00
							Discounted Rental Total	\$107,000.00
							Administrative Fee	N/A
							Grand Total	\$107,000.00