

ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT

This Economic Development Program Grant Agreement ("Agreement") is made and entered into by and between Stream Gas & Electric, Ltd., a Texas limited partnership ("Stream" or "Company"), and the Town of Addison, Texas ("Addison" or the "City"), a Texas home rule municipality, for the purposes and consideration stated below (Stream and the City are sometimes referred to herein together as the "Parties" and individually as a "Party").

WHEREAS, Stream and entities affiliated with Stream (its "Affiliates") are in the business of providing retail electricity, natural gas, as well as phone and connected life services (the "Services"); and

WHEREAS, Stream has been located in Dallas and a tenant of certain office space located at 1950 N. Stemmons Fwy., Suite 3000, Dallas, Texas 75207; and

WHEREAS, Stream has signed a new ten year lease for at least 52,000 square feet of space within the new Tollway Center located at 14675 Dallas Parkway, Addison, Texas 75254 (the "Leased Premises"); and

WHEREAS, Stream and its new landlord on behalf of Stream intends to spend an estimated combined \$5,000,000.00 in tenant improvements and other office space expenditures within the Leased Premises; and

WHEREAS, during the term of this Agreement and as set forth above, Stream and many of its Affiliates intend to and will use the Leased Premises as their home and primary office for the provision of the Services ("Headquarters"); and

WHEREAS, Stream anticipates that, from and after the date of, and at all times relevant to, this Agreement, it along with its Affiliates will employ at the Leased Premises at least 225 full time equivalent employment positions; and

WHEREAS, from and after the Lease commencement date, Stream and many of its affiliates intend to install, locate or retain at the Leased Premises business personal property for use in providing the Services in an initial taxable amount of at least \$3,500,000; and

WHEREAS, in connection with its lease and occupancy of the Leased Premises, Stream has asked the City to provide an economic development grant that will help Stream defray a portion of the costs it will incur in commencing the lease and occupancy Leased Premises; and

WHEREAS, the City is authorized by Section 380.001, Tex. Loc. Gov. Code, to establish and provide for the administration of programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City, and this Agreement constitutes such a program for promoting

and retaining economic development within the City; and

WHEREAS, the City has determined that making an economic development grant to Stream in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants, and will promote local economic development and stimulate business and commercial activity within the City.

NOW, THEREFORE, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the City and Stream do hereby agree as follows:

Section 1. Findings. The findings set forth above are incorporated as if fully set forth herein.

Section 2. Term.

This Agreement shall be effective as of the last date of execution hereof (the "Effective Date") and will continue in effect from the Effective Date through the date that represents the fifth anniversary of the date that Stream occupies the Leased Premises; subject, however, to the earlier termination of this Agreement in accordance with the terms of this Agreement (the "Term").

Section 3. Program Grant.

Subject to Stream's satisfaction of and compliance with all of the terms and conditions of this Agreement, including without limitation the requirements set forth in Section 4 below, the City agrees, to pay to Stream a Program Grant in the maximum amount of One-Hundred and Twenty-Five Thousand and NO/100 Dollars (\$125,000.00). In addition, the Program Grant shall include a waiver of local permit fees for construction of the Leased Premises.

The Grant payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant unless the City appropriates funds to make such payment during the budget year in which the Grant is payable; provided that during the Term of this Agreement the City agrees that it will take such steps as are within its power to appropriate funds each year estimated to equal the amount of Grants to be paid the Company for the ensuing fiscal year. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Section 4. Conditions to Grant Payments.

The City's obligation to make the Grant payments shall be conditioned upon Stream's compliance with and satisfaction of all of the terms and conditions of this Agreement, including without limitation, each of the conditions set forth below:

(a) **First Grant Payment:** The First Grant Payment of Forty-One Thousand Six Hundred Sixty-Six and 67/100s Dollars (\$41,666.67) shall be due upon the submission of a request for payment and the completion of all of the following to the satisfaction of the City:

1. An executed copy of a lease by Stream and property owner for the lease of a minimum of fifty-two thousand (52,000) square feet of space within the Tollway Center ("Leased Premises") for a minimum term of ten (10) years; and
2. A copy of a certificate of occupancy issued by the Town of Addison for the Leased Premises; and
3. An executed affidavit in a form attached as Exhibit A attesting that the Company is occupying the Leased Premises and the Company or its landlord at Tollway Center on its behalf has made a combined capital investment of a minimum of Five Million and No/100s Dollars (\$5,000,000.00) on and/or within the Leased Premises; and
4. A copy of an official employee report submitted to the Texas Workforce Commission demonstrating that the Company and its Affiliates collectively and currently employ 225 employees, when combined, with an average annual wage of \$78,000.

(b) **Second Grant Payment:** The Second Grant Payment of Forty-One Thousand Six Hundred Sixty-Six and 67/100s Dollars(\$41,666.67) shall be due upon the submission of a request for payment and the completion of all of the following to the satisfaction of the City:

1. An executive affidavit in a form attached as Exhibit B attesting that the Company has occupied the Leased Premises for twelve (12) consecutive months; and
2. A copy of an official employee report submitted to the Texas Workforce Commission demonstrating that the Company and its Affiliates collectively and currently employ 225 employees, when combined, with an average annual wage of \$78,000.

(c) **Third Grant Payment:** The Third Grant Payment of Forty-One Thousand Six Hundred-Sixty Six and 66/100s Dollars (\$41,666.66) shall be due upon the submission of a request for payment and the completion of all of the following to the satisfaction of the City:

1. An executive affidavit in a form attached as Exhibit C attesting that the Company

- has occupied the Leased Premises for twenty-four (24) consecutive months; and
2. A copy of an official employee report submitted to the Texas Workforce Commission demonstrating that the Company and its Affiliates collectively currently employ 225 employees, when combined, with an average annual wage of \$78,000.

In the event the official employee reports submitted to the Texas Workforce Commission and to the City pursuant to subsections (b) 2 and (c) 2 of this Section reflect that the Company and its Affiliates collectively employ fewer than 225 employees, the amount of the respective Grant payment shall be proportionately reduced.

Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Program Grant payment (and/or any portion thereof) shall not be due and payable, and this Agreement may be terminated by the City (that is, without any opportunity for cure by Stream), if Stream fails to timely comply with and satisfy to the City's satisfaction any of the conditions to the Program Grant payments (and/or any portion thereof) as set forth in this Section 4, above. Further, notwithstanding any other provision of this Agreement, in connection with the payment of the Program Grant (or any portion thereof) to Stream, if the City fails to make such payment, Stream shall submit a request for the same within six (6) weeks after the right to receive the same accrues to Stream.

Section 5. Default.

(a) **Event of Default by the Company.** If, during the Term of this Agreement the Company breaches any of the terms or conditions of this Agreement or fails to maintain any conditions of the Grant payments, then the Company shall be in default ("Event of Default"). In the event the Company defaults in its performance, then the City shall give the Company written notice of such default, and if the Company has not cured any default within thirty (30) days of said written notice, this Agreement may be terminated by the City. In the event of default by the Company and the continuation of such default for thirty (30) days after the written notice set forth above, the City shall have the following remedies, in addition to all other rights and remedies available at law or in equity:

(i) to nullify Section 3 of this Agreement and immediately seek reimbursement of any and all Grant Payments received by the Company; and/or

(ii) to seek specific enforcement of this Agreement.

(b) **Event of Default by the City.** Upon the occurrence of default by the City, the Company shall give written notice of such default, and if City has not cured the default within thirty (30) days within said written notice, this Agreement may be terminated by the Company. The Company shall have the right to seek specific performance of this Agreement as its sole and exclusive remedy.

Section 6. Termination; Reimbursement.

This Agreement shall terminate without notice or demand upon the occurrence of any one of the following:

- (a) the execution by both Parties of a written agreement terminating this Agreement; or
- (b) as otherwise provided for in this Agreement, including as set forth in Section 3, above; or
- (c) the expiration of the Term; or
- (d) at the option of either party (the “non-breaching party”) in the event the other party (the “breaching party”) breaches or fails to comply with any material term, condition, or provision of this Agreement and such breach or failure is not cured or remedied to the satisfaction of the non-breaching party within thirty (30) days after written notice thereof from the non-breaching party to the breaching party;
- (e) if Stream suffers an Event of Bankruptcy or Insolvency; or
- (f) at the City’s option, if any taxes or fees, owed by Stream to the City or the State of Texas shall become delinquent (provided, however, that Stream retains the right to timely and properly protest and contest any such taxes or fees, and the City’s right to terminate this Agreement shall be suspended during such protest and contest period).

If this Agreement is terminated pursuant to subsection (d), subsection (e), or subsection (f) of this Section, Stream shall promptly (but in any event within thirty (30) days of the date of termination) reimburse and repay to the City a sum equal amount of Grant payment made by the City up to the date of termination. All repayment and/or reimbursement amounts under this Agreement shall bear and include interest at the rate of 4% per year, compounded, from the date that the payment was initially made to Stream.

For purposes of this Section, “Event of Bankruptcy or Insolvency” means (i) the liquidation, dissolution, or termination of Stream as a going business, (ii) insolvency or a declaration of insolvency of Stream under any law, (iii) appointment of a receiver for Stream, (iv) any assignment or conveyance of all or a substantial portion of assets for the benefit of creditors, (v) a transfer in fraud of creditors according to any applicable law, or (vi) the filing of a petition by Stream for relief, or the filing of a petition against Stream for involuntary bankruptcy, under the United States Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy, or similar laws.

Section 7. Representations by the City.

The City represents that the City is a home rule Texas municipal corporation and to the best of its actual knowledge has the power to enter into this Agreement and to carry out its obligations hereunder. However, notwithstanding any other provision of this Agreement, it is understood and expressly agreed by Stream that the City does not warrant or guarantee that the Program Grant payment (and any part thereof) as described herein will be upheld as valid, lawful, enforceable or constitutional in the event the statutory or other authority for the same or the City's use thereof is challenged by court action or other action or proceeding (including any action or proceeding involving the Texas Attorney General). In the event such court or other action or proceeding related to the legality of this Agreement and the providing of the Program Grant (or any part thereof) is instituted, the Parties shall defend or respond to such action or proceeding at their respective expense. Should such litigation, action or other proceeding result in a determination that this Agreement or the payment of the Program Grant (or any part thereof) was or is prohibited under federal, state or local law (including any constitutional or charter provision), rule or regulation, and so result in the loss of the Program Grant as provided herein, Stream shall have no recourse against the City or any of its officials, officers, employees, agents, or volunteers, past or present, and Stream shall promptly repay to the City the Program Grant payment previously made to Stream by the City. In addition, the City represents that it shall use good faith efforts to expedite permitting for any tenant improvements that may be needed for the construction of the Leased Premises.

Section 8. Representations and Warranties by Stream.

Stream represents and warrants that:

- (a) Stream is a Texas limited partnership and has the legal capacity and the authority to enter into and perform its obligations under this Agreement, and the same shall be true and accurate at all times in connection with this Agreement;
- (b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement, and this Agreement is not in contravention of Stream's articles of formation or regulations, or any agreement or instrument to which Stream is a party or by which it may be bound as of the date hereof;
- (c) Stream has the necessary legal ability to perform its obligations under this Agreement;
- (d) No litigation or governmental proceeding is pending, or, to the knowledge of any of Stream's officers, threatened against or affecting Stream, which may result in a material adverse change in Stream's business, properties or operations sufficient to jeopardize Stream as a going concern; and

(e) This Agreement constitutes a valid and binding obligation of Stream, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

Section 9. Entire Agreement; Changes and Amendments.

This Agreement represents the entire and integrated agreement between the City and Stream with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of each of the City and Stream.

Section 10. Successors and Assigns; No Third Party Beneficiaries.

Stream shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a "Conveyance") in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of its rights and obligations hereunder without the prior written approval of the City, which may be withheld in the City's reasonable discretion. Other than a Conveyance in connection with a reorganization or restructuring that does not result in a change in ownership or control, any Conveyance of any kind or by any method without the City's prior written consent shall be null and void. Notwithstanding the foregoing, Stream shall have the right to assign this Agreement to an entity which (1) controls, is controlled by, or is in common control with Stream; or (2) results from the merger or consolidation with Stream, or (3) acquires all or substantially all of the assets of, interest in, or stock of Stream.

Any Conveyance approved by the City shall be expressly subject to all of the terms, conditions and provisions of this Agreement. In the event of any such Conveyance approved by the City, Stream shall obtain a written agreement (the "Assumption Agreement") from each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed whereby each such assignee, transferee, buyer, pledgee, or other person or entity to whom this Agreement is otherwise conveyed agrees to be bound by the terms and provisions of this Agreement.

This Agreement shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. This Agreement and all of its provisions are solely for the benefit of the Parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Section 11. Notice.

Any notice, statement and/or report required or permitted to be given or delivered shall be in writing and shall be deemed to have been properly given for all purposes (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day

following deposit of such notice with such carrier unless such carrier confirms such notice was not delivered, then on the day such carrier actually delivers such notice, or (ii) if personally delivered, on the actual date of delivery, or (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing. Addresses for any such notice, statement and/or report hereunder are as follows:

To the City:

Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254
Attention: City Manager

To Stream:

Stream
1950 N. Stemmons Fwy., Suite 3000
Dallas, Texas 75207
Attention: Chief Executive Officer

Section 12. Applicable Law; Venue.

This Agreement is subject to the provisions of the Charter and ordinances of the City, as amended or modified. This Agreement shall be construed under, governed by and is subject to the laws (including the constitution) of the State of Texas, without regard to choice of law rules, and all obligations of Stream and the City created by this Agreement are performable in Dallas County, Texas. Venue for any suit, action or proceeding under this Agreement shall lie exclusively in Dallas County, Texas. Each party hereby submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder. Each party waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper.

Section 13. Legal Construction/Partial Invalidity of Agreement.

The terms, conditions and provisions of this Agreement are severable, and in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 14. Miscellaneous.

- (a) The Recitals to this Agreement are incorporated into this Agreement and made a part hereof for all purposes.
- (b) Pursuant to Texas Government Code, Chapter 2264 (entitled "Restrictions on Use of Certain Public Subsidies"), Stream certifies that neither Stream, nor any branch, division, or department of Stream, knowingly employs, or will employ, an undocumented worker (as the term "undocumented worker" is defined in Section 2264.001 of the said Chapter 2264, Tex. Gov. Code) in connection with the Leased Premises, the Services provided by Stream at the Leased Premises, or this Agreement. Stream agrees that if,

during the term of this agreement and after it receives any payment or funds from the City pursuant to this Agreement, Stream , or a branch, division, or department of Stream , is convicted of a violation under 8 U.S.C. Section 1324a(f), Stream shall repay the amount of all Grant funds paid by the City to Stream with interest, at the rate of 4% per year, compounded, from the date that the payment was initially made to Stream , not later than the 120th day after the date the City notifies Stream of the violation.

(c) Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

(d) Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. All waivers must be in writing and signed by the waiving party, and the City's waiver of any right, or of Stream's breach, on one or more occasions will not be deemed a waiver on any other occasion. The City's failure to enforce or pursue any of its rights under or any provision of this Agreement shall not be or constitute a waiver of its rights or provision and shall not prevent the City from enforcing or pursuing that right or provision or any other right under or provision of this Agreement in the future. No custom or practice arising during the administration of this Agreement will waive, or diminish, the City's rights hereunder or to diminish the City's right to insist upon strict compliance by Stream with this Agreement.

(e) This Agreement is not confidential information and may be disclosed to the public.

(f) Any of the representations, covenants, and obligations of the Parties hereto, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.

(g) It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the Parties.

(h) The undersigned officers and/or agents of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

(i) The City agrees that with respect to this Agreement, no liability shall arise in favor of the City against any officer, director, member, agent or employee of Stream, but the City shall look solely to the assets of Stream for satisfaction of Stream's duties, obligations and liabilities arising under or in connection with the Agreement.

(SIGNATURES ON NEXT PAGES)

EXECUTED this ____ day of _____, 2016.

TOWN OF ADDISON

Wes Pierson, City Manager

ATTEST:

APPROVED AS TO FORM:

Laura Bell, City Secretary

Brenda N. McDonald, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of 2016, by
Wes Pierson, City Manager of the Town of Addison, Texas, on behalf of the town.

Notary Public, State of Texas

[SEAL]

EXECUTED this 21 day of December, 2016.


STREAM GAS & ELECTRIC, LTD.
a Texas limited partnership

By: 
Renee Hornbaker, Chief Financial Officer

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 21st December day of 2016, by Renee Hornbaker, Chief Financial Officer of Stream Gas & Electric, Ltd.




Notary Public, State of Texas

[SEAL]

EXHIBIT A

AFFIDAVIT OF COMPANY OFFICER

LEASED PREMISES OCCUPATION AND CAPITAL INVESTMENT

The undersigned, _____, first being duly sworn by a person authorized by law to administer oaths, deposes and states as follows (capitalized terms used but not defined herein have the same meaning as set forth in the Agreement (as defined below)):

I am an officer of Stream Gas & Electric, Ltd., a Texas limited partnership (the "Company"), and I am authorized by the Company to submit this Affidavit to the Town of Addison (the "City") on behalf of the Company with respect to the Economic Development Program Grant Agreement (the "Agreement") dated as of _____, 2016 by and among the City and the Company.

As such, I here do certify that as of and on _____, 201__ Company is occupying not less than 52,000 square feet of space within the Tollway Center located at 14675 Dallas Parkway, Addison, Texas 75254 (the "Leased Premises") and has made a combined capital investment of not less than Five Million and No/100s Dollars (\$5,000,000.00) on and within the Leased Premises.

I hereby certify under oath that the above statements are true and correct.

Stream Gas & Electric, Ltd.

By: _____

Typed name: _____

Title: _____

Date: _____

**STATE OF TEXAS §
 §
COUNTY OF DALLAS §**

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the _____ day of _____, 201__.

Notary Public, State of Texas

[SEAL]

EXHIBIT B

AFFIDAVIT OF COMPANY OFFICER

LEASED PREMISES 12 MONTH CERTIFICATION

The undersigned, _____, first being duly sworn by a person authorized by law to administer oaths, deposes and states as follows (capitalized terms used but not defined herein have the same meaning as set forth in the Agreement (as defined below)):

I am an officer of Stream Gas & Electric, Ltd., a Texas limited partnership (the "Company"), and I am authorized by the Company to submit this Affidavit to the Town of Addison (the "City") on behalf of the Company with respect to the Economic Development Program Grant Agreement (the "Agreement") dated as of _____, 2016 by and among the City and the Company.

As such, I here do certify that as of and on _____, 201__ Company has continued to occupy not less than 52,000 square feet of space within the Tollway Center located at 14675 Dallas Parkway, Addison, Texas 75254 (the "Leased Premises") for a period not less than the last 12 consecutive months from the initial date of occupancy.

I hereby certify under oath that the above statements are true and correct.

Stream Gas & Electric, Ltd.

By: _____

Typed name: _____

Title: _____

Date: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

_____ **SWORN TO AND SUBSCRIBED** before me, the undersigned authority, on this the _____ day of _____, 201__.

Notary Public, State of Texas

[SEAL]

EXHIBIT C

AFFIDAVIT OF COMPANY OFFICER

LEASED PREMISES 24 MONTH CERTIFICATION

The undersigned, _____, first being duly sworn by a person authorized by law to administer oaths, deposes and states as follows (capitalized terms used but not defined herein have the same meaning as set forth in the Agreement (as defined below)):

I am an officer of Stream Gas & Electric, Ltd., a Texas limited partnership (the "Company"), and I am authorized by the Company to submit this Affidavit to the Town of Addison (the "City") on behalf of the Company with respect to the Economic Development Program Grant Agreement (the "Agreement") dated as of _____, 2016 by and among the City and the Company.

As such, I here do certify that as of and on _____, 201__ Company has continued to occupy not less than 52,000 square feet of space within the Tollway Center located at 14675 Dallas Parkway, Addison, Texas 75254 (the "Leased Premises") for a period not less than the last 24 consecutive months from the initial date of occupancy.

I hereby certify under oath that the above statements are true and correct.

Stream Gas & Electric, Ltd.

By: _____

Typed name: _____

Title: _____

Date: _____

STATE OF TEXAS §
§
COUNTY OF DALLAS §

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the _____ day of _____, 201__.

Notary Public, State of Texas

[SEAL]