

EXHIBIT

"A"

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("**Agreement**") is entered into this ____ day of _____, 2019, by and between the **City of Round Rock, Texas**, a Texas home rule municipal corporation ("**City**"), and **BGE, Inc.**, a Texas Corporation ("**BGE**").

WHEREAS, the City has adopted Resolution No. _____, attached as Exhibit A ("**City Resolution**"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with BGE in recognition of the positive economic benefits to the City through BGE's decision to lease a facility in the City for the operation of an engineering consulting firm, and its intention to (i) create at least eighty (80) new jobs with an average salary of \$80,000 with benefits, and (ii) invest at least \$1,925,000 in the leased space as provided below; and

WHEREAS, on the 19th day of November, 2018, BGE entered into a lease agreement (the "**Lease**") originally for the lease of 18,239 square feet of office space (the "**Original Facility**") on the fourth floor of the building located at 101 West Louis Henna Boulevard, Austin, Texas (the "**Building**"). The Original Facility together with any additional space leased by BGE within the Building from time to time (including, without limitation, any expansion space pursuant to any amendment to the Lease) is referred to herein as the "**Facility**"; and

WHEREAS, the City issued a Certificate of Occupancy for the Original Facility on August 9, 2019; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby BGE has leased and occupied the Facility and intends to accomplish the foregoing investment and job creation; and

WHEREAS, the City agrees to provide performance-based Economic Incentive Payments ("**EIP's**") (as defined below);

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, and BGE agree as follows:

1. **Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code, and the City Resolution, and constitutes a valid and binding obligation of the City in the event BGE proceeds with the lease, improvement, occupation, and staffing of the Facility. The City acknowledges that BGE is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to lease, improve, and occupy the Facility.
2. **Definitions.**
 - 2.1. "**Business Personal Property**" means fixtures, equipment, artwork and furniture purchased for the purpose of supporting BGE's business operation as the Facility.

- 2.2. **“Economic Incentive Payment(s)” (“EIPs”)** means the amount paid by the City to BGE under the Program.
- 2.3. **“Effective Date”** is the date this Agreement is executed to be effective by the City and BGE.
- 2.4. **“Facility”** is defined in the recitals above.
- 2.5. **“Full Time Equivalent Employee” (“FTE”)** means a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least 35 hours per week, but who, in combination, are counted as the equivalent of a full-time employee. FTE’s shall include original hires or their replacements over time.
- 2.6. **“Program”** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.7. **“Real Property Improvements”** means costs directly incurred as a result of the rehabilitation, reconstruction, repair or remodeling of the existing Facility for the purpose of supporting BGE’s business operation. This does not include soft costs such as financing costs, permit fees, attorneys, and similar costs.
- 2.8. **“Recapture Liability”** means the total amount of all EIP’s that are paid as result of this Agreement that are subject to recapture by the City from BGE in the event of BGE’s default.
3. **Intention of Parties.** The City Council of Round Rock has previously determined that one of its priority goals is to encourage economic development within the City. To further these goals, the City is willing to provide EIP’s to assist BGE in the leasing and improving of the Facility.
4. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2026.
5. **Rights and Obligations of BGE.**
- 5.1. Lease. BGE leased the Facility on November 19, 2018.
- 5.2. Real Property Improvements. BGE agrees to invest at least \$975,000 in Real Property Improvements to the Facility (the **“Real Property Investment Threshold”**) in accordance with the following schedule (the **“Real Property Investment Schedule”**): (i) at least \$700,000 in Real Property Improvements to the Facility prior to December 31, 2019 (including any Real Property Improvements made prior to the date of this Agreement), and (ii) the remainder of the Real Property Investment Threshold must be spent prior to December 31, 2022.

If BGE achieves the Real Property Investment Threshold, BGE agrees to provide the City with documentation that shows proof that this threshold has been satisfied, and the City shall have the right to audit BGE's records to verify same.

- 5.3. Business Personal Property Investment. BGE intends to invest at least \$950,000 in Business Personal Property for the Facility (the "**Personal Property Investment Threshold**") in accordance with the following schedule (the "**Personal Property Investment Schedule**"): (i) at least \$650,000 in Business Personal Property for the Facility prior to December 31, 2019 (including any Business Personal Property investments made prior to the date of this Agreement), and (ii) the remainder of the Personal Property Investment Threshold must be spent prior to December 31, 2022.

In order to provide proof that the Personal Property Investment Threshold is being satisfied in accordance with the Personal Property Investment Schedule, on or before April 15 of 2020 and each subsequent calendar year until the Personal Property Investment Threshold has been satisfied, BGE agrees to provide the City with a copy of the rendition statement filed with the Williamson Central Appraisal District, pursuant to § 22.01 of the Texas Tax Code. The rendition statement shall indicate that the business personal property has either an estimated market value, or a historical cost when new of at least the Personal Property Investment Threshold or portion thereof as required to be obtained in accordance with the Personal Property Investment Schedule.

- 5.4. Jobs. BGE intends to employ at least eighty (80) full-time employees and/or FTE's, (the "**Jobs Threshold**") with an annual average salary of at least \$80,000 in accordance with the schedule set forth below (including, without limitation, any present employees or FTE's of BGE who will be transferred to the Facility) (the "**Jobs Schedule**"). As used in the below Jobs Schedule "jobs" shall include full-time employees and/or FTE's.

<u>Year</u>	<u>Retained Jobs</u>	<u>New/Transferred Jobs</u>	<u>Total Jobs</u>
2019	0	50	50
2020	50	8	58
2021	58	5	63
2022	63	5	68
2023	68	5	73
2024	73	4	77
2025	77	3	80

- 5.5. Job Compliance Affidavit. On or before April 15 of 2020, and for each calendar year thereafter of this Agreement, BGE agrees to provide to the City a Job Compliance Affidavit, a copy of such Job Compliance Affidavit being attached hereto as **Exhibit B**. City shall have the right, following reasonable advance notice to BGE, to audit BGE's records to verify that this obligation has been satisfied.

- 5.6. Compliance with regulations. BGE agrees that it will comply with the City's development approval processes, and shall construct and install the improvements and lease and operate the Facility consistent with City ordinances, development regulations and legal requirements.
- 5.7. Continuous operation. BGE agrees that following BGE's commencement of operations at the Facility, it will continuously operate the Facility during the term of this Agreement for a minimum of seven (7) years from the effective date of this Agreement, except during periods of construction or reconstruction of the Facility or in the event of a casualty, condemnation or other force majeure event with respect to the Facility or a portion thereof.
- 5.8. Clawback. In the event that BGE fails to comply with any of the actions as described in Section 5.1 through 5.5 above (including, without limitation, any failure to comply with the Real Property Investment Schedule, the Personal Property Investment Schedule, and the Jobs Schedule), and such failure continues for a period of thirty (30) days after BGE's receipt of written notice of such failure from the City, BGE will immediately pay to the City an amount equal to, but not to exceed, the Recapture Liability.

6. Economic Incentive Payments.

- 6.1 In consideration, and subject to BGE's compliance with this Agreement (including BGE being in compliance with the Real Property Investment Schedule, the Personal Property Investment Schedule, and the Jobs Schedule), the City agrees to pay EIPs as set forth below.
- 6.2. Schedule for EIPs. City shall, subject to BGE's satisfaction of its obligations set forth herein, make EIPs to BGE as set forth herein. The EIP's shall be made in three annual payments on or before June 1 of each year. The amount of the EIP's shall be as follows:

<u>Year</u>	<u>Amount of EIP</u>
2020	\$50,000.00
2021	\$25,000.00
2022	\$25,000.00

- 6.3. EIP Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to BGE. The EIPs by the City under this Agreement are subject to the City's appropriation of funds for such payments in the budget year for which they are made. The EIPs to be made to BGE, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable

limitations or procedural requirements. In the event that the City does not appropriate funds in any fiscal year for the EIP due under this Agreement, such failure shall not be considered a default under Section 7.3, and the City shall not be liable to BGE for such EIP, however, the City shall extend this Agreement for another year(s), until BGE has received all of the EIPs provided for herein. In addition, BGE shall have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

- 6.4. EIP Recapture. In the event the City terminates this Agreement as a result of BGE's default that is not cured within thirty (30) days after BGE's receipt of written notice of such failure from the City, the City may recapture and collect from BGE the Recapture Liability. BGE shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which BGE may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. Miscellaneous.

- 7.1. Mutual Assistance. The City and BGE will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 7.2. Representations and Warranties. The City represents and warrants to BGE that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. BGE represents and warrants to the City that it has the requisite authority to enter into this Agreement.
- 7.3. Default. If either the City or BGE should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party with written notice of such default and thirty (30) days' opportunity to cure, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, BGE shall have the right to pursue any remedy at law or in equity for the City's breach. If BGE remains in default after notice and opportunity to cure, City shall have the right to pursue any remedy at law or in equity for BGE's breach, but only up to an amount equal to the Recapture Liability.
- 7.4. Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and BGE to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action

shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

7.5. Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and BGE.

7.6. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

7.7. Assignment. BGE may not assign all or part of its rights and obligations to a third party without the express written consent of the City provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.

7.8. Amendment. This Agreement may be amended by the mutual written agreement of the parties.

7.9. Termination. In the event BGE elects not to lease the Facility or install the improvements as contemplated by this Agreement, BGE shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect.

7.10. Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Round Rock
 221 E. Main Street
 Round Rock, TX 78664
 Attn: City Manager
 Phone: (512) 218-5400
 Email: lhadley@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrrlaw.com

If to BGE: BGE, Inc.
 Attn: Catherine Hays, Real Estate Manager
 10777 Westheimer, Suite 400
 Houston, TX 77042

Phone: (281) 558-8700
Chays@bgeinc.com

And to:

BGE, Inc.
Attn: Rob Harris, Vice President
101 W Louis Henna Blvd, Suite 400, Austin, Texas 78728
Phone: (512) 879-0423
Email: crharris@bgeinc.com

With a required copy to:

Wick Phillips Gould & Martin, LLP
3131 McKinney Avenue, Suite 100
Dallas, Texas 75204
Attn: Rob Wills
Phone: (214) 740-4020
Email: rob.wills@wickphillips.com

Either party may designate a different address at any time upon written notice to the other party.

- 7.11. Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 7.12. Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 7.13. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 7.14. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.15. Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "*force majeure* event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay.

Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

- 7.16. No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.

EXECUTED to be effective as of the ____ day of _____, 2019.

CITY OF ROUND ROCK, TEXAS

By: _____
Craig Morgan, Mayor

APPROVED as to form:

Stephan L. Sheets, City Attorney

BGE, INC.

By: Charles R. Harris
11-19-19, its Sen. Vice President

EXHIBIT "A"

RESOLUTION NO. R-_____

WHEREAS, the City Council has determined that one of its priority goals is to encourage economic development within the city of Round Rock; and

WHEREAS, BGE, Inc. ("BGE") has leased a portion of the building located in the City of Round Rock at 101 West Louis Henna Boulevard, Austin, Texas 78728, known as "Frontera Crossing" (the "Facility"); and

WHEREAS, the Council wishes to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby BGE has leased and intends to improve the Facility; and

WHEREAS, BGE intends to add at least 80 employees within seven (7) years of the occupancy of the Facility;

WHEREAS, §380.001 Local Government Code provides that a municipality may establish an economic development program ("Program") to promote local economic development and to stimulate business and commercial activity in the municipality, and

WHEREAS, the City Council has determined that the Program described in Exhibit "A" will encourage economic development within the City and will also meet the goals set forth in said §380.001,

NOW THEREFORE

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK,
TEXAS,**

That the City offers to BGE a §380.001 Program whereby the City will grant certain Economic Incentive Payments ("EIP's"), and

BE IT FURTHER RESOLVED

That the offer of the Program shall be as generally outlined in Exhibit "A" attached hereto and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this _____ day of _____, 2019.

CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk

EXHIBIT A TO RESOLUTION
ECONOMIC DEVELOPMENT PROGRAM

The terms of the §380.001 Economic Development Program to be offered to BGE, Inc. in exchange for BGE's lease of a portion of the building located at 101 West Louis Henna Boulevard, Austin, Texas 78728 are as generally outlined below:

1. BGE's intentions and obligations:
 - 1.1. Lease. BGE previously leased and occupied a portion of the building located in the City of Round Rock at 101 West Louis Henna Boulevard, Austin, Texas 78728, known as "Frontera Crossing".
 - 1.2. Investment. BGE intends to invest at least \$1,925,000 in the improvement of the Facility (including, without limitation, costs directly incurred as a result of the rehabilitation, reconstruction, repair or remodeling of the existing Facility and costs incurred for fixtures, equipment, and furniture purchased for the purpose of supporting BGE's business operation at the Facility).
 - 1.3. Jobs. BGE intends to create at least 80 new jobs within seven (7) years of its occupancy of the Facility.
 - 1.4. Compliance with regulations. BGE agrees that it will comply with the City's development approval processes and shall construct and install the improvements and lease and operate the Facility consistent with City ordinances, development regulations and requirements.
 - 1.5. Continuous operation. BGE agrees that it will continuously operate the Facility for a minimum of seven (7) years, except during periods of construction or reconstruction of the Facility or in the event of a casualty, condemnation or other force majeure event with respect to the Facility or a portion thereof.
2. City's obligations:
 - 2.1. Economic Incentive Payments. In consideration of BGE's compliance with the aforesaid intentions, the City agrees to grant Economic Incentive Payments to BGE in the amount of \$100,000.
3. The terms and provisions of this Program will be set out in more detail in the Economic Development Program Agreement of even date herewith.

EXHIBIT B

JOB COMPLIANCE AFFIDAVIT

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED _____ (NAME), KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED BELOW AND AFTER HAVING BEEN DULY SWORN, ON HIS/HER OATH STATED AS FOLLOWS:

1. "MY NAME IS _____. I AM OVER THE AGE OF 21 YEARS AND AM CAPABLE OF MAKING THIS AFFIDAVIT. THE FACTS STATED IN THIS AFFIDAVIT ARE WITHIN MY PERSONAL KNOWLEDGE AND ARE TRUE AND CORRECT.
2. "I AM THE _____(TITLE) OF BGE, INC. AND I AM DULY AUTHORIZED TO MAKE THIS AFFIDAVIT.
3. "AS OF DECEMBER 31, 201__, BGE, INC. HAD THE FOLLOWING JOB POSITIONS:

[illegible]

EMPLOYEE ID NO.	JOB POSITION OR TITLE	ANNUAL SALARY
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTAL JOBS _____ AVERAGE ANNUAL SALARY _____

DATED THIS ____ DAY OF _____, 20__.

By: _____ (Signature)

_____ (Printed Name)

_____ (Title)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE ____ DAY OF _____, 20__.

NOTARY PUBLIC, STATE OF TEXAS