

**AMENDMENT  
TO SETTLEMENT AGREEMENT**

THIS AMENDMENT TO SETTLEMENT AGREEMENT (this “**Amendment**”), as of February \_\_\_, 2023, is entered into by and between Baltimore Gas and Electric Company, a Maryland corporation (“**BGE**”), and the Mayor and City Council of Baltimore, a municipal corporation of the State of Maryland (the “**City**”), as an amendment to that certain Settlement Agreement by and between BGE and the City approved on November 30, 2016 (the “**2016 Settlement Agreement**”). BGE and the City shall be referred to collectively as the “**Parties**” and individually as a “**Party**.” Any capitalized term used in this Amendment but not defined hereunder shall have the meaning ascribed to such term in the 2016 Settlement Agreement.

**Recitals**

WHEREAS, the Parties entered into the 2016 Settlement Agreement regarding, in part, BGE’s use of the Conduit System and the City’s maintenance of the Conduit System; and

WHEREAS, the Parties desire to amend the 2016 Settlement Agreement to provide that BGE shall be responsible for capital expenditures related to Conduit System capital improvement projects pursuant to the terms set forth in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree, as follows:

1. **Effective Date**. This Amendment shall be subject to the approval of the Board of Estimates of Baltimore City and, following receipt of such approval and being executed by both Parties, shall be effective as of the date of such approval (the “**Effective Date**”).
2. **Definitions**. The following terms shall have such meanings as are set forth in this Section 2:
  - a. “**Capital Improvements**” shall mean any construction, restoration, alteration, addition, improvement, renovation, or other physical changes or modifications of any nature (excluding Maintenance) in, on, or to the Conduit System, including, without limitation, structural alterations, modifications or improvements to any expansion of the Conduit System, in each case, to the extent that the costs of such activity are or would be capitalized in accordance with Generally Accepted Accounting Principles (GAAP).
  - b. “**Maintenance**” shall mean all maintenance, repairs, non-capital replacements, and related inspections necessary to maintain the Conduit System in good order and proper working condition and suitable for BGE’s provision of safe, reliable, and efficient electric service to customers throughout its service territory.

3. Initial Term; Responsibility for Conduit System Capital Improvement Projects. Beginning on the Effective Date and continuing for a term ending on December 31, 2026 (the “**Initial Term**”), and subject to the terms and conditions of this Amendment, BGE shall be responsible for, and undertake itself and through its contractors, capital expenditures related to Capital Improvements (“**Capital Improvement Projects**”), up to an aggregate cost of One Hundred Twenty Million Dollars (\$120,000,000) during the Initial Term (“**BGE’s Initial Term CIP Obligation**”). The City, in its discretion, may undertake additional Capital Improvements and may continue Capital Improvements that the City began prior to the Effective Date.
4. Maintenance Payments. BGE shall pay (i) an annual fee of Fourteen Million Dollars (\$14,000,000) for the calendar year ending December 31, 2023 and (ii) an annual fee of One Million Five Hundred Thousand Dollars (\$1,500,000) for each subsequent calendar year during the Initial Term (each such annual fee payment, a “**Maintenance Payment**”), to the City for Maintenance of the Conduit System to be performed by the City and which Maintenance Payments shall be used in accordance with Section 10 of the 2016 Settlement Agreement. The Maintenance Payment shall be an annual, non-refundable payment made to the City within ten (10) days following the Effective Date and within ten (10) days following the first day of each of the subsequent three (3) calendar years. The need for Maintenance and the means and methods of performing Maintenance work shall be determined solely by the City in a manner consistent with the City’s past practices in determining the need for Maintenance and the means and methods of performing Maintenance, and the City will consider in good faith any reasonable request by BGE for the performance of Maintenance.

In the event that BGE does not spend the entire amount of either BGE’s Initial Term CIP Obligation or BGE’s Extended Term CIP Obligation (as defined in Section 5 below), all amounts not expended, or not otherwise earmarked and committed for Capital Improvement Projects then under construction, shall be paid to the City by BGE as an additional Maintenance Payment or an additional Extended Term Maintenance Payment (as defined in Section 5 below), as applicable, and in each case shall be expended by the City for the benefit of the Conduit System as determined by the City; provided, that all such amounts shall be expended by the City to perform Maintenance or Capital Improvements to the Conduit System; and provided, further, that any such payments under this paragraph shall not reduce the amount of the Maintenance Payment or Extended Term Maintenance Payment, as applicable, required under this Section 4. Unspent funds may be considered earmarked only if a contract has already been awarded by BGE for such work and such work has commenced as of the expiration of the Term or the Extended Term, as the case may be. Any such funds not expended by the City in any year shall be carried over to the next year and committed to the payment for Maintenance of the Conduit System or for City-funded Capital Improvements.

5. Extended Term. This Amendment shall automatically renew for a succeeding term of three (3) years (such succeeding term referred to herein as the “**Extended Term**”) unless either Party delivers written notice of its intent not to renew to the other Party at least one hundred eighty (180) days prior to the expiration of the Initial Term. During the Extended Term,

and subject to the terms and conditions of this Amendment, BGE shall (a) be responsible for, and undertake itself and through its contractors, Capital Improvement Projects up to an aggregate cost of Ninety-Two Million Dollars (\$92,000,000) (“**BGE’s Extended Term CIP Obligation**”) and (b) pay an annual fee of One Million Five Hundred Thousand Dollars (\$1,500,000) for each subsequent calendar year during the Extended Term (each such annual fee payment, an “**Extended Term Maintenance Payment**”) to the City for Maintenance of the Conduit System to be performed by the City and which Maintenance Payments shall be used in accordance with Section 10 of the 2016 Settlement Agreement. Any Capital Improvement Project begun before the expiration of the Initial Term or the Extended Term must be completed regardless of when the Initial Term or the Extended Term expires, which obligation survives the expiration of this Amendment. At the request of the City at least two hundred seventy (270) days prior to the expiration of the Initial Term, the City may propose and the Parties shall thereupon discuss potential changes in BGE’s Extended Term CIP Obligation or the Extended Term Maintenance Payment.

6. Prioritization and Scope of Conduit System Capital Improvement Projects. BGE and the City shall work in good faith to prioritize and define the scope of work of potential Capital Improvement Projects, including those programs set forth in the Department of Transportation, Conduit Division’s FY 2023-2027 Conduit Capital Improvements Program. All such projects undertaken by BGE shall be designed to enhance the Conduit System in a manner that will help improve its safety, efficiency, and reliability for all users of the Conduit System. The Parties recognize that BGE occupies space throughout the entire Conduit System, and thus, as a general proposition, any Capital Improvement Project will help improve the safety, efficiency, and reliability of BGE’s electric distribution system. Notwithstanding the foregoing, (a) the Capital Improvement Projects shall be in support of and connected with the Facilities and (b) BGE shall determine in its reasonable judgment whether to pursue any specific Capital Improvement Project.

Upon the completion of each Capital Improvement Project by BGE, BGE shall provide the City with “as-built” plans prepared in adherence to City requirements. BGE will submit its inspection results to the City for its review and approval. BGE’s work shall not be deemed to have been accepted until such plans have been received and approved and all inspections have been satisfactorily completed (such plan approvals and inspections not to be unreasonably withheld by the City).

7. Blanket Permit; Expedited Permitting. On the Effective Date, BGE has authorization to conduct any work in the Conduit System permitted by this Amendment. To the extent any additional City permits are required, the City shall make all reasonable efforts to prioritize, escalate and expedite the process for any such permits and shall endeavor to grant any such permit no later than fifteen (15) business days after the date of application or written request from BGE (provided that the permit application is in material compliance with the City’s published written instructions and procedures that are in place as of the Effective Date). If any such permit is delayed, withheld, or withdrawn by the City, BGE’s failure to perform the work for which such permit is required shall not be deemed a breach or derogation of its obligations under this Amendment. The terms and conditions of any blanket permit and any other permits or approvals issued to BGE (including, without limitation, any cure

periods therein) shall not be less favorable to BGE than the City's standard terms and conditions applicable to such permits and approvals. The City shall implement a usual and customary capital inspection fee (the "**Capital Inspection Fee**") to be assessed annually under BGE's blanket permit pursuant to this Section 7; provided, however, that the annual Capital Inspection Fee shall be funded solely by BGE's Initial Term CIP Obligation or BGE's Extended Term CIP Obligation, as the case may be.

8. Review of Capital Improvement Programs. At least one hundred twenty (120) calendar days prior to the start of each City Fiscal Year, the City shall submit to BGE a plan of potential Capital Improvements ("**City Capital Improvement Programs**") that BGE shall consider in good faith for construction during the upcoming City Fiscal Year. Notwithstanding the foregoing, BGE shall determine in its sole discretion whether to pursue any City Capital Improvement Programs and will notify the City regarding same. BGE and the City shall continue to meet monthly and discuss BGE's Capital Improvement Projects, as they have done in accordance with Section 13 of the 2016 Settlement Agreement.
9. Emergency. BGE and the City shall coordinate and cooperate with each other in the event that emergency repairs to the conduit system are necessary. Generally, the City, in furtherance of its Maintenance obligations, shall undertake all emergency repairs. In the event, however, of an emergency that requires Capital Improvement(s) to the City's conduit system involving Facilities, BGE, in furtherance of its obligations related to Capital Improvement(s) pursuant to this Amendment, shall undertake said emergency repairs; provided, however, that all costs associated with any such emergency repairs shall be funded solely by BGE's Initial Term CIP Obligation or BGE's Extended Term CIP Obligation, as the case may be. Notwithstanding the foregoing, if BGE believes that an emergency poses a threat of imminent harm or to any of its Facilities or is necessary to promptly address a BGE customer service request, upon timely notice to the City, under its blanket permit (subject to Section 7 above), and to the extent not prohibited by law, BGE may access the Conduit System to ameliorate the threatened harm. In addressing such BGE customer complaints, BGE shall prioritize service calls based upon its assessments of emergencies and in accordance with its customer service protocols. Notwithstanding anything to the contrary in this Amendment, in connection with BGE's performance of any actions under this Section 9, BGE shall not be liable for any Losses arising as a result of any act or omission of the City, its elected or appointed officials, employees, and agents, whether such Losses are based upon contract, warranty, tort, strict liability, or otherwise.
10. Operation and Maintenance. The City shall continue to be responsible for the operation and Maintenance of the Conduit System as set forth in this Amendment and in the 2016 Settlement Agreement.
11. Conduit System Rental Fee. BGE shall not be assessed any rental or other fees for BGE's use of the Conduit System during this Amendment and any Extended Term. BGE shall be obligated to pay its rental fee for July 1, 2022 through December 31, 2022 of fiscal year 2023.

12. Portions of Conduit System Used by other Users. Except as otherwise contemplated in this Amendment, BGE shall not enter or otherwise access any duct within the Conduit System that is used by other users (and is not used by BGE) without prior written consent from the City which shall not be unreasonably withheld (and, if and as required by the City, the other user).
13. Indemnification. BGE shall indemnify, defend and hold harmless the City, its elected and appointed officials, employees, and agents (the “**Indemnified Parties**”) from any and all claims, demands, liabilities, losses, damages, fines, fees, penalties, costs, expenses, suits, and actions (including reasonable attorneys’ fees and court costs incurred in connection therewith) by a third party, to the extent attributable to bodily injury, death, or destruction of property (collectively, “**Losses**”), brought against the Indemnified Parties, arising as a result of any act or omission of BGE, its officers, directors, employees, or agents in connection with the performance of this Amendment that constitutes negligence, willful misconduct, or gross negligence, whether such Losses are based upon contract, warranty, tort, strict liability, or otherwise; provided, however, that BGE shall not be required to indemnify the Indemnified Parties for any Losses arising out of any act or omission of the Indemnified Parties that constitutes negligence, willful misconduct, or gross negligence, whether such Losses are based upon contract, warranty, tort, strict liability, or otherwise.

BGE shall have the right to control the defense of all such claims, lawsuits, and other proceedings and, upon written request from the City, shall provide the City with status updates regarding such proceedings. In no event shall BGE settle any such claim, lawsuit, or proceeding without the City’s prior written approval (not to be unreasonably withheld, delayed, or conditioned); provided, however, that the City’s prior written approval shall not be required if the settlement (i) contains no finding or admission of liability with respect to the City, (ii) involves only monetary relief which BGE has agreed to pay, and (iii) includes an unconditional release of the City. In the event of any claim for Losses against BGE, its officials, employees and agents, BGE shall not seek to join the Indemnified Parties in such action or hold such persons responsible in any way, except to the extent the Losses arise out of any act or omission of the Indemnified Parties that constitutes negligence, willful misconduct, or gross negligence, whether such Losses are based upon contract, warranty, tort, strict liability, or otherwise. The obligations of this section shall survive the expiration or earlier termination of this Amendment.

14. Warranty. BGE warrants to the City as set forth below in this Section 14 with respect to all work by BGE on any Capital Improvement Project completed by BGE during the Term, for a period of two (2) years after the date of acceptance of the work by the City or such longer warranty period as may be provided by a BGE contractor, (such period, the “Warranty Period”):
  - a. That all materials and equipment installed to construct the Conduit will be new, unless otherwise specified and all work performed by BGE will be of good quality and free from faults and material defects.

- b. That all work shall be performed, in all material respects, in accordance with the requirements of all required permits, plans, specifications, the City of Baltimore, Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures, Issue of 2006, and any and all Amendments thereto, the City of Baltimore, Department of Public Works, Book of Standards, and any and all Amendments thereto, and all other applicable codes, rules and regulations in effect at the beginning of the Effective Date of this agreement (collectively, the “Applicable Standards”).
- c. That all equipment and systems and each and every part thereof, shall operate in a satisfactory and efficient manner, and in accordance with the Applicable Standards.
- d. That every component and structure shall be watertight and leak proof, as specified in the Applicable Standards.
- e. That BGE shall, upon receipt within the Warranty Period of written notice from the City, replace with proper workmanship and materials, and re-execute, correct, or repair, without cost to the City, all work which may be finally determined~~OBJ~~.
- f. That no use by the City of any work by BGE or any part thereof, nor any failure to use the same, nor any repairs, adjustments or corrections made by the City in accordance with Section 14(g) due to BGE’s failure to comply with any of its obligations under this Amendment and the Applicable Standards, shall impair in any way the warranty obligations assumed by BGE under this Amendment.
- g. If BGE refuses to make such repairs as are reasonably necessary to bring any Capital Improvement in compliance with the Applicable Standards upon written demand delivered by the City to BGE during the Warranty Period, the City may undertake such repairs as are reasonably necessary to cause such Capital Improvement to comply with the Applicable Standards at the cost and expense of BGE, including reasonable compensation if required for additional professional services, to the extent finally determined that such Capital Improvement was not in accordance with Applicable Standards. BGE shall also bear the expense of making good all work of others destroyed or damaged by BGE’s correction, removal, repair, or replacement of any defective work.
- h. All equipment, systems and other work performed by BGE shall be fully operational at the beginning of the warranty period. Upon determination by the City that an item of work is defective, the City will notify BGE in writing, prior to the expiration of the Warranty Period, of the existence and extent of such defect, and shall establish a reasonable time for BGE to inspect, renew or repair the item of work. If BGE satisfactorily renews or repairs the item within the stipulated time period, the Warranty Period will be unaffected. If BGE fails to satisfactorily renew or repair the defective item within the stipulated time period, the Warranty Period shall be extended by the amount of time beyond the stipulated time period until the item is

fully and satisfactorily operational. The intent of this requirement is that the City receives full and satisfactory use of all items of work for the full Warranty Period.

Except as set forth in Section 14(h) above, all representations and warranties in this Section 14 will survive for the length of the Warranty Period, and will immediately thereafter terminate along with any associated right of indemnification and any associated remedies provided for in this Amendment.

15. Minority and Women's Business Opportunity Requirements. While the Parties acknowledge that the provisions of Article 5, Subtitle 28 of the Baltimore City Code do not apply to this Amendment because the work is being performed by BGE at its expense and no City funds are being expended, both the City and BGE acknowledge the importance of contractor diversity. BGE agrees that it shall make every good faith effort to equitably utilize the services of minority business enterprises ("MBE's") and women's business enterprises ("WBE's"). In identifying available MBE's and WBE's, BGE is encouraged to use the MBE/WBE Directory online at <https://baltimorecity.diversitycompliance.com/>. Notwithstanding anything in this Section 15, BGE shall continue to meet the diverse supplier goals set forth in its Memorandum of Understanding with the Public Service Commission.
16. Deletion of Specific Sections of the 2016 Settlement Agreement. The following provisions of the 2016 Settlement Agreement are hereby deleted in their entirety:
  - a. Section 6 (Billing)
  - b. Section 7 (True-up of Conduit System Rental Fees Paid by BGE)
  - c. Section 8 (Future Conduit System Rental Fee)

For avoidance of any doubt or misunderstanding, the Parties recognize that upon the expiration of the Initial Term or the Extended Term, as the case may be, this Amendment and the Settlement Agreement shall have been terminated except for any obligations surviving such termination.

17. Conflict of Terms. To the extent the provisions of this Amendment are inconsistent with the terms of the 2016 Settlement Agreement or to the "Current Agreements" to which the 2016 Settlement Agreement refers, the terms of this Amendment shall control. All other terms and conditions of the 2016 Settlement Agreement shall remain in full force and effect.
18. Binding Effect; Assignment. This Amendment shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto. Neither Party shall assign any part of this Amendment without the prior written consent of the other Party, which may be withheld in such Party's sole discretion.

19. No Waiver. Unless otherwise stated in this Amendment, the Parties recognize, acknowledge, and agree that the failure by either Party to enforce any term of this Amendment shall not constitute a waiver of any rights or deprive either Party of the right to insist thereafter upon strict adherence to that or any other term of this Amendment, nor shall a waiver of any breach of this Amendment constitute a waiver of any proceeding or succeeding breach. No waiver of any of the provisions of this Amendment, unless expressly stated otherwise in this Amendment, shall be valid and binding unless it is in writing and signed by the Party against whom it is sought to be enforced.
20. Governing Law. The validity and construction of this Amendment or any of its terms or provisions shall be determined under the laws of the State of Maryland, regardless of any principles of conflicts of laws or choice of laws of any jurisdiction. The Parties further agree that the courts of the State of Maryland shall have exclusive jurisdiction to resolve disputes hereunder that may arise between the Parties.
21. Rules and Regulations. Subject to any limitations imposed by law or unless modified by this Amendment, BGE shall continue to abide by and adhere to the City's Rules and Regulations governing the use of the Conduit System, as amended from time to time, adopted pursuant to the Baltimore City Code. If BGE is not able to comply with any Rule or Regulation due to State or Federal law, BGE will give notice to the City and promptly confer with the City so that the Parties can make a good faith effort to address the City's concerns, as reflected in the new or amended Rule or Regulation, in a lawful manner.
22. Reservation of Rights. BGE reserves all rights and abilities that are necessary to its satisfactory compliance with any duties, requirements, obligations, or responsibilities that may exist under applicable law, including, but not limited to, any rule, regulation, or decision issued by the Commission. Notwithstanding anything in the foregoing to the contrary, BGE represents to the City that none of BGE's duties, requirements, obligations, or responsibilities under this Amendment are prohibited, conditioned, limited, or restricted by any applicable law any rule, regulation, or decision issued by the Commission, as such applicable law, rules, regulations, and decisions now stand. In this respect, BGE shall promptly advise the City of any proposed rule or regulation or pending case that could result in any rule, regulation, or decision that would prohibit condition, limit, or restrict BGE's duties, requirements, obligations, or responsibilities under this Amendment. Should any such rule, regulation, or decision frustrate the purpose of this Amendment or the ability of BGE to perform hereunder, the Parties agree to meet and confer in good faith on potential remedies and whether the City or BGE should be able to modify or terminate this Amendment, whereupon if no mutually acceptable accommodation or amendment is reached, the City may terminate this Amendment.
23. Conflicts of Interest. No member, official, representative, or employee of the City shall have any personal interest, direct or indirect, in this Amendment, nor shall any member, official, representative, or employee participate in any decision relating to this Amendment that affects such person's personal interest or the interests of any corporation, partnership, or association in which such person is, directly or indirectly, interested.

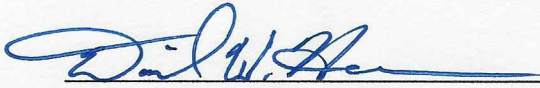


24. Interpretation. In the event of an ambiguity or question of intent or interpretation arises, this Amendment shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Amendment. Whenever the word “including” is used in this Amendment, it shall be deemed to be followed by the words “without limitation.”
25. Severability. This Amendment shall be enforceable to the fullest extent allowed by law. If any provision of this Amendment shall be found to be null, unlawful, void, or inoperative for any reason, such provisions shall be struck from this Amendment and otherwise the Amendment shall continue in full force and effect.
26. Counterparts; Electronic Delivery. This Amendment may be executed in multiple counterparts, each of which when executed shall be deemed to be an original, but all of which together shall constitute one and the same agreement. Execution and delivery by facsimile or other electronic means shall be deemed to be, and shall have the same legal effect as, execution by an original signature and delivery in person.
27. Entire Agreement; Modification; Interpretation. This Amendment and the 2016 Settlement Agreement, together, with the “Current Agreements” to which the 2016 Settlement Agreement refers, constitute the entire agreement and understanding between the Parties and supersede all prior agreements, understandings, whether written or oral, relating to the subject matter of this Amendment. This Amendment may be amended or modified only by a written instrument executed by each Party and, in the case of the City, approved by its Board of Estimates. The language of all parts of this Amendment shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the Parties, notwithstanding any statutory or common law provisions that would suggest otherwise.


[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, BGE and the City have caused this Amendment to Settlement Agreement to be executed by their respective officers as of the Effective Date.

WITNESS:



**BALTIMORE GAS AND ELECTRIC  
COMPANY**

By: 

Name: David M. Vahos


Title: Chief Financial Officer, BGE

Date: \_\_\_\_\_

[SEAL]  
ATTEST:

\_\_\_\_\_  
Custodian of the City Seal

**MAYOR AND CITY COUNCIL OF  
BALTIMORE**

By: 

Name: Brandon Scott

Title: Mayor

APPROVED FOR FORM AND LEGAL  
SUFFICIENCY

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED BY THE BOARD OF  
ESTIMATES

\_\_\_\_\_  
Deputy Controller

Date: \_\_\_\_\_