

**SEVENTH AMENDMENT TO THE
BRIDGEWATER ANNEXATION AGREEMENT**

THIS SEVENTH AMENDMENT TO THE BRIDGEWATER ANNEXATION AGREEMENT (“Seventh Amendment”) is made and entered into this ____ day of _____, 2020 (the “Effective Date”), by and between the TOWN OF ERIE, a Colorado municipal corporation, in the Counties of Weld and Boulder, State of Colorado, hereinafter referred to as “Erie” or “Town,” and DAYBREAK RECOVERY ACQUISITION LLC, a Delaware limited liability (“Owner”).

WHEREAS, Erie and TALLGRASS INVESTORS, LLC, a Colorado limited liability company, and COMMUNITY DEVELOPMENT GROUP OF ERIE, INC., a Colorado corporation, 2500 Arapahoe Avenue, Suite 220, Boulder, Colorado 80302, (“Previous Owner”) previously entered into that certain Bridgewater Annexation Agreement, dated October 9, 2007, and recorded November 19, 2007, at Reception No. 3518317 in the records of the Weld County Clerk and Recorder (the “Original Agreement”); as amended by that certain First Amendment to the Bridgewater Annexation Agreement, dated December 13, 2010, and recorded December 30, 2010, at Reception No. 3741841 in the records of the Weld County Clerk and Recorder (the “First Amendment”), that certain Second Amendment to the Bridgewater Annexation Agreement, dated October 4, 2011, and recorded October 12, 2011, at Reception No. 3798317 in the records of the Weld County Clerk and Recorder (the “Second Amendment”), that certain Third Amendment to the Bridgewater Annexation Agreement, dated January 8, 2013, and recorded January 23, 2013, at Reception No. 3904988 in the records of the Weld County Clerk and Recorder (the “Third Amendment”), that certain Fourth Amendment to the Bridgewater Annexation Agreement, dated July 23, 2013, and recorded October 6, 2014, at Reception No. 4051656 in the records of the Weld County Clerk and Recorder (the “Fourth Amendment”), that certain Fifth Amendment to the Bridgewater Annexation Agreement, dated December 9, 2014, and recorded December 15, 2014, at Reception No. 4068366 in the records of the Weld County Clerk and Recorder (the “Fifth Amendment”) and that certain Sixth Amendment to the Bridgewater Annexation Agreement, dated May 9, 2017, and recorded May 25, 2017, at Reception No. 4304946 in the records of the Weld County Clerk and Recorder (the “Sixth Amendment,” and collectively with the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, the “Agreement”);

WHEREAS, Previous Owner sold a portion of the real property encumbered by the Agreement to the Owner (the “Owner Property”), and in connection with such transaction, Previous Owner partially assigned to Owner its rights and obligations under the Agreement; and

WHEREAS, Erie and Owner desire to amend the Agreement to modify, amend and add certain terms and provisions to the Agreement, as set forth herein below.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1. Terms and words used herein shall have the same definition and meaning as those terms and words set forth and defined in the Agreement unless specifically stated otherwise herein.

2. Section XI.G.3., “Future Off-Site Waterline Improvements,” of the Agreement (as set forth in the Second Amendment) is hereby deleted in its entirety and replaced by the following new Section XI.G.3., to read as follows:

- 3. Off-Site Waterline Improvements.** The Town designed and constructed a water storage tank with a minimum capacity of 1.5 million gallons (the “Zone 3 Tank”), located at the Town’s existing tank site. Owner will pay the Town \$150,000 within ten (10) days of the Effective Date for the Town’s Zone 3 Tank design costs.

3. Section XI.N.2.c., “Community Park,” of the Agreement (as set forth in the Second Amendment) is hereby deleted in its entirety and replaced by the following new Section XI.N.2.c., to read as follows:

- c. Community Park.** Owner will pay the Town \$2,700,000 within ten (10) days of the Effective Date in satisfaction of Owner’s obligation with respect to the Community Park, and notwithstanding Section XI, Para. N. 2, of the Original Agreement, such amount will not escalate according to the ENR Construction Cost Index. Such funds shall be for the Town’s design and construction of Phase I of the Community Park. The Town shall credit Owner for up to 22.5 acre feet of reuse water, at \$8,333.00 per acre foot, to serve irrigated areas within the Community Park. Any drainage facilities will be integrally designed in accordance with Municipal Code, Title 10.

4. Section XII.D., “Erie Parkway Bridge over Coal Creek,” of the Agreement (as set forth in the Third Amendment) is hereby deleted in its entirety and replaced by the following new Section XII.D., to read as follows:

- D. Erie Parkway Bridge over Coal Creek.** The Town constructed a four-lane bridge on Erie Parkway. Owner will pay Town \$1,230,379 within ten (10) days of the Effective Date in satisfaction of Owner’s obligations with respect to such bridge.

5. Section XI.I.3., “North Water Reclamation Facility (“NWR”) Interceptor,” of the Agreement (as set forth in the Third Amendment) is hereby deleted in its entirety and replaced by the following new Section XI.I.3., to read as follows:

- 3. North Water Reclamation Facility (“NWR”) Interceptor.** The NWR Interceptor has been completed by the Town. Owner paid the Town \$1,200,000 in May of 2017 in satisfaction of the Owner’s obligation with respect to the NWR Interceptor.

6. The Original Agreement is modified by the addition of the following new subsection 10., “Raw Water Reuse Extension Line,” to Section XI.H., “Non-Potable Water,” to read as follows:

7. **H. Non-Potable Water.** The Town and Owner desire to utilize non-potable or raw water for the irrigation of parks, open space, and major street rights-of-ways.

* * *

10. **Raw Water Reuse Extension Line.** The Owner will design and construct the Raw Water Reuse Extension Line described in Exhibit A attached to this Seventh Amendment and made a part hereof (the “RWREL”). The cost to construct such RWREL is currently estimated to be \$666,594, also as set forth in Exhibit A. The Owner will be responsible for 25% of the cost to construct the RWREL, and the Town will be responsible for the remaining 75% of such cost. Town will promptly pay the Owner 75% of the cost of the RWREL upon the Owner’s presentment to the Town of verified design and construction costs in form and detail acceptable to the Town.

8. In the event of any conflict, inconsistency or incongruity between the provisions of this Seventh Amendment and any of the provisions of the Agreement, the provisions of this Seventh Amendment shall govern and control with respect to the items addressed herein.

9. Except as specifically amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Seventh Amendment as of the Effective Date.

ERIE:

TOWN OF ERIE, a Colorado municipal corporation

By: _____
_____, Mayor

ATTEST:

By: _____
_____, Town Clerk

OWNER:

DAYBREAK RECOVERY ACQUISITION LLC, a Delaware limited liability company

By: _____
Its: Manager

STATE OF COLORADO)
) ss
COUNTY OF _____)

Subscribed and sworn before me this ____ day of _____, 2020, by
_____ as Manager of Daybreak Recovery Acquisition, a Delaware limited liability
company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

A-1

1433587.8



CIVIL ENGINEERING
LAND PLANNING
SURVEYING

OPINION OF PROBABLE
CONSTRUCTION COSTS
COLLIERS HILL 16" & 12" REUSE LINE

ITEM	NO. OF UNITS	UNIT COST	TOTAL COST
1. Mobilization	1 L.S.	\$ 10,000	\$ 10,000
2. Potholing	1 L.S.	5,000	5,000
3. 16" C900 PVC	2,679 L.F.	80 /L.F.	214,320
4. 12" C900 PVC	1,939 L.F.	60 /L.F.	116,340
5. 4" Foundation Drain	2,031 L.F.	10 /L.F.	20,310
6. 16" Bends	5 Ea.	1,500 /Ea.	7,500
7. 16" Valves	5 Ea.	12,000 /Ea.	60,000
8. 16" Lowering	1 Ea.	10,000 /Ea.	10,000
9. 16" Connect to Existing	1 Ea.	8,000 /Ea.	8,000
10. 12" Bends	4 Ea.	1,100 /Ea.	4,400
11. 12" Valves	4 Ea.	4,500 /Ea.	18,000
12. 12" Plug	1 Ea.	1,000 /Ea.	1,000
13. 12" Lowering	1 Ea.	5,000 /Ea.	5,000
14. 12" Connect to Existing	1 Ea.	6,000 /Ea.	6,000
15. Raw Water Pond Grading	1 L.S.	10,000	10,000
16. 5' Concrete Walk Removal	1 L.S.	5,000	5,000
17. 5' Concrete Walk Replacement	385 L.F.	25 /L.F.	9,625
18. Erosion Control	1 L.S.	10,000	10,000
19. Traffic Control	1 L.S.	15,000	15,000
20. Asphalt Removal & Repair	1 L.S.	20,000	20,000
Subtotal			\$ 555,495
CONTINGENCY 10%			\$ 55,550
SURVEY & TESTING 5%			\$ 27,775
CONSTRUCTION MANAGEMENT 5%			\$ 27,775
TOTAL			666,594

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