

GRANT AGREEMENT
(Fiscal Year 2025)

THIS GRANT AGREEMENT (“Agreement”) is between **NEW BRAUNFELS UTILITIES**, a municipally owned utility (“NBU”), and **HEADWATERS AT THE COMAL**, a 501(c)(3) nonprofit organization (“Headwaters” and, individually, referred to as “Party” or collectively, with NBU, referred to as the “Parties.”).

WHEREAS, Article III, Section 52 of the Texas Constitution prohibits a municipal owned utility from lending its credit or granting public money or other things of value to an individual, association, or corporation in order to prevent the gratuitous application of public funds for private use;

WHEREAS, the Texas Constitution provides an exception to Article III, Section 52 of the Texas Constitution, when an expenditure benefits a private interest if it is made for the direct accomplishment of a legitimate public interest;

WHEREAS, as agent of the City of New Braunfels, NBU owns sixteen (16) acres of real property located at 333 E. Klingemann Street, New Braunfels, Texas 78130 (“Site”), which is adjacent to the Comal River and the springs that feed it;

WHEREAS, in keeping with a longstanding commitment to the environment and to the community, NBU engaged with stakeholders and community members in a visioning process to restore and redevelop the Site into an education and community center that highlights the cultural and environmental significance of the Comal Springs (the “Center”);

WHEREAS, in 2012, following input from stakeholders and community members, NBU completed a master plan dated April 20, 2012, and designated “Comal Headwaters Conservation Center,” outlining NBU’s intention for the Site to be a place that enhances the community’s connection with nature and honors the cultural and environmental history of the Site, encouraging future stewardship of the environment, water, and community (“Master Plan”);

WHEREAS, in 2017, Headwaters was formed as a tax-exempt nonprofit organization to facilitate the process of restoring the Site in accordance with the Master Plan;

WHEREAS, NBU desires to grant public money and administrative support to Headwaters under an annual contract to assist NBU in the process of restoring the Site; and

WHEREAS, Headwaters is willing to accept the grant of public money and administrative support for the development of the cultural and environmental history of the Site and encouraging future stewardship of the environment, water, and community as provided for within this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained in this agreement and as authorized by the laws of the State of Texas:

AGREEMENT:

1. **Term:** This Agreement is for the NBU’s fiscal year beginning on August 1, 2024, and ending July 31, 2025.
2. **Grant:** NBU shall provide a grant in the sum of \$250,000 (the “Grant”) to Headwaters for the purposes described herein. The Grant shall be distributed to Headwaters in one lump-sum payment no later than September 30, 2024.
3. **Sources for Grant Funding.** In compliance with Texas law, the Grant shall be paid from any source lawfully available to the NBU, including NBU revenues but shall not include the proceeds of any bonds or other obligations.
4. **Headwaters’ Responsibility.** During the term of this Agreement, Headwaters shall:
 - a. ensure the Grant funds provided under this Agreement are utilized only for the purposes described in Exhibit A to this Agreement;
 - b. submit any proposed change in use of funds for prior approval to the NBU Board of Trustees.
 - c. serve as the first point of contact for restoring the Site to a world class environmental education center highlighting the cultural and environmental significance of the Comal Springs;
 - d. assist in the maintenance of Phase One of the Center, which includes the environmental zones, water quality improvement through construction of bioswales and grasslands, partial removal of the spring cap, restoration of the spring run, walking trails and an outdoor classroom;
 - e. seek and ensure additional funds to assist in the completion of Phase Two of the Center, which includes the modification, renovation and improvement of the existing facilities to create an education and exhibition space, conference and meeting rooms, visitor’s center and restroom facility and the related professional services and fees associated with the design, development, and construction of the Center;
 - f. develop, manage, and operate the Center to provide safe access to the community;
 - g. maintain all documents, papers, and records, and other evidence pertaining to the Grant funds provided hereunder in an accurate and complete manner, and make such materials available to NBU at its office and at a reasonable time if NBU deems necessary during the Term for purposes of inspection, examination, and making excerpts and/or copies of same by NBU or its authorized representatives;

- h. work in conjunction with NBU to establish and use commercially reasonable internal accounting and administrative controls to preclude theft, embezzlement, and to prevent fraud or abuse;
 - i. produce materials that market the Center, including a website that caters to existing and prospective donors and information packets for targeted companies to donate;
 - j. hold workshops or educational seminars highlighting the cultural and environmental significance of the Center; and
 - k. collaborate with NBU and the media to promote the Center.
5. **NBU Responsibility.** During the term of this Agreement, NBU shall provide the following to Headwaters:
- a. an annual grant as described in this Agreement;
 - b. three full-time NBU employees, including the Headwaters Managing Director, the Headwaters Assistant Manager, and the Headwaters Program and Restoration Coordinator, for Headwaters professional and administrative services;
 - c. technical support with IT, fiduciary record keeping, and other administrative support for Headwaters;
 - d. procurement assistance for purchases of goods and services for contracts that include NBU as a party; and
 - e. office space to facilitate the business operations of Headwaters.
6. **Default, Termination, and Repayment of Grant:** During the Term, if NBU determines that Headwaters has failed to comply with any term or condition of this Agreement (each, a “*Default*”), NBU may declare a Default and terminate this Agreement in accordance with the procedure described herein. If NBU provides written notice of a Default(s) (“*Default Notice*”) to Headwaters, and the Default(s) as identified in the Default Notice is not cured within sixty (60) days from the date the Default Notice is sent (“*Cure Period*”), then this Agreement shall automatically terminate effective as of the date of the expiration of the Cure Period (“*Termination Date*”). NBU may, in its sole discretion, extend the Cure Period if Headwaters commences the cure within the Cure Period and is diligently pursuing such cure. Upon termination of this Agreement, any Grant funds that have not been utilized upon the Termination Date shall be the property of NBU and Headwaters hereby agrees to return such funds to NBU immediately.

It is not, and shall not be construed as, a waiver if NBU fails to declare immediately a Default, or delays in taking any action with respect to a Default, or fails to take any action

with respect to a Default. Additionally, the remedies contained herein are non-exclusive, and NBU shall have any and all remedies it may be entitled to in law or in equity. The exercise of any remedy by NBU shall not be deemed as a waiver of any other remedy to which NBU may be entitled.

7. **Notices:** All notices provided to be given under this Agreement must be in writing, and shall either be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid, and addressed to the proper Party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to NBU: New Braunfels Utilities
 263 Main Plaza
 New Braunfels, Texas 78130
 Attention: Chief Financial Officer
 Attention: General Counsel

Headwaters: Headwaters
 333 E. Klingemann Street
 New Braunfels, Texas 78130
 Attention: President, Headwaters Board of Directors
 Attention: Managing Director

8. **Contract Administration:** The NBU Chief Executive Officer or his designated representative shall be the administrator for this Agreement. The Headwaters Board President or his/her designated representative shall be the primary contact for all matters pertaining to this Agreement.
9. **Entire Agreement:** It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.
10. **Amendments and Waivers:** No modification of this Agreement shall be binding unless made in writing and executed by both parties. No waiver by either party or any breach or obligation of the other party under this Agreement shall constitute a waiver of any other prior or subsequent breach or obligation.
11. **Authority:** NBU and Headwaters represent that the execution and performance of this Agreement has been duly authorized by its respective board and does not require the consent or approval of any other person or entity that has not been obtained. Additionally, the individuals executing this Agreement on behalf of NBU and Headwaters represent, warrant, assure, and guarantee that they have full legal authority to execute this Agreement

on behalf of NBU and Headwaters and to bind NBU and Headwaters to all terms, performances, and provisions herein contained.

12. **Assignment:** No legal or business entity other than Headwaters shall be entitled to receive the benefit of the Grant provided under this Agreement, including any entity resulting from a reorganization, or any other form of business combination involving Headwaters, without the prior written consent of NBU. In addition, this Agreement shall not be assigned by Headwaters to any other legal entity without the prior written consent of NBU. Any attempted transfer of the rights and responsibilities under this Agreement or the assignment of this Agreement without prior approval of NBU shall be void and this Agreement shall terminate.
13. **Severability:** In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word contained in this Agreement is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In such event, there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal, and enforceable to effectuate the purpose of this Agreement.
14. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles that would require the application of the laws of any other state. Venue for any action brought hereunder will be exclusively in Comal County, Texas.

(The remainder of this page is left blank intentionally.)

IN WITNESS WHEREOF, THIS AGREEMENT IS EXECUTED THIS _____ DAY OF _____, 2024.

NEW BRAUNFELS UTILITIES

HEADWATERS AT THE COMAL

By: _____
Ryan Kelso, Chief Executive Officer

By: _____
Dawn Schriever, President

Exhibit A

The Grant shall only be used for the following purposes:

1. programs that promote the safe and efficient use of water;
2. programs that promote water education;
3. programs that promote and/or provide education regarding environmental preservation and conservation;
4. programs that enhance NBU's support for and standing in the national, state, and regional water utility industry;
5. programs that include NBU's participation in professional association events offering information exchanges and educational benefits;
6. maintenance of the Site;
7. promotion of the programs specified in this Exhibit; or
8. administrative support of the programs specified in this Exhibit.