

## **FIRST AMENDED AND RESTATED BYLAWS**

### **FOR THE HEADWATERS AT THE COMAL**

#### **ARTICLE 1 – NAME, PURPOSES, POWERS, AND OFFICES**

##### **1.1 Name**

The name of this corporation is The Headwaters at the Comal (the “Corporation” or the “Headwaters”).

##### **1.2 Purposes**

The Corporation is organized and shall be operated exclusively for scientific, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provisions of any subsequent federal revenue law (the “Code”), including, but not limited to, the making of gifts and grants in a manner consistent with the requirements for organizations described in Section 501(c)(3) of the Code, and to conduct, accomplish, and carry on its objectives, functions, and purposes or any part thereof set forth in the governing documents of the Corporation as amended from time to time.

Within the scope of the foregoing purposes and not by limitation thereof, the Corporation is organized and operated as a place that establishes a relationship between the community and its natural resources, in order to demonstrate the regeneration and protection of water and ecological resources and be an educational tool for the New Braunfels community and the many expected visitors. The assets and property of the Corporation are hereby pledged for use in performing its exempt purposes.

The Corporation is additionally organized to promote, encourage, and foster any other similar charitable, scientific, or educational activities; to accept, hold, invest, and reinvest and administer any gifts, legacies, bequests, devises, funds, and property of any sort or nature, and to use, expend, or donate its assets, and all income therefrom, for and to devote the same to, the foregoing purposes of the Corporation; and to do any and all lawful acts and things which may be necessary, useful, suitable, or proper for the furtherance of accomplishment of the purposes of this Corporation. Provided however, no act may be performed which would violate section 501(c)(3) of the Code as it now exists or as it may hereafter be amended.

##### **1.3 Powers**

The Corporation is a Texas nonprofit corporation and has all the powers, duties, authorizations and responsibilities as provided by the Texas Business Organizations Code (“TBOC”); provided that the Corporation shall neither have nor exercise any power, nor engage directly or indirectly in any activity, that would invalidate its status as a Corporation that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Code.

##### **1.4 Offices**

The principal business office of the Corporation in the State of Texas shall be 333 E. Klingemann, New Braunfels, Texas 78130. The Corporation may have such other offices as the Board of Directors (also referred to as “Headwaters Board”) may determine or as the affairs of the Corporation may require from time to time.

## **1.5 Registered Office**

The Corporation shall comply with the requirements of the TBOC and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Headwaters Board may change the registered office and the registered agent as provided in the TBOC.

## **ARTICLE 2 – NO MEMBERS**

### **2.1 Membership**

The Corporation shall have no "members" as that term is used in the TBOC. The Corporation is a Board of Director-managed organization, as described in Article 3. The Corporation may, nevertheless, use the word "members" to describe persons having such status and privileges as may be prescribed herein or as determined by the Headwaters Board. Such "members" shall have no voting or other legal or equitable right in the Corporation.

## **ARTICLE 3 – BOARD OF DIRECTORS**

### **3.1 General Powers**

The activities, property, and affairs of the Corporation shall be managed by its Headwaters Board. The Headwaters Board may exercise all such powers of the Corporation and do all such lawful acts and things as are permitted by law, by the Certificate of Formation, or by these Bylaws, unless otherwise expressly provided herein.

### **3.2 Number and Qualifications**

The Headwaters Board shall consist of at least three (3) directors. The initial directors shall be those persons named as directors in the Certificate of Formation. Decreasing the number of directors will not shorten the term of any incumbent director.

There shall be two classes of directors.

(a) Class A. Class A shall consist of four (4) employees of New Braunfels Utilities *recommended by the CEO of New Braunfels Utilities and appointed by the New Braunfels Utilities Board of Trustees*.

(b) Class B. Class B shall consist of three (3) community members *recommended by the Headwaters Board and appointed by the New Braunfels Utilities Board of Trustees*.

### **3.3 Term of Office**

The initial directors of the Corporation shall be those persons named in the Certificate of Formation as the initial directors, and they shall hold office until their successors are chosen and qualified.

Thereafter, the Class A directors will serve until a successor director is appointed.

Class B directors shall hold office for a three-year term and until such director's successor is chosen and qualified, or until such director's earlier death, resignation, retirement, disqualification or removal from office. There shall be staggered terms of office for Class B directors so that approximately one-third of the Class B directors shall be selected each year.

### **3.4 Selection of Directors**

Class A directors shall *be recommended by the CEO of New Braunfels Utilities and appointed by the New Braunfels Utilities Board of Trustees.*

Class B directors shall *be recommended by the Headwaters Board and appointed by the New Braunfels Utilities Board of Trustees.*

### **3.5 Duties of Directors**

Directors will perform their duties in good faith, with ordinary care, and in a manner they reasonably believe to be in the best interest of the Corporation. Ordinary care is care that prudent persons in similar positions would exercise under similar circumstances. In the performance of any duty imposed or power conferred on directors, they may in good faith rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by a variety of persons, including officers and employees of the Corporation, professional advisors, or experts such as accountants or attorneys. A director is not relying in good faith if the director has knowledge concerning a matter in question that renders reliance unwarranted.

### **3.6 Vacancies**

**Class A vacancy.** Any vacancy occurring in the Headwaters Board resulting from the death, resignation, retirement, disqualification, or removal from office of a Class A director shall be filled *by the New Braunfels Utilities Board of Trustees based on a recommendation from the CEO of New Braunfels Utilities.*

**Class B Vacancy.** Any vacancy occurring in the Headwaters Board resulting from the death, resignation, retirement, disqualification, or removal from office of a Class B director shall be filled *by the New Braunfels Utilities Board of Trustees based on a recommendation from the Headwaters Board.*

### **3.7 Removal**

Any director may be removed, either for or without cause, by the affirmative vote of a majority of the directors present at any meeting of the Headwaters Board at which a quorum is present, if notice of the intention to act upon such matter shall have been given in the notice of such meeting and if such notice is provided to the director proposed to be removed; provided, however, once the Headwaters Board votes to remove a director, the Headwaters Board must provide such recommendation to the New Braunfels Utilities Board of Trustees to consider for approval before the removal becomes effective.

Regardless of any vote by the Headwaters Board, any director may be removed, either for or without cause, by the affirmative vote of a majority of the trustees present at any meeting of the New Braunfels Utilities Board of Trustees at which a quorum is present, if notice of the intention to act upon such matter shall have been given in the notice of such meeting and if such notice is provided to the director proposed to be removed.

### **3.8 Resignation**

Any director may resign at any time by delivering written notice to the Secretary or President of the Headwaters Board and communicated within one (1) business day to the CEO of the New Braunfels Utilities and the New Braunfels Utilities Board of Trustees. Such resignation shall take effect upon receipt or, if later, at the time specified in the notice.

### **3.9 Directors' Compensation**

Directors will not receive any salaries or other compensation for their services from the Corporation, but, by resolution of the Headwaters Board, may be reimbursed for any actual expenses incurred in the performance of their duties for the Corporation, as long as a majority of disinterested directors approve the reimbursement. The Corporation will not loan money or property to, or guarantee the obligation of, any director.

## **ARTICLE 4 – NOTICES**

### **4.1 Notice**

At least three (3) days' written notice must be given to all directors of any meeting of the Headwaters Board. Notice of meetings may be given by electronic transmission (i.e., e-mail) if all directors individually and collectively consent in writing. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to a meeting not properly called.

## **ARTICLE 5 – MEETINGS**

### **5.1 Regular & Special Meetings**

The Headwaters Board will hold at least one meeting a year.

Regular meetings of the Headwaters Board will be held at such times and places as may be selected by resolution adopted by the Headwaters Board and communicated by written notice to all directors. Except as otherwise provided by law, by the Certificate of Formation, or by these Bylaws, any and all business may be transacted at any regular meeting.

Special meetings of the Headwaters Board may be called by or at the request of the Headwaters Board President or a majority of directors. A person or persons authorized to call special meetings of the Headwaters Board may select any place as the place for holding a special meeting. The person calling a special meeting will notify the Secretary of the Headwaters Board of the information required to be included in the notice of the meeting. The Secretary of the Headwaters Board will give notice to the directors as required in the Bylaws.

### **5.2 Quorum and Manner of Acting**

A majority of the number of directors then in office will constitute a quorum for the transaction of business at any meeting of the Headwaters Board.

The directors present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough directors leave the meeting so that less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of directors required to constitute a quorum. If a quorum is present at no time during a meeting, a majority of the directors present may adjourn and reconvene the meeting one time without further notice.

### **5.3 Proxy Voting Prohibited**

Proxy voting is not permitted.

#### **5.4 Written Consent of Directors**

Any action required or permitted to be taken at any meeting of the Headwaters Board or any committee may be taken without a meeting if a consent in writing setting forth the action to be taken is signed by the number of directors or officers whose vote would be necessary to take action at a meeting at which all such persons entitled to vote were present and voted, as the case may be. Such consent must be filed with the minutes of proceedings of the Headwaters Board or of the committee. Such consent shall have the same force and effect as a vote at a meeting where such directors or officers were present and voted and may be stated as such in any document.

#### **5.5 Electronic Meetings**

Subject to the provisions of applicable law and these Bylaws regarding notice of meetings, directors or members of any committee designated by the Headwaters Board may, unless otherwise restricted by statute, by the Certificate of Formation or by these Bylaws, participate in and hold any meeting of the Headwaters Board or committee by using conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, reasonable measures must be implemented to verify that every person voting at the meeting by means of remote communications is sufficiently identified and a record must be kept of any vote or other action taken. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

#### **5.6 Minutes**

At meetings of the Headwaters Board, business shall be transacted in such order as the Headwaters Board may determine from time to time. In the event the Secretary of the Headwaters Board is unavailable, the Headwaters Board President shall appoint a person to act as Secretary at each meeting. The Secretary of the Headwaters Board, or the person appointed to act as Secretary, shall prepare minutes of the meetings, which shall be delivered to the Corporation to be placed in the minute books of the Corporation.

### **ARTICLE 6 – COMMITTEES**

#### **6.1 Committees of Directors**

The Headwaters Board may establish one or more committees, may delegate specified authority to a committee, and may appoint or remove members of a committee. A committee shall include one or more directors and may include persons who are not directors. If the Headwaters Board delegates any of its authority to a committee, the majority of the committee shall consist of directors.

#### **6.2 Advisory Boards or Committees**

Advisory boards or committees not having and exercising the authority, responsibility or duties of the Headwaters Board in the management of the Corporation may be designated by a resolution adopted by the directors. Except as otherwise provided in such resolution, members of each such advisory board or committee need not be directors of the Corporation. The Headwaters Board President shall appoint the members of such advisory boards or committees. Any committee

member may be removed by the Headwaters Board President whenever in the Headwaters Board President's judgment the best interests of the Corporation shall be served by such removal.

## **ARTICLE 7 – OFFICERS**

### **7.1 Appointed Officers**

On an annual basis, following a recommendation from the CEO of New Braunfels Utilities, the New Braunfels Utilities Board of Trustees shall appoint the President of the Headwaters Board.

The Headwaters Board may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and assistant officers and agents as it shall from time to time deem necessary, who shall exercise such powers and perform such duties as shall be set forth in these Bylaws or determined from time to time by the Headwaters Board.

### **7.2 Elected Officers**

The elected officers of the Corporation shall include a Secretary and may include one or more Vice Presidents and/or a Treasurer, as may be determined from time to time by the Headwaters Board. Any two (2) or more offices may be held by the same person, except that the President and Secretary shall not be the same person.

### **7.3 Election**

All officers, except the President, will be elected by the Headwaters Board, so far as is practicable, at each annual meeting of the Headwaters Board.

### **7.4 Term of Office; Removal; Filling of Vacancies**

Officers shall hold a one-year term. An officer may be re-elected or re-appointed to serve consecutive terms of office. Each elected or appointed officer of the Corporation shall hold office until such officer's successor is chosen and qualified in such officer's stead or until such officer's earlier death, resignation, retirement, disqualification or removal from office.

Any officer, except for the President, of the Headwaters Board may be removed at any time by the affirmative vote of a majority of the Headwaters Board. The President of the Headwaters Board may be removed at any time by the New Braunfels Utilities Board of Trustees. If any office except the President becomes vacant for any reason, the vacancy shall be filled by the Headwaters Board. If the office of the President becomes vacant for any reason, the vacancy shall be filled by the New Braunfels Utilities Board of Trustees based on a recommendation from the CEO of New Braunfels Utilities.

### **7.5 President**

The President shall be the chief executive officer of the Corporation; shall preside at all meetings of the directors; shall be an ex-officio member of all standing committees; and shall have general and active management of the business of the Corporation.

### **7.6 Secretary**

The Secretary shall keep the minutes of the meetings of the Headwaters Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; keep custody of the corporate records of the Corporation; keep a register of the post office address of each director which shall be furnished to the Secretary by such directors; and in general perform all duties incident to the office of Secretary

and such other duties as from time to time may be assigned by the President or the Headwaters Board.

### **7.7 Vice President**

In the absence of the President or in the event of the President's inability or refusal to act, the Vice President, if any, (or in the event there be more than one Vice President, Vice Presidents in the order of their election) shall perform the duties of and be subject to all the restrictions of the President. Any Vice President shall perform such other duties as from time to time may be assigned by the President or by the Headwaters Board.

### **7.8 Treasurer**

The Treasurer, if any, shall keep correct and complete books and records of account and make the reports as the Headwaters Board shall require; shall receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Headwaters Board; and, in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Headwaters Board.

### **7.9 Additional Powers and Duties**

In addition to the foregoing specially enumerated duties, services and powers, the several elected and appointed officers of the Corporation shall perform such other duties and services and exercise such further powers as may be provided by law, the Certificate of Formation or these Bylaws, or as the Headwaters Board may from time to time determine or as may be assigned by any competent superior officer.

## **ARTICLE 8 – STAFF**

### **8.1 Staff**

New Braunfels Utilities (“NBU”) shall appoint a staff, including an Executive Director (currently named Managing Director until formal action is taken by the Headwaters Board to change such title by resolution or written agreement), and/or a management company to serve at the Headwaters Board's discretion and to carry out whatever tasks the Headwaters Board from time-to-time resolves.

### **8.2 Executive Director and/or Management Company**

The Executive Director and/or management company (“Management”) shall be compensated and/or paid a fee as set by NBU. The Headwaters Board may provide input as to performance metrics and evaluation of staff as requested by NBU; provided, however, that, if Management is employed by NBU, then NBU shall be solely responsible for all decisions as it relates to staff evaluation, hiring, promotion, discipline, and other matters in connection therewith. Subject to such supervisory powers as are vested in the Headwaters Board, Management shall supervise, direct, and control the business of the Corporation and actively manage the Corporation's business, and shall have such other powers and duties as may be prescribed by the Headwaters Board or by these Bylaws. Management may engage in negotiations involving commitments of the resources of the Corporation or the acceptance of money or resources by the Corporation in furtherance of the purposes of the Corporation as set out in the Certificate of

Formation and these Bylaws. Management shall generally be expected to attend all meetings of the Headwaters Board, yet Management does not have a vote on the Headwaters Board.

## **ARTICLE 9 – OPERATIONS**

### **9.1 Contracts**

The Headwaters Board may authorize any officer or officers, or agent or agents, of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. The Headwaters Board shall be required to obtain NBU approval for any contracts that affect or pertain to real property owned by NBU or staff employed by NBU.

### **9.2 Disbursement of Funds**

Management may dispense with the funds of the Corporation in accordance with the annual budget approved by the Headwaters Board and the purposes of the Corporation as set out in the Certificate of Formation and these Bylaws.

Financial transactions with the value of \$5,000 or more that are not in the annual budget shall require majority approval of the Headwaters Board.

Notwithstanding the above, all checks of more than \$5,000 disbursing funds from any of the Corporation's accounts shall require the signatures of Management and at least one of the following officers who is an authorized signer: President, Vice President, Secretary, or Treasurer.

### **9.3 Records**

The Corporation will keep correct and complete records of account and will also keep minutes of the proceedings of the Headwaters Board meetings and Committees. The Corporation will keep at its principal place of business the original or a copy of these Bylaws, including any amendments to date certified by the Secretary of the Corporation.

### **9.4 Conflicts of Interest**

The Corporation shall adopt a conflict of interest policy in the form attached hereto as Schedule A.

### **9.5 Dividends Prohibited**

No part of the net income of the Corporation shall inure to the benefit of any private individual and no dividend shall be paid and no part of the income of the Corporation shall be distributed to its directors or officers.

The Corporation may reimburse its directors as provided in Section 3.9.

### **9.6 Loans to Officers and Directors Prohibited**

The Corporation will not make loans to its officers and directors, and any directors voting for or assenting to the making of any such loan, and any officer participating in the making thereof, shall be jointly and severally liable to the Corporation for the amount of such loan until repayment thereof.

### **9.7 Fiscal Year**

The fiscal year of the Corporation will be January 1 to December 31.



## **9.8 Invalid Provisions**

If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall remain valid and operative.

# **ARTICLE 10 – INDEMNIFICATION**

## **10.1 Right to Indemnification**

The Corporation shall indemnify any person who was, is, or is threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person (i) is or was a director, officer, or committee member of the Corporation or (ii) while a director, officer, or committee member of the Corporation, is or was serving at the request of the Corporation as a director, officer, committee member, partner, or other enterprise, to the fullest extent that a corporation may grant indemnification to a director under the TBOC as the same exists or may hereafter be amended. TO THE EXTENT PERMITTED BY THEN-APPLICABLE LAW, THE GRANT OF MANDATORY INDEMNIFICATION TO ANY PERSON PURSUANT TO THIS ARTICLE SHALL EXTEND TO PROCEEDINGS INVOLVING THE NEGLIGENCE OF SUCH PERSONS. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the TBOC as the same exists or may hereafter be amended. As used herein, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

## **10.2 Reimbursement**

If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Corporation within one-hundred and eighty (180) days after a written claim has been received by the Corporation, the claimant may at any time thereafter, provided within the applicable statute of limitations, bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to be paid also the reasonable expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the TBOC, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Headwaters Board or any committee thereof, special legal counsel, or members, if any) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Corporation (including its Board or any committee thereof, special legal counsel, or members, if any) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible.

## **10.3 Right to Indemnity**

In the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of his heirs, executors, administrators, and personal representatives.

## **10.4 Insurance**

The Corporation shall purchase and maintain insurance on behalf of any person who is serving the Corporation against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the Corporation would have the power to indemnify him against that liability under these Bylaws or by statute. Notwithstanding the foregoing, no person shall be indemnified pursuant to the provisions of this Article and no insurance may be maintained on behalf of any person if such indemnification or maintenance of insurance would subject the Corporation or such person to income or excise tax under the Code, including any tax asserted under Chapter 42 of the Code. The Corporation may additionally indemnify any person covered by the grant of mandatory indemnification contained above to such further extent as is permitted by law and may indemnify any other person to the fullest extent permitted by law. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of members, if any, or directors, agreement, or otherwise.

## **ARTICLE 11 – AMENDMENTS TO BYLAWS**

### **11.1 Powers to Amend**

These Bylaws may be amended or repealed, or new bylaws may be adopted at any annual or special meeting of the Headwaters Board at which a quorum is present by the affirmative vote of a majority of the directors present at the meeting, provided notice of the proposed amendment, repeal or adoption be contained in the notice of such meeting; and provided further, that the foregoing notice requirement shall not prohibit the directors from adopting the proposed amendment, effecting the proposed repeal or adopting the proposed new bylaws, as the case may be, in a modified form which is not identical to that described or set forth in the notice of such meeting. Any amendment, repeal, or adoption of the Bylaws must also be approved by the New Braunfels Utilities Board of Trustees.

## **ARTICLE 12 –DISSOLUTION**

### **12.1 Distribution of Assets**

The Corporation pledges its assets for use in performing the Corporation’s charitable functions. In the event the Corporation is dissolved, after all liabilities and obligations of the Corporation are paid or provision is made therefore, the Headwaters Board shall distribute remaining assets of the Corporation as they shall determine but only for tax-exempt purposes to such organization or organizations organized and operated exclusively for charitable or educational purposes and which are exempt under Section 501(c)(3) of the Code. Any of such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county which the principal office of the Corporation is then located, to one or more organizations exempt under Section 501(c)(3) of the Code in a manner which best accomplishes the purposes of the Corporation. No director or officer of the Corporation and no private individual will be entitled to share in the distribution of any assets of the Corporation in the event of its dissolution.

### **12.2 Decision Making Authority**

The Headwaters Board shall have the sole and exclusive right to vote and make decisions regarding or in any way involving the dissolution, merger, and/or consolidation of the Corporation

and decisions regarding the sale of substantially all of the Corporation's assets, provided any such decision is approved by the New Braunfels Utilities Board of Trustees.

## CERTIFICATION

I, the undersigned duly elected and acting Secretary of the Corporation hereby certify that the foregoing Bylaws were adopted as of the Corporation as of the 1st day of March, 2023, that the same constitute the Bylaws of said nonprofit corporation, and that the Bylaws have not been modified, amended or rescinded as of such date.

IN WITNESS WHEREOF, I have signed this certification effective as of March 1, 2023.



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Leonard Dougal  
Secretary of the Headwaters Board of Directors

## **SCHEDULE A. CONFLICT OF INTEREST POLICY**

### **ARTICLE 1 - PURPOSE**

The purpose of the Conflict of Interest Policy (“Policy”) is to protect The Headwaters of the Comal’s (the “Corporation”) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director, or key employee of the Corporation that might result in a possible excess benefit transaction. This Policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

### **ARTICLE 2 - DEFINITIONS**

#### **2.1. Interested Person**

Any director, principal officer, or member of a committee with powers delegated by the Corporation’s Board of Directors (the “Headwaters Board”), who has a direct or indirect financial interest, as defined below, is an interested person.

#### **2.2. Financial Interests**

Financial interests include, but are not limited to:

- a. An ownership, investment interest, or compensation arrangement with any entity with which the Corporation has a transaction or arrangement;
- b. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
- c. A potential ownership, investment interest, or compensation arrangement with any entity or individual with which the Corporation is negotiating a transaction or arrangement, including a commission or fee, share of the proceeds, the prospect of promotion or profit, or any other form of financial reward.

**2.3.** Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. Compensation, however, does not include any salary or benefits paid by New Braunfels Utilities to any director in exchange for employment services rendered.

**2.4.** A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the Headwater Board decides that a conflict of interest exists.

### **ARTICLE 3 – PROCEDURES**

#### **3.1. Duty to Disclose**

In connection with the actual or potential conflict of interest, an interested person must disclose the existence of his financial interest and all material facts to the directors and members of committees with Headwaters Board-delegated powers considering the proposed transaction or arrangement and shall abstain from voting on such matters.

#### **3.2. Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested party shall leave the Headwaters Board or committee meeting

while the determination of a conflict of interest is discussed and voted upon. The remaining Headwaters Board or committee members shall decide if a conflict of interest exists.

### **3.3. Procedures for Addressing the Conflict of Interest**

- a. An interested person may make a presentation at the Headwaters Board or committee meeting, but after such presentation, he shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
- b. The President or Chair of a committee shall appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement, if appropriate.
- c. After exercising due diligence, the Headwaters Board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Headwaters Board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation. The Corporation shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

### **3.4. Violations of the Conflict of Interest Policy**

- a. If the Headwaters Board or committee has reasonable cause to believe that a person has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the Headwaters Board or committee determines that the person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action, including, but not limited to, removal from the Headwaters Board.

## **ARTICLE 4 – RECORDINGS AND PROCEEDINGS**

**4.1.** The minutes of the Headwaters Board and committees with Headwaters Board-delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Headwaters Board's or committee's decision as to whether a conflict of interest in fact existed; and
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

## **ARTICLE 5 – COMPENSATION**

**5.1** A voting member of the Headwaters Board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

**5.2** A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

**5.3** No voting member of the Headwaters Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

## **ARTICLE 6 – ANNUAL STATEMENT**

**6.1** Each director, officer, and committee member with Board-delegated powers shall annually sign a statement that affirms that such person:

- a. Has received a copy of the Policy;
- b. Has read and understands the Policy;
- c. Has agreed to comply with the Policy; and
- d. Understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

## **ARTICLE 7 – PERIODIC REVIEWS**

**7.1** To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.
- c. When conducting the periodic reviews, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Headwaters Board of its responsibility for ensuring periodic reviews are conducted.

## Conflict of Interest Annual Disclosure Statement

By signing the form below, I agree to ALL the statements below:

- I serve in of the following function(s) for the Corporation: Director, Board Advisor, Staff, Volunteer, Contractor, or \_\_\_\_\_ (specify other).
- I have received a copy of the Conflict of Interest Policy.
- I have READ and UNDERSTAND the Conflict of Interest Policy and know that I can directly contact the Corporation’s Executive Director or Board Chairman on matters that may pertain to a “real or perceived” conflict of interest.
- I agree to comply with this Conflict of Interest Policy.
- I understand that the corporation is a nonprofit corporation with 501(c)(3) tax exempt status, and that the Corporation, in order to maintain its federal tax-exemption, that is must engage primarily in activities that accomplish one or more of its tax-exempt purposes;

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

### **ACCEPTANCE OF NOTICE BY EMAIL**

I agree to accept meeting notice and other Headwaters Board materials via email at the email address listed below. I agree to meet electronically should the meeting notice include the electronic contact information.

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Director’s Email Address, Date