

JOINT USE AGREEMENT

This **JOINT USE AGREEMENT** (the “Agreement”) is entered into _____, 2022, by and 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.”). The **CITY OF NEW BRAUNFELS, TEXAS** (the “City”) joins this Agreement to acknowledge and approve the joint use of the Site defined in this Agreement.

RECITALS

WHEREAS, pursuant to Texas law and the Charter of the City, the City has delegated to the NBU Board of Trustees the complete management and control of the City’s water, wastewater, and electric utility systems;

WHEREAS, NBU, as agent of the City, holds and controls sixteen (16) acres of real property located at 333 E. Klingemann Street, New Braunfels, Texas 78130 (the “Site”), to carry out its utility purpose;

WHEREAS, the Site is adjacent to the Comal River;

WHEREAS, the Comal River and the springs that feed it (the “Comal Springs”) are core to the identity of the New Braunfels community and are a critical natural resource to the region;

WHEREAS, the Comal Springs are the largest concentration of naturally occurring freshwater springs in Texas and home to four endangered and eight threatened species endemic to the Edwards Aquifer system;

WHEREAS, the Site surrounding the Headwaters is historically significant within New Braunfels because it served as a gathering place for native people dating back as far as 10,000 years as evidenced by archaeological findings;

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 due to its important environmental and historical significance;

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, the Master Plan resulted in the vision to restore the Site to a world class environmental education center highlighting the cultural and environmental significance of the Comal Springs, the largest naturally occurring freshwater springs system in Texas;

WHEREAS, in 2017, Headwaters was formed as a tax-exempt nonprofit organization and created a long-term vision for the protection and conservation of the Comal Springs and Comal River system;

WHEREAS, NBU's vision for the preservation of the Site is for Headwaters to maintain and preserve the Site while NBU continues to maintain a working water plant facility at the Site; and

WHEREAS, the Parties desire to collaborate on the use of the Site by Headwaters to achieve its highest and best purpose.

NOW, THEREFORE, for and in consideration of the releases and promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

AGREEMENT

1. Purpose. The purpose of this Agreement is to describe the manner in which NBU and the Headwaters plan to use the Site to implement the Master Plan to transform the Site into an education and community center that highlights the cultural and environmental significance of the Comal Springs.
2. Joint Use. NBU and Headwaters hereby agree to the joint use of the Site, such area designated in Exhibit B, for the Term of this Agreement.
3. Term. This Agreement will begin on **[DATE]** and will continue for thirty (30) years unless any one of the following occurs:
 - a) both Parties agree to terminate the Agreement in writing; or
 - b) the Headwaters Board of Trustees is no longer composed of a majority of NBU members, which shall include NBU Board members and/or NBU employees.
4. Relationship of Parties. The City appoints the members of the NBU Board of Trustees. The Board is composed of four residents of the City and the current mayor of the City. NBU assisted with the creation of the Headwaters and appoints members to the Headwaters Board of Trustees. The Headwaters Board of Trustees currently consists of seven members, which include two members of the NBU Board of Trustees, two NBU employees, and three members of the community. The NBU Board of Trustees shall approve any modification to the composition of the Headwaters Board of Trustees.
5. Site Ownership. NBU, as an agent of the City, operates and controls the Site. The City holds title to all NBU real property.
6. Master Plan. Headwaters and NBU agree to collaborate regarding implementation of the Master Plan, attached hereto as Exhibit A, including, but not limited to, the following activities:

- a) development and improvements on the designated joint use area of the Site;
- b) architectural plan updates; and
- c) construction plan improvements, including phasing of the Master Plan.

The Parties agree to phase the Master Plan. The Board of Trustees for both NBU and the Headwaters must approve any amendments to the Master Plan and the phasing described therein.

7. Fundraising. Headwaters shall be responsible for raising funds to complete the Master Plan. The NBU Board of Trustees and the Headwaters Board of Trustees agree to collaborate to define the amounts that Headwaters will raise and the related funding milestones. Headwaters shall provide a quarterly fundraising report to the NBU Board of Trustees.
8. Educational Programming. Headwaters shall be responsible for educational programming, research, and scientific studies related to the Headwaters vision. This requirement includes curriculum and scheduling of any environmental and stewardship educational program and research. NBU may use the Site from time to time for NBU events and educational programming related to NBU's utility purpose. This use shall be coordinated with Headwaters.
9. Property Management. NBU and Headwaters agree to collaborate on the control and management of the Property.
10. Authority. The undersigned agent is an authorized representative of the respective Party with full authority to bind the undersigned to the terms and conditions of this Agreement and has the necessary authority to execute this Agreement on behalf of the undersigned party.
11. Successors. The provisions of this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
12. Amendment. This Agreement may be amended only by mutual consent of the Parties as evidence in writing.
13. Relationship of the Parties. Nothing contained herein will be deemed or construed by the Parties or by any other entity, as creating the relationship of principal and agent, joint venture, partnership or any other similar relationship between the Parties. It is understood and agreed that no provisions in this Agreement, or any acts of the Parties, create a relationship between them other than that of being an independent contracting public entity. In keeping with the provision of their services as an independent public entity, each Party will be responsible for its respective acts or omissions. Neither Party has the authority to bind the other or to hold out to other entities that it has the authority to bind the other Party. Neither Party is the legal agent of the other. In no event will either Party be liable for an indirect, incidental, special or consequential damages, including loss of profits, revenues,

data, or use, incurred by either Party or any third party, whether in an action in contract or tort, even if the other Party or any other person has been advised of the possibility of such damages.

14. No Third Party Beneficiary. Each Party is entering into this Agreement solely for the benefit of its own entity and agree that nothing in this Agreement will be construed to confer any right, privilege or benefit on any person or entity other than the Parties.
15. Counterparts. This Agreement may be signed in separate counterparts each of which will be an original, but all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement, and duplicate originals, as of the date first written above.

NEW BRAUNFELS UTILITIES

HEADWATERS AT THE COMAL

X

Ian Taylor
CEO

X

Dr. Judith Dykes-Hoffmann
Headwater at the Comal, Board President

**ACKNOWLEDGED AND APPROVED
BY:**

CITY OF NEW BRAUNFELS, TEXAS

X

Robert Camareno
City Manager

Exhibit A
Master Plan

Exhibit B

Site—Designation of Joint Use Area