



**Meeting Date:** March 25, 2021      **Agenda Type:** Action Items

**From:** Nancy Pappas      **Reviewed by:** Melissa C. Krause  
Managing Director,  
Headwaters at the Comal      Chief Communications and  
Strategy Officer

**Submitted by:** Melissa C. Krause      **Approved by:** Ian Taylor  
Chief Communications and  
Strategy Officer      Chief Executive Officer

**RECOMMENDED ACTION:** Discuss and Consider Ratifying the Memorandum of Agreement dated April 5, 2016, among New Braunfels Utilities, the United States Army Corps of Engineers, the Texas State Historic Preservation Officer, the City of New Braunfels, and Comal County Historical Commission; and Authorize the CEO or His Designee to Execute the Amendment to the Memorandum of Agreement to Protect Historic Features and Preserve Unique Historical Items at the Headwaters at the Comal Site

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## **BACKGROUND**

The Headwaters at the Comal (“Headwaters”) is a non-profit conservation legacy project by New Braunfels Utilities (“NBU”). The site is master-planned to restore 16.33-acres of property and create a premier education and research center that will highlight the importance of conservation.

At the onset of transforming the site from NBU’s service yard to a premiere conservation education and research outreach destination, it was determined the undertaking would have an adverse effect on the natural spring cap, which is considered a contributing feature to the Headwaters.

The United States Army Corps of Engineers (the “USACE”), the federal agency authorizing the waterway at the Headwaters project, has jurisdiction over the Headwaters site under Section 404 of the Clean Water Act (33, U.S.C. 1251-1376). Required federal involvement triggers cultural resource regulatory oversight as outlined in Section 106 of the National Historic Preservation Act of 1966, as amended, (the “NHPA”) and with procedures outlined in Title 36 Code of Federal Regulations Section 800.

Construction on the Headwaters site is therefore subject to cultural and archaeological resource regulatory oversight as outlined in the NHPA and the Antiquities Code of Texas (the “ACT”). The project Area of Potential Effects (“APE”) for archaeological resources is (laterally) the existing facility footprint. The USACE and the Texas Historic Commission (the “THC”) have agreed that the Headwaters is eligible for listing on the National Register of Historical Places and therefore was subject to the terms of the Memorandum of Agreement (“MOA”) which imposed stipulations on the Headwaters, including:

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- Requirement for interpretive markers
  - Archeological monitoring with post review discoveries
  - Protocol for dispute resolution

between the USACE, the Texas State Historic Preservation Officer (“SHPO”), and NBU and was executed on April 5, 2016.

In January it was concluded that the initial MOA was not presented to the NBU Board for authorization in 2016. Additionally, to date, consulting parties have not yet been provided with documentation of the potential effects because the final archaeology report remains outstanding.

On September 27, 2018, NBU agreed to enter into a Professional Services Agreement with AmaTerra Environmental, Inc. to provide regulatory coordination, excavations, analysis, reporting, and curation for data recovery at the Headwaters to meet the terms of the MOA. The completion of the work contemplated under the MOA was delayed because of restrictions placed on businesses and academic institutions as a result of COVID-19 and as the development of the Headwaters restoration master plan is not yet complete, the USACE has requested an extension of the MOA to complete the work, but not to exceed five years from the date of execution.

We request that the NBU Board of Trustees ratify the MOA and authorize the CEO or his designee to sign this Amendment to the MOA in order for NBU to comply with federal law.

## **FINANCIAL IMPACT**

This MOA and Amendment have no additional financial impact. Archaeological requirements regarding future development of the Headwaters master plan is unknown at this time.

## **LINK TO STRATEGIC PLAN**

**Be a Responsible Steward of Natural Resources**

## **EXHIBITS**

1. Original signed MOA, including Exhibit A
2. Amendment to MOA, including Exhibit A