

REIMBURSEMENT AGREEMENT

This **REIMBURSEMENT 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**”).

WITNESSETH:

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, Headwaters received \$4,500,000 from NBU and \$1,650,000 from the community for Phase One of the Center, which included restoration of soils and creation of 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;

WHEREAS, Headwaters received a cost estimate in the amount of \$5,406,714 to complete the site work for 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;

WHEREAS, Headwaters has raised funds through its capital campaign and received pledges from other fundraising efforts, both of which are detailed in Exhibit A and incorporated herein for all purposes, to pay for a portion of the site work for Phase Two of the Center; and

WHEREAS, in consideration for Headwaters raising such funds, NBU has determined that making a grant to Headwaters for Phase Two of the Center in the amount of \$4,000,000 in accordance with this Agreement (“*Grant*”) will further the objectives of NBU and benefit the community and its residents and serve the broader purpose of promoting environmental education, the cultural and environmental significance of the Comal Springs, and water quality.

NOW, THEREFORE, upon and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
PURPOSE

1.01 The purpose of this Agreement is to encourage and support Headwater’s goal of restoring the Site to a world class environmental education center highlighting the cultural and environmental significance of the Comal Springs. The funds NBU grants to Headwaters will be used to pay for a portion of the site work for the construction of a 6,400 square foot air-conditioned building(s), with indoor spaces for education programs, community meetings, exhibition space, conference and meeting rooms, visitor’s center, and restroom facility. The site work is described in Exhibit B (the “Site Work”) and incorporated herein for all purposes.

ARTICLE II
TERM

2.01 The Term shall begin upon approval and execution of this Agreement by NBU and Headwaters and continue until the Site Work (as defined herein) for Phase Two of the Center is complete.

ARTICLE III
GRANT

- 3.01 Subject to Headwater's continued fulfillment of all the terms, conditions, representations, and warranties contained in this Agreement, NBU will provide Headwaters with a Grant in the amount of \$4,000,000. The Grant will be held by NBU and disbursed in accordance with the terms of this Agreement and in the manner described in Exhibit C, which shall be incorporated herein for all purposes.
- 3.02 The Grant provided to Headwaters pursuant to this Agreement will be paid solely from lawfully available funds that have been appropriated by NBU. Under no circumstances will NBU's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of NBU's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution. Furthermore, NBU shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by Headwaters.
- 3.03 Under no circumstances will NBU's Grant under this Agreement exceed the amount of \$4,000,000. If the total cost of the Site Work for Phase Two of the Center exceeds the amount described in Exhibit B, Headwaters shall be responsible for paying such excess as described in Exhibit C.

ARTICLE IV
GENERAL RESPONSIBILITIES OF NBU

- 4.01 Subject to the other terms and conditions of this Agreement, including, but not limited to, force majeure provisions, NBU hereby accepts full responsibility for the performance of all services and activities to complete the Site Work for Phase Two of the Center. NBU and Headwaters will agree to the final set of plans and specifications that meet NBU's requirements including compliance with all applicable federal, state, and local laws.
- 4.02 The approvals given pursuant to this Agreement do not relieve NBU and Headwaters of the burden of obtaining all necessary governmental approvals, including those provided by the City through its relevant development departments and relevant boards and commissions, the United States Army Corp of Engineers, and any other regulatory agency, as required.
- 4.03 To the extent applicable, Parties agree to abide by Chapters 252 and 271 of the Texas Local Government Code and Chapters 2254 and 2267 of the Texas Government Code or other open competitive contracting processes, which are advertised to the public in a legal and appropriate manner.

- 4.04 Plans must conform to Americans with Disabilities Act requirements and NBU and the Headwaters must approve such plans before construction begins. Inspections and final approval shall be the responsibility of NBU.

ARTICLE V
FISCAL MANAGEMENT AND RECORDS RETENTION

- 5.01 Headwaters will properly, accurately, and completely maintain all documents, papers, and records, and other evidence pertaining to the Grant funds provided hereunder, and will 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.
- 5.02 Headwaters and NBU must establish and use commercially reasonable internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent fraud or abuse.
- 5.03 Headwaters acknowledges that the Grant funds provided pursuant to this Agreement are public funds and must be expended and accounted for in accordance with the laws of the State of Texas. Accordingly, any funds expended or transferred to Headwaters, if any, Headwaters agrees to clearly document, by way of receipts, invoices, contracts or other similar documentation, all expenditures of Grant funds and to provide an accounting of those expenditures upon request of NBU.
- 5.04 Upon termination of this Agreement, any Grant funds that have not been utilized before the date of completion or termination shall be the property of NBU.

ARTICLE VI
REPRESENTATIONS OF HEADWATERS

- 6.01 Headwaters represents that the execution and performance of this Agreement has been duly authorized by its board of directors and does not require the consent or approval of any other person or entity that has not been obtained. Additionally, the individual executing this Agreement on behalf of Headwaters represents, warrants, assures, and guarantees that he or she has full legal authority to execute this Agreement on behalf of Headwaters and to bind Headwaters to all terms, performances, and provisions herein contained.
- 6.02 Headwaters represents that the Grant funds provided under this Agreement will be utilized only for the purposes described in this Agreement. Headwaters agrees that any change in use of funds must have the prior approval of the NBU Board of Trustees.

ARTICLE VII
DISPUTES

- 7.01 The Parties agree to cooperate with each other in good faith to resolve all disputes arising under this Agreement.

ARTICLE VIII
DEFAULT, TERMINATION, AND REPAYMENT OF GRANT

- 8.01 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 Headwaters with written notice of a Default(s) (“*Default Notice*”), 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. Any Grant funds that have not been utilized upon the Termination Date are subject to Section 5.04.
- 8.02 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.

ARTICLE IX
ASSIGNMENT

- 9.01 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.

ARTICLE X
NOTICES

10.01 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 Strategic, Communications, and Security Officer
 Attention: General Counsel

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

ARTICLE XI
SEVERABILITY

11.01 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.

ARTICLE XII
APPLICABLE LAW

12.01 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.

ARTICLE XIII
AMENDMENT OF DOCUMENTS

13.01 No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof, approved by the respective Boards of each Party, and duly executed by the Parties hereto.

ARTICLE XIV
PRIOR AGREEMENTS SUPERSEDED

14.01 This Agreement constitutes the sole and only agreement of the Parties hereto and supersedes all prior understandings or written or oral agreements between the Parties respecting the subject matter within.

ARTICLE XV
FORCE MAJEURE

15.01 In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, epidemic, pandemic, or the act or conduct of any person or persons not a party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects.

IN WITNESS WHEREOF, THIS AGREEMENT IS EXECUTED THIS _____ DAY OF _____, 2023.

NEW BRAUNFELS UTILITIES

HEADWATERS AT THE COMAL

By: _____

Ian Taylor, Chief Executive Officer

By: _____

Dr. Judith Dykes-Hoffmann, President

Exhibit A

Headwaters at the Comal

Statement of Financial Position

As of December 31, 2022

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
Capital Campaign fund	1,237,016.70
Frost Business Checking (7230)	173,506.87
Total Bank Accounts	\$1,410,523.57
Other Current Assets	
Pledges Receivable	1,163,573.17
Prepaid Insurance	873.66
Total Other Current Assets	\$1,164,446.83
Total Current Assets	\$2,574,970.40
TOTAL ASSETS	\$2,574,970.40
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Credit Cards	
Commerce Bank	3,572.96
Total Credit Cards	\$3,572.96
Other Current Liabilities	
Compensated Absences	4,662.00
Total Other Current Liabilities	\$4,662.00
Total Current Liabilities	\$8,234.96
Total Liabilities	\$8,234.96
Equity	
Retained Earnings	1,045,479.87
Net Revenue	1,521,255.57
Total Equity	\$2,566,735.44
TOTAL LIABILITIES AND EQUITY	\$2,574,970.40

Exhibit B

Phased Cost Estimate Summary Sheet

Headwater at the Comal - Phase 2 [Sitework & Envelope]

100% Construction Documents for GMP

Date: December 15, 2022

15,071 sqft

Bid Package #	Bid Package Description	Phase 1: Building Structure & Envelope / Earthwork	Cost/SF	Notes
010020	Temporary Construction [Envelope Only]	\$ 98,494	\$ 6.54	
023000	Demolition	\$ 334,956	\$ 22.23	Robles
023000	Demolition / Salvaging Allowance	\$ 88,485	\$ 5.87	Allowance
033000	Concrete	\$ 267,575	\$ 17.75	MH3 Contractors
036500	Polished & Stained Concrete	\$ -	\$ -	None / Excluded
044000	Masonry	\$ -	\$ -	None / Excluded
051000	Structural Steel	\$ 979,976	\$ 65.02	Myrex Industries + Moore Erectio
055000	Decorative Metals	\$ -	\$ -	Excluded
061000	Rough Carpentry [Envelope Only]	\$ 65,000	\$ 4.31	Byrne Self-Perform
062000	Architectural Woodwork [Wood Siding Only]	\$ 38,130	\$ 2.53	Madera Millwork
062000	Interior Wood Gapped Ceiling	\$ -	\$ -	Excluded
071000	Waterproofing & Sealants	\$ 62,420	\$ 4.14	Fireproof Contractors
072500	Spray Insulation	\$ -	\$ -	Excluded
074100	Roofing	\$ 427,450	\$ 28.36	Earnest Roofing
074100	Roofing Decking	\$ 248,432	\$ 16.48	Earnest Roofing
074200	Metal Panels & Soffits	\$ -	\$ -	w/ Roofing
079000	Fireproofing	\$ -	\$ -	Excluded
081000	Doors, Frames & Hardware [Exterior Only]	\$ 127,990	\$ 8.49	The Door Frame Hardware Co
085000	Steel Framed Doors	\$ -	\$ -	Excluded
084000	Glass & Glazing	\$ 319,162	\$ 21.18	Champion Glas
086000	Skylights	\$ 53,254	\$ 3.53	DEA Specialties
089100	Louvers	\$ -	\$ -	Excluded
092100	Drywall & Acoustical [Exterior Wall Only]	\$ 155,845	\$ 10.34	Lasco Drywa
093000	Tile	\$ -	\$ -	Excluded
096600	Resilient Flooring & Base	\$ -	\$ -	Excluded
099100	Painting	\$ 112,337	\$ 7.45	FA McComas
099100	Painting Allowance	\$ 5,000	\$ 0.33	TBD
100000	Specialties [Knox Boxes Only]	\$ 1,500	\$ 0.10	Excluded
101400	Room Signage	\$ -	\$ -	Excluded
122000	Window Treatment	\$ -	\$ -	Excluded
210000	Fire Protection	\$ 89,000	\$ 5.91	SFS - Security Fire Systems
220000	Plumbing [Underground Piping Only]	\$ 98,500	\$ 6.54	Team Mechanical
230000	HVAC [Underground Sleeving Only]	\$ 3,775	\$ 0.25	Team Mechanical
260000	Electrical [Underground Pathways Only]	\$ 116,200	\$ 7.71	IES Commercial
270000	Communications	\$ -	\$ -	Excluded
270001	Audio / Video Systems	\$ -	\$ -	Excluded
280000	Security & Access Control - Allowance	\$ -	\$ -	Excluded
310000	Earthwork	\$ 324,500	\$ 21.53	Flow T
310000	Asphalt Paving	\$ 36,000	\$ 2.39	Flow T
312500	Pavement Markings	\$ 7,056	\$ 0.47	RS
310001	Enabling	\$ 43,272	\$ 2.87	Byrne Self-Perform
313116	Termite Treatment	\$ 2,225	\$ 0.15	Pestforce
311662	Helical Piers [Building Only]	\$ 19,672	\$ 1.31	Ram Jack
321410	Fencing & Gates	\$ -	\$ -	Excluded
323000	Site Improvements	\$ -	\$ -	Excluded
324000	Unit Pavers	\$ 32,729	\$ 2.17	Marshall Ren
324000	Salvaged Concrete Pavers Allowance	\$ 63,500	\$ 4.21	Allowance
329000	Decomposed Granite Allowance	\$ 7,500	\$ 0.50	Allowance
329000	Landscape & Irrigation 1 YR Maintenance	\$ -	\$ -	Excluded
329000	Check Dam Swale & Salvaged Benches	\$ 12,500	\$ 0.83	Allowance



NINE DECADES OF EXCELLENCE
 5851 Sebastian Place
 San Antonio, TX 78249
 Phone: (210) 402-3335
 Fax: (210) 402-3376

Phased Cost Estimate Summary Sheet

Headwater at the Comal - Phase 2 [Sitework & Envelope]

100% Construction Documents for GMP

Date: December 15, 2022

15,071 sqft

Bid Package #	Bid Package Description		Phase 1: Building Structure & Envelope / Earthwork	Cost/SF	Notes
330000	Site Utilities		\$ 207,620	\$ 13.78	CK Enterprises
330000	Site Utilities WRP		\$ -	\$ -	Excluded
331600	Cisterns		\$ -	\$ -	Excluded
Cost of Work Subtotal			\$ 4,450,055	\$ 295.27	
	Design Completion Factor	0.00%	\$ -	\$ -	Excluded
	Market Volatility Contingency	2.00%	\$ 89,001	\$ 5.91	
	Contractor Contingency	4.00%	\$ 178,002	\$ 11.81	
	Building Permits	0.00%	\$ -	\$ -	Excluded / By Owner
Construction Costs Subtotal			\$ 4,717,058	\$ 312.99	
	CGL & Umbrella Insurance	0.96%	\$ 51,959	\$ 3.45	
	Professional Liability	0.00%	\$ -	\$ -	Excluded
	Builder's Risk	Calc.	\$ 6,958	\$ 0.46	
	Payment & Performance Bond	Calc.	\$ 83,667	\$ 5.55	
Construction Costs & Insurance Subtotal			\$ 4,859,642	\$ 322.45	
	General Conditions & General Requirements	LSUM	\$ 392,144	\$ 26.02	
Subtotal			\$ 5,251,786	\$ 348.47	
	Preconstruction Fee	0.00%	\$ -	\$ -	None / Excluded
	Fee	2.95%	\$ 154,928	\$ 10.28	
Project Subtotal			\$ 5,406,714	\$ 358.75	
	Remodel / Renovation Tax	0.00%	\$ -	\$ -	Tax Exempt Entity (NBU)
Project Total			\$ 5,406,714	\$ 358.75	

Exhibit C

The Guaranteed Maximum Price Amendment (“GMP”) for the Site Work for Phase Two will be between NBU and Thos. S. Byrne, Inc. (“Byrne”) in the amount of \$5,406,714.

The process for NBU to make payment under the GMP and for Headwaters to reimburse NBU is described below in this Exhibit.

- A. Byrne will provide a pay application to the NBU owner’s representative.
- B. The NBU owner’s representative will analyze the pay application and, if it complies with the contract documents, the owner’s representative will recommend approval of the pay application to NBU.
- C. NBU will pay Byrne within the timeframe permitted in the GMP and the related contract documents.
- D. NBU will submit an invoice related to the pay application to Headwaters.
- E. Headwaters will reimburse NBU from the funds described in Exhibit A within forty-five days of receiving an invoice.
- F. If the GMP exceeds \$5,406,714, Headwaters shall pay such excess from available funds prior to requesting funds from the NBU Grant.
- G. Once Headwaters reimburses pay applications in the amount of \$1,406,714 plus any approved increases to the GMP amount, NBU will pay up to \$4,000,000 to Byrne for any remaining approved pay applications.