

The Regular Meeting of the
Brian Head Town Council
www.Zoom.us ([Click Here](#))
Via Zoom Meeting ID# [88468385737](#)
TUESDAY, NOVEMBER 09, 2021 @ 1:00 PM

AMENDED AGENDA

- A. CALL TO ORDER**
- B. PLEDGE ALLEGIANCE**
- C. DISCLOSURES**
- D. APPROVAL OF THE MINUTES:** October 26, 2021, Town Council Meeting
- E. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS.** Public input is limited to three (3) minutes on non-agenda items.
- F. AGENDA ITEMS:**
 - 1. 2021 ELECTION CANVASS.** Nancy Leigh, Town Clerk. The Council acting as the Canvassing Board will canvass the 2021 Brian Head Municipal Election.
 - 2. PUBLIC ART PIECE CONTRACT.** Bret Howser, Town Manager. The Council will award the contract for the public art piece, Brian the Bear, to Jagged Edge Metal, Terrance Martin.
 - 3. A RESOLUTION DECLARING THE INTENTION OF THE TOWN COUNCIL OF THE TOWN OF BRIAN HEAD, IRON COUNTY, UTAH FOR WATER SYSTEM IMPROVEMENTS AND RELATED IMPROVEMENTS WITHIN THE CEDAR BREAKS MOUNTAIN ESTATES, UNIT C SUBDIVISION, TO DESIGNATE OR CREATE THE TOWN OF BRIAN HEAD, UTAH SPECIAL TAX ASSESSMENT AREA NO. 2021-02 (FALCON COURT) TO FUND THE COST AND EXPENSES OF SAID ASSESSMENT AREA BY SPECIAL TAX ASSESSMENTS TO BE LEVIED AGAINST THE PROPERTY BENEFITTED BY SUCH IMPROVEMENTS TO PROVIDE NOTICE OF INTENTION TO AUTHORIZE SUCH IMPROVEMENTS AND TO FIX A TIME AND PLACE FOR PROTESTS AGAINST SUCH IMPROVEMENTS OR THE CREATION OF SAID ASSESSMENT AREA; TO DELCARE ITS INTENTION OF FUNDING A RESERVE FUND IN LIEU OF A GUARRANTY FUND AND RELATED MATTERS.** Bret Howser, Town Manager. The Council will consider a resolution for the Notice of Intent for the Falcon Court Special Assessment Area (SAA).
 - 4. TRAIL ROAD SPECIAL ASSESSMENT AREA PETITION.** Nancy Leigh, Town Clerk. The Council will consider a petition for a SAA on Trail Road for water and sewer improvements.
 - 5. FUTURE AGENDA ITEMS.** The Council will discuss potential items for future agendas.

G. ADJOURNMENT

Date: November 8, 2021

Available to Board Members as per Ordinance No. 11-003 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the public board may participate by means of electronic communications. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.

CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in three conspicuous locations; The Mall, Post Office, and the Brian Head Town Hall and have posted copies on the Utah Meeting Notice Website and the Brian Head Town website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

Nancy Leigh, Town Clerk





Brian Head Town Council Update

November 1, 2021

BRIAN HEAD MARSHALS OFFICE:

October is a great time of year for us to evaluate our summer end and prepare for the upcoming winter. We have been working on inspecting and all of our equipment from the fire service to the marshal's service. We have had to deal with some issues with fire equipment and get things back up and running properly to replacing batteries in lights and other important devices. This keeps us busy and familiar with our equipment. We have also been busy handling fire inspections (24) and other calls of service which were up from last month (87). So to say Brian Head is slow in October is true in some ways. But not for us in Public Safety. There is always equipment that needs inspections and repairs, trainings that have lapsed and still people to deal with.

One of our calls is as simple as finding a nice new snow blower that someone lost out of the back of their truck. Luckily a Brian Head Marshal was driving down the road and noticed it. He gathered it up and found it a nice place to hang out until the owner was tracked down and it was returned. The owner was greatly appreciative. He had mistakenly left the tailgate down on his truck and drove off to clear some snow and the blower fell out. He made a call and at the time we thought that it was lost or stolen by a passerby. But thanks to this Deputy we had it in our possession.

Both Brian Head Marshal's and Fire Department responded to a terrible crash at about mile post 6 on SR 143. The driver had been speeding down the canyon and lost control on a corner. The vehicle rolled many times and the driver had to be extricated. He is alive and should make a full recovery. We are thankful that this incident did not involve a head on and that the driver was not ejected.

We had a couple of snowstorms during October. This resulted in numerous slide offs. It seems that these early snowstorms along with our late spring storms really catch drivers off guard. Luckily we had no injury accidents from any of these incidents.

Deputies also dealt with Domestic Violence, Prowlers, Utility Problems, Trespassing, Medicals, and numerous other Citizen Assist calls. We have been impressed by how many of our "STR's" are staying occupied even during our slower seasons.

Both the Marshal's and the Fire Department were invited to participate at Parowan Elementary during their "Red Ribbon" event. This is an event geared towards public safety and kids getting to know their firefighters and police officers. It is an event

geared towards drug awareness and keeping kids out of trouble. We had a great group from many other agencies. Tours of our police trucks and firetrucks were given. "McGruff the Crime Dog" was there along with other fire departments, police/sheriff's a helicopter the SWAT armored truck and a HUMVEE from the Army Recruiter.

BRIAN HEAD FIRE DEPARTMENT:

We are starting to do some controlled burns around town. If you see smoke it is probably us. But if it looks like it could be something more alarming, please call 911. We would rather you report and us take the call than for something to get away from us.

Our ground ladders and aerial ladder was inspected this month and passed. We will soon be testing and inspecting our pumps on all of our apparatus. We have had to send our new brush truck back to the dealer for some warranty work and hope to see it back before the end of the year.

We had great trainings this month. The first was how to deal with chimney fires and was taught by Deputy Danny Abbott. The second training was involving our SCBA's and prepping us for the upcoming winter fire season. Don't forget to check your chimney for creosote buildup and get them cleaned and don't forget to change the batteries in your smoke detectors.









**Don't expect me to
stop if you're broken
down by the side of
the road. You were
offered an extended
car warranty several
times.**



Brian Head Town

Public Works Department Update

November 09, 2021

November...It's here and Public Works is ready to go for the Winter Season. The mountain has already received a few good snowstorms to get operators back in the snow plowing saddle. The rest of the Public Works Equipment fleet have been transitioned over to winter use with chains and sanders being installed. The Resorts snow making pond is full and staff continues to work with Resort operators to try and provide them with as much water as the Town is able to. The issues from having to pump to the farmers to fulfill the Towns commitment to them without the use of the Bristlecone Pond (due to the small slide and Engineers recommendation to not lower the pond) while trying to pump to the Resort in early October have been corrected. It is planned to fill the Resort Pond in late July or early August. This way when the farmers call for water in September the snowmaking pond has already been filled and would only need to be topped off in early October due to pond leakage or Resort use.

Staff has already contacted the Well workers and is on schedule for well work in the April or as soon as weather permits after the snow making season. This work will include, upsizing the Town Hall well and then exploration of the Bear Flat Well for repairs if any can be made. The following are a list of the projects that Public Works has been working on.

STREETS

- Planning for the 2022 Streets and Gravel Roads project has begun. Staff are putting together several drainage and construction projects for next spring to present during the budget process
- The new snow blower has arrived and has been hooked up and tested by Public Works. It is a good addition to the snow removal toolbox
- The wing has been installed on the grader.
- The winter snow removal loader is scheduled to arrive next week.
- Both dump trucks have been serviced from the summer workload and are ready to go.
- The Kodiak blower has been serviced and will be ready to deploy when needed.

CULINARY

- A leak has been repaired on Aoki Mechi Street, but alas another has surfaced on a meter barrel on Lee Street and is scheduled for repair.
- Repair of the meter reading system continues.
- A walk thru was held for culinary projects that are being proposed. Three contractors attended the meeting.
- Repairs from the Sanitary survey have been completed.

SEWER.

- Staff continuous to work with Alpha Engineering on the Sewer Capital Plan.
- Twin D has completed the cleaning and video inspection of the mainline down the Canyon. Staff is reviewing the reports that were provided.

PARKS & TRAILS

- Staff is working on gathering data for the engineering of the Paved Town trail phase III

IN-HOUSE PROJECTS

Public works will continue to work on in-house projects and maintaining buildings and equipment as needed.

If you have any questions or concerns, please do not hesitate to call.



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: 2021 Municipal Election Canvass
AUTHOR: Nancy Leigh, Town Clerk
DEPARTMENT: Administration
DATE: November 9, 2021
TYPE OF ITEM: Legislative Action

SUMMARY:

The Council will convene as the Canvass Board to canvass the 2021 Brian Head election results as required by state law UCA 20A-4-301(2). Staff will present the final canvass report during Council meeting on Tuesday.

BACKGROUND:

Every Municipal Election, the Canvass Board (Town Council) is required to canvass the election in order to make the results official. This year we had two Council seats and the mayor seat up for election.

State law requires that an election be canvassed no earlier than seven days and no later than 14 days after an election. Brian Head election canvass date has been duly noticed as required by state law and published in a newspaper of general circulation.

This year the mayor's seat went uncontested and will continued to be held by Clayton Calloway for another four-year term. The two council seats that were up this year were Council Member Mulder and Council Member Kelly. We had three candidates run for the two open council seats: incumbent Shaun Kelly, Planning Commissioner Dennis VanNostran and Planning Commissioner Marty Tidwell.

ANALYSIS:

The 2021 Municipal Election had a total of 53 ballots cast out of 122 registered voters which is a 43.44% turnout.

As of the date of this report listed below are the unofficial results of the 2021 Brian Head Municipal Election:

Mayor: Clayton Calloway: 45 votes or 84.91% of the vote

Town Council:

Shaun Kelly:	22 votes or 20.75% of the vote
Marty Tidwell:	30 votes or 18.20% of the vote
Dennis VanNostran:	30 votes or 28.20% of the vote

I will have the official election canvas report for Tuesday's meeting in case any additional ballots come in between now and Tuesday's Council meeting. If any ballots come in by mail, they would need to have a November 01, 2021 postmark at the latest in order to count in this election.



Staff will present a statement of votes casted in which all Council Members and the Mayor will need to sign. This will be sent to the Lt. Governor's office as the official canvass of the 2021 Brian Head Municipal Election as well as to the Iron County Clerk.

FINANCIAL IMPLICATIONS:

Typically, our elections cost approximately \$800 in which the County will invoice their portion to the Town which is usually around \$600. The Town has not yet received a final invoice for the 2021 election but anticipates it will be approximately \$600. This cost includes the ballots and postage along with any advertising the County Clerk may have done on behalf of Brian Head Town. The other costs are associated with the Town's requirement to advertise as part of the election process.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends the Board of Canvassers approve the 2021 Municipal Election as presented.

PROPOSED MOTION:

I move to approve the 2021 Brian Head Municipal Election as presented. (The Mayor may read the final votes counted on the statement).

ATTACHMENTS:

A – Unofficial Election Summary Report as of November 5, 2021.

STATISTICS

	TOTAL
Registered Voters - Total	122
Ballots Cast - Total	53
Voter Turnout - Total	43.44%

Brian Head Town Mayor
Vote For 1

	TOTAL	VOTE %
CLAYTON CALLOWAY	45	84.91%

Brian Head Town Council
Vote For 2

	TOTAL	VOTE %
SHAUN KELLY	22	20.75%
DENNIS D. VAN NOSTRAN	30	28.30%
MARTY TIDWELL	30	28.30%



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Public Art Contract
AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: November 9, 2021
TYPE OF ITEM: Administrative Direction

SUMMARY:

The Council will consider a contract with Jagged Metal Art in the amount of \$95,500 for the design, construction, and installation of the “Brian the Bear” art project at Bristlecone Park.

BACKGROUND:

Following a lengthy RFQ/RFP process spanning much of 2021, the Town Council decided to move forward with the “Brian the Bear” public art proposal from Terrence Martin of Jagged Metal Art in September 2021. While some details need to be finalized, including the material to be used for the Bear and the final location, the Council directed staff to move forward drafting an agreement with the artist.

ANALYSIS:

The draft contract is attached. It was written by the Town’s attorney, based on similar contracts between municipalities and artists, and has been thoroughly reviewed by staff and the artist.

FINANCIAL IMPLICATIONS:

The project is currently budgeted, with half the cost being covered by surplus General Fund money from FY 2021, and the other half covered by RDA funds. Further funding may be required to prepare a location for the art installation, particularly if it entails relocating the playground.

BOARD/COMMISSION RECOMMENDATION:

Brian the Bear was one of three projects recommended by the Public Art Committee

STAFF RECOMMENDATION:

Staff recommends approving the attached contract

PROPOSED MOTION:

Council may give administrative direction to staff, either by consensus or by motion

ATTACHMENTS:

A- Public Art Contract

BRIAN HEAD TOWN

AGREEMENT TO PURCHASE ARTWORK

This Agreement is made, as of _____ (“Effective Date”), by and between the Town of Brian Head, a municipal corporation of the state of Utah (“Town”), and Terrence Martin representing “JAGGED EDGE METAL ART” (Artist”).

The Town and Artist may be referred to collectively as “Parties” or in the singular as “Party,” as the context requires.

Background

- A. The Town is a small but growing mountain resort community in Southern Utah, about 40 minutes northeast of Cedar City. Outdoor recreation and tourism form the basis of the local economy – skiing and snow sports in the winter and mountain biking, hiking, and motorsports in the summer. Most of the 1,400 condos and cabins in the Town are second homes and rental units.
- B. The Brian Head Town Council recently reviewed several potential economic development initiatives the Town might consider to make the area more attractive for visitors. One such idea was to commission a public art piece that would be iconic in nature – something that serves as a major visual focal point of the Town and an organic social media marketing feature.
- C. A survey of the Town businesses, residents, and property owners showed broad support for the concept, as well as a variety of suggestions for what type of art piece might work well in the Town.
- D. The Town sent out a request for proposals seeking proposals from experienced artists to design, construct, and install a public art piece in the Town that accomplishes the above-described vision.
- A. The Town has since Awarded the Contract (the “Contract”) to Terrence Martin representing “JAGGED EDGE METAL ART.” This award was made through a competitive process and review of submissions in response to a request for proposals. The Council awarded the contract based on the criteria in the aforementioned request for proposal. The Contract as represented in this document outlines the terms and conditions of the agreement between the parties and contains all terms of the agreement.

Based on the facts in the foregoing background, the Town and Artist agree as follows:

1. **Definition of “Artwork.”** As used in this Agreement, unless the context otherwise requires: “Artwork” means the work of art as ultimately conceived, designed, fabricated, transported, delivered and installed by the Artist, after consultation with

the staff of the Town. The Artwork includes all physical components of the complete artwork, including but not limited to, associated foundations, bases, mounting brackets or devices, and all other miscellaneous components necessary to complete the fabrication and installation of the artwork.

2. **Artist's Comprehensive Design and Budget Proposal (Final Design).** The Artist submitted a Design and Budget Proposal ("Sculpture Proposal"). The original Design and Budget Proposal is attached as "Exhibit A." The Artist will, under this Agreement, adhere to the Design as submitted in its Sculpture Proposal.
3. **Expectation of Final Design.** The Artist shall not modify any approved material of the Final Design of the Artwork without the prior written approval of the Town. The Artist shall present to the Town, in writing, for further review and approval any material changes in the scope, design, color, size, material or texture of the Artwork. A change shall be deemed material if it alters the form, fit, or function of the Artwork, or modifies its dimensions by more than five percent (5%).
4. **Purchasing Materials, Fabrication, Installation and Delivery.** Upon signing of this contract and written notice to proceed the Artist shall commence fabrication, installation and delivery of the Artwork, subject to the terms and conditions set forth in Exhibit "B". The Artist agrees to fabricate, install, and deliver the Artwork consistent with the approved Sculpture Proposal.
5. **Time of Performance.** Time is of the essence in this Agreement. Artist shall dedicate such time and effort as is necessary to fulfill Artist's obligations to completely finish and install the Work to the satisfaction of Town by July 31, 2022, except as the Work may be delayed by circumstances described in Section 26 of this Agreement. Town shall make its staff and contractors reasonably available to Artist for consultation and assistance in order to achieve the purposes of this Agreement.
6. **Payment.** Artist shall be paid according to the fees and manner of payment set forth in "Exhibit C" and "Exhibit D", which are attached and incorporated by reference.
7. **Post-Installation.** The Artist shall provide information on the Artwork requested by Town staff for its registration files including but not limited to technical and maintenance information, copyright registration information, updated biographical information, and a descriptive statement regarding the Work.
8. **Artist's Representations and Warranties.**
 - A. **Work Free from Defects.** The Artist represents and warrants to the Town that the fabrication and installation of the Artwork will be performed in a workman like manner and that the Artwork will be free of defects in

workmanship or materials, including inherent vice, and that the Artist will, at the Artist's own expense, remedy any defects due to faulty workmanship or materials, or to inherent vice, which appear within a period of three (3) years from the date the Artwork is finally accepted by the Town. The foregoing warranty is conditional, and shall be voided, by the failure of the Town to maintain the Artwork in accordance with the Artist's specifications and applicable conservation standards. The foregoing warranty also does not include repair of damage caused by external forces such as weather and other Acts of God, vandalism, neglect, civil unrest, war, riots, or acts of third parties outside the Artist's control. Any and all such repairs completed by the Artist shall be consistent with professional conservation standards and shall be free of defects in material and workmanship for the balance of the initial warranty period or ninety (90) days, whichever is longer. "Inherent vice" refers to a quality within the material or materials which comprise the Artwork which, either alone or in combination, results in the tendency of the Artwork to destroy itself.

- B. **Restoration of Artwork Site.** Artist agrees and warrants that, within 30 days after the Work is accepted by the Town, Artist shall restore the Artwork site (including the entire area affected by the fabrication and installation of the Artwork) to a state and condition that is substantially similar to that which existed when the Artwork was begun. Artist further agrees and warrants that, within the period specified herein, Artist shall repair or replace, as is determined necessary by Town, and to the reasonable satisfaction of Town, all property (real, personal or otherwise), which has been damaged, injured or otherwise adversely affected by the acts or omissions of Artist, Artist's agents, contractors, or employees. Artist shall be solely responsible for all expenses and costs which may be necessary to comply with the requirements of this paragraph, and Town shall have no responsibility or liability therefor.
- C. **Infringement.** Artist warrants that the Artwork is original and solely the product of Artist's own creative effort and does not infringe the rights, including copyrights, of any person or entity. Artist also agrees to protect, defend, indemnify and hold the Town, its officers, agents and employees harmless from any action, claim, suit or liability based on a claim that work performed under this Agreement by Artist, or Artist's agents or Artist's subcontractors constitutes an infringement of any patent, copyright, trademark, trade name, or other proprietary right of any party.
- D. **Originality of Artwork.** Artist also warrants that, unless otherwise stipulated in writing, the Artwork is original, that it is an edition of one (1), and that Artist shall not sell, license, perform or reproduce a substantially similar copy of the Artwork without the prior written consent of Town. However, nothing contained herein shall prevent the Artist from creating

future works in Artist's style and manner of working. The Artist shall not reference or reproduce the Artwork, or any portion thereof, in a way which reflects poorly upon, disparages, or discredits the Town or the Artwork.

- E. **Maintenance.** The Artist represents and warrants to the Town that except as against force majeure, or acts of third parties, the Artwork will not require maintenance substantially in excess of that described in the maintenance recommendations, to be provided by the Artist to the Town.
 - F. **Artwork Free from Hazards.** The Artist represents and warrants to the Town that the Artwork will not contain sharp points or edges which the Town deems a danger to the public and agrees to cooperate in making or permitting adjustments to the Artwork, if necessary, to eliminate any hazards which become apparent within one (1) year of the date the Artwork is finally accepted by the Town. If the appearance of such hazards or the Town's determination of a hazard does not relate to a breach of Artist's warranty pursuant to subsection "A" above, then the Town shall compensate the Artist at rates to be mutually agreed for the repairs to be performed pursuant to this subsection.
 - G. **Liens or Encumbrances.** The Artist represents and warrants to the Town that the Artwork is solely the result of the artistic efforts of the Artist and that it will be installed free and clear of any liens, claims, or other encumbrances of any type or from any source whatsoever.
 - H. **Compliance with all Laws.** In performing services under this Agreement, Artist shall comply with all applicable federal, state, and local laws and regulations, including without limitation applicable state and federal occupational safety and health acts and regulations, and acquisition of all licenses, permits, or approvals that are legally required for Artist to provide any services under this Agreement. If any failure by Artist to comply with any laws or regulations results in a fine, penalty, cost, or charge being assessed, imposed, or charged against Town, Artist shall reimburse and indemnify Town for any such fine, penalty, cost or charge, including without limitation attorney fees, court costs, and expenses.
 - I. **Authority.** Artist warrants that it has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
9. **Performance Made Impossible.** In the event it shall become impossible for the Artist to complete the Artwork because of illness, death or injury, this Agreement may be terminated at the sole discretion of Town, and, in such event, all completed work, materials, and supplies related to the Artwork shall be delivered to Town and shall, along with the Final Design Proposal, become Town's sole

property. Town shall thereafter have no obligation to make any additional or further payments to Artist, and Artist shall have no further or additional claims against Town with respect to the Artwork or such portion thereof as may be completed, or the Sculpture Proposal, or with respect to any matter whatsoever pertaining to, affected by, or embodied in this Agreement. In the event of such termination, Town may take such action as may appear to it appropriate under the circumstances, including, without limitation of the generality of the foregoing, commissioning another artist to complete the Artwork. In the event that Town completes the Artwork or arranges to have it completed, Artist's names shall be publicly displayed at, on, or near the Artwork, unless Artist and Town mutually agree otherwise.

10. **Acceptance of Artwork.**

- A. Title to the Artwork shall pass to the Town upon written notice to the Artist of the Town's final acceptance of the Work, including its installation. Town agrees to accept the completed Work unless:
 - (1) The Artwork was not completed in substantial conformance with the Sculpture Proposal or other requirements of "Exhibit A"; or
 - (2) The Artwork as completed, or any portion thereof does not conform to a reasonable standard of artistic or technical quality. Town shall provide its reasons for this finding to Artist in writing no later than ten (10) days after Artist has tendered the Artwork to the Town for Town's acceptance. Where the Artist disputes this finding, the dispute may, if the Parties so agree, be subject to mediation which decision shall be binding upon Town and Artist and neither shall have any further recourse or cause of action regarding the matters so resolved.
- B. Upon the Town's refusal to accept the Artwork for the reasons stated in Sections 10(A)(1) or 10(A)(2), Town shall have the right to: 1) request that Artist correct the deficiencies in the Artwork within a reasonable time, or 2) terminate this Agreement and recover all sums previously paid to Artist. Both remedies shall be independent and cumulative and in addition to any other remedy available to the Town at law or equity. Enforcement of one such remedy shall not be exclusive, nor shall it be deemed an election of such remedy to the exclusion of any other or further remedy. However, nothing contained herein shall limit Town's available remedies at law and equity.
- C. No payments to Artist shall be deemed as a waiver of Town's right to refuse to accept the Artwork.

11. **Transfer of Title to Artwork.** Title to the Artwork shall remain with Artist until Town has accepted the Artwork as completed and it is installed to the satisfaction of Town except as otherwise indicated in Section 10 above. When Town has so certified and provided a written Letter of Acceptance, title shall transfer to Town. Artist shall bear all risk of loss of the Artwork until title has been transferred to Town, including obtaining any necessary insurance to insure the Work, and Town agrees to inspect Artwork and accept Artwork within thirty (30) days of Artist notification of completion, unless the provisions of Section 10(A)(1) or 10(A)(2) apply.
12. **Town Maintenance of Artwork.** Upon transfer of title of the Artwork to the Town, Town agrees to reasonably ensure that the Artwork is properly maintained and protected. Town agrees that it will not intentionally destroy, damage, alter, modify, or change the Artwork in any way. If an alteration should occur, either intentionally or unintentionally, the Artwork will no longer be represented as the work of the Artist without the Artist's written permission. Town shall have the right to move or remove the Artwork from display or deaccession of the Artwork, in Town's sole determination. In the event it becomes necessary to change the placement of the Artwork, Town shall confer with Artist concerning placement, though the ultimate placement of the Artwork is solely within the Town's discretion.
15. **Repair and Restoration of Artwork.** The Town shall have the authority to make repairs, either major or minor, to the artwork as needed.
16. **Artwork Authorship.** Artist shall retain the copyright to the Artwork and the right to claim authorship of the Artwork. Town shall ensure that Artist's name is publicly displayed on, at, or, near the Artwork. In the event the Artwork is substantially damaged or altered, Town shall no longer represent the Artwork to be the Artwork of the Artist if Artist gives written notice to Town that Artist denies authorship of the Artwork on the grounds stated in this paragraph.
17. **Artist Payment of Contractors and Employees.** In the event Artist hires or contracts with employees, subcontractors, or material suppliers, Artist shall pay these employees, subcontractors, or material suppliers out of the payments made to Artist by Town for completion of the phase of work for which the employees, subcontractors, or material suppliers provided labor or materials and provide proof of payment to the Town prior to completion of the next phase of work. In the case of nonpayment of wages or other amounts due the employees, subcontractors, or material suppliers herein, Town may withhold from Artist out of payments due a sum sufficient to pay such persons the amounts owed by Artist absent evidence satisfactory to the Town of a legal basis for such nonpayment. All subcontractors shall be properly licensed pursuant to state law.
18. **Indemnity.** Artist shall defend, hold harmless and indemnify Town, its officers and employees, and each and every one of them, from and against any and all

claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by Town's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to or relate solely to any negligent act or omission, recklessness or willful misconduct of Artist, their subcontractors or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from the sole negligence or willful misconduct of Town, its subcontractors or agents, and their respective officers and employees. The existence or acceptance by Town of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of Town's rights under this agreement, nor shall the limits of such insurance limit the liability of Artist. The provisions of this agreement shall survive any expiration or termination of this Agreement.

19. **Insurance.** During the entire term of this Agreement, Artist shall maintain appropriate insurance policies covering commercial general liability, workers compensation, professional liability, and automobile insurance. Adequate evidence of this insurance shall be provided to the Town

Full compensation for all premiums that Artist is required to pay for the insurance coverage described herein shall be included in the compensation paid to Artist under this Agreement. No additional compensation will be provided for Artist's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the Town. It is understood and agreed by the Artist that their liability to the Town shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Artist in connection with this Agreement.

Artist shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this section.

20. **Copyright.** Artist expressly reserves every right available to Artist, at common law or under the Federal Copyright Act, to control the making and dissemination of copies or reproduction of the Artwork except as those rights are limited by this Agreement. Artist agrees to give a credit substantially in the following form: "Original owned by the Town of Brian Head" in any public showing of reproductions of the Artwork. Artist authorizes the Town to make, and to authorize the making of,

photographs and other two-dimensional reproductions of the Artwork for educational, public relations, arts promotional and other non-commercial purposes. For the purposes of this Agreement, the following are among those deemed to be reproductions for non-commercial purposes: brochures and pamphlets pertaining to the Town; Town-purchased advertising that promotes programs and services of the Town; reproduction in exhibition catalogues, books, slides, photographs, postcards, posters, and calendars; in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience; and television from stations operated for educational purposes or on programs for educational purposes from all stations. Whenever possible, on such reproductions, the Town shall place a copyright notice in the form and manner required to protect the copyright in the results of the Artwork, as applicable, under the United States copyright law.

21. **Waiver of VARA Rights.** With the exception of Artist's rights as to third parties, Artist waives any and all rights Artist may have with respect to the Artwork under the federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 106A and 113(d)), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, or any other type of moral right protecting the integrity of works of art.
22. **Location of Artwork.** The final location of the Artwork shall be determined by the Town Council following consultation with Artist. In making the final decision, the Town Council may also consult with the Town's staff.
23. **Representatives.** Any notices or demands from the Parties shall be in writing and served either personally or by first-class mail. Service shall be conclusively deemed made at the time of personal service or the time of deposit in the mail, return receipt requested. Any notice or demand shall be given to the following addresses:

Town:

Bret Howser, Town Manager
bhowser@bhtown.utah.gov
Brian Head Town
P.O. Box 190068
56 North Hwy 143
Brian Head, UT 84719

Artist:

Terrence Martin

JAGGED EDGE METAL ART
Phone: 916-372-9353
bigmetalhammer@gmail.com

Artist shall notify the Town Representative in writing of any change of address. Failure to do so shall constitute a waiver of Artist's rights under this Agreement during the time of the omission.

24. **Excuse from Performance.**

- A. In the event Artist's performance of any of its obligations or undertakings under this Agreement are delayed, interrupted, or prevented by an act of God, unforeseen conditions, unusually severe weather, or occurrences that are beyond the control of the Parties to this Agreement, Artist shall be excused from any further performance for whatever period of time after the occurrence necessary to remedy the effects of that occurrence. Artist shall notify Town in writing within ten (10) days after any occurrence described in this section that may delay Artist's performance. Town shall amend the Project Schedule when, in its determination, Artist's performance has been excused, and the delay or interruption has resulted in a material change in the time for performance.
- B. In the event the installation site is not adequately prepared for receipt of the Artwork as scheduled, or delivery or installation is delayed due to a material failure on the part of the Town or its subcontractors, then the Town shall promptly act to address the problem(s) identified by Artist. The Artist will provide advance notice of additional storage or other costs directly associated with such delays, in writing to the Town. The Town shall reimburse the Artist the reasonable costs incurred unless the parties are able to find and use a free alternative. If such an event occurs, timelines for performance by Artist shall be extended as needed, provided, that none of the delays are caused in whole or in part by Artist. Site preparation by Town shall not include site measurements, which shall be the sole responsibility of Artist.

25. **Press Releases.** Artist shall not make any public information release in connection with services performed under this Agreement without the prior written permission of the Town, such permission not to be unreasonably denied.

26. **Tax Implications and Consequences.** The Town makes no representations as to the tax consequences associated with the payment of funds related to this Agreement, and any determination related to this issue is the sole responsibility of the Artist. Artist acknowledges consulting with its own tax advisors regarding this transaction or having had an opportunity to do so prior to signing this Agreement. Artist acknowledges the Town cannot provide advice regarding the tax

consequences or implications for payment made in exchange for the Work or related services.

27. **Exhibits.** All exhibits referenced in this Agreement are attached and are by this reference incorporated as if set forth fully herein.
28. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Artist, and by Town, in accordance with applicable provisions of the Town Code.
29. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
30. **Waiver.** Neither Town's acceptance of, or payment for, any work performed by Artist, nor any waiver by the Parties of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder. No waiver shall be effective unless it is in writing and signed by the Town.
31. **Attorney Fees.** Except as required by this agreement, the Parties will bear their own costs and attorney fees incurred in connection with this Agreement.
32. **Independent Contractors; Artist Not Agents.** The Artist is an independent contractor, and no relationship of employer-employee shall exist between Artist and the Town for any purpose whatsoever. Artist shall not be entitled to any benefits payable to employees of the Town. Artist shall have no authority, express or implied, to act on behalf of Town in any capacity whatsoever as agents or to bind Town to any obligations whatsoever.
33. **Enforcement of Agreement.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Utah, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
34. **Dispute Resolution.** If any dispute is submitted to a third party for resolution, all fees, expenses, and costs connected therewith shall be borne jointly and equally by Town and Artist. The previous sentence notwithstanding, each Party shall bear its own attorneys' fees and costs. Each and every obligation under this Agreement to submit any matter to a third party for resolution is conditioned upon the foregoing two sentences of this paragraph. This provision is elective and does not replace or take precedent over the other remedies set forth in this agreement. To invoke

the provisions of this section requires the written mutual consent of the Parties to submit to a third party for resolution of any dispute.

35. **Assignment Prohibited.** The expertise and experience of Artist is a material consideration for this Agreement. Artist shall not assign any right or obligation pursuant to this Agreement without the written consent of the Town. Any attempted or purported assignment without Town's written consent shall be void and of no effect.
36. **Binding Effect.** All rights and obligations of Artist pursuant to this Agreement shall be personal to Artist and shall terminate upon either the legal disability or incompetence of Artist or upon the death of Artist, except the rights provided to Artist under copyright laws.
37. **Term; Suspension; Termination.**
 - A. This Agreement shall become effective on the Effective Date set forth on the first page of the Agreement and shall continue in effect until the Parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
 - B. Town shall have the right, at any time, to temporarily suspend Artist's performance hereunder, in whole or in part, by giving a written notice of suspension to Artist. If Town gives such notice of suspension, Artist shall immediately suspend their activities under this Agreement, as specified in such notice. Once written notice of suspension is received, Artist shall not recommence with their performance of Artwork until Town provides written notice that the Artist shall proceed with performance.
 - C. Town shall have the right to terminate this Agreement at any time by giving a written notice of termination to Artist. If Town gives such notice of termination, Artist shall immediately cease rendering services pursuant to this Agreement. If Town terminates this Agreement:
 - (1) Artist shall, not later than five (5) days after such notice of termination, deliver to Town copies of all information prepared pursuant to this Agreement.
 - (2) Town shall pay Artist the reasonable value of services rendered by Artist prior to termination; provided, however, Town shall not in any manner be liable for lost profits that might have been made by Artist, had the Agreement not been terminated. In this regard, Artist shall furnish to Town such financial information as, in the judgment of the Town, is necessary for Town to determine the reasonable value of the services rendered by Artist. The foregoing is cumulative and

does not affect any right or remedy that Town may have in law or equity.

[Signature Page Follows]

Executed as of the day and year first above stated.

TOWN OF BRIAN HEAD
A Municipal Corporation

Clayton Calloway, Mayor

Attest:

Nancy Leigh, Town Clerk

(SEAL)

ARTIST:

Terrence Martin of
JAGGED EDGE METAL ART

Exhibits:

EXHIBIT A – Sculpture Proposal

EXHIBIT B - Fabrication, Installation and Delivery

EXHIBIT C – Fees/Manner of Payment

EXHIBIT A

SCULPTURE PROPOSAL



“BRIAN”



SCULPTURE PROPOSAL
BY
TERRENCE MARTIN

JAGGEDGE
METAL ART

INTRODUCTION

Brian Head Town may be relatively small, but from my experience, creates big memories. I actually speak from experience. I had the chance to spend a long weekend in Brian Head in the late 80's while attending the University of Utah. Those cherished memories that were made that very weekend, are still with me to this day. It would be my intent to design an art feature that would do just that, create an amazing memory for others, that would last a lifetime.

LOCATION

We paid careful attention to the community comments, proposal guidelines and local history. In the end, we have taken all this information and in summary feel our major objective is to provide something iconic, highly marketable, robust, interactive, community based and safe. We really want to make this a hallmark, social media and marketing icon for the town. While this may be a tall order, I feel we have developed a concept that fulfills all of these wishes.

While we considered placing multiple sculptures around town, it is my opinion that focusing the project in and around one area, with one dynamic sculpture feature would be essential. Something that would be larger than life. Something that residents and visitors of all ages and ethnicities could connect and bond with. Something that you want to share with others. After thoughtful consideration, we have chosen to locate the sculpture at the Bristlecone Park and Pond site. After surveying the site, we feel that the location in the grass area, just south of the two fire pits would be ideal. In this location, we would use the existing fire pits and barn style picnic area structure as the backdrop. This particular location would be highly visible, both from the street and within the park. This would set the stage perfectly for this sculpture concept, as it is where people would naturally gravitate and gather. Utilities would also be within close proximity for lighting this feature at night.



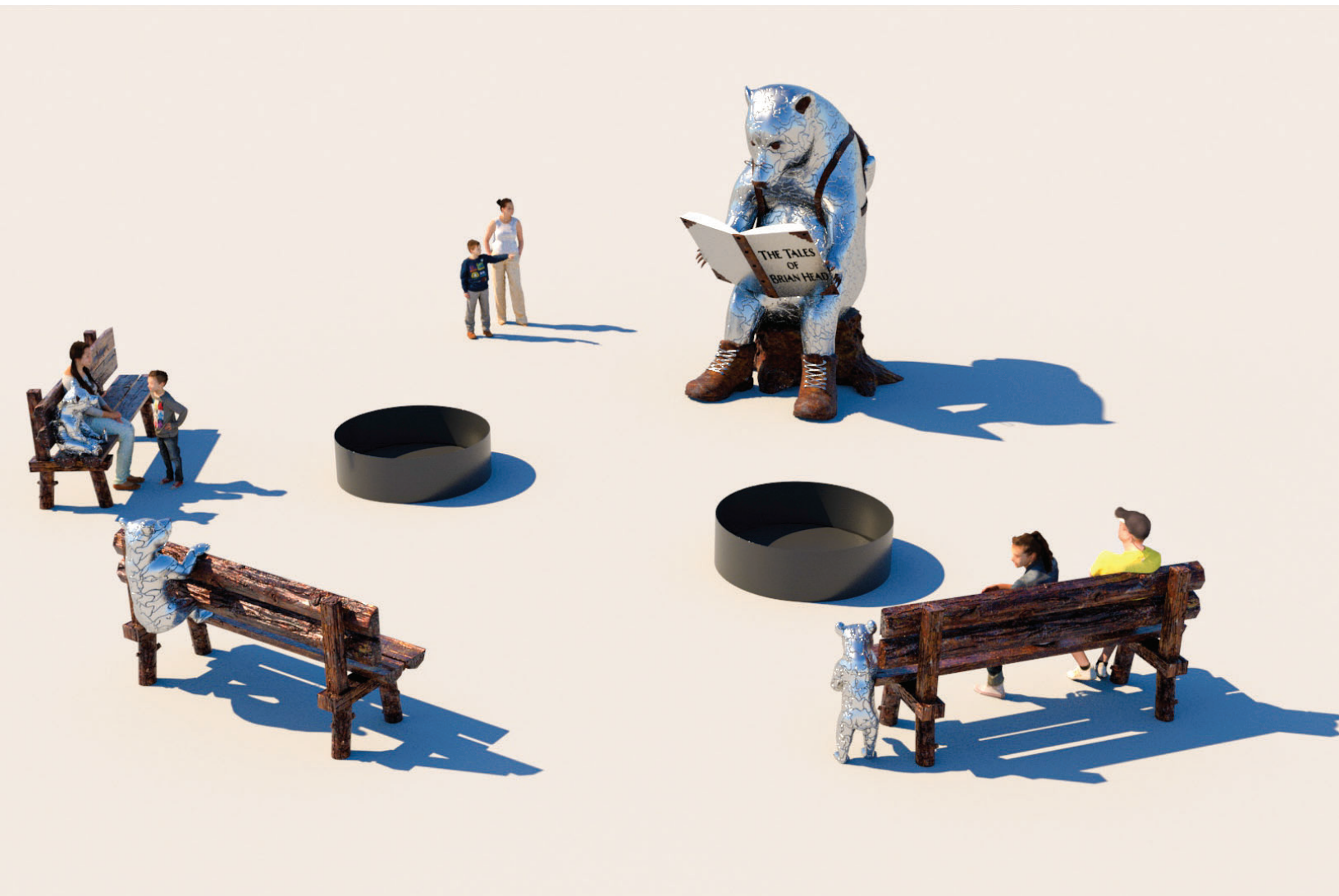
DESIGN CONCEPT

In order to engage the community and visitors, we felt it necessary to create a sculpture that has personality. In a marketability sense, we want to create something that makes strangers a visitor, which in turn creates a customer. Eventually you want that customer to become a lifetime promoter. By promoter, I mean people using keyword descriptions, social media, blogs and word of mouth to share an experience. In the end, the public becomes a source to boost the publicity of Brian Head the town. While this is a marketing concept, it also works in the world of public art. We want to share the beauty and experience of Brian Head with the world. The question is, how can we do that? To help make this happen, we have created "Brian".



DESIGN CONCEPT (CONTINUED)

Brian is a stand alone sculpture fashioned in the likeness of a whimsical and endearing, larger than life Bear. He would be a fixture at the south end of the park, towering over the surroundings at somewhere around 12-13 ft. He would be seated on a realistic looking metal tree stump, attached to a structurally engineered concrete footing. His orientation would have him centered and pointed directly towards the two existing fire pits and the existing covered picnic structure. This placement would make him a central focus of the entire Bristlecone Park and Pond. A quintessential gathering point for the public.



DESIGN CONCEPT (CONTINUED)

To generate a character driven sculpture, Brian would have multiple endearing anthropomorphic elements. His body style would be playful and adorable in nature. Proportions would be slightly exaggerated, but unmistakably bearlike. It is our thought that Brian would be seated at the campfire, reading a giant book to all those in attendance. This book would be titled, "The Tales of Brian Head". He would be holding the book in his lap and appear to be reading the book, outloud.

To add to his character, he would possess certain human traits that would reflect activities that go on in and around Brian Head. These would include, but are not limited to, a backpack, hiking boots, belt with camping accessories attached and of course, some reading glasses. Possibly a fishing pole and a stringer of fish? It would be our thought that we could get some public or committee feedback on what could be included in his attire.



MATERIAL

The sculpture itself would be very robust and constructed to withstand the site conditions at 10,000ft. All materials used within the construction of the sculpture would be a combination of stainless steel and Corten “weathering” steel. Both of which would be the optimal choice of materials for the given environmental conditions. The sculpture would begin with a stainless steel internal support structure. Solid 304B stainless steel rod, ranging from ½ to 1in in diameter would be used to create the internal skeleton. This rod would be hand rolled and manipulated to form the primary form of the “bear”. The external skin of the sculpture would be created with overlapping stainless steel sheet metal “tiles”. To add extra contrast and color, corten “tiles” with a rust patina finish can be added as well. These tiles would be MIG welded together to form a “quilt-like” exterior skin. The stainless steel would have a matte silver finish and the corten would have a natural rust patina. These two colors would stand in contrast and provide a distinctive surface treatment. Both materials would be smooth and highly durable. Both stainless steel and corten are impervious to the elements and would be easy to repair in the event of vandalism and or damage.

STAINLESS & CORTEN SKIN



STAINLESS SKIN



QUILT LIKE SKIN (EXAMPLE)



ADDITIONAL FEATURES

Along with the bear sculpture, it is proposed that three benches be placed in a radiating fashion, around the sculpture. These benches would be placed to work in conjunction with the existing firepits. The benches themselves would be made from steel, in the form of realistic logs. A rust patina would be applied and a clear powder coat would be applied. These benches would be approximately 8ft. long and would accommodate 4-5 people each.



ADDITIONAL FEATURES (CONTINUED)

Accompanying the benches would be a few smaller bear cub sculptures. These would be attached to the benches, as if they are there to listen to the story. This would allow visitors to sit at the benches, next to the little cubs and provide the perfect photographic memory. These smaller sculptures would be in the same design aesthetic as Brian.



ADDITIONAL FEATURES (CONTINUED)

EXISTING FIRE PITS

An additional consideration would be to address the existing fire pits with some added decorative details. These would be laser cut images that would be attached around the perimeter of the pits. These images would be developed to compliment the sculpture installation and further add to a sense of place. These additions would be drilled onsite and bolted to the exterior wall of the fire pit. Stainless steel and Corten sheet metal would be our choice of materials.

STORY BOOK

As an added marketing feature and really unique component to the sculpture, we would like to create a small printable story book, "The Tales of Brian Head". It would be amazing if we could get local feedback to help guide the story. We would then take these suggestions and create a short story accompanied by digital renderings. The town could arrange to have small child size versions printed. These small books could be sold locally for a small donation or fee. This fee could be collected and over time and used to fund a maintenance program for the sculpture.

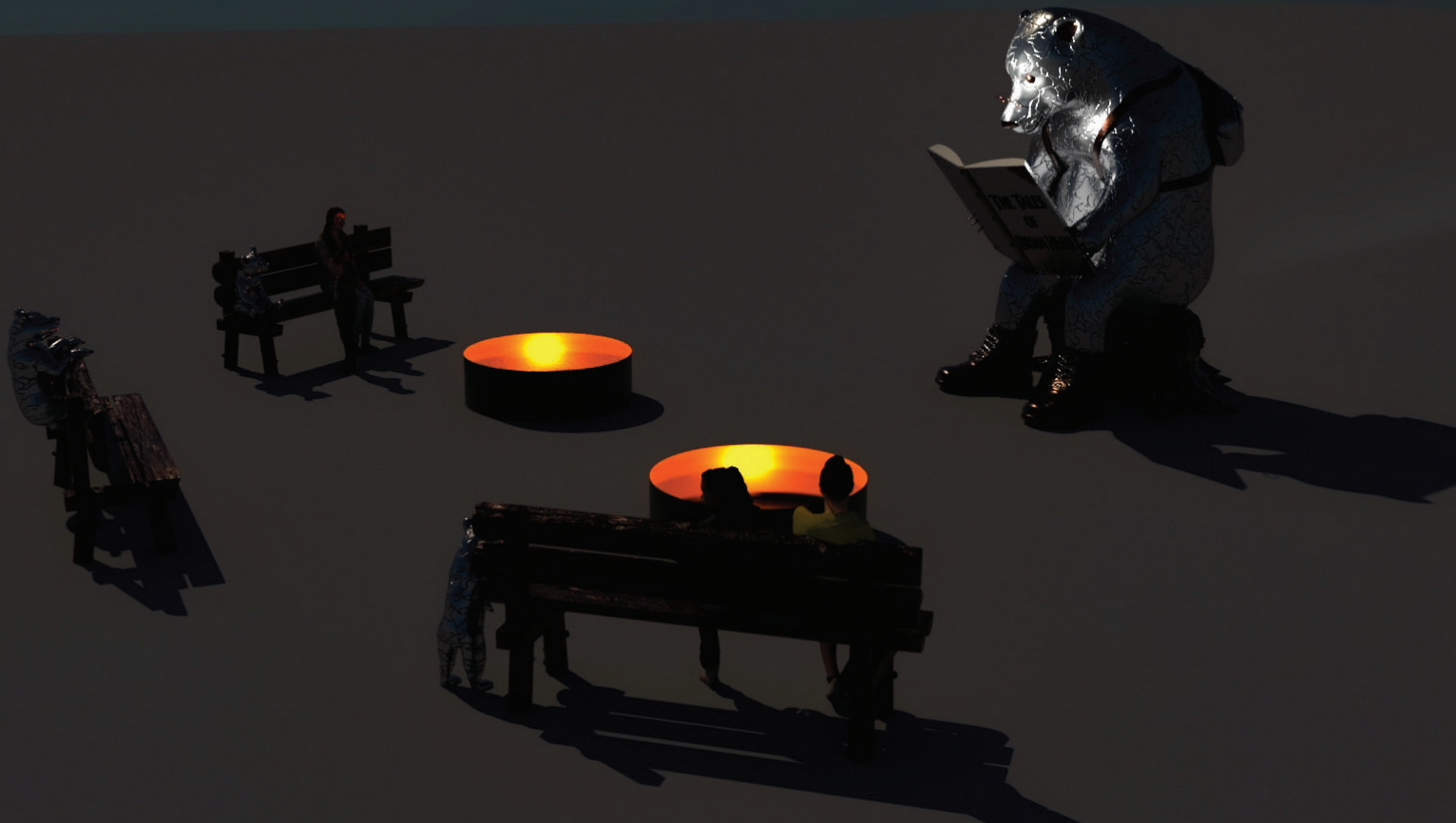


INSTALLATION

Brian would be seated on a realistic tree stump that would be anchored to an engineered footing and would be made with an access door. In the event that the sculpture needs to be moved or repaired, it could be unbolted and lifted from its foundation. Weight would be approximated at or around 3,000lbs. At this weight, installation could be handled by a gradall or similar type of equipment. Lifted off of a flatbed trailer and literally driven and lowered into place.

LIGHTING

Lighting would consist of directional up lighting. These low voltage LED lights would be incorporated into the sculpture itself and not in the ground. These would be placed behind the book feature and would illuminate upwards toward the face and head of the sculpture. These lights could be color changing RGB units that would be programmable. An access door panel would be fabricated on the back of the sculpture and would protect and contain the 12v - 12v transformer. Easy to access and replaceable. LED lights would last with little to no maintenance for over 10 years or more.



LIGHTING (CONTINUED)

VARIETY OF LED COLORS



TIMELINE

September-November	Design and Development
December	Materials and supplies acquisition
January 2022- June	Commence Fabrication
July	Delivery and Installation
August	Unveiling

BUDGET

Artist Fee	\$8,000
Design and Development	\$4,000
Engineering	\$5,000
Materials/Supplies/Hardware	\$26,000
Concrete Footing	\$6,000
Travel/Delivery	\$5,000
Labor (shop/onsite)	\$25,000
CNC laser cutting	\$6,000
Lighting	\$2,500
Insurance/permits/taxes	\$6,000
Contingencies	\$2,000
Total	\$95,500

FINAL STATEMENTS

We would love to be able to bring Brian to life in your small town of Brian Head, Utah. Considering the level of construction and difficulty, this project would reach into the higher budget levels indicated by the call for proposals. However, we feel that the additional expense (\$15,500) is worth the end result and return that would be enjoyed by both the residents and visitors. We believe that the value and price point is in line, if not below what comparably priced sculptures of this size and scope. Steel prices are a big driving force behind the above budget numbers. In the end, we hope that this sculptural dream of Brian, becomes a reality. We feel that this concept would add an iconic and adored character to the community. With over 17 years in the public art business, we know we can provide an amazing sculpture to your town. We control the project in house from start to finish and do not use third parties to create our artworks. This particular project is what we do best, which is to create memories. It would be an honor to be able to bring something back to Utah, a place that helped shape my life and who I am today. We will be completely at your service.



EXHIBIT B

FABRICATION, INSTALLATION AND DELIVERY SCOPE OF SERVICES

1. **Artist Completion of the Artwork.** Artist shall purchase, at Artist's sole expense, all labor, supplies, materials, equipment and other items required to design, fabricate, deliver, and install an exterior artwork ("Artwork") to the satisfaction of Town and in substantial conformance with Artist's Final Design.
2. **Review of Fabrication.** Town staff shall have access to review the Artwork in progress, at regular intervals, to allow the Town to confirm that the fabrication is consistent with the approved Final Design. The Artist shall make such access available to Town staff during reasonable business hours of the Town.
3. **Phases to be Completed by Artist.** Artist shall *not* commence performance of the Artwork identified in "Exhibit A" until Artist receives a written "Notice to Proceed" from the Town. All work shall be performed in accordance with the Project Schedule specified below. Artist shall complete the following phases:

Phase A: Purchasing Material, Supplies, Permits, Installation of Foundation. Upon the Town's written "Notice to Proceed", the Artist shall submit an invoice for up to \$50,000 of the total contract amount for the purchasing materials for fabricating the Artwork and installation of the foundation on site as agreed upon with the architect and APP Staff. Any changes in the scope, design, color, size, material or texture of the Artwork from the Final Design must be approved in writing by the Town before commencement or continuing fabrication.

Phase B: Technical and Maintenance report and Acceptance of Artwork. Once the Artwork has been fabricated and installed, and all services have been completed by the Artist as required by this Agreement, the Artist shall submit a Technical and Maintenance information to the Town Representative. The Town's representative will inspect the Artwork before acceptance of the Artwork. Title to the Artwork shall pass to the Town upon written notice to the Artist of the Town's final acceptance of the Artwork, including its installation, at which time the Artist shall submit an invoice for the remainder of the budget as outlined in Exhibit C.

EXHIBIT C

FEES / MANNER OF PAYMENT

1. **Artist's Compensation.** The total of all fees paid to Artist for the performance of all services set forth in this contract, including normal revisions (hereafter the "Services"), shall not exceed the total sum of **\$95,500**. In the event Artist incurs costs in excess of this not-to-exceed amount, Artist shall pay such excess from Artist's own funds. Town shall not be required to pay any part of such excess and Artist shall not have any claim against Town on account of any cost overruns. If the Town approves any modification of the Final Design or Construction Drawings which results in cost savings such as, but not limited to, the deletion of an element of the Artwork, the substitution of lesser quality, quantity and/or cost materials with no offsetting upgrade of other materials, or the reduction in the Artwork's size, the cost savings attributable to the modification will not be paid to the Artist.
2. **Payments to Artist.** Payments to Artist shall be made within a reasonable time after Town's receipt of Artist's invoices. Following the initial disbursement for purchasing materials, the remaining balance of compensation shall be disbursed proportionately based on the percentage completion of the project.

Artist shall be responsible for the cost of supplying all documentation necessary to verify the billings to the satisfaction of Town. All invoices must contain an itemized description of the services performed under that invoice. No payment shall be made if Artist is in default of this Agreement or if any Phase is not completed to the satisfaction of Town. Town shall be the sole determiner of when a Phase has been completed to its satisfaction. All invoices shall be emailed to the Town Representative identified in Section 23 above. Artist agrees that Town has no obligations regarding commissions or any agreement with galleries or agents with whom the Artist may have contracted, and Town is not responsible for paying sales tax.

3. **Taxes.** Artist shall pay, when and as due, any and all taxes incurred as a result of Artist's compensation hereunder, including estimated taxes, and shall provide Town with proof of the payment upon request. Artist hereby agrees to indemnify Town for any claims, losses, costs, fees, liabilities, damages or injuries suffered by Town arising out of Artist's breach of this section.
4. **Expenses.** All expenses incurred on behalf of the Artwork in accordance with the Budget shall be paid by the Artist and are included in the basic fee above. Expenses shall include transportation-related expenses, room and board during the Artist work-related trips, insurance, consultant fees, telephone, mail, photocopying and material expenses incurred to prepare the site, and fabricate, transport and install the Artwork.
5. **Additional Services.** "Additional Services" are those services related to the

scope of services of Artist set forth in **Exhibit A** -Budget- but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when an amendment authorizing the Additional Services is approved by Town in accordance with Town's amendment procedures. Town reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform the Additional Services.



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Falcon Court Special Assessment Area – Notice of Intent Resolution
AUTHOR: Nancy Leigh, Town Clerk
DEPARTMENT: Administration
DATE: November 9, 2021
TYPE OF ITEM: Legislative Action

SUMMARY:

The Council will consider a resolution to begin the Falcon Court Special Assessment Area (SAA) by adopting a Notice of Intent. Staff is working with the attorney and a resolution should be ready for adoption by Tuesday's Council meeting. Once staff receives the resolution it will be forwarded onto Council for consideration.

BACKGROUND:

In June 2021, staff reported on a new Southwest Health Department regulation regarding water hauling and septic tank permits. The regulation became effective in 2019 but the staff was not aware of this regulation until recently. The Health Department requirement stated that water hauling is not a preferred method for culinary water supply for full-time residential use and unless prohibited by a local municipality, water hauling may be approved for usage for recreational property that does not have year-round access and is prohibited for commercial use which short-term rentals would be considered commercial.

Shortly after the Town received a request from the Leany's who are operating a short-term rental on Falcon Court. The Leany's inquired as to the Town's special assessment area (SAA) process for installing a waterline on Falcon Court. In speaking with her neighbors, Jana Leany learned that her neighbors were also interested in participating in an SAA for a waterline installation project which ended up running north on Falcon Court, crossed over onto Fox Run and back south down Forest Drive to create a looped waterline that connected back into the existing Mountain View Drive waterline.

In July 2021, the Leany's presented their SAA petition for a waterline project for Falcon Court to the Council. The Council gave their approval to begin the process of an SAA that included Falcon Court, Fox Run and Forest Drive. The original petition included three properties owned by the Palmers that were located on the north end of Forest Drive. The Palmer's submitted a written request to withdraw from the SAA and staff removed their properties from the special assessment area. The Leany's still met the +50% approval requirement.

ANALYSIS:

The next step in the SAA process is a Notice of Intent to Create the SAA. Once the Notice of Intent resolution is adopted, it will set the public hearing date and the protest period of 60 days after the public hearing date. Staff will also give written notice to each property owner in the proposed SAA area notifying them of the public hearing date and the protest period.

If there are a total of 40% or higher of written protests submitted against the SAA, the SAA would fail and the Council would have to abandon the SAA as per state law, otherwise, if the SAA has the support of the property owners, the Council's next step will be to consider a Notice of Creation of the SAA. This would take place after the 60-day protest period.

After the Notice of Creation is adopted, the next step would be to adopt an Assessment Ordinance which would identify the specific properties, the term and assessment amount for each property.

The Leany's are looking to begin construction in Spring of 2022 and hoping to be completed with the waterline project by the end of the 2022 construction season.

FINANCIAL IMPLICATIONS:

As of now, the estimated engineering costs for the waterline project is approximately \$425,000. This amount does not include legal costs which would be included in the final assessment. Each property owner would be assessed on an annual basis for their portion of the waterline improvement.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends the Council adopt resolution No. 507, a Notice of Intent to create the Falcon Court Special Assessment Area as presented.

PROPOSED MOTION:

I move to adopt resolution No. 507, a Notice of Intent to create the Falcon Court Special Assessment Area as presented.

ATTACHMENTS:

A – Engineering Estimate for Falcon Court SAA

B – Falcon Court SAA Map.

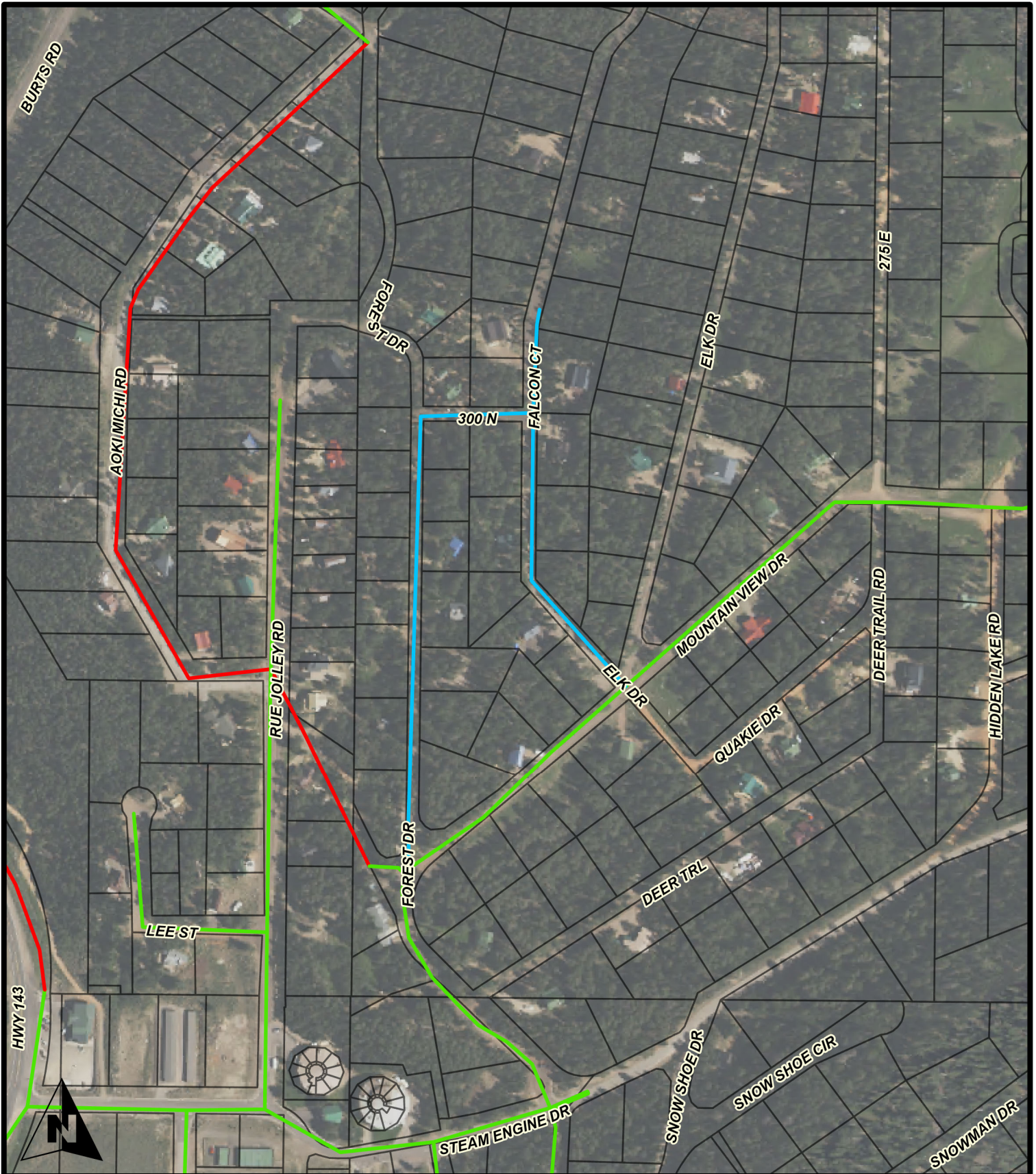
C - Notice of Intent Resolution

Spencer Leany Waterline Extension
Brian Head, Utah
Preliminary Engineer's Opinion of Probable Construction Costs
August 3, 2021

ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNITS	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents
1	Mobilization @ 10%	1	L.S.	\$30,395.00	\$30,395
2	8" D.I. Waterline	2,230	L.F.	\$85.00	\$189,550
3	8" Tee	2	Each	\$950.00	\$1,900
4	8" Gate Valves	6	Each	\$2,700.00	\$16,200
5	Fire Hydrant Assembly	8	Each	\$8,000.00	\$64,000
6	Tie-ins to Existing Piping	2	Each	\$5,000.00	\$10,000
7	6" Roadbase	22,300	Each	\$1.00	\$22,300
SUBTOTAL					\$334,345
10% CONTINGENCY					\$33,435
15% ENGINEERING & CONSTRUCTION MANAGEMENT					\$50,152
TOTAL					\$417,931

An additional cost for AirVac not included in estimated costs p/ Public Works Director \$8,000

Total after additional cost of Airvac **\$425,931**



0 75 150 300 450
Feet



43 South 100 East, Suite 100 • St George, Utah 84770
T: 435.628.6500 • F: 435.628.6553 • alphaengineering.com

Legend

- Existing 6" Line
- Existing 8" Line
- Proposed 8" Waterline

Forest & Falcon

Brian Head, UT

Spatial Reference: UT83-SF

Drawn By: RKB

Scale: 1" = 300 feet

Date: September 2021

TOWN OF BRIAN HEAD, UTAH
NOTICE OF INTENTION TO DESIGNATE TOWN OF BRIAN HEAD, UTAH
SPECIAL TAX ASSESSMENT AREA 2021-02 (FALCON COURT)

November 9, 2021

RESOLUTION NO. 2021-__

A RESOLUTION DECLARING THE INTENTION OF THE TOWN COUNCIL OF THE TOWN OF BRIAN HEAD, IRON COUNTY, UTAH, FOR WATER SYSTEM IMPROVEMENTS AND RELATED IMPROVEMENTS WITHIN THE CEDAR BREAKS MOUNTAIN ESTATES, UNIT C SUBDIVISION; TO DESIGNATE OR CREATE THE TOWN OF BRIAN HEAD, UTAH SPECIAL TAX ASSESSMENT AREA NO. 2021-02 (FALCON COURT); TO FUND THE COST AND EXPENSES OF SAID ASSESSMENT AREA BY SPECIAL TAX ASSESSMENTS TO BE LEVIED AGAINST THE PROPERTY BENEFITTED BY SUCH IMPROVEMENTS; TO PROVIDE NOTICE OF INTENTION TO AUTHORIZE SUCH IMPROVEMENTS AND TO FIX A TIME AND PLACE FOR PROTESTS AGAINST SUCH IMPROVEMENTS OR THE CREATION OF SAID ASSESSMENT AREA; TO DECLARE ITS INTENTION OF FUNDING A RESERVE FUND IN LIEU OF A GUARANTY FUND; AND RELATED MATTERS.

WHEREAS, pursuant to the Utah Assessment Area Act, Title 11, Chapter 42, of the Utah Code, the Town Council of the Town of Brian Head, Iron County, Utah (the Town) has the power to make or cause to be made all of the following improvements, water system improvements that will benefit certain properties in the Cedar Breaks Mountain Estates, Unit C (the Improvements); and

WHEREAS, the Town has received petitions from property owners desiring the water system improvements described herein; and

WHEREAS, the Town desires to designate or create a Special Tax Assessment Area and impose a special tax assessment against the portion of the properties in the Town that will be directly or indirectly benefitted by the Improvements:

BE IT RESOLVED by the Town Council of the Town of Brian Head, Iron County, Utah:

Section 1. The Town Council of the Town hereby determines that it will be in the best interest of the Town to finance and install or have installed the Improvements in specified locations of the Town, and to complete the whole in a proper and workmanlike manner according to plans, profiles and specifications that have been presented to the Town and are on file in the Office of the Town Clerk. In order to finance the costs of the Improvements, the Town proposes to create, establish, and designate a Special Tax Assessment Area. A description of the proposed Special Tax Assessment Area is more particularly described in the Notice of Intention to construct the proposed Improvements hereinafter set forth.

Section 2. The proposed Assessment Area shall be known as the Town of Brian Head, Utah Special Tax Assessment Area No. 2021-02 (Falcon Court) (the “Special Tax Assessment Area”).

Section 3. The cost and expenses of the proposed Improvements shall be paid by a special tax assessment to be levied against the properties on a per lot basis for lots that will be benefited directly or indirectly from the Improvements, or which may be affected or specially benefitted, directly or indirectly, by any of such Improvements, such assessment to be paid in not more than ten (10) annual installments with interest on the unpaid balance until due and paid. An allowance shall be made for corner lots, if applicable, so that such lots are not assessed at the full rate on both streets.

Section 4. The Town Council hereby finds that the water system improvements, including any modifications to streets, that is proposed for Special Tax Assessment Area No. 2021-02 (Falcon Court) are necessary or convenient to enable the Town to provide the water service that the Town proposes and is authorized to provide in Special Tax Assessment Area No. 2021-02 (Falcon Court).

Section 5. A public hearing is called for the Town Council meeting on January 11, 2022, at 1:00 p.m., at the Town offices located at 56 N. Highway 143, Brian Head, Utah 84719 to hear from any person desiring to be heard and objections to a) the designation of the proposed

Town of Brian Head, Utah Special Tax Assessment Areas No. 2021-02 (Falcon Court) or the improvements proposed to be provided in said assessment area; b) the amount that a property reasonably and equitably benefits from the improvements; and c) the inclusion of unassessed benefitted government property.

Section 6. Any owner of property that is proposed to be assess and who does not want its property to be included in the proposed Special Tax Assessment Area No. 2021-02 (Falcon Court) may file a written protest against:

- a) The designation of the Special Tax Assessment Area No. 2021-02 (Falcon Court);
- b) The inclusion of the owner's property in the proposed Special Tax Assessment Area No. 2021-02 (Falcon Court);
- c) The proposed improvements to be acquired or constructed; or
- d) If applicable, the inclusion of an unassessed benefitted government property, the benefit for which the other assessed properties will collectively pay (of which there are none)

Each written protest shall:

- a) Describe or otherwise identify the property owned by the person filing the protest; and
- b) Include the signature of the owner of the property.

The failure of a property owner within the proposed Special Tax Assessment Area No. 2021-02 (Falcon Court) to file a timely written protest constitutes a waiver of any objection to:

- a) The designation of the Special Tax Assessment Area No. 2021-02 (Falcon Court);
- b) Any improvement to be provided to property within the Special Tax Assessment Area No. 2021-02 (Falcon Court);
- c) The inclusion of the owner's property within the Special Tax Assessment Area No. 2021-02 (Falcon Court);
- d) The fact, but not amount, of benefit to the to the owner's property; and
- e) The inclusion of an unassessed benefitted government property in the assessment areas (of which there are none).

The Town Council hereby directs the Town Clerk to post the total and percentage of the written protests that the Town receives on the Town's website, and at the Town office at least five days before the January 11, 2022 meeting against the proposed Improvements or against the creation of the Special Tax Assessment Area must be presented and filed in the Office of the Town Clerk on or before January 4, 2022, at the hour of 4:00 p.m. Any person desiring to be heard may file a written protest or objection to a) the designation of the proposed Town of Brian Head, Utah Special Tax Assessment Areas No. 2021-02 (Falcon Court) or the improvements proposed to be

provided in said assessment area; b) the amount that a property reasonably and equitably benefits from the improvements; and c) the inclusion of unassessed benefitted government property (of which there is none). Thereafter at 1:00 p.m. on January 11, 2022, at 56 N. Highway 143, Brian Head, Utah, 84719, any such written protests shall be heard and considered by the Town Council.

Section 7. The Town Clerk is hereby directed to give notice of intention to make the proposed improvements and of the public hearing and of the time within which protests against the proposed improvements or the designation of the proposed Special Tax Assessment Area may be filed and the date when such protests will be heard and considered by publishing a notice of intention to create the Assessment Area in the Spectrum, a newspaper of general circulation in the Town, said notice to be published four times, once during each week for four consecutive weeks, the last publication to be not less than five (5) nor more than twenty (20) days prior to the date of the public hearing. The Town Clerk shall also post the Notice of Intention on the Utah Public Notice Website for four weeks. In addition, the Town Clerk shall mail a copy of such notice by United States Mail, postage prepaid, to each owner of land to be assessed within the proposed Special Tax Assessment Area at the last known address of such owner, using for such purpose the names and addresses of said owners appearing on the last completed real property assessment rolls of Iron County, said notices to be so mailed not later than ten (10) days after the first publication of the Notice of Intention or the posting of the Notice of Intention of the Utah Public Notice Website, whichever is first. Said Notice shall be in substantially the following form:

NOTICE OF INTENTION

PUBLIC NOTICE IS HEREBY GIVEN that the Town Council (the “Town Council”) of the Town of Brian Head, Iron County, Utah (the “Town”), intends to create or designate a Special Tax Assessment Area to be known as the Town of Brian Head, Iron County, Utah Special Tax Assessment Area No. 2021-02 (Falcon Court) (the “Special Tax Assessment Area”). Accordingly, the Town Council called a public hearing regarding the creation or designation of the Special Tax Assessment Area to be held on January 11, 2022, at 1:00 p.m. at the Town Office at 56 N. Highway 143, Brian Head, Utah 84719, to hear from any person desiring to be heard and objections to a) the designation of the proposed Town of Brian Head, Utah Special Tax Assessment Areas No. 2021-02 (Falcon Court) or the improvements proposed to be provided in said assessment area; b) the amount that a property reasonably and equitably benefits from the improvements; and c) the inclusion of unassessed benefitted government property (of which there is none). It is the intention of the Town Council to make water system improvements within the Special Tax Assessment Area and to levy special assessments as provided in Title 11, Chapter 42, Utah Code Annotated 1953, as amended, on the real estate lying within the Special Tax Assessment Area as described herein for the benefit of which such assessments are to be assessed in the making of such improvements.

DESCRIPTION OF SPECIAL TAX ASSESSMENT AREA

The proposed Special Tax Assessment Area shall include the following real property in the Town of Brian Head, Iron County, UT and is described as:

The properties in the Cedar Breaks Mountain Estates, Unit C subdivision in the Town of Brian Head, Iron County, Utah. More specifically the following parcel numbers in said Falcon Court. Properties other than the identified parcel numbers will not be included in the proposed Special Tax Assessment Area.

Parcel #	Cedar Breaks Mountain Estates, Unit C Subdivision
A-1211-014A-0000	Lot #14A
A-1211-0016-0000	Lot #16
A-1211-0017-0000	Lot #17
A-1211-0018-0000	Lot #18
A-1211-0019-0000	Lot #19
A-1211-0020-0000	Lot #20
A-1211-0021-0000	Lot #21
A-1211-0027-0000	Lot #27
A-1211-0028-0000	Lot #28
A-1211-0029-0000	Lot #29

A-1211-0030-0000	Lot #30
A-1211-0031-0000	Lot #31
A-1211-0032-0000	Lot #32
A-12-11-0033-0000	Lot #33
A-1211-0034-0000	Lot #34
A-1211-0035-0000	Lot #35
A-1211-0036-0000	Lot #36
A-1211-0041-0000	Lot #41

INTENDED IMPROVEMENTS

The improvements to be constructed within the Special Tax Assessment Area are as follows:

Water System Improvement: Water System Improvements to extend water lines on Falcon Court, Fox Run, and Forest Drive, and related improvements, and complete the whole in a proper and workman like manner with all drainage and other improvement appurtenant and useful to a water system and associated municipal improvements.

ESTIMATED COST AND METHOD OF ASSESSMENT

Estimated Cost and Method of Assessment: The total cost of Improvements in the Special Tax Assessment Area is currently estimated to be \$435,000.00, of which the Town will pay \$0 leaving a remainder of \$435,000.00 which shall be paid by special tax assessment on the private property within the Special Tax Assessment Area.

This includes engineering costs, overhead costs and funding of a reserve fund described herein, all of which shall be paid by special tax assessment to be levied against the properties which may be directly or indirectly benefited by the Improvements which benefits need not actually increase the fair market value of the property to be assessed. The property owners' portion of the total estimated cost of the Improvements may be financed during the construction period by the use of interim warrants, in which case the interest on said warrants will be assessed to the property owners.

In lieu of utilizing a guaranty fund, the Town Council intends to create a special reserve fund, if desired by lenders, to secure payment of the special assessment bonds (the "Bonds") anticipated to be issued by the Town to finance the proposed Improvements. The reserve fund will be either initially funded with proceeds of the Bonds in an amount equal to approximately ten percent (10%) of the total principal amount of Bonds to be issued, or by building up a reserve

fund over a period of six years until an amount equal to approximately ten percent (10%) of the total principal amount of Bonds to be issued is placed in the reserve fund. The Town Council anticipates applying any moneys remaining in the reserve fund to the final payment on the Bonds which, in turn, would offset the final assessment payments to be made by the owners of property benefited by such Improvements, all of which will be further described in the assessment ordinance to be adopted by the Town. Any money in the reserve fund upon full payment of the Bonds is to be disbursed ratably to each assessed lot owner as of the date of disbursement. In addition, estimated costs of assessment include estimated overhead costs which the Town projects to incur in the creation and administration of the Special Tax Assessment Area. If Bonds are issued, the current estimated interest rate is no more than 6.50% per annum and the estimated discount is no more than 2.00%, subject to market rates at the time of issuance and the current estimated term of financing is ten (10) years.

The estimated cost and method of assessment against the properties for the Improvements are as follows:

<u>Improvement</u>	<u>Estimated Assessment</u>	<u>Method of Assessment</u>
Water System Improvement	\$435,000 total cost or \$24,166 per lot.	Per lot.
Total of All Improvements	\$435,000 total cost or \$24,166 per lot	Per lot.

For assessment purposes, if applicable, an owner of a lot is defined herein to be the owner of a platted lot within the Town of Brian Head, Iron County, Utah according to the official records of the Town of Brian Head, upon which a residential, commercial, or other structure to be used for human occupancy is now or may be located consistent with the "lot size" requirements of the applicable Town of Brian Head Land Management ordinances in place as of the date this is adopted.

LEVY OF ASSESSMENTS

It is the intention of the Town Council to levy assessments as provided by the laws of Utah on all property, parcels, and lots of real property to be benefited by the proposed improvements within the Special Tax Assessment Area. The purpose of the assessment and levy is to pay those costs of the improvements which the Town will not assume and pay. The method of assessment shall be per lot, as set forth herein.

The assessments may be paid by property owners in not more than ten (10) annual installments with interest on the unpaid balance at a rate or rates fixed by the Town, or the whole or any part of the assessment may be paid without interest within twenty-five (25) days after the ordinance levying the assessment becomes effective. The assessments shall be levied according to the benefits to be derived by each property within the Special Tax Assessment Area. Other payment provisions and enforcement remedies shall be in accordance with Title 11, Chapter 42, Utah Code Annotated 1953, as amended. The assessment method will be by inclusion on a property tax notice issued in accordance with Section 59-2-1317 and in compliance with Section 11-42-401 of the Utah Code.

A map of the proposed Special Tax Assessment Area is on file in the Town offices which will make such information available to all interested persons. Copies of plans, profiles and specifications of the proposed improvements shall be made available by the Town as soon as they have been prepared.

TIME FOR FILING PROTESTS

Any person who is the owner of record of property to be assessed in the Special Tax Assessment Area described in this Notice of Intention shall have the right to file in writing a protest against the creation of the Special Tax Assessment Area or to make any other objections relating thereto. Protests shall describe or otherwise identify the property owner of record by the person or persons making the protest and shall indicate the total number of lots represented by said protest. Protests shall be filed with the Town Clerk of the Town of Brian Head, Utah, on or before sixty (60) days after the public hearing to be held January 11, 2022, at 1:00 p.m. at the Town Office. The Town Council will meet on April 13, 2022, at 1:00 p.m. in public meeting at the regular meeting place of the Town Council at the Town Office at 56 N. Highway 143, Brian Head, Utah 84719 to consider all protests so filed and hear all objections relating to the proposed improvements. Each protest must be filed in writing and describe or otherwise identify the property owned by the person filing the protest and include the signature of the property owner.

A PROPERTY OWNER MUST PROTEST THE DESIGNATION OF THE SPECIAL TAX ASSESSMENT AREA IN WRITING IF THE OWNER OBJECTS TO (1) THE DESIGNATION OF THE SPECIAL TAX ASSESSMENT AREA, (2) ANY PROPOSED IMPROVEMENT, (3) THE INCLUSION OF THE OWNER'S PROPERTY, OR (4) THE FACT, BUT NOT AMOUNT, OF BENEFIT TO THE OWNER'S PROPERTY. Failure of an owner of property to file a timely written protest can constitute a waiver.

After such consideration and determination, the Town Council shall adopt a resolution either abandoning the Special Tax Assessment Area or creating and designating the Special Tax Assessment Area either as described in this Notice of Intention or with deletions and changes made as authorized by law; but the Town Council shall abandon the Special Tax Assessment Area and not create the same if the necessary number of protests as provided herein have been filed on or before the time specified in this Notice of Intention for the filing of protests after eliminating from such filed protests: (i) protests relating to property or relating to a type of improvement which has been deleted from the Special Tax Assessment Area, and (ii) protests

which have been withdrawn in writing prior to sixty (60) days after the public hearing. The necessary number of protests shall mean the aggregate of the protests representing forty percent (40%) of the owners proposed to be assessed, according to the same assessment method by which the assessment is proposed to be levied.

BY ORDER OF THE TOWN COUNCIL OF TOWN OF BRIAN HEAD, IRON COUNTY, UTAH

/s/ Nancy Leigh
Town Clerk

Published in the Spectrum.

Publication Dates: December 5, 12, 19, 26, 2021

Section 8. The Town Council reasonably expects, to reimburse the Town from proceeds of the Bonds for capital expenditures paid by the Town (whether or not such expenditures are paid from proceeds of interim warrants) with respect to the Improvements.

Section 9. This declaration is intended to be a declaration of official intent under Treasury Regulation ' 1.103-18(1).

Section 10. The maximum principal amount of debt expected to be issued for reimbursement purposes is \$478,000.00. This amount will be reduced by cash payments received by the Town from property owners who elect to pay their assessment in full during the cash payment period immediately following the effective date of the assessment ordinance.

Section 11. This declaration of official intent is consistent with the Town's budgetary and financial circumstances. No funds from sources other than the Bonds are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the Town or by any member of the same controlled group pursuant to their budget or financial policies with respect to the expenditures to be reimbursed.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF BRIAN HEAD, IRON COUNTY,
UTAH THIS November 9, 2021.

Clayton Calloway, Mayor

ATTEST:

Nancy Leigh, Town Clerk

(S E A L)

RECORD OF PROCEEDINGS

A regular meeting of the Town Council of the Town of Brian Head, Iron County, Utah was held on November 9, 2021, at 1:00 p.m., or as soon thereafter as feasible, at the regular meeting place of said Town Council at 56 N. Highway 143, Brian Head, Utah 84719 at which meeting there were present and answering roll call the following members who constituted a quorum:

Clayton Calloway	Mayor
Lynn Mulder	Council Member
Shaun Kelly	Council Member
Kelly Marshall	Council Member
Larry Freeberg	Council Member

Also present:

Nancy Leigh	Town Clerk
Bret Howser	Town Manager

Absent:

After the meeting had been duly called to order and other matters not pertinent to this resolution had been discussed, the Town Clerk presented to the Town Council a Certificate of Compliance with Open Meeting Law with respect to this November 9, 2021 meeting, a copy of which is attached hereto.

Council Member _____ introduced the foregoing resolution in writing and moved its adoption. Council Member _____ seconded the motion to adopt the foregoing resolution. The motion and resolution were adopted on the following recorded vote:

Those voting AYE:

Those voting NAY:

Those ABSTAINING:

After the conduct of other business not pertinent to the above, the meeting was adjourned.

STATE OF UTAH)

: ss.

COUNTY OF IRON)

I, Nancy Leigh, the duly chosen, qualified and acting Town Clerk of the Town of Brian Head, Iron County, Utah, do hereby certify as follows:

That the foregoing typewritten pages constitute a full, true and correct copy of the record of proceedings of the Town Council taken at a regular meeting thereof held in said Town on November 9, 2021, at the hour of 1:00 p.m., insofar as said proceedings relate to the consideration and adoption of a resolution declaring the intention of the Town Council to create the Town of Brian Head, Utah Assessment Area No. 2021-02 (Falcon Court) and make certain improvements therein described as the same appears of record in my office; that I personally attended said meeting, and that the proceedings were in fact held as in said minutes specified.

That due, legal, and timely notice of said meeting was served upon all members as required by law and the rules and ordinances of said Town.

That the above resolution was deposited in my office on November 9, 2021, has been recorded by me, and is a part of the permanent records of the Town of Brian Head, Iron County, Utah.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the seal of said Town this November 9, 2021.

Nancy Leigh, Town Clerk

(S E A L)

STATE OF UTAH)

: ss.

COUNTY OF IRON)

AFFIDAVIT OF MAILING

NOTICE OF INTENTION

I, Nancy Leigh, the duly chosen, qualified and acting Town Clerk of the Town of Brian Head, Iron County, Utah, do hereby certify that the attached Notice of Intention was approved and adopted in the proceedings of the Town Council had on November 9, 2021.

I further certify that on the _____, 2021 (a date not later than ten (10) days after the first publication of the Notice of Intention (or the posting on the Town Website, whichever was first) I mailed a true copy of the Notice of Intention to create the Town of Brian Head, Utah Assessment Area No. 2021-02 (Falcon Court) by United States Mail, postage prepaid to each owner of land to be assessed within the proposed Assessment Area at the last known address of such owner, using for such purpose the names and addresses appearing on the last completed real property assessment rolls of Iron County. I further certify that a certified copy of said Notice of Intention together with profiles of the improvements and a map of the proposed Assessment Area, was on file in my office for inspection by any interested parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Brian Head, Iron County, Utah this _____, 2021.

Nancy Leigh, Town Clerk

(S E A L)

(Affidavit of proof of publication of the Notice of Intention to create the Town of Brian Head, Utah Assessment Area No. 2021-02 (Falcon Court)).

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Nancy Leigh, the undersigned Town Clerk of the Town of Brian Head, Iron County, Utah (the Town), do hereby certify, according to the records of the Town in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-6(2), Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the November 9, 2021 public meeting held by the Town as follows:

(a) By causing a Notice, in the form attached hereto (the "Meeting Notice"), to be posted at the principal office of the Issuer at least twenty-four (24) hours prior the convening of the meeting, the Meeting Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of the Meeting Notice to be delivered to a newspaper of general circulation in the geographic jurisdiction of the Issuer at least twenty-four (24) hours prior to the convening of the meeting; and

(c) By causing a copy of the Meeting Notice to be published on the Utah Public Notice Website at least twenty-four (24) hours prior to the convening of the meeting; and

(d) By causing a copy of the Meeting Notice to be delivered to each member of the Town Council of the Issuer at least twenty-four (24) hours prior to the convening of the Meeting.

In addition, the Notice of 2021 Annual Meeting Schedule for the Issuer, attached hereto, specifying the date, time and place of the regular meetings of the governing body of the Issuer to be held during the calendar year 2021 was (1) posted on December 8, 2020, at the principal offices of the Issuer; (2) provided to a newspaper of general circulation within the geographic jurisdiction of the Town on December 15, 2020; and (3) published on the Utah Public Notice Website on January 26, 2021.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this November 9, 2021.

Nancy Leigh, Town Clerk

(S E A L)

SCHEDULE "1"

**NOTICE OF MEETING and EVIDENCE OF POSTING MEETING NOTICE
ON PUBLIC NOTICE WEBSITE**

SCHEDULE "2"

**NOTICE OF ANNUAL MEETING SCHEDULE
EVIDENCE OF POSTING ANNUAL NOTICE ON PUBLIC NOTICE
WEBSITE**



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Trail Road Special Assessment Area Petition
AUTHOR: Nancy Leigh, Town Clerk
DEPARTMENT: Administration
DATE: November 9, 2021
TYPE OF ITEM: Legislative Action

SUMMARY:

The Council will consider a petition for a special assessment area (SAA) on Trail Road for water and sewer improvements.

BACKGROUND:

Mr. Steve Traylor, a property owner on Trail Road is submitting a petition to begin a special assessment area for Trail Road that would include water and sewer improvements. Mr. Traylor reported he has a majority of the property owners who are in favor of a SAA and would like to have water and sewer to their properties.

As with the previous SAA's, staff is starting to see more of petitions being submitted for infrastructure improvements. Mr. Traylor's goal is to begin construction in the Spring of 2022.

The SAA Policy states that a majority of the property owners within an area need to sign the petition in order to begin the process. Mr. Traylor has acquired 18 signatures out of 28 lots which is 64% of the property owners within the proposed SAA. Mr. Traylor indicated he would have additional signatures to add to the petition. This meets the qualifier of 50% of the property owners. If the Council chooses to move forward with the petition, then additional information would need to be gathered such as the estimated cost of the project, legal descriptions for the properties and a map of the proposed SAA area which will be sent to the attorney to draft the Notice of Intent which will identify the public hearings and the 60-day protest period after the public hearings are held.

ANALYSIS:

Staff will give written notice to each property owner of the public hearing dates and the process for protesting the SAA. If there is 40% of the property owners who protest the SAA, the Council would then adopt a resolution abandoning the SAA. If it is successful during the public hearing process, the Council will adopt a Notice to Create the SAA.

In looking at a tentative timeline for this project if everything goes according to plan:

November 9, 2021 Town Council Meeting: Council approves the SAA petition.

December 14, 2021 Town Council Meeting: Notice of Intent Resolution

February 08, 2022 Town Council Meeting: Public Hearing for SAA

April 26, 2022 Town Council Meeting: Adopt either Creation of SAA or Abandon SAA.

After the April 26th meeting and the SAA succeeds, then the Council will adopt an assessment ordinance identifying the amount each property will be assessed over a period of time.

FINANCIAL IMPLICATIONS:

As of now, staff currently has a partial estimate of cost that Mr. Traylor submitted from Orton Excavation. Staff will need to review the cost estimate and verify with the engineers on this project before it is submitted to legal for the Notice of Intent resolution.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff does not have a position on this petition. Staff will verify the signatures and begin gathering needed documents for the next step if the Council approves the petition.

PROPOSED MOTION:

I move to approve the Trail Road Special Assessment Area petition and direct staff to proceed with the SAA process.

ATTACHMENTS:

A – Trail Road SAA Petition with signatures

B – Trail Road SAA Map area.

Brian Head Town

Special Assessment Areas

What is a Special Assessment Area?

A Special Assessment Area (SAA) is an area legally defined through ordinance by the Town Council for the installation of public way improvements. Public way improvements may involve the installation of curb and gutter, sidewalks, and drive approaches where such improvements have not previously existed. Improvements may also include roadway and drainage improvements, accessibility ramp construction, and installation of culinary water and sanitary sewer systems. All SAA improvements must extend from existing similar Town owned and approved facilities. SAA projects upgrade the community through the elimination of drainage problems, pedestrian safety concerns, year-round access, fire protection and unsightly conditions in the public way.

What does it Cost?

Actual costs may vary based on specific construction needs and bids received from contractors when the Special Assessment Area is created. The sponsor of the SAA will work with the Town on preliminary engineering estimates for improvements.

At the completion of the project when actual costs are determined, a special tax assessment is placed on all abutting properties according to the proportional benefit received from the public way improvements. Property owners can pay the assessment in one lump sum or through equal annual installments. The installment plan for Water, Sewer and Street Extension SAA's are generally spread over ten years. Interest charges are accrued on the unpaid balance at a rate established by the Town Treasurer. This interest rate is set when the Town obtains a municipal bond for the project. Favorable interest rates have always been obtained because of the excellent bond rating held by Brian Head Town. Property owners who pay the entire assessment within fifteen days of the initial notification avoid any interest charges.

How do I get an SAA in my neighborhood?

Property owners can petition the Town for the installation or reconstruction of public way improvements through a Special Assessment Area. Those signing the petition must be the owners of the properties adjacent to the requested public way improvements, not residents that are renting or leasing the property. A petition form is provided at the end of this information sheet for your use in collecting signatures and determining support of the proposed project. Apparent support of the project, as indicated by those signing the petition, must represent greater than 50% of the total properties/lots of the proposed public way improvements for the Town Council to accept a petition and consider the creation of a Special Assessment Area.

Once the sponsor has acquired the required signatures that meet the majority of the property owners who are in favor of a SAA, the petition is to be submitted to the Town Clerk for verification of signatures and legal property owners. Once confirmed, the Town Clerk will present the petition to the Town Council for approval.

How long does it take?

SAA petitions are given immediate attention. The time frame from receipt of a petition to construction is approximately 18 months (or sooner), pending the availability of capital

improvement funding. Activities that occur during this time frame include public meetings to address property owner concerns, defining the project scope, designing the project, preparing cost estimates, determining the availability of funding, and complying with all SAA bonding requirements.

Please contact the Town offices to obtain more information and/or assistance.

Phone: 435-677-2029

Petition on following page must be completed and signed by the legal owner of the property.

Special Assessment Area Petition

Public Way Improvements

PETITIONERS' SPOKESPERSON:

Steve Traylor

PHONE: 858-602-8054

MAILING ADDRESS: 11956 Bernardo Plaza Drive, Ste. 240, San Diego, CA, 92128**PHYSICAL ADDRESS OF PROPERTY:** 451 E TRAIL RD, BRIAN HEAD, UT, 84719**SUBDIVISION:** CEDAR BREAKS MOUNTAIN ESTATES **UNIT:** B **BLOCK:** **LOT#** 21**LOCATION OF PROPOSED DISTRICT:**

N. HIDDEN LAKE RD. BETWEEN E. STEAM ENGINE DR ON SOUTH AND E MT. VIEW DR. ON NORTH; ALSO EXTENDING NORTHWESTERLY ON E. TRAIL RD. FROM HIDDEN LAKE ON THE EAST, TERMINATING AT LOT #38 ON E. TRAIL RD.; INCLUDING LOTS #5-13 AND LOTS #21-38 AND LOT #47 WITHIN CEDAR BREAKS MOUNTAIN ESTATES, UNIT B

SEE ATTACHED DIAGRAM

SPECIFIC IMPROVEMENTS REQUESTED:☐ Sidewalk☐ Curb and Gutter☐ Drive Approaches☐ Total Street Reconstruction☒ Water System☒ Sewer System☐ Gravel Road Construction☐ Paved Road Construction☐ Other: _____

Adopted September 14, 2021

4

ADDITIONAL COMMENTS OR REQUESTS:

It is our understanding there is existing sewer and water system on E. Mountain View Drive, crossing private property, Lots #19-20 of the same subdivision. Our proposal is to connect to both existing systems at intersections of N. Hidden Lake Rd/E. Mountain View Dr. as well as at Northern edge of Lot #38 where these existing systems cross E. Trail Road and form a loop. Also to extend South from intersection of N. Hidden Lake Rd./E. Trail Rd., terminating at E. Steam Engine Dr. (Southwest corner of Lot #47).

Special Assessment Area Petitioners

Signature: _____ Date: _____

(Print Name: Eric Palacios) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 5

DocuSigned by:

Signature:  Date: 11/8/2021

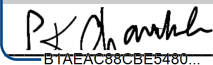
BTAEAC88CBE5480...

(Print Name: Paul Chamberlain) Phone: Paul Chamberlain
pablo1949@aol.com

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 6

DocuSigned by:

Signature:  Date: 11/8/2021

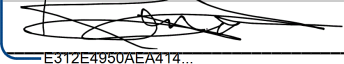
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(Print Name: Paul Chamberlain) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 7

DocuSigned by:

Signature:  Date: 11/8/2021

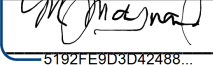
E31ZE4950AE414...

(Print Name: Ryan Jones) Phone: 435.668.2617
1205 E High Ridge Dr St. George UT 84780

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 8

DocuSigned by:

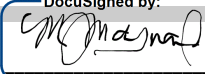
Signature:  Date: 11/8/2021

5192FE9D3D42488...

(Print Name: Richard Schmitt) Phone: Richard SchmittMailing Address: 177 Hidden Lake Road Brian Head UtahSubdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 9

Adopted September 14, 2021

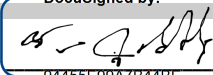
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DocuSigned by:

Signature: _____ Date: 11/8/2021
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(Print Name: Richard Schmitt) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 10

DocuSigned by:

Signature: _____ Date: 11/8/2021
94455E99A7B44BE...

(Print Name: William Schlaf) Phone: 702-274-6398

Mailing Address: 9720 Craighead Ln Las Vegas, NV 89117

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 13

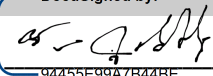
DocuSigned by:

Signature: _____ Date: 11/8/2021
A75C68CF73C14E8...

(Print Name: Peggy Koning) Phone: Peggy Micco Koning

Mailing Address: 10209 Los Padres Place Las Vegas, NV 89134

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 12

DocuSigned by:

Signature: _____ Date: 11/8/2021
94455E99A7B44BE...

(Print Name: William Schlaf) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 11

DocuSigned by:

Signature: _____ Date: 11/8/2021
10825B8C83A54FA...

(Print Name: Michael Blue) Phone: Michael C Blue

Mailing Address: P.O. 190235 Brian Head, UT, 84719

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 28

Signature: _____ Date: _____

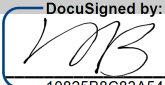
(Print Name: Gary Miller) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 47

Adopted September 14, 2021

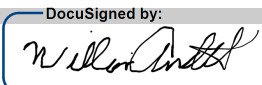
6

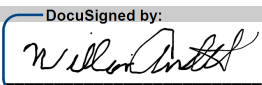
DocuSigned by:
Signature:  Date: 11/8/2021
10825B8C83A54FA...
(Print Name: Michael Blue) Phone: _____
Mailing Address: _____
Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 29

Signature: _____ Date: _____
(Print Name: Chris Jacobsen) Phone: _____
Mailing Address: _____
Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 30

Signature: _____ Date: _____
(Print Name: Hannah Ripplinger) Phone: _____
Mailing Address: _____
Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 31

Signature: _____ Date: _____
(Print Name: James Helvie) Phone: _____
Mailing Address: _____
Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 32

DocuSigned by:
Signature:  Date: 11/8/2021
8BBF9B82B4254D7...
(Print Name: William Anstett) Phone: 7026589913
4579 Harey Sptngs Cir Las Vegas, NV 89129
Mailing Address: _____
Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 33

DocuSigned by:
Signature:  Date: 11/8/2021
8BBF9B82B4254D7...
(Print Name: William Anstett) Phone: _____
Mailing Address: _____
Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 34

Adopted September 14, 2021

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DocuSigned by:
Signature: Richard Gelb Date: 11/8/2021
DDEE1955DDDF4AE...
(Print Name: Richard Gelb) Phone: Richard Gelb
157 S70 west
Mailing Address: Lindon, UT 84042
CEDAR BREAKS MOUNTAIN ESTATES
Subdivision: _____ Unit B Block _____ Lot 35

DocuSigned by:
Signature: Tim McLaughlin Date: 11/8/2021
DFB7061A185642A...
(Print Name: Tim McLaughlin) Phone: 808 294c8128
26 skybird ct Las Vegas, NV 89135
Mailing Address: _____
CEDAR BREAKS MOUNTAIN ESTATES
Subdivision: _____ Unit B Block _____ Lot 36

DocuSigned by:
Signature: Kenneth Flippin Date: 11/8/2021
2E3ED90C70B947F...
(Print Name: Kenneth Flippin) Phone: 1-702-296-8104
6772 Running Colors Ave. Las Vegas, NV. 89131
Mailing Address: _____
CEDAR BREAKS MOUNTAIN ESTATES
Subdivision: _____ Unit B Block _____ Lot 37

DocuSigned by:
Signature: Kenneth Flippin Date: 11/8/2021
2E3ED90C70B947F...
(Print Name: Kenneth Flippin) Phone: _____
Mailing Address: _____
CEDAR BREAKS MOUNTAIN ESTATES
Subdivision: _____ Unit B Block _____ Lot 38

DocuSigned by:
Signature: Steve A Traylor Date: 11/8/2021
0337EF8C7E46423...
(Print Name: Steve Traylor) Phone: 858-602-8054
11956 Bernardo Plaza Drive, Ste. 240, San Diego, CA, 92128
Mailing Address: _____
CEDAR BREAKS MOUNTAIN ESTATES
Subdivision: _____ Unit B Block _____ Lot 21

DocuSigned by:
Signature: Michael P. Hill Date: 11/8/2021
B29198A8DCE14A2...
(Print Name: Michael P. Hill) Phone: 435-531-6115
1014 S Main St Cedar City Ut 84720
Mailing Address: _____
CEDAR BREAKS MOUNTAIN ESTATES
Subdivision: _____ Unit B Block _____ Lot 22

Adopted September 14, 2021

8

Signature: _____ Date: _____

(Print Name: _____) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 23

Signature: _____ Date: _____

(Print Name: William Lindquist) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 24

Signature: _____ Date: _____

(Print Name: Marilyn Oehler) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 25

Signature: _____ Date: _____

(Print Name: Chintana Nagy) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 26

Signature: _____ Date: _____

(Print Name: David Rich) Phone: _____

Mailing Address: _____

Subdivision: CEDAR BREAKS MOUNTAIN ESTATES Unit B Block _____ Lot 27

Signature: _____ Date: _____

(Print Name: _____) Phone: _____

Mailing Address: _____

Subdivision: _____ Unit _____ Block _____ Lot _____

This aerial map shows a residential area with several streets and numbered lots. The streets include N 275 E, N 275 E, E Mt View Dr, E Hidden Lake Rd, E Trail Rd, E Steam Engine Dr, E Lookout Cir, E Cascade Dr, and N 450 E. The lots are numbered #5 through #47. A red line highlights a specific survey path, starting from the intersection of N 275 E and E Hidden Lake Rd, running north along N 275 E, then east along E Hidden Lake Rd, and finally south along E Trail Rd. A blue line highlights another survey path, starting from the intersection of N 275 E and E Mt View Dr, running north along N 275 E, then east along E Mt View Dr, and finally south along E Trail Rd. Green dots are placed at various points along these highlighted paths, likely indicating survey stations or specific points of interest.

Red Line=proposed water/sewer system

Measurement



| Feet (US) ▼

Measurement Result

1,634.7 Feet (US)

Clear

Press **CTRL** to enable snapping

