

TOWN OF PALM BEACH

Information for Town Council Meeting on: April 9, 2024

To: Mayor and Town Council

Via: Kirk W. Blouin, Town Manager

From: Carolyn S. Stone, Deputy Town Manager, Business Enterprise and Culture

Re: Phipps Ocean Park Update on Capital Grant and Operating Agreement and
Foundation Proposed Donor Naming Opportunities

Date: April 2, 2024

STAFF RECOMMENDATION

That the Town Council consider, prior to any staff recommendation for approval and their finalization, certain terms of the following proposed agreements with The Preservation Foundation of Palm Beach (“Foundation”): (i) Capital Grant and Operating Agreement along with its updated Donor Proposed Naming Opportunities, (ii) the associated new Coastal Restoration Lease, and (iii) the new Little Red Schoolhouse Lease (replacing the existing lease for the Little Red Schoolhouse).

GENERAL INFORMATION

The staff has been preparing the Phipps Ocean Park Capital Grant and Operating Agreement (Agreement) with the Foundation. This memorandum highlights certain terms of the Agreement and its two associated leases that will govern improvements to Phipps Ocean Park (“Park Improvements”). Park Improvements to the public service areas of the Park are the Town’s sole obligation, provided that the Park Improvements include landscape enhancements.

PROJECT BACKGROUND

At the September 13, 2022 meeting, the Town Council accepted a \$250,000 donation from the Foundation to establish a project account and allow for the solicitation of a Construction Manager At Risk to perform the Park Improvements. Burkhardt Construction was selected by the RFQ committee and ratified by Town Council at the November 8, 2022, meeting. The project was presented and approved by the Landmarks Preservation Commission for a Certificate of Appropriateness (COA) and nine variances on November 16, 2022. On February 14, 2023, Town Council was presented the estimated cost of the Park Improvements and future operating costs for the Town. On January 9, 2024, the Town Council approved the Site Plan Modifications and a seventy-five (75) year naming right to a lead donor of the Foundation for the Coastal Conservancy component of the Park Improvements. The project Guaranteed Maximum Price (GMP) from Burkhardt Construction was presented and approved at the March 12, 2024 Town Council meeting.

The Foundation is committing to raise approximately \$30 million to refurbish the park.

CAPITAL GRANT AND OPERATING AGREEMENT SUMMARY

1. Grant Funding - The Foundation will provide substantially all the funding for soft and hard costs of the Park Improvements (approximately \$30 million); the Town's contribution will be \$2 million. The funding shall be to a separate capital project account.
2. Foundation's Delivery of Funds– The Foundation will provide proof of funds as a condition of the Agreement, which also includes quarterly draw procedures and a required \$7 million prepayment to the separate capital project account.
3. Separate Accounting –The Town will establish a designated Phipps Ocean Park Revenue and Expense operating account that will be required to maintain adequate reserves before the reallocation of funds.
4. Playground – The Foundation will directly purchase the playground equipment from Monstrum meeting ATSM's technical manufacturing standards for public use playground equipment. The Foundation will pay for all associated design, construction, and installation costs for the Monstrum equipment.
5. Donor Proposed Naming Opportunities– The Foundation will present the Proposed Donor Naming Opportunities included as an attachment to this Memo for Town Council approval. (No donor signage will take precedence over the more prominent display of "Phipps Ocean Park".)
6. Donor Naming Rights. The agreement permits naming rights with a maximum term of 75 years. Naming rights are limited to the actual life of the named improvement, with the Foundation having the right to contribute required restoration funds to allow naming rights to persist up to a maximum 75-year term. Any revocation of a naming right that would cast dispute or adversely affect the Town would be accomplished by the Town Council at a regularly scheduled meeting at least 30 days after notice to the Foundation.
7. Media Communications- The Town and Foundation will issue a joint press release following Town Council's approval of the final agreements.
8. Educational Programming. The Foundation will operate the relocated and restored Little Red Schoolhouse, under a new lease that will replace the existing lease, as a public educational facility. The Foundation will also be primarily responsible for educational events in the adjacent outdoor classroom.
9. Coastal Restoration Center. The Park Improvements include construction of a Coastal Restoration Center and Coastal Restoration Center Nursery to be leased and operated by the Foundation as a source of native landscaping for the Park, as an educational facility, and as a home base for the botanical curator, educator and gardener to be employed by the Foundation (each of whom shall be subject to designated employment criteria including, for example, equal opportunity.) Landscaping not needed by the Park may be used in other Town facilities or be donated by the Foundation to properties within the Town.
10. Special Events – Subject to the Town's issuance of special events permits, the Foundation can hold two special events per year in the park, including its annual dinner dance. The Foundation will have the first right to have a February special event in the park.
11. Landscaping Maintenance. The Agreement requires that the Foundation designate a voting member for the landscape maintenance contractor selection committee. The Agreement also requires the Town to coordinate the services of the landscape maintenance contractor with the Foundation.

12. Landscape Buffers. The Park Improvements include installing a dense landscape buffer composed of trees and understory plantings at the north end of the park and installing a 30-foot-wide landscaping buffer and 6-foot concrete wall at the south end of the Park.
13. Other Maintenance. – A matrix listing the Town’s and Foundation’s respective ongoing maintenance obligations is attached to this Memo.
14. Repair and Replacement. – The Agreement limits the Town’s obligation for capital repairs and replacements to Town standard options unless the Foundation donates funds to repair or replace the original Park Improvements.
15. Future Redevelopment- The Agreement grants the Foundation a right of first offer to donate funds for the redevelopment of the Park or any material component if the Town determines that such redevelopment is required within 40 years.
16. Public Purpose and Town Authority. The Agreement recognizes the primacy of the public purpose of the Park and the conditions of the Phipps family’s donation of the Park. Likewise, the Agreement is subject to the Town Charter and the municipal requirements of the Town, including the Town’s authority to make decisions with respect to the operation and use of the Park in the best interest of the Town and its citizens.
17. Other Provisions. The Agreement includes other terms including those governing indemnification and insurance.

PROPOSED DONOR NAMING OPPORTUNITIES

Notwithstanding lengthy value engineering, the cost of the Park Improvements has increased from its initial budget as reflected in the total project cost summary included as an attachment. As a result, the Foundation has increased its donor outreach to obtain the additional required funds and is requesting additional naming opportunities in the Park. The donor naming opportunities submitted by the Foundation is attached and would include additional donor recognition signage. The Foundation will be responsible for the installation and maintenance of its signage materials and format, which must be approved by Town Council.

GROUND LEASES

Please refer to Items 8 and 9 above. These ground leases will be for a proposed 75-year term commencing on substantial completion of the respective Park Improvements.

FUNDING/FISCAL IMPACT

The Foundation will raise the approximate \$30 million projected project cost and establish an endowment fund of \$5 million. The Agreement includes an annual Town contribution of \$100,000, inflation-adjusted, for the Park’s landscape maintenance. The Agreement requires the following Town budget commitments:

- \$100,000 annually for general maintenance
- \$100,000 for the Park’s landscape contract
- Park staffing (3 FTEs at an approximate cost of \$300,000)
- Police (1 FTE at approximately \$120,000)
- Parking enforcement (.5 FTE at an approximate cost of \$40,000)
 - Totalling approximately \$660,000 annually for fiscal year 2026, subject to inflation adjustments.
- Liability and property insurance coverage and claims (cost TBD)

- Beach renourishment (an existing annual budgeted amount that is separate from the Phipps Ocean Park maintenance).
- Increased parking revenue and park rentals are anticipated to offset some of these costs.

Attachments – Matrix of Maintenance Allocations – Town and Foundation
 Foundation Donor Naming Opportunities
 Schedule of Budgeted Total Project Costs

cc: Bob Miracle, Deputy Town Manager – Finance and Administration
 H. Paul Brazil, Director of Public Works
 Nicholas Caristo, Police Chief
 Mark Bresnahan, Recreation Director
 Sean Baker, Fire-Rescue Chief
 Wayne Bergman, Planning, Zoning, and Building Director
 Dean Mealy, Procurement and Contract Manager
 Amanda Skier, Executive Director and CEO of the Preservation Foundation of Palm Beach

