



HARVEY E. OYER, III  
PARTNER  
Shutts & Bowen LLP  
1100 CityPlace Tower  
525 Okeechobee Boulevard  
West Palm Beach, Florida 33401  
DIRECT (561) 650-8517  
FAX (561) 822-5522  
EMAIL hoyer@shutts.com

July 1, 2024

**VIA E-MAIL**

Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480  
Attn: Kirk Blouin, Town Manager

**Re: GMP for Phipps Ocean Park Improvements**

Dear Kirk:

Thank you for your support of the meeting that took place last Tuesday. As stated in the Preservation Foundation's letter dated May 28, 2024, a copy of which is attached hereto, the Preservation Foundation rejected the Burkhardt Construction GMP proposal for the reasons stated therein. Because the Preservation Foundation's approval of the GMP was a condition precedent to the Town's approval of the GMP, the GMP was never approved.

In our continuing efforts to achieve the mutually desired improvements to Phipps Ocean Park, at our meeting on Tuesday the Preservation Foundation representatives, Burkhardt Construction, and the Town jointly agreed to extend Burkhardt's preconstruction services in order to develop a new GMP. Through this extended preconstruction period, we have agreed that Burkhardt will collaborate with Zubatkin Owner Representation, the Preservation Foundation's Owner's Representative, to develop new bid packages utilizing the updated construction documents and re-bid the project. Furthermore, we mutually agreed that we will jointly develop a procurement strategy to receive more bids, and more precise bids with full backup. We all agree that re-bidding the GMP benefits all parties.

As such, we ask that the Town proceed with directing its selected CMAR, Burkhardt Construction, to commence this additional preconstruction phase utilizing the most updated and detailed construction drawings available. The Preservation Foundation and its owner's representative, Zubatkin, will work directly with Burkhardt Construction to ensure that the bidding process meets the standards expected by the donors to the project.

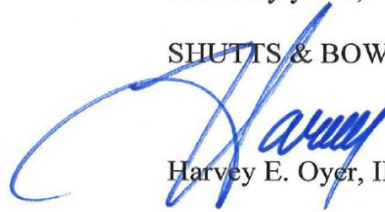
Thank you to you and your colleagues for your continued efforts to make this a successful project for the Town, its residents, and the donors.

July 1, 2024  
Page 2

Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

SHUTTS & BOWEN LLP

A handwritten signature in blue ink, appearing to read "Harvey", is written over the typed name below.

Harvey E. Oyer, III, Esq.

HEO/ias

cc: Bobbie Lindsay, Town Council President  
Dean Mealy, Chief Procurement Officer



PRESERVATION  
FOUNDATION  
OF PALM BEACH

#### Executive Committee

Mrs. Paul Shiverick, *Chairman*  
Mr. Daniel E. Ponton, *Vice-Chairman*  
Mr. Thomas C. Quick, *Secretary*  
Mr. Erik T. Waldin, *Treasurer*  
Mr. Jeffrey A. Marcus  
Mrs. Pauline B. Pitt, *Chairman Emeritus*  
Mr. Charles M. Royce  
Mrs. Lynne M. Wheat

#### President & CEO

Amanda H. Skier

#### Board of Trustees

Mrs. Rand V. Araskog  
Mr. and Mrs. Manucher Azmudeh  
Mrs. Walter F. Ballinger  
Mrs. Alan D. Bleznak  
Mrs. T. Dennie Boardman  
Mr. and Mrs. Martin Brand  
Mrs. Edwin M. Burke  
L. Frank Chopin, *Esquire*  
Mr. Edward A. Cooney  
Mr. and Mrs. Philippe Dauman  
Dr. Jane S. Day  
Mrs. Ashton de Peyster  
Mr. and Mrs. Thompson Dean  
Mrs. John J. Dowdle  
Mr. and Mrs. E. Llwyd Ecclestone  
Ambassador and Mrs. Edward E. Elson  
Mrs. Jennifer M. Fischer  
Ms. Kristen Kelly Fisher  
Mr. and Mrs. James C. Flores  
Mr. and Mrs. J. Christopher Flowers  
Mr. and Mrs. Mark E. Freitas  
Mr. William J. Gilbane III  
Mr. and Mrs. Avram Glazer  
Mrs. Martin D. Gruss  
Mrs. Jessica Guff  
Dr. and Mrs. Ben Han  
Mrs. J. Ira Harris  
Mr. James Held  
Dr. Peter N. Heydon  
Mrs. Katherine B. Horgen  
The Honorable and Mrs. Robert W. Johnson IV  
Mr. and Mrs. Gerald R. Jordan, Jr.  
Mr. Kenn Karakul  
Mr. and Mrs. Howard J. Kessler  
Mrs. Laura Landro  
Mr. Leonard A. Lauder  
The Honorable and Mrs. Howard H. Leach  
Mrs. Joseph W. Luter III  
Mrs. David J. Mahoney  
Mrs. Jeffrey A. Marcus  
Mrs. Talbott B. Maxey  
Mrs. Leigh A. McMakin  
Ms. Audrey McNiff  
Mr. and Mrs. Joseph Meyer  
Mr. and Mrs. Donald K. Miller  
The Honorable Danielle Hickox Moore  
Mr. and Mrs. Dudley L. Moore, Jr.  
Mr. David G. Ober  
Mrs. William G. Pannill  
Mr. and Mrs. Gary Patsley  
Mrs. Sallie B. Phillips  
Mrs. Wilbur L. Ross, Jr.  
Mrs. Charles M. Royce  
Mrs. Jeannie Rutherford  
Mr. Richard E. Salomon  
Mr. Jorge A. Sanchez  
Mrs. Vera Serrano  
Mr. Paul Shiverick  
Mr. and Mrs. Brian Simmons  
Mr. Jeffrey W. Smith  
The Honorable Lesly S. Smith  
Mr. Thomas S. Smith, Jr.  
Mrs. Electra Toub  
Mr. Mish Tworkowski  
Mrs. Leo A. Vecellio, Jr.

#### Emeritus Trustee

Mrs. Nathan Appleman  
Mrs. F. Eugene Dixon, Jr.  
Mrs. Robert M. Grace  
Mrs. Frances G. Scaife

May 28, 2024

Mr. Kirk Blouin  
Town of Palm Beach  
360 South County Road  
Post Office Box 2029  
Palm Beach, FL 33480

Dear Kirk,

The Preservation Foundation of Palm Beach Executive Committee convened last week to discuss the Capital Grant and Operating Agreement, and the proposed Burkhardt Guaranteed Maximum Price (GMP). As of now, the Foundation, in its fiduciary capacity, regrets to inform you that it is unable to execute the Capital Grant and Operating Agreement with the Town of Palm Beach.

The Foundation views the last-minute alterations presented to us just before the Town Council meeting on May 14, 2024 as inadequate in their current state. The amended agreement lacks the necessary clarity to mitigate the Foundation's liability and risk exposure. More specifically, the revised language introduced to the agreement does not match the explanation given at the meeting to justify the changes. We welcome the opportunity to engage in discussions on how best to proceed with modifications to the Capital Grant agreement in an efficient and collaborative manner in the coming weeks.

Currently, the Foundation is unable to agree to fund the proposed Guaranteed Maximum Price (GMP) as our team has found that it is not fair, competitive, or reasonable. Requests for information necessary to fulfill the Foundation's fiduciary responsibilities have been made since the GMP was first issued at the end of February:

1. A six-page memorandum was provided to the Town of Palm Beach by Kimley Horn, as the project manager on behalf of the Foundation, during the GMP negotiations on February 27, 2024. The memo requested information about lump sum costs, the GMP bidding process, and the project scope.

2. On April 16, 2024, a meeting was held with the Town of Palm Beach, Kimley Horn, Burkhardt, and the Foundation's design team to discuss the significant number of outstanding items listed in the memo.
3. Much of the requested information was not made available to the Foundation until later meetings held on May 15, 2024 and May 22, 2024 when the Foundation's owner representative Zubatkin met with the Town of Palm Beach and Burkhardt.

During these previous exchanges with the Town, the Foundation and its advisors have expressed reservations regarding the following concerns:

1. Limited subcontractor participation in the bidding process, notably with only one or two bidders for many packages, including the crucial vertical construction to a General Contractor.
2. A recent assessment on May 22, 2024, revealed more than \$2 million in unforeseen additional costs, exceeding initial estimates.
3. The exclusion of Addendum 2 drawings from February 2024 in the proposed GMP may potentially result in unknown supplementary costs.

In light of the above considerations, and as stewards of donor funds, the Preservation Foundation finds itself unable to endorse the current GMP proposal. The Foundation respectfully asks that the Town of Palm Beach, in coordination with the current Construction Manager, formulate a proposed corrective action plan by June 10, 2024 to address these issues and devise a GMP that is fair, competitive, and reasonable. Our Owners Representative, Zubatkin, is available to elaborate specific requirements as needed.

We are eager to collaborate with you closely to navigate these concerns and bring this project to successful realization as expediently as possible.

Sincerely,



Betsy Shiverick

Chair of the Executive Committee