

TOWN OF PALM BEACH

Information for Town Council Meeting on: November 12, 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 Capital Grant and Operating Agreement and associated ground leases
Resolution No. 152-2024

Date: November 6, 2024

STAFF RECOMMENDATION

Staff recommends Town Council consider approval of the Phipps Ocean Park Capital Grant and Operating Agreement and associated ground leases via Resolution No.152-2024.

GENERAL INFORMATION

Town staff has prepared the Phipps Ocean Park Capital Grant and Operating Agreement (CGOA), between the Town and the Preservation Foundation of Palm Beach. The CGOA will govern improvements to Phipps Ocean Park and its operations once the improvements are completed. It requires two leases to the Foundation for areas within the Park, each for a 75-year term, each commencing once the leasehold improvements are completed. The first lease is a new replacement lease for the Little Red Schoolhouse; the second lease is for a Coastal Restoration Center to be included in the Park Improvements. The Town Council approved a prior version of the Capital Grant and Operating Agreement at the May 14, 2024 meeting, but the Preservation Foundation did not execute the agreement as further discussed below. As a result, the Town and Preservation Foundation met through the summer to re-work the bid documents in order to create a new GMP/CMAR agreement for Council's consideration and also worked this fall on changes to the form of CGOA.

PROJECT BACKGROUND & TIMELINE

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 (CMAR) 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 then presented and approved by the Landmarks Preservation Commission for a Certificate of Appropriateness (COA) and nine variances on November 16, 2022. The Town Council approved COA-22-037 under ZON-22-107 at its December 13, 2022 meeting (which included adding pickleball courts and reconstruction of the lifeguard station). On February 14, 2023, the Town Council was presented the estimated cost of the Park Improvements along with the estimated future operating costs that the Town would incur. At its April 3, 2023 meeting, the Town Council approved

site plan modifications under Resolution No. 003-2024. At its January 9, 2024 meeting, the Town Council approved the Site Plan Modifications associated with the Park Improvements 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 first Guaranteed Maximum Price (GMP) from Burkhardt Construction was presented and approved at the March 12, 2024 Town Council meeting. The Town Council received an update on the CGOA and Donor Signage locations at the April 9, 2024 regular meeting.

As noted, the Town Council did approve a prior version of the Capital Grant and Operating Agreement at the May 14, 2024 meeting; the Preservation Foundation did not execute the agreement due to concerns over GMP process and alterations to the agreement language that was brought forward at the May 14th meeting itself.

Since the May 14th Council meeting, Town staff and the Preservation Foundation have worked collaboratively through the summer and early fall to complete a value engineering exercise. This resulted in a revised bid set that is currently being used to obtain a new set of construction bids for the contract. The new bids are expected back in late December, at which time the Foundation and Town will review and approve before bringing forth an updated GMP and CMAR contract for the Town Council's consideration expected for January 14, 2025.

The Town and Preservation staff and legal counsels have also prepared a revised version of the Capital Grant and Operating Agreement. The most notable modifications from the version that was approved at the May 14, 2024 Town Council meeting are as follows:

- The revised agreement, unlike the prior, does not include an approved GMP; the Agreement is terminable if the Foundation does not approve the new pending GMP with respect to the Foundation improvements or the Town does not approve the new pending GMP with respect to the Public Service Areas in the Park. The Agreement has an 18-month sunset on these approvals or it will expire by its terms.
- The revised agreement anticipates a Foundation Donation in the approximate amount of \$26.465 million, plus the cost of the construction phase services of Kimley Horn and the cost of playground equipment and related equipment charges.
- The revised agreement clarifies that the Town is not required to commence "renovation improvements" until it has received all required permits.
- Once the Town Council and Foundation approve the GMP and CMAR Agreement, the Foundation may require deductive changes to any or all of the 18 designated park elements, and the Town will require the CMAR to provide costs for restoration and repair work, for completing the project component, or reducing the component's scope. The agreement includes requirements that any such deductive change, if elected by the Foundation, would leave the Park in safe, usable, and serviceable condition without visual cues that work has stopped and started. The Foundation would elect next steps after considering the relative cost of permitted options taking into account that such costs would include possible increased general conditions, costs imposed by a possible termination for convenience of the CMAR Agreement, and any costs due under a final accounting. A final accounting could also require the reimbursement to the Foundation of any applicable portion of its \$7 million Prepaid Grant Amount.
- The Agreement requires the Town Council's approval at its November, December or January meetings as a condition of its effectiveness.
- The Foundation has executed the agreement and the two ground leases prior to its consideration by Town Council.
- The agreement includes extensive requirements for joint Town, Foundation and CMAR

attendance at meetings and other required coordination between Town staff and the Foundation and its representatives throughout the construction process and, likewise, maintenance requirements following completion.

FUNDING/FISCAL IMPACT

The Preservation Foundation of Palm Beach will raise the projected project cost (except for the public service areas the Town will be paying for) and establish an endowment. The CGOA requires that the Town contribute \$100,000 annually, inflation-adjusted, toward the park's landscape maintenance. The following are additional estimated budget requirements for the Town to operate the park after completion of the Foundation's renovation improvements: \$200,000, comprised of \$100,000 for general maintenance, the first \$100,000 of the park's landscape contract, park staffing (3 park 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), liability and property insurance coverage and claims (cost TBD). Beach renourishment is an already annual budgeted amount separate from this new agreement. Increased parking revenue and park rentals are anticipated to offset some of these costs.

Attachments: Phipps Ocean Park Capital Grant and Operating Agreement with Appendices including leases

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