

MEMORANDUM OF UNDERSTANDING

Rehabilitation of the Berger Fountain and Expansion of the Berger Fountain Plaza Area Loring Park – City of Minneapolis

This Memorandum of Understanding (“MOU”) is made as of the 22nd of January 2019 by and between the Berger Fountain Workgroup Committee (“the Committee”), a designated subcommittee of Citizens for a Loring Park Community; the Friends of Loring Park (“FOLP”), a Minnesota non-profit organization; Citizens for a Loring Park Community (“CLPC”), a Minnesota non-profit organization and the City’s designated Citizen Participatory Organization for the Loring Park neighborhood; and the Minneapolis Park and Recreation Board (“MPRB”), a body corporate and public under the laws for Minnesota (“Park Board”), which collectively comprise the Parties to the MOU.

RECITALS

WHEREAS, the Committee, FOLP, CLPC and the Park Board have the authority to enter into the MOU in furtherance of the objective of undertaking the full rehabilitation and reconstruction of the Berger Fountain, the design and development of an Artistic Winter Cover for the Fountain and the expansion and improvement of the area surrounding the Berger Fountain, herein identified as the Berger Fountain Plaza in Loring Park in the City of Minneapolis; and

WHEREAS, the Loring Park Neighborhood is an officially designated neighborhood in the City of Minneapolis, and each year, Loring Park hosts several regional and highly attended events including Holidazzle, Twin Cities Pride Festival, Loring Park Arts Festival and the Loring Park Music Festival; and

WHEREAS, the existing Berger Fountain has been in its present location since 1975 and is recognized as an icon and landmark of Loring Park; and

WHEREAS, the Berger Fountain rehabilitation was identified as a priority in the Loring Park NRP Phase I plan (adopted by the Minneapolis City Council – May 1995), the Loring Park NRP Phase II Plan (adopted by the Minneapolis City Council – November 2008), and the Loring Park Neighborhood Small Area Plan (adopted by the Minneapolis City Council – October 2013); and

WHEREAS, the approved MPRB Downtown Service Area Master Plan and the Loring Park segment of the Master Plan identified the Berger Fountain, the Berger Fountain Plaza and the Willow Street crossing as designated items for improvement and enhancement, identified potential costs associates with these improvements and identified a prioritization list of how parks may receive funding for various improvements; and

WHEREAS, the existing Berger Fountain, its basic structure and underlying mechanical, plumbing and electrical support structures are deteriorating and the Fountain continues to require increasing levels of maintenance; and

WHEREAS, the Park Board provides services to Loring Park, its components and facilities, but recognizes the desires of the Loring Park neighborhood to exceed its capacity to deliver within a timeframe that will prevent the Berger Fountain from ceasing to function; and

WHEREAS, the Park Board, by its Chapter 16 and Chapter 17 ordinances, is mandated to deliver currently funded improvements in Minneapolis parks equitably, including the Loring Park Neighborhood, which ranks as a low priority for the funding of capital improvements through the 20-year Neighborhood Park Plan; and

WHEREAS, in a fully-developed neighborhood with limited resources, creative approaches to fulfilling capital needs are, at time, crucial and the Parties view a collaborative partnership as essential to delivering improved facilities to the Loring Park Neighborhood; and

WHEREAS, FOLP and CLPC are committed to retaining an improved Berger Fountain in Loring Park and desire to effect its rehabilitation in the short-term (over the next three to five years) by working collaboratively with, but to a certain degree, independent of the Park Board to engage various professional firms and other organizations to provide services to the Committee, FOLP, and CLPC to complete the design and construction of a new Berger Fountain and Artistic Winter Cover at a minimum; if additional time and funds allow, the Parties may also seek to complete the design and construction of the surrounding Berger Plaza area, although the timeframe for this improvement may extend beyond five years; and

WHEREAS, the Committee, FOLP, and CLPC seek the cooperation and approval of the Park Board to engage various professional firms to provide design, project management and construction services with the oversight of the Park Board to accomplish the rehabilitation and expansion of the Berger Fountain in Loring Park; and

WHEREAS, the Committee, FOLP, and CLPC intend together to source funding for the proposed work program for the Berger Fountain and where applicable and appropriate may include some funds that would be available under the oversight of the Park Board, but most are likely to include funds from various different private and public sources outside of the Park Board's oversight and jurisdiction; and

WHEREAS, the Committee, FOLP, and CLPC recognize and welcome the participation of MPRB staff in its activities related to the Berger Fountain, particularly relative to MPRB staff's ability to guide efforts in alignment with MPRB policies and procedures; and

WHEREAS, the Parties recognize their mutual goals for serving the Loring Park Neighborhood through the rehabilitation of the Berger Fountain, the design and development of a protective and artistic Winter Cover and the improvement of the Berger Plaza area may be better accomplished through a partnership aimed at efficient and effective provision of services to support mutual goals;

WHEREAS, FOLP and CLPC are established organizations in the community that will enable them to manage the development processes which include, but are not limited to: the solicitation and management of fundraising, the solicitation of professional services for various aspects of the Berger Fountain project and the management and distribution of funds as needed to complete the development program; and

WHEREAS, the Parties desire to formalize a relationship in this MOU with the desired outcome of understanding that the Committee, FOLP, and CLPC shall be given the responsibility by the Park Board to move forward with the Berger Fountain initiative and that all Parties shall work together toward the ultimate completion of the proposed development program.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties hereby agree as follows:

1. The Parties agree to immediately commence diligently working together to identify a logical and appropriate process and timeline for the rehabilitation of the Berger Fountain including, but not limited to the engagement of various professional services to determine the actual costs, design services, construction services, fundraising services and other services as needed for a comprehensive rehabilitation of the Berger Fountain and the potential improvement of the Plaza Area surrounding the Fountain.

2. Principles

1. Data Collection

- a. The Parties agree to work together to collect, synthesize and share information and data related to the existing infrastructure, potential replacement costs, potential costs of professional services, etc. to frame a detailed scope of work to complete the rehabilitation objective and Plaza improvements.

2. Development of Work Program

- a. The Berger Committee, FOLP, and CLPC shall be responsible for, but shall consult the Park Board, in developing a range of services and associated costs needed to complete the proposed development program.

3. Funding and Financing

- a. The Park Board acknowledges that funds are required to accomplish the short-term goals of rehabilitating the Fountain prior to the estimated equity priority timeline in the Master Plan. As such, it agrees to extend permission to the Committee, FOLP, and CLPC to raise funds to accomplish the proposed rehabilitation.
- b. The Committee, FOLP and CLPC agree that they shall collectively be responsible for working together to define and develop potential sources and mix of funding and financing for the implementation of the design and development program for the Berger Fountain rehabilitation. In as much as the Park Board has jurisdiction over the allocation and distribution of any Park Dedication Fees that may be allocated and subsequently distributed in the implementation of this program, the Parties involved

shall collaborate together to ensure that such funds are appropriately managed and distributed.

- c. FOLP and CLPC each have the capacity to maintain separate accounts for the holding and distribution of funds raised for the Berger Fountain rehabilitation. One of these organizations shall be designated to hold, distribute and keep an accounting of all funds for the Berger Fountain rehabilitation and shall ensure that all funds distributed shall be made available only for the purpose of rehabilitating the Berger Fountain and its immediate environs.

4. Design and Implementation

- a. Following the development and approval of the work program by the Parties to the MOU, the Committee, FOLP, and CLPC shall proceed with the various aspects of the engagement for services to support implementation such as fundraising, design and other professional services required to set an effective base from which implementation may proceed.
- b. Implementation shall proceed to the extent that funds are available to undertake various aspects of the work program that has been developed and approved by all parties. Implementation may occur in phases as funds are available. It is the intent of the Parties that sufficient funds shall be sourced to implement a cohesive rehabilitation and one that is not piecemeal, thereby subverting the ultimate objective of the rehabilitation.
- c. Engagement. As a part of the design and development process, the Parties agree to work together to collect additional input from the Loring Park Neighborhood and any reasonable extension of the Neighborhood for the design and process of completing the rehabilitation and improvement of the Plaza area. The Parties will support engagement by providing staff or volunteers to assist in engagement events.
- d. Community Engagement Plan. In accordance with Park Board policies, the Parties agree to abide by a Community Engagement Plan, prepared by Park Board staff in concert with the other Parties. The Community Engagement Plan shall define the minimum level of engagement related to the activities of this MOU.

5. Partnership with Others

- a. The Parties agree to discuss partnering options, as identified through the design and development program or other activities related to this MOU, in furtherance of the common objective.

6. Coordination

- a. The Parties will coordinate communication, progress, deadlines, approvals and other partnership or development dynamics in a manner that recognizes the realities of the meeting schedules of the governing bodies of the Committee, FOLP, CLPC, the Park Board and other ad hoc or established groups related to or arising out of this MOU.

7. Governance

- a. The Parties agree that their respective staff members and appointed or elected volunteers are empowered to create, shepherd and manage the processes required by this MOU, but that the ultimate approval lies in the governing bodies of FOLP, CLPC, and the Park Board, respectively. The Parties assign the following staff and volunteers to support this MOU:
 - i. FLOP: David T. Hile, President
 - ii. CLPC: Dr. Lee Frelich, President
 - iii. Berger Fountain Workgroup Committee: Mary Bujold, Chair
 - iv. Park Board: Superintendent Al Bangora or the Superintendent's designee
8. Duration, Amendment, Termination
 - a. Milestones. The Parties agree to the following milestones with respect to the undertaking of the rehabilitation of the Berger Fountain:
 - i. Preparation of concept plans depicting an Artistic Winter Cover by the Dunwoody College Architecture Studio class (December 2018);
 - ii. Engagement of consultants supporting assessments, cost projections and architectural pre-design concept analysis by end of April 2022);
 - iii. Final assessment of conditions and projections of rehabilitation costs by end of May 2022;
 - iv. Community engagement process for the design of a new Berger Fountain plaza during summer of 2022;
 - v. Issue RFP for the development of a complete fountain plaza design for construction in 2023;
 - vi. Selection of landscape architecture, fountain development and construction design team for construction in 2023;
 - vii. Completion of full design specifications and construction documents for the reconstruction of the Berger Fountain.
 - viii. Fundraising/sourcing of dollars sufficient to accomplish the fountain structure and mechanical reconstruction by August 2022;
 - ix. Fundraising/sourcing of dollars sufficient to accomplish the completion of the design and construction of the Artistic Winter Cover should such cover be agreed by all parties to be necessary for winter protection of the fountain when it is not operational due to seasonal weather conditions.
 - x. Fundraising/sourcing of dollars sufficient to accomplish the construction construct a new Berger Fountain plaza by October 2021.
 - b. Bidding and/or negotiation of contracts for consulting services construction or any aspect of the improvements shall occur only when 98% or more of the funds for that improvement have been raised/sourced.
 - c. All Parties agree to evaluate the partnership resulting from this MOU periodically and whenever any major milestone is not met, or the partnership fails to operate effectively.

- d. All Parties agree to supply their best efforts to achieve the goals and objectives outlined herein and shall make adjustments or amendments to this agreement to support same as needed.
- e. This MOU shall terminate upon the full completion of the rehabilitation, reconstruction and construction of the Berger Fountain and surrounding Plaza area or by written agreement of the Parties, whichever occurs first.

9. Nonbinding.

- a. This document represents a framework of principles expressing the current understanding between the Parties and does not constitute a legally binding agreement. The Parties agree to utilize the principles expressed in this document as a framework for all subsequent legally binding documents between the Committee, FOLP, CLPC and the Park Board.

10. No Third-Party Rights

- a. This MOU does not confer any rights to any third party.

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IN WITNESS WHEREOF, the authorized representative of the Parties has entered into this Memorandum of Understanding in triplicate as of the date stated above.

FRIENDS OF LORING PARK

By: David T. Hile
Its: *President*

Date: 3/6/2022

CITIZENS FOR A LORING PARK COMMUNITY

By: La. K. Park
Its: *President*

Date: February 28, 2022

BERGER FOUNTAIN WORKGROUP COMMITTEE

By: Mary C. Ringold
Its: *Chair*

Date: 3/07/2022

MINNEAPOLIS PARK AND RECREATION BOARD

By: McG. Finney
Its: *President*

Date: 2/16/2022

By: J. B. Hingle
Its: *Secretary*

Date: 2/16/2022

Approved as to form:

B. F. Hule
Attorney for the Minneapolis Park and Recreation Board

MINNEAPOLIS PARK AND RECREATION BOARD

AN ACTION, RESOLUTION OR ORDINANCE

In accordance with Article VI, Section 6.2(j), of the City Charter, there is herewith submitted to you, the Mayor of the City of Minneapolis, an action, resolution or ordinance adopted by the Minneapolis Park and Recreation Board which you may approve by affixing your signature herein below or if you disapprove of same to return to the Board, with your objection thereto, by depositing the same with the Secretary of the Board to be presented to the Board at their next meeting where the question of its passage will be put again before the Board.


9.A.1 That the Board adopt Resolution 2019-121 captioned as follows:

Resolution 2019-121

Resolution Approving Memorandum of Understanding with the Berger Fountain Workgroup Committee, Citizens for a Loring Park Community, and the Friends of Loring Park for Planning Activities and Fundraising Related to Berger Fountain Rehabilitation, Artistic Winter Cover, and Plaza Improvements in Loring Park.

PASSED March 6, 2019

APPROVED


Secretary of the Board


Mayor