

MANDAN REMEDIATION TRUST (MRT)
June 2, 2009 Minutes

Meeting: 189th Official Meeting
Date: June 2, 2009
Location: Mandan City Hall, 205 2nd Ave. NW
Time: 10:08 A.M.

The MRT meeting was called to order by Jim Neubauer. Fritz Schwindt and Dave Glatt were present. Also, present were Scott Radig and Marilyn Mertz, State Department of Health; and Maggie Olson, North Dakota Attorney General's office.

Minutes. Discussed MRT's May 5, 2009 minutes. Revisions were made.

Motion. Glatt moved and Schwindt seconded approval of the May 5, 2009 MRT minutes. All ayes. Motion carried.

Bank Statement. Reviewed bank statement ending April 2009 from the Bank of North Dakota showing an ending balance of \$9,435,202.14. Since that time we invested \$8 million into a CD for six months with a rate of 1 percent and \$.5 million or \$1 million in a 60-day CD (Bank statement verified a \$9 million CD for six months and \$300,000 into a 60-day CD.). The next statement will indicate a lesser balance.

Motion. Schwindt moved and Glatt seconded approval of the bank statement for April 30, 2009. All ayes. Motion carried.

Recovered Fuel Payment. Neubauer received a check from Chief Construction dated May 4, 2009. It was for \$100 for 250 gallons of recovered diesel fuel. The check was mailed to Mertz and then sent to the Bank of North Dakota for deposit.

Pay Requests. Two disbursements: LBG statement dated May 14, 2009 in the amount of \$27,688.18. Radig reviewed it and it looks fine. The biggest portion is from O&M. There were some expenses due to the planning for the Main Street drilling which is listed under the Out-of-Scope tasks. Radig will get a task approved for that specific project. Amounts are all within the parameters of the approved amount. Schwindt commented on the charges for indemnification. It was an LBG issue not MRT. Brad Peschong and Ken Kytta had charges, but there are none for Tim Kenyon.

Motion. Schwindt moved and Glatt seconded approval of LBG's statement dated May 14, 2009 in the amount of \$27,688.18. All ayes. Motion carried.

City of Mandan. City's invoice dated April 30, 2009 for wastewater charges of \$1,426.80 for a volume of 92,000 cubic feet. The volume has been fairly constant. It depends on what wells they are cycling at the time.

Motion. Glatt moved and Schwindt seconded to approve payment request 175 for \$1,426.80 to the city of Mandan for wastewater charges. All ayes. Motion carried.

Indemnification. Neubauer received Kenyon's e-mail this morning. He said the state rejected his indemnity proposal. The communication Schwindt got from the Health Department indicated Olson was advising that state law doesn't allow us to assume any liability for another contractor.

Olson said, "Under state law they can't assume liability for third parties." Schwindt communicated that with Kenyon to see where the MRT goes from there. He was going to try to get something to us before the meeting today. Glatt indicated Mr. Kenyon might be working through Braun Intertec. Is that assuming we would still subcontract with LBG? Schwindt read it that way too. They are trying to work on some additional language.

Glatt indicated if that fails, Plan B would be to go out for bids on our own and the state could sign the contract with the agreement that the MRT would pay the bills. Schwindt asked about the specifics of the procurement process. Do we need to advertise for 30 days? Glatt thought it was 30 days. Discussed options. Radig indicated it is basically Time and Materials. Glatt noted if wells are put in and they don't work, they will still get paid for T&M. Schwindt indicated that Braun was on T&M and would not give us cost per well.

Discussed reassurance of the project. Olson indicated it would be outlined in the contract. It's definitely different from indemnity. Schwindt explained that in the task order they want to have language that says this is experimental and we [LBG] are not certain we can successfully complete all of the wells. Discussed having a motion to that effect. Neubauer added we probably should have a motion to simply recognize the difficulty of the work and the assurance by the MRT to pay for their Time and Materials. There is no guarantee they will be able to complete seven wells. Glatt clarified. This is the design and that T&M is in place and to be clear this is not any way, shape, or form associated with indemnification. Schwindt noted that the design has already been paid for. Neubauer indicated if a motion were to be made that's probably what it would be that they would be paid for T&M and that they finish the project and we understand that this is experimental.

Motion. Neubauer moved to approve and second by Glatt to pay Braun Intertec for Time and Materials to install slant wells in Main Street with the understanding that the project is experimental.

Schwindt didn't like the motion. He could support a motion like that at the time they get a task order from LBG, if they have some specific language that wants us to recognize the experimental nature of it to do it now. If you want to pass the motion, that's fine. It seems more appropriate to see what LBG wants done. Radig indicated it

seems more appropriate for them to put that statement in the task order and then you approve the task order. Glatt suggested asking what they want.

Motion to Withdraw. Neubauer: There are a motion and second on the table. No votes were cast in favor of the motion so the motion is defeated. The message the MRT wants to send is that we will certainly pay for T&M that is put into this project. Also, we will ask that Radig communicate to LBG that whatever specific language they are worried about have them draft the language and send it to us for review as part of the task order for the completion and start of the wells on Main Street.

Task Order Language. Schwindt asked Olson. Do you see any problem with recognizing some language like that in the task order, if we were to sign it? Olson couldn't think of anything now. She hasn't looked at the contract. Schwindt noted that the task order identifies specific tasks that they are going to do for us. If they are going to do a particular job, we authorize it in the task order. It is the summary of the work and the costs associated with that task. Radig added sometimes the task is a lump sum. They get paid "x" amount of dollars for putting in all seven wells regardless of how much time it takes. Or you get paid on an hourly basis plus cost of materials and it is spec'd out for how much per foot of casing. It looks like they are asking for what would be a T&M. That would be the fairest way to do it. Glatt explained the background of the wells and why the additional wells are needed.

Liability Relief. Schwindt indicated the liability relief they were seeking was related to the number of utilities: sanitary sewer, storm sewer, electrical lines for street lights, lines communicating traffic control signals and gas line where the wells would be installed. We will have to thread that drill bit which is 10 to 12 inches in diameter around all that stuff. They can identify where much of those utilities are at because they are close to the sidewalk where we will begin drilling the holes. With the hollow stem auger, you do not know where the point of that auger is at when it gets a distance away. There is a sanitary sewer and storm sewer out in the middle of the street on one or two of the wells. So they are concerned about hitting that sanitary with the auger when it is out there 20 or 30 feet. That was their main concern with liability. When they first started talking about that, we just don't think we can do something like that or they were very hesitant to proceed so Schwindt contacted Braun Intertec (Bismarck) as one company that has that technology to drill on a horizontal basis. He met onsite with him and gave him maps of all the utilities from the city. They spent a lot of time reviewing it and they thought they could successfully get through the utilities and construct the wells. Braun has done that in a number of different places around the country. So based on Braun's feedback, then we had LBG go out and advertise for bids from a number of different drillers. The bids came back and that's when LBG started talking about this liability relief so we have never done anything with the bids from a state perspective.

Olson indicated the state can't indemnify third parties. She did not know about how the [MRT] trust can indemnify or the city. Schwindt indicated the trust is an entity of the state. He thinks state law would apply to the trust. Olson indicated the Health

Department could not indemnify because the Risk Management Fund (RMF) by law won't pay for the third parties.

Glatt indicated the trust was a settlement agreement of \$24 million to remediate the downtown. There is some liability that the state has accepted. He does not think it is an issue. If the MRT was to indemnify it would just be for repairs to the sanitary sewer if something happened.

Schwindt noted, Braun does have insurance. So does LBG. We require LBG to have additional insurance because of potential problems we may have. In the alternative, if the negotiations between Braun and LBG do not prove successful, do you want me to start looking at their bid documents that LBG prepared for us so we can go out and bid sometime next week if those discussions aren't successful?

Glatt would like some specific language.

Insurance. Olson responded, if the state is going to enter a contract then we have to require an insurance provision. We would probably want to have additional coverage here because it is high risk.

Schwindt asked Glatt. Can you get me the Health Department's current standard contract provisions? He will provide those. He assumes it will be the Health Department and the MRT advertising for those bids. Neubauer is O.K. with the process.

Meeting with Kenyon. Neubauer indicated if we have discussions with Tim Kenyon on June 9, 2009 and they don't have things worked out we could put bids out on the 15th and receive those by the middle of July. They may not start work until the middle of August in order to get the contract signed. Kenyon's question on meeting with the MRT that day would bring up the cost sharing. It would be a three-day split of his travel and time up here. Discussed cost share. The MRT does not object to the cost share. Schwindt suggested meeting with Kenyon on June 9.

Motion/Motion to Rescind. Schwindt moved to have an MRT meeting next week at a time to be determined. Motion died for lack of a second.

Kenyon will be meeting with the county in the morning. Radig will ask Kenyon what time will work when he sends his e-mail.

County Data. Glatt would like to get a report at some time on what they found at the county building. Radig indicated they received the soil samples back. They are all dirty. He doesn't think it is possible to compare samples. They are pretty contaminated. The analytical report Radig received didn't show the soil type. He has not received the log report. He just has the lab reports.

Berube Building. Glatt has questions on the Berube building. Radig will

request a report. He has not heard anything.

Motion. Neubauer made a motion to approve and second by Glatt to meet June 9, 2009 at a time to be determined and to cover one-third of Tim Kenyon's travel cost to come up here. All ayes. Motion carried.

Redevelopment. Neubauer indicated the Collins/Main Street project is on hold. They will probably ask for another six-month extension on June 16. He is moving that forward. The board may say yes. Rohrer's group put in proposals. He said if this thing falls through, give us a call.

Cleaning Tar Bid. Neubauer does not have the bids for cleaning tar.

Escrow Account. Radig suggested an escrow account be set up for some period of time after the remediation system is completely shut off. There could be a fund to pay for insurance for a period of time. It could be a cash account. The closure plan will need to be discussed. Glatt noted it will depend on how much we have cleaned up and what is remaining. Previously, they were talking about the exterior wells. Potentially, they can start looking at those wells. Neubauer indicated we talked about it before. Glatt said. "The key in that report is the criterion the department will follow to allow no further action." Glatt thinks it would be a good idea to go out for some public comment but does not want to do it too soon in the process because it may give the public the impression we are done. So we have to get to a point where we say here is our starting point if it meets these criteria we start the process of shutting it down, Neubauer said. Glatt thinks they should shoot for the end of the year. He will get a draft.

Wells Fargo. Schwindt has a sheet of cement board to repair the manifold at Wells Fargo. He will do that within the next two weeks. He put two rumble strips on the manifold by Wells Fargo bank.

Broken Bench. Community Contractors broke one of the benches at Library Square II. Neubauer ordered the bench last week at a cost of \$1,100.

Gas Service Line Replacement. Schwindt received a call from Dave Auch with the city last week that MDU is in the process of replacing the gas service line in the alley by Vicky's. Last winter they had one going into George's Bakery because of a leak. So apparently they dug it up and replaced it and found it had been nicked some place along the line and corrosion set in. So now they are replacing all these service lines. Auch indicated they would be going all the way to Collins Avenue replacing all the service lines through the alley. Schwindt does not know if MDU will be seeking any reimbursement from Earthmovers or LBG. Schwindt indicated one of the questions he has for Auch is: Should whoever will be replacing that concrete will they be pinning that concrete to the existing stuff rather than just pouring that hole back in? He thought that was a good idea, but does not know if that is part of the city requirements. Who is going

to be communicating that with whoever is the concrete contractor or MDU or somebody to make sure that work is done? Neubauer suggested talking to Auch. Schwindt will do that.

Next Meeting. July 7, 2009 at 10:00 a.m.

Motion. Schwindt moved and Glatt seconded to adjourn the meeting at 11:05 a.m. All ayes. Motion carried.