

MANDAN REMEDIATION TRUST (MRT)
April 7, 2009 Minutes

Meeting: 187th Official Meeting
Date: April 7, 2009
Location: Mandan City Hall, 205 2nd Ave. NW
Time: 10:15 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; Ellen Huber, city of Mandan and John Spilman, concerned citizen.

Minutes. Discussed MRT's March 3, 2009 minutes.

Motion. Schwindt moved and Glatt seconded approval of the March 3, 2009 minutes. All ayes. Motion carried.

Bank Statement. Reviewed and acknowledged the MRT bank statement ending March 31, 2009 with a balance of \$9,503,972.55. Pay requests 167 and 168 have been paid. One goes to the city of Mandan for wastewater treatment for \$921 and the other goes to LBG for \$28,949.88.

City of Mandan. Pay Request 170 is a wastewater recovery billing for \$826.18. The checks crossed in the mail. The bill received was \$1,700 but the MRT approved \$921 on March 3, 2009. Radig noted there is a 30- to 60-day lag between when it gets approved and gets to the bank.

Motion. Schwindt moved and Glatt seconded approval of Pay Request 170 to the city of Mandan in the amount of \$826.18 for wastewater services. All ayes. Motion carried.

LBG. Pay Request 169 is for \$35,917.32 for the March 19, 2009-invoice from LBG. Radig noted that this invoice was received after the last meeting. He has reviewed all the tasks and charges and they are all within the approved budgeted amounts. They also included the detail for the miscellaneous tasks. Most of those out-of-scope tasks dealt with planning for the Main Street drilling project. That project has not been given a separate task number yet. For last month, it was about \$7,965. Radig's recommendation was to approve this invoice.

Motion. Schwindt moved and Glatt seconded to approve Pay Request 169 in the amount of \$35,917.32 for LBG's invoice dated March 19, 2009. All ayes. Motion carried.

LBG. Pay Request 171 came in this morning to Radig for services through March 31, 2009 of \$36,116.69. He reviewed it and compared it to the budgeted task amounts. They are all within the approved amounts. This past month the out-of-scope charges were \$11,675.38. Almost all of that is related to the design and planning for the Main Street drilling.

Schwindt is concerned about the costs. We are over \$30,000 for putting in seven wells. We don't have the design on the connections they were working on. Glatt indicated we have the bids from the well drilling contractors and they know what they need to do as far as the well installation. In looking at the detail, Radig indicated it was included. It appears that all of the connections and everything – that design is included in this at least a substantial amount of it. Glatt questioned, What are the design costs? Radig indicated other than the out-of-scope task everything appears as planned. Schwindt suggested responding back to LBG with a concern about a total amount of costs charged the MRT for the slant well project.

Discussed travel time costs for Brad Peschong. The cost was to be split between the MRT and the investigation into the LEC. Glatt asked. How did they split up the time?

Motion. Glatt moved and Schwindt seconded to approve Pay Request 171 to LBG in the amount of \$36,116.69 for March 19, 2009-invoice, contingent upon a satisfactory answer to the question on how the time is being split between the LEC and the MRT. Neubauer noted we can pay this bill with the understanding that if there are corrections to be made they will be made on the following month's bill. All ayes. Motion carried.

Radig has received the city of Mandan's first quarter bills from Neubauer. They are bills paid by the city to MDU and water bills, etc. on behalf of MRT. He will review prior to the next meeting with recommendations.

At the last meeting Schwindt asked if there were additional funds to be coming from the city. Neubauer asked Schwindt to visit with Greg Welch.

Bids. Schwindt indicated the bids came in. Kenyon sent a memo. The memo is saying Borart Longyear's bid came in the lowest. Their bid was \$63,675. In LBG terms, "there are some issues that cast doubt on the accuracy of their bid. For instance, after conversations with Borart, we are not convinced they are fully aware of the complexity of the drilling and buried utility lines. Also, the bid does not include soil disposal costs." We understand that their insurance carrier may not allow them to drill as near the buried

lines as we require. It goes on to say, "The Braun bid does not have the omissions or reservations of the Borart bid. It is a higher bid but it is a bid that appears to be more responsible and less chance of change orders. Braun has committed the most time to bid the project and has exhibited the best understanding of all the complexities of the project." Braun's bid was \$89,000 plus. There is an additional \$2,205 for well development. The Borart bid for well development was \$6,300.

Kenyon says in his memo, "We directed them to proceed with making the connections to the existing system at the same time." Schwindt doesn't recall that being his direction at the previous meeting with feedback from Braun. They were the only bidders that showed up at the pre bid meeting on that Wednesday. Why would we want to go in and pour concrete and come back a month or two later and dig it back up and redo it? As we talked about it, it seemed to make more sense to have somebody come in while the hole was open, dig down, and make the connections and finish it off so then it's all done.

Schwindt's recollection of instructions to Ken Kytta was let's go ahead and get some bids from R³ and Earthmovers, etc. so we can see where we are at with well connection costs. In the memo, they make it sound like we have made that decision. Schwindt says. He doesn't think that is accurate.

Sidewalk. Neubauer received the city contract bid on the sidewalk replacement.

Restoration. Schwindt indicated that R³ was to submit a bid on Monday (April 6, 2009), but he didn't see anything this morning. There is not going to be any hot mix plants operating. They may start up the end of May. If we use the city contractor to go in and replace the sidewalk, he suggested putting cold mix into the parking lot areas at least until the hot mix plants start up. Or we could have R³ responsible for all of the work and the dollar amount and if they can get the work done, Neubauer added. Based on the weather and everything else, he doesn't know how promising it is to get drillers in and connections made and out of here before the first of June. It might be better to wait until the Fourth of July. It makes more sense to get everything done at the same time. It wouldn't be critical to our mission if we waited till July. Schwindt agreed with that. The only caveats on that would be their schedules. When Ken Haag called recently, he was wondering where things were at. He was holding some time open the end of April to do that if we, in fact, go with Braun. LBG was recommending that.

Neubauer indicated if it goes past May 1, 2009 that is not enough time to complete work by June 1.

Braun has estimated 11 days to complete their work. The contractor doing the connections should be starting some of the connections several days after the well drillers are in and after several wells are done.

There are no issues with design, wells and construction so it is just a matter of timing and getting the connections. Seven wells will be installed.

Indemnification. Schwindt indicated one issue that is pending is indemnification. LBG wants to be indemnified from hitting any kind of utilities. Schwindt's conversation with Braun was they are not seeking any indemnification protection in their bid. They indicated if they hit something, it is their cost. LBG's response back to Schwindt was if Braun is a subcontractor under LBG, LBG is still responsible if they hit something and don't fix it correctly. Neubauer indicated we would look to LBG to oversee. Kenyon is looking for indemnification relief so if they do hit some utilities they are not held responsible.

Schwindt suggested directly contracting with Braun. If Braun is willing to do the work without any indemnification then LBG's indemnification goes away. LBG could do the drilling oversight. LBG is suggesting if the MRT hires R³ they are familiar with project construction, project maintenance, etc. The MRT wouldn't get the 10 percent markup or another \$9,000. The only pitfall Schwindt can think of would be if the wells don't work. If the work is under LBG's contract, they are ultimately responsible but if they are not the oversight contractor who will be responsible for the wells if they don't work?

Can we indemnify for utilities? Glatt asked. Schwindt indicated LBG wants us to recognize and acknowledge this is an experimental process that might not work. Glatt does not know why they wouldn't run. Schwindt agreed. He suggested calling Kenyon. When we talked about it initially, Kenyon's concern was that the first well, the storm sewer, and the sewer are out in Main Street. If we hit that, we have to go in and tear Main Street up to fix it. Now you are talking a fair amount of money to tear Main Street out and provide the traffic protection. While you are doing that dig down and repair to the lines and bring it all back up to speed then repour the concrete, etc. There was no number ever associated with that.

Neubauer indicated there were estimated dollars if we used the vertical wells. That number was \$63,000. Schwindt agreed. It was \$60,000 for those vertical wells. That's entirely different from what Kenyon is concerned about as far as indemnity.

Neubauer is concerned whether the slant wells work vs. the vertical wells because whatever process is done, there is no guarantee on that. If Braun hits a utility, is the MRT prepared to fight that battle with Braun? Who pays for what? Whereas if we continue on the road we have been, LBG battles with Braun.

Schwindt indicated if we contract specifically with LBG, they are not willing to go ahead and order the drilling done unless we do indemnify them. We assume the risk. So if we contract directly with Braun, they are not seeking that same indemnification so it is their risk. Glatt noted they would gain by going with Braun. Schwindt agreed.

Gas Line. The only concern Braun still had was one well – the second one west of the movie theater. The storm and sanitary are in the middle of the street and then they come over to the curb line. According to the plans that ELM had from MDU, there is a gas line that runs under the sidewalk through that area. It also shows the gas line branching and going south into the middle of the parking lot and close to where the water fall is. However, there was a line that went over to the old Conoco Station and that was cut off. The one plan said it was cut off right where the driveway goes into the Movie Galleria parking lot. Paul Wiese was there when we were marking stuff and he was telling the guy no, we cut it off back here at the junction mark. If that is in fact true then it isn't in where we need to drill the well. So there is that question. That is the only concern that Braun had about trying to get by the gas line at that location.

Electrical Lines. They will want to be careful and do a lot of probing on the electrical lines and we may end up having to rewire the street light from west of Movie Galleria to east of Movie Galleria because that electrical line runs right down the sidewalk. Schwindt talked to Dave Auch from the city and Dave Bechtel about it. It should be in a conduit so it is just a matter of rerunning wire. There would be a cost for an electrician and wire to redo that.

Communications Wire. Also there is a communications wire for the street lights but that should also be in a conduit. It is a light gauge wire like doorbell wire. So if we took that out it would have to run from the street light on First Avenue to a street light on Third Avenue.

If we had those two wires out of there, it would simplify things. If we have to take those wires, we are going to have that cost regardless. He didn't know what it would involve to have MDU come over and just cap it off at that point. Glatt suggested talking to MDU about shortening the gas line.

Discussed legal issues. MRT did not solicit the bids directly. There is no contract with Braun. Do we have to go through the bid process? Schwindt suggested checking with the Office of Attorney General.

John Spilman indicated that the MRT could get a rider on their insurance to cover the indemnification.

Phone Call to Tim Kenyon. Neubauer placed a call to Kenyon to discuss the indemnification. Kenyon indicated that drilling contracts always indemnify. There is still a risk if he doesn't have it. Braun did not require indemnification in their bid. Kenyon indicated they don't have it in their bid, but it will be in their contract. Neubauer will check with Malcolm Brown, city attorney, about legal issues. Schwindt will check with Braun. Glatt will check with the Office of Attorney General.

Discussed the possibility of hitting the utility lines. Schwindt asked about shortening the gas line so it would be a stub line.

Kenyon indicated that R³ is available. Discussed doing the work prior to July 4 or after the holiday. The time frame prior to Buggies “n” Blues and July 4 would be five weeks. The consensus was to wait until July. Kenyon indicated water levels are coming up, but he doesn’t see a risk in waiting. Strata can’t give a price before July 4.

Neubauer asked for the layout map. Kenyon will send it. He noted the challenges will be weather related and finding the right pipe.

Schwindt indicated he was concerned about the costs of the project. Kenyon noted that R³ and Earthmovers have provided a good plan. They are capable of doing the work. Earthmovers are available later in the summer but not in May.

The MRT will accept Braun’s bid, if there are no legal issues.

Remediation Building. Schwindt talked about the March billing relating to the damage of the remediation building. He would like further detail.

Other. Neubauer’s discussion with Wells Fargo bank indicated a project with underground and commercial on the main floor. He asked Schwindt to take a look at those issues.

Discussed development activity regarding Furniture First, Bolken/Berger and Century 21 locations.

Huber asked. When you talk about connecting those wells to the existing system, what kind of disruption should be expected for that work? Schwindt explained the connection on the map. The wells will all connect on the south side of Main Street but generally they correspond with a well. The wells in most cases except for one will be in the sidewalk. There is going to be a panel of sidewalk coming out on everyone except one. Then we dig down from the sidewalk and go over to the closest well so they are relatively close.

Access. Huber asked about access to Papa Murphy’s and the Movie Gallery. There should still be access Schwindt said. Papa Murphy’s door is right in front of their building. You can get in through the Movie Gallery but their access is right in front of the building Huber said. There may be some disruption here according to Schwindt because it will be close to the building. While they work in this area they would have to park over here and come in. They will be able to use the front door. They will have access to the businesses. The work will be on one side of the building but not both sides. Schwindt talked about coordinating the construction of these two wells and to minimize disruption. It might have to be one of the early ones. The others can be done

later. Then you come in and do this one at the end to maintain access to the businesses.

Huber indicated there would be time to assemble if they do the work after the Fourth of July.

Another reason for the layout is we have our parking lot, concrete over here and then we are coming in with asphalt lying here. It makes more sense to extend the concrete out rather than throwing a patch, Neubauer indicated. He will review the layout.

Schwindt indicated it may depend on how big an area they will have to slope to work in the trench. The wells on the parking lot are about 5 feet to 10 feet in from the edge of the parking lot so you would be taking out a square around that. It won't be a strip along the whole area. The disruption for the wells, Schwindt's impression in talking with Braun, would be primarily limited to the sidewalk square. The pre bid discussion was about looking at putting the wells so they could take out one section of sidewalk.

LBG Update. Radig will e-mail LBG's update with their recovery numbers for March.

Next Meeting. The MRT will meet on May 5, 2009 at 10:00 a.m. unless authorized to proceed with drilling.

Motion. Glatt moved and Schwindt seconded to adjourn the meeting at noon on April 7, 2009.