

MANDAN REMEDIATION TRUST (MRT)
April 6, 2010

Meeting: 200th Official Meeting
Date: April 6, 2010
Location: Mandan City Hall, 205 2nd Ave. NW
Time: 10:00 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.

Minutes. Discussed March 2, 2010 minutes. Revisions were made.

Motion. Schwindt moved to approve the February 2, 2010 minutes, as amended, and Neubauer seconded. All ayes. Motion carried.

Pay Request. Brady Martz bill received for MRT's audit preparation in the amount of \$3,535, which is 70 percent of the total bill of \$5,050.

Motion: Schwindt moved to approve payment to Brady Martz for the MRT auditing expenses of \$3,535. Second by Neubauer. All ayes. Motion carried.

City of Mandan. Statement was received for first quarter of 2010 utility bills for the city of Mandan in the amount of \$20,247.37. Radig will review.

Pay Request. Invoice from the city of Mandan for \$717.25, which is the reimbursement for the remediation portion of the 2009 Progress Report – 2 pages of a 36 page report on the remediation project update that was completed and distributed to over 10,528 households with a 58554 address. Ellen Huber had requested roughly a \$1,000 as an estimate. It was slightly less.

Motion. Schwindt moved approval of payment in the amount of \$717.25 to the city of Mandan for a 2-page update in the Mandan Progress Report (36-page report). Second by Neubauer. All ayes. Motion carried.

Pay Request. LBG invoice dated March 16, 2010 for \$14,485.79. Radig has reviewed and it is all within the budgeted amount. He noted that another person has been promoted -- Brad Granley. He is at the same level as Ken Kytta. Granley put in one hour; Kytta put in 5.5 hours on the O&M task. The bulk of it was Rusty Krikava and Jason Vander Linden.

Schwindt commented. In furtherance of our discussion of the hourly rates I am not convinced that this is in accordance with the contract. We could go ahead and approve this payment, but I think we need to let LBG know that we can either dispute these costs or raise a concern. I noted in his response to your e-mail Scott, Tim

Kenyon doesn't expect Kytta's rate will increase the total cost beyond the budgeted amount for O&M. So that is good. I am just concerned that there were no hours in the approved task for this level of compensation. Therefore, I am not convinced that it is a legitimate charge under the contract. If there is some attorney that can review the language of the contract and the task that would make me feel better if we continue doing this. Radig suggested having Maggie Olson (assistant attorney general) look at the contract -- the Master Services Agreement and the tasks.

Neubauer indicated if the MRT has approved a task for a certain dollar level and LBG's job is to stay within that monetary amount, how they get there whether it is Kytta, Kenyon or Brad Peschong putting in hours on it are we concerned who they have working on the project that we have already approved if it is a \$5,000 task? Their job is to get that task done in that amount of money. How they get there is their business.

Schwindt would agree with that if it is a lump sum then the bottom line is the bottom line. When we look at the time and materials aspect of it, it has specific levels of expertise or personnel we are agreeing that these are an appropriate level of expertise whether they are hydrologists or engineers, etc. There are hours associated with those levels of expertise that we need. So if I would have been aware that they were going to be charging \$166 an hour for engineering services I don't know if that would have changed my decision to approve that task order or not. That's where I'm coming from. It seems you can't have both increases the same way. We are allowing them an increase based on the consumer price index. We are allowing an inflationary clause in their contract, but it seems the level of work we are demanding or need for engineering purposes they are also promoting people, which I have no objection to. But they are saying because we promoted this person, we need to charge at a higher rate even though the level of service we are getting is still the same. The level of engineering we need is still a senior engineer rather than a project manager or associate.

Radig's question was they are cognizant of that Neubauer noted. They are obviously backfilling some of Kytta's work. Your question is on the contract. Maybe what we can do if Olson can look at the contract. Radig indicated Glatt will have to approve that because all the hours she puts in to do that will be charged to our Department. We will talk to Glatt about that.

Schwindt is concerned if that is within the scope of the contract. But it seems that the task order becomes part of the contract and if you don't have any hours for that level of expertise or whatever that individual is then did we actually approve that? Right now, in my mind, I am thinking not unless someone can tell me otherwise. Radig indicated if Kytta could do the task in 5.5 hours and it would take a regular project engineer 8 hours then it probably will balance out, if he has that much more experience. I see your point about more increases.

Neubauer agreed it was OK to have Maggie Olson, the Health Department's assigned attorney, review the contract.

On some of the tasks, Schwindt noted, like meeting participation they don't have specific hours or categories. I have less discomfort there allowing something because it is not specifically assigned to a category.

Radig indicated then it is our responsibility before meeting to say do we really need both to come or just one.

Neubauer commented. Are we getting an effective cost for the task at hand, a less costly way to do it?

Schwindt assumed this payment should be approved to the original contract. It says we have to pay within a certain number of days unless we dispute certain costs.

Radig noted you can approve it, and I will make a note that we are still questioning those charges in May depending on what the response is on the review. We may ask for some reimbursement or credit later.

Schwindt agreed that would be fine. We just have to notify them. We are just not quite satisfied with the answer.

Motion. Schwindt moved and seconded by Neubauer to approve LBG's pay request in the amount of \$14,485.79. All ayes. Motion carried.

Bank Statement. The March bank statement has not been received yet, but the February 28, 2010 bank statement from the Bank of North Dakota indicates we have \$8,885,707.25. This is an acknowledgment that MRT has received the February bank statement.

LBG Update. Brad Peschong's e-mail yesterday included the cumulative numbers through February 28, 2010. To date 1.8 million pounds of hydrocarbons have been recovered and one pound of VOC vapor.

Manifold Building Damages. Manifold building by We-Ship received damages. Neubauer called Schwindt on Thursday notifying him of the damages. Schwindt completed the repairs the same day. He bought wood grained texture board that had a prime coat on it. Schwindt called Krikava after looking at it to let him know that someone had pushed the whole wall in. There was a six-to-eight foot section of wall with busted cement board. He opened up the manifold and they didn't do any damage inside but there were five 2 x 4 inch boards that were snapped off on the bottom. There was nothing inside. Krikava and Vander Linden were out of town. He applied caulking on it this morning. He will try to paint it today.

Vicky's Place. Neubauer received a call from Vicky about something structurally happening with the building on the south side. It is on the alley side of Vicky's Place. It appears there is some settling occurring starting by the doorway on the south side of the building and going to the west. There is a crack appearing in the wall above the

doorway and running to the west at least 10 feet or so. There is also a meter pit inside the building that has a deeper foundation than I assume the rest of the building. The floor is humping up over the top where that meter pit is located, but I think rather than the floor humping up I think the floor adjacent to it is settling so it makes the floor uneven. You have the support level here and this part is sinking so that's how it appears so that is my assessment. She was concerned about activity that was related to the MRT construction remediation project putting in the deep borings that may have caused the shifting of the ground or building. The same thing had happened when they put the deep wells in but she couldn't remember when they had gone under the building. She noticed that same unevenness where that little foundation is by the meter pit at that point in time.

Schwindt thought that occurred 10 to 15 years ago that he could remember. He did go back and look and it did occur in the fall of 2001 when we put in the deep horizontal wells. That is 9 years ago. She was also thinking that the current remediation system had a horizontal boring put in from the Zone 1 building, which is right behind her over to the bank to tie into the manifolds over there. And there was. I did find on some of the as builts showing that boring is out in the alley and down about 8 feet or 9 feet. That doesn't give me a distance horizontally from the building but it is out in the alley. I really don't know what would have caused her building to settle that we would have been directly involved in because these borings were put in 2006 so that is 3.5 years ago and that's out in the alley. Why that would occur, I don't know.

Radig asked. Did it just seem to appear this past winter? Or has it been gradually? Schwindt explained she noticed it about two months ago when they were having trouble getting in and out of the door. It was very obvious that door didn't close very well on the south side. There was a crack in the wall up above the door. I didn't measure the thickness of it. It may have been a quarter of an inch. I did put in a couple of pieces of tape up there and measured the distance between them to see whether it is changing. I told her that I would be getting some of this information back to her when that construction occurred. Also told her that we were meeting this week and I would bring it to the attention of the trust and see if there is anything that we wanted to do. I can get back to her after we finish here today. I don't know if there is anything that the trust is responsible for. I don't disagree that it appears that there is settlement occurring at least in portions of the building. Why it would have started in the middle of winter is odd.

Neubauer clarified so there is something going on with the building, which I would imagine with every building everywhere. That door they would be going in and out every day and the door started sticking. One of their employees noticed that unevenness in the floor by the women's bathroom at that time as well. In your opinion, is anything related to that?

Schwindt indicated I don't know what would be changing right now. If it would have been when things were installed or soon after, she was wondering if the pipes had collapsed or anything like that. We would have noticed that because it would have

affected the operation of the system if the pipes would have collapsed. Neubauer suggested running a camera down the pipes (4-inch pipes) if we need to disprove that. Schwindt told Vicky that Chief Construction put that line in. If she wanted to visit with Paul Weiss he could provide greater detail on how he constructed things then I could. Schwindt indicated he was going to call Chief and just visit with him about the construction techniques and the location, but when he found this on the as built there was no need to contact him. And those other ones from the original system back 9 years ago those were down – the shallowest one was 15 feet or something.

Radig indicated they are still there. Discussed further. If you are 15 feet down and you have a four or six inch pipe and it entirely collapses. Radig and Schwindt did not think it would affect the building at 15 feet deep.

Neubauer noted there is no basement. It is slab on grade. We have the camera equipment (utility maintenance) so we could run the camera down there. Neubauer asked Schwindt to talk to Paul Weiss at Chief. Neubauer would like to verify the as built with him and say, does this look reasonable as far as what the as built is compared to what they actually did? You may want to talk with Vicky again. Even if we had a collapsed line, it wouldn't be showing up within the system on something not working properly. We had the same arguments with the doors on Lavon's Hallmark shortly after we put wells in. They claimed the building was moving because it was sucking out all the stuff underneath the buildings. That was causing them to shift a little bit. Freeze and thaw has more to do with that than anything.

Radig noted we have had two extremely cold winters, which has more to do with it than pipes underneath. Schwindt noted that she had been in that building for 15 years or more why all of a sudden the building starts moving now.

Schwindt couldn't find the original construction plans for these. He is not sure what size the line was, but he can find that out from Weiss. Schwindt will visit with Vicky later today. He will double check those measurements to see whether the crack is closing up or getting worse.

Collins and Main Street Update. Do not expect any construction on Collins and Main Street until the spring of 2011 at this point in time. As long as things progress with the developer, I think we leave everything in place as long as we can. So you have another year to operate the system on that site.

Ritterman's Project. Neubauer indicated that Ritterman was in town last week indicating that they are still interested in doing something on The Medicine Shoppe wall, the old Century 21 wall. Neubauer indicated I think we gave you until May 1 to make a decision if you were going to ask for anything else or not. Ritterman responded. We'll see about that. He wasn't sure what they were going to do.

LEC. Schwindt stopped at the LEC last week and again this morning. Last Thursday they were in the process of cleaning the building up from all the dust of the

construction activity. When they started ripping the carpet out and taking the baseboard off mold and wet sheetrock were found. He noted in some of the rooms you could just take the sheetrock and squeeze moisture out of it. The county must have authorized them to go ahead and start replacing all the moldy/wet sheetrock and they started tearing into a lot of the exterior walls and found in some areas the moisture had been going on long enough that the steel studs were rusted away. The guy from R³ was thinking it was coming in from the top close to the ground surface -- coming in and coming down.

Neubauer questioned if it was from the rooftop. Schwindt doesn't know about the rooftop. Neubauer had heard that it was finding its way from the roof by finding a steel column and eventually making its way down all the way to the basement. Schwindt noted there were quite a few rooms that they have replaced the sheetrock up 4 feet. They are patching that in. If it would have been my building, I wouldn't have patched that all in until I had determined where the water was coming from and had that resolved.

It was R³'s understanding that they were soliciting bids for doing some landscaping. Whether they are going to do anything on the roof this is the first I have heard "roof" because he was talking "landscaping". Schwindt and Radig agreed there is not a lot of elevation difference from the main floor of the building up to the sidewalks or space around the building.

Schwindt continued. The carpeting is stripped out. Whoever is putting the epoxy down came in and started working in this one room and found the mold and said we are done until the mold is taken care of. There wasn't anybody back working in it this morning other than cleaning it up. I did notice the last couple times I was there with the additional work that has been done and the venting that are occurring that I haven't detected any diesel odors coming in and going into the elevator. There was always that light odor before. It could be the venting. The carpeting is out of there as well. All the carpet is gone. So maybe it is all of the above. We talked last time we have several concrete areas that seem to be clean, but yet the carpet was smelly like hydrocarbon. Whatever type of glue they used on the carpet when it was installed possibly could be where the odor is coming from. Schwindt didn't think so.

Neubauer recalls peeling up the carpet and smelling it. OK that's fuel. I can't tell the difference between diesel and gas, but it smelled nasty. I think the carpet was mostly peeling back in the north area. Schwindt interjected. It was all over. Neubauer noted if a lot of that concrete was not contaminated, what else do we have there? Schwindt noted he was using a scented cleaner today so when you came into the elevator that's what you smelled, but like you said, you just don't notice that fuel smell there anymore like they used to.

Cost Share Agreement. Radig asked. Did Glatt mail the draft of the Cost Share Agreement that Maggie Olson put together. Radig provided a copy. He will have Glatt send it around.

Neubauer indicated that the MRT will assist in payment for part of the cleaning up, etc. and Morton County has to sign off and release the MRT and whoever else of any further cleanup or building modifications.

Radig indicated there are still some blanks in there of what costs are going to be shared.

Neubauer has not heard from any of the county commissioners. He has talked to Paul Trauger a couple of times and asked him if he had a number cost wise yet. The MRT has not received any documentation.

Wastewater Disposal Invoice. Radig received the invoice on March 10, 2010. It will be approved at the next meeting.

Cost Share Agreement. The MRT will look at the Cost Share Agreement in May.

First Quarter Utility Costs. These costs will be received by the May 4 meeting.

Site Strategy Plan (SSP). Any movement on the SSP? Radig has not received anything since the public meeting. Arvy Smith will have to approve this. We will need to get a couple numbers of closure cost estimates from LBG. It has not been reviewed by the Risk Management group. We will need the contacts for insurance. Schwindt asked. Are we necessarily in a position to be even starting any kind of dialogue with those people? Radig suggested making some contacts. He noted it is not critical to do it immediately.

Neubauer indicated it wouldn't cost us anything to have them take a look at it if they would potentially bid an insurance part on it. What's common in industry? Radig indicated the Department has not done anything like this either. Neubauer indicated making contact now isn't a bad thing. Neubauer asked. Would there be any value in having Trauger come over and update the costs so far?

Schwindt is torn two ways on the epoxy coating. Is it really necessary to do it as long as the concrete wasn't stained and doesn't show any kind of petroleum contamination? What is the purpose of doing that? But on the other hand you say, well we have the floor up and cleaned off. Should we do it now and just be done with it? I'm torn both ways on it. I thought the county was supposed to come in and talk to us about it especially if they are going to look to us to reimburse for that. At least have some discussion. Do we need it? Or don't we need it? But by the next meeting in May that becomes a moot point.

Radig asked Schwindt. Are there a lot of cracks in the basement floor? There are some, but not a lot of cracks. Radig wondered as the building gets older if the epoxy will crack. If that happens, they will have the same issues as before. Neubauer

indicated if the floor is in decent condition you are not having a lot of that going on as you replace carpet or as you replace tile. Schwindt noted some of the bathrooms have ceramic tile on. They are not going to replace that. That is going to stay. It's their building they will do as they wish. If they are going to look to us to reimburse them for certain things, I would like someone to start that process.

Neubauer indicated no one has asked the MRT, hey, look! This is what is happening. Will you pay for this? No one has come and said here is where we are at. Will you guys be paying for part of it? Absent of that, I think it is safe on our part to say, we didn't have any input into the whole process here. You all decided to do it on your own, which is fine. We are not obligated to pay for it.

People's Square. Schwindt stopped at Library Square today to check with Gene Kringstad to see when they would be starting to work on parking lots, etc. Ellen Huber asked him to submit a plan for the old Hedahl's area and what they are going to do there. The MRT understands they will use that lot for a parking lot.

Recess.

Meeting Resumed. Dave Glatt has entered the room. Neubauer summarized. We have approved the minutes, as amended, from March. We approved the Brady Martz bill. The first quarter utilities statement on the city of Mandan has been given to Radig for review. We approved the invoice to LBG. The suggestion was to have Glatt, Radig, and the Department's assigned attorney Maggie Olson look at the contract regarding hourly rates to LBG and personnel.

Schwindt noted there were no hours put in for associates. We had engineering hours put in. I was not sure the rates they were charging were in accordance with the contract. So I would like to have an attorney look at that and give me some assurance that we are not violating the contract.

Neubauer explained that Brad Granley was promoted. We are not questioning the function of the motion; it is just a matter of billing under time and materials on the projects that was a concern.

Manifold Damage. Apparently a vehicle has run into the manifold over by the We-Ship. It is right by Starion. Schwindt has been out there and patched it up and we will look at getting some paint on there. Either a vehicle drove directly into it or backed into it and smashed two 4 x 8 feet sheets of cement board and broke 4 or 5 of the 2 x 4 inch boards – just pushed them off. They knew they hit it. There wasn't any damage to the piping inside or anything.

Bank Statement. We acknowledged the receipt of the February 2010 bank statement. We do not have the March one yet.

Vicky's Place. Schwindt got a call from Vicky Johnson about two weeks ago from Vicky's bar regarding some potential settling that is going on in the building. He has looked at some boring that was done in the alley way 3.5 years ago. They said they just noticed that one of the back doors wasn't closing right three months ago. The original horizontal lines were going down the alley next to her place. These are the original ones that go underneath the building, but those are 15 to 20 feet deep. These are the ones that Chief Construction put in back in 2006. These were put in during 2001. This one went out in the alley and is down 8 to 9 feet deep. Also, MDU has done some work in the alley. Schwindt talked to Vicky last week and he told her he would get some construction information on where some of this stuff is located and when it was done. He told her he would get back to her and told her he would bring it to the MRT today to find out if there was anything in particular the trust wanted to do. He isn't sure there is any responsibility or anything we can do.

Glatt asked about the door. Schwindt doesn't know how it closed before, but it doesn't close very well right now. It looks like there is an eighth or a quarter inch crack in the wall starting from the door frame going up and going across so there is a pretty good crack there. She said, she noticed things started happening about two months ago.

Neubauer indicated after Vicky's call they had some remodeling in the bar. Maybe she noticed it as a result of the contractors' pointing out certain things to her.

Schwindt indicated I have a hard time believing that these borings done out in the alley 3.5 years ago would show up now and even the ones that go underneath her place from 9 years ago. Especially, the way that was put in there, it was in the flooring underneath and you don't displace, you just replace what you took out with the pipe so the structural integrity is still there. Schwindt noted that she did say when they put these underneath there before she noticed there is a meter pit right where you go into the ladies' bathroom. It is not really big about 4 to 5 feet wide or 10 feet wide and the floor is uneven right there. That unevenness is similar to what happened when they put these deeper wells in back 10 years ago. What did you do this time? A meter pit is just where the water line comes in underneath the building. It is inside the building. The size is about 5 by 10 feet wide. There is nothing down there. There isn't a meter there anymore, but a water line coming in.

Neubauer stated that it is nothing we put in.

Schwindt indicated we would visit with Paul Weiss, Chief Construction, to get more information and verify that this is where things are at. I will visit with Vicky some more and share this information.

Glatt asked. Would there have been any changes in the grade of that alley? Was it like that before all the work was done? Schwindt doesn't think the grade of the alley has changed. Maybe you could have a grade now.

Neubauer indicated we moved to approve 2 pages of the Progress Report. There will probably not be any update on Collins and Main the former Ratz building, until the spring of 2011. So that will leave things in place for another year. I visited with Kevin Ritterman last week and they are still debating whether they are going to do anything additional with tuck pointing on the wall of The Medicine Shoppe. He has until May 1, 2010.

LEC Progress. Schwindt has gone through there this morning. They have started tearing up the carpet and the mold around the bottom of the sheetrock. Several places the sheetrock was wet and there were mold issues. In several rooms they had taken out half of the walls going vertical. They replaced those. Schwindt indicated it sounds like it is coming in from the outside. Neubauer heard it might be coming from the roof and following some of the steel down. Some of the steel beams have rust, Neubauer added. It is not a brand new issue. Schwindt talked to a guy from R³ and he was saying in that one room it has been going on long enough where the steel studs were rusted off.

Glatt explained it goes back to some of the complaints of the diesel odors, mold and stuff in there when staff had headaches, itchy eyes, etc.

Schwindt noted there are quite a few rooms where they replaced that sheetrock. He said that when they were in the men's locker room when they started tearing the baseboard off, you could take some of the sheetrock and squeeze moisture out of it. He said there were areas that were plain soggy.

Neubauer asked. Is there a law that it has to be reported to the Health Department? Is there a requirement to that?

Glatt indicated indoor air is more voluntary and the Department will assist if needed. It is not a requirement. Neubauer asked. And throughout all the air quality studies that have been done, Glatt responded, they aren't specifically looking for mold. They are looking more for the volatiles in different types of tests. I would imagine that they did look for mold but didn't find it. We don't have that kind of moisture hanging around for that long that things are rusting off and now you have mold. What concerns me they can put a lot of money into the diesel remediation and not improve the building one iota without taking care of that mold? Neubauer noted it appears that they are doing the removal and everything. Glatt responded. That's good, but you still need to take care of the moisture and how it is getting there. The back is horrible.

That was my thought, Schwindt noted, here they went in and replaced some of the sheetrock, it's taped back up, and they are going to paint it this week the way it sounded. They haven't figured out the source whatever that is. He did say they were soliciting bids for some landscaping to try to improve the drainage around the building. He didn't mention anything about the deals on the roof whether that is where it is coming from or not. It seems odd you would be replacing sheetrock before you solve your drainage issue. Glatt added it is good to know when we start discussing the bill.

The floor is open right now if you want to go and look at it, Schwindt indicated. There certainly is some discoloration from some of the glues where there is still glue on the floor. There isn't much staining. Someone is removing the old glue, which is part of the prep to the epoxy.

Glatt asked. Is the system hooked up? Schwindt is sure that it is hooked up and operating. When I came into the elevator today – he was washing all the walls and getting all the dust off so he was using a scented cleaner to do that and that's what you pick up when you walk in. When I was here last Thursday, I had not been here for over a month. It seems like I don't detect that trace of hydrocarbons anymore. All the carpet is gone too. Between the venting that is occurring on the SVE system and the carpet being gone and all the other things that have happened, I think there is an improvement. I don't detect any odor.

No update from the county.

Cost Share Agreement. Glatt has a draft of what Maggie Olson put together. Neubauer requested an e-mail be sent of that draft. Glatt will provide a hard copy as well.

Wastewater Charge. City of Mandan's wastewater charge for March will be approved next month.

Site Closure Plan. No comments have been received by the Department.

LBG. Next step would be for LBG to provide some numerical information into that. Radig indicated it should be sent to Risk Management. The main issue is insurance, Glatt noted, for long-term, we should get a quote. Neubauer suggested each trustee put their stamp on it and run it through Risk Management and return.

Discussed insurance whether the MRT could buy a policy to protect the state, the city and the MRT on this. Also, whether it would be appropriate to send them a draft of the second closure of that document to see if they have any input. Maggie's next step was to send the draft to Malcolm Brown.

Next Meeting. May 4, 2010 at 10:00 a.m.

Adjournment of Meeting. Schwindt moved and seconded by Neubauer to adjourn the meeting at 11:30 a.m. All ayes. Motion carried.