

**MANDAN REMEDIATION TRUST (MRT)**  
**May 4, 2010**

**Meeting:** 201st Official Meeting  
**Date:** May 4, 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 April 6, 2010 minutes. Revisions were made.

**Motion.** Schwindt moved to approve the April 6, 2010 minutes, as amended, and seconded by Glatt. All ayes. Motion carried.

**Bank of North Dakota.** BND's statement ending March 31 2010 is showing a balance of \$8,838,270.79. Neubauer acknowledged its receipt. There are no CD's at this time. He will check current interest rates.

**Pay Request 205.** Request to approve payment to the city of Mandan through March 2010 for its wastewater recovery system in the amount of \$2,007.56.

**Motion.** Glatt moved to approve PR 205 for \$2,007.56 to the city of Mandan; second by Schwindt. All ayes. Motion carried.

**Pay Request 206.** This request was presented at the April meeting. It covers the first quarter of MDU utility costs for city of Mandan.

**Motion.** Schwindt moved to approve payment of \$20,247.37 to the city of Mandan; second by Glatt. Radig has reviewed the billing. All ayes. Motion carried.

**Pay Request 207.** LBG pay request in the amount of \$23,478.42 for their billing through April 15, 2010. Radig indicated there were no questions except on the rates for LBG's associates.

**Motion.** Schwindt moved to approve PR 207 to LBG of \$23,478.42; second by Glatt. Radig noted the amounts were within the required scope. All ayes. Motion carried.

**The Medicine Shoppe.** Neubauer e-mailed out the tuck pointing estimate for the north wall of the Medicine Shoppe building. It looks like the tuck pointing estimate from Hertz Masonry is \$4,500. The contractors also added on \$500 for field engineering; \$1,000 for project meetings; \$250 for temporary toilets.

Glatt questioned \$1,000 for project meetings.

The MRT previously paid them \$6,600 for sandblasting. Schwindt asked. What was authorized -- \$12,000? This bid troubles me – the \$6,600 we paid already. We have already included \$500 for field engineering, \$2,000 for project meetings, and \$500 for temporary toilets. That was supposed to cover the entire cost of the tuck pointing and the ice blasting. Glatt indicated toilets would be a fixed cost. Schwindt does not recall seeing a toilet on that particular jobsite. There is one right across the alley over at the other building that they are building. Neubauer indicated the \$6,600 included \$3 grand for the dry ice, \$2 grand for supervision and all the other stuff.

Schwindt is OK with going to the original authorized amount whatever that was -- \$12,000. We paid \$6,600. He couldn't find the original bid but we must have it someplace. It was authorized last summer [See motion from July 7, 2009 minutes.].

Neubauer reviewed his file and his paperwork indicated \$12,100. The balance remaining would be \$5,500. He suggested looking back in the minutes to review what we authorized previously and in turn continue to honor up to that amount. Glatt and Schwindt agreed it was fair.

**Motion.** Schwindt moved to review the minutes to verify what was previously authorized and to honor our previous commitment for a total dollar amount of what we think will be \$12,100. Mertz will check the minutes and get back to us and let us know what that amount is less the previous amount that we paid of \$6,600 for using dry ice to remove the tar and in essence we will honor that amount. Second by Glatt. All eyes. Motion carried.

**Recovery Numbers.** LBG did not forward any recent recovery numbers.

**LEC.** Neubauer indicated last month we talked about water/mold issues. He has not had any communication with them. He has a LEC Advisory Board meeting tomorrow afternoon. Their agenda is not known at this time.

Schwindt stopped over there and just checked. They are working on leveling the floor and prepping it for the epoxy coating. I talked to Paul Trauger. He thought it would take a couple of weeks to complete that. It sounds like they are going to be putting carpeting in the conference room and perhaps some other offices. As people move down to the lower level and if they don't like the epoxy flooring in their office then they would carpet individual offices as they go along.

Glatt asked. Did they address the water seepage at all other than taking the walls out and putting new ones back? That is all they have accomplished so far Schwindt said.

**Landscaping.** They did get one bid for landscaping. They are trying to get another bid. The location of the problem is where the downspouts come down. That part has not been taken care of.

**Roof.** They discussed the roof. Schwindt indicated there was an issue with the roof, a leak that was impacting the center conference room. They have that fixed. It was some hole around one of the spikes that impacted the center conference room. He did not think the sheetrock was removed in that location yet to see if there is any damage.

**Health Issues.** Just a question in my mind, Glatt noted, somebody complains about respiratory issues and burning eyes, etc., it may not have been all related to diesel fuel. Some of it may have but not all of it. They need to take care of that water issue.

Schwindt indicated it will take another month before they finish everything up.

**LEC Update Requested.** Glatt noted we have requested an update from LEC a couple of times. I thought we had meetings setup that they would come to an MRT meeting so they could explain, but have not seen anyone.

Neubauer suggested having Paul Trauger attend the next MRT meeting. Schwindt noted that by next month, they still won't have all the billing put together. Neubauer will e-mail Trauger inviting him to June's meeting.

**Vicky's Bar.** Schwindt stopped at Vicky's and measured the crack on the wall. It doesn't appear that it changed one way or another. It didn't get any wider. He asked her if she had done anything further and she said no.

**Risk Management.** Glatt indicated he and Radig met with Risk Management but have not received a response at this time related to insurance and site strategy plan, etc., but they do have that information. They were going to look at it. Glatt and Radig explained to them the long-term insurance that is one of the options we have.

**Cost Share Agreement.** Discussed draft cost share agreement. There will be additional discussing and editing before sending a draft to Trauger. Glatt requested that the document be e-mailed to the trustees again for review.

**Time and Materials Contract.** Schwindt asked for their understanding of the time and materials contract that we have and what those numbers mean. It seems like we need to open some kind of a dialogue with LBG to understand what their position is and whether that is something that is acceptable to us. He said, maybe I am the only one that has a different understanding of what is involved when we approve a task order. I recognize that it is an estimate that they put together. If we are just looking at the contract and the only thing that is important is the dollar amount in the end, then why do we have all that detail in the estimate? That's where I struggle a little bit. As

discussed, the engineering was supposed to be at 220 hours; and senior engineer 208 hours at \$111.91 per hour. I assume any engineering that we are going to be getting would be at that kind of rate. Now, if they assign someone different to it, even if it is the same person and they get promoted then all of a sudden we are paying a different rate. It is for the same services. I recognize it is a different classification, but it is the same services to me. That's where I struggle on what this means.

In essence, Glatt explained, it is the best estimate based on what they think the project is going to do. He struggles with that a little bit just in the fact that they say it will take 200 hours to do the work at "x" amount of dollars and if that final dollar amount comes out. He gravitates more to a higher class or more experienced engineer that will take 150 hours. Does the price come out the same? The bottom line is how much do we pay at the end of the day? Do we get the kind of service that we ask for? He struggles a little bit with why did we get into cost of living adjustments and those kinds of discussions? In my mind the intent was those are the dollar amounts that we can go ahead and play with and we will adjust those on an annual basis based on the cost of living. We agreed to that 4 percent or whatever it is. They can make adjustments above and beyond that. Why do we mess with this, if they are going to be adjusting that?

Schwindt explained, because that affects every class of employee that they have.

Neubauer indicated when you deal with the costs of living adjustments in the labor range and we just take, for example, in situ biorespiration rate testing they have 3 hours in for an associate. Now, if we care what associate is putting those 3 hours in that estimate is reasonable. If we started to see – OK now we have 10 hours in review and oversight at \$166.70 an hour and you still have 8 hours in on a senior engineer, would that be the issue we are dealing with?

Glatt indicated we are vaulting to a lump sum. They have \$10,000 to do this work and then it comes out as \$12,000. Then you go back in and say yeah, it cost \$12,000 because you had a higher price on an engineer that we didn't anticipate, initially. There are things on here that we didn't anticipate.

Neubauer added, and if they have more hours in an associate and less hours as a senior engineer, but the amount is still \$20 grand. Glatt would have an issue if they came in at \$25 grand.

Radig noted. It is still time and materials not to exceed.

Schwindt said. "It is not clear that it is not to exceed." My thought was that we were open to increases if they were justifiable increases. He doesn't think we have run into any where one has exceeded the budget that he can recall.

Radig recalled on construction projects they did just because concrete was more expensive. As far as labor rates, he doesn't think that came into it.

Glatt talked to Maggie Olson this morning and there is nothing that she sees that we have a guaranteed price in the actual contract. Radig indicated Kenyon did say that it would not exceed. Schwindt added. It just points out a weakness in what we have been doing and seems like we should have some kind of dialogue with LBG about what this stuff means. Does it mean not to exceed? Does it not mean that? Does it mean you can do anything as long as you don't exceed the bottom line? I don't know. Maybe after we have a discussion, future work tasks should be clearer. Glatt indicates that is a fair thing to do. It has not been an issue until just recently. And because of the length of the project we are going to see people promoted and we are going to have to deal with that. Where we are at we are confused as to how that impacts the bottom line. And how is LBG approaching it? If they are saying the bottom line is still the bottom line and we agree to that and stick to that but if they say no, we can't adjust to what it is going to cost then we need to talk. I agree with that, it is a dialogue.

Radig will put that point together that the working understanding in the past has been time and materials not to exceed even though maybe it hasn't specifically stated that along with his meeting summary and forward it to LBG. Because of these issues we may want to clarify how the task orders are written and may want to tighten up the wording in future task orders.

Schwindt indicated not to exceed is one issue. How they charge people within here because if they list somebody they expect to see some hourly rates. With that biorespiration they do have time in for an associate, but on O&M they do not but we are being charged that so how does that work?

Glatt asked. How much stock do they take in on how they itemize everything? Do they follow that or does it get them an estimate but they don't necessarily follow that? So the question we would have is how much stock should we take? If it is \$20,000 and you exceed that then tough.

Neubauer indicated we have the principal for 12 hours. That would be Tim Kenyon, but the associate has zero and does not list any hours Schwindt responded.

Glatt indicated the bottom line for me is it helps us to itemize it if we can ask some questions and if we come out to a dollar amount we agree at a dollar amount say \$20,000 to do project x. We are comfortable with that. He doesn't know if he wants to sit and look at every timesheet and how much they charge out. Just say don't exceed this amount because we agreed to get this looked at and it is worth \$20,000 to us. What are we going to pay? If you come in and say it is going to cost more than -- things have changed dramatically during the project because something came up. New people with higher rates he doesn't think we are going to buy that.

Radig explained that never in the whole project that he has done reviews of the invoices has he done any totals of any hours. He goes to the bottom line, it's within their budget and that is pretty much it. Unless there is some specific line item that we

don't like, like buying cases of bottled water. Schwindt said. "But I do look at that stuff. I don't tally the hours to see if they are less than 208 hours for this particular individual, but I do look at them. If I would have known when they presented this, that they were going to be billing us engineering at \$166 an hour I probably would have had an objection to that."

But at the end of the day, Glatt indicated, if it is not going to exceed the amount we agreed to. Is that something we need to have an argument over?

We can spend a whole lot of money to have them trying to itemize and it will cost us at the end of the day, Neubauer explained.

Glatt does think if they itemize if they come in at \$25,000 we can say let's take a look here. How did you charge that out? Wait a minute you are charging off a lot more to this engineer than you said you would.

If we are going to start having them try to reconcile the actual to the estimated that is going to cost us probably more money, Neubauer responded.

Glatt stated, I think the understanding should be with Tim Kenyon if he understands that is a not to exceed level and then he comes back and says I just gave these guys a promotion and it will cost more. He has to be of the understanding we are going to say we are happy for you, but we are not paying for it.

Neubauer added. What they have said so far that is the number and we are not going to exceed it. It is rare that they have exceeded that, but like I say if we want to confirm that with them.

Glatt noted it creates some issue. Not to exceed is a comfort level but creates some issues that this is what is estimated. Now it has taken on an extreme because they are going to be making all these changes.

Schwindt is not suggesting that we have to go back and reconcile everything, but he does double check some of that stuff. We have not withheld payment to LBG just because they may have 208 hours in here and it went to 209. That's my point in asking some of those questions. If you envision putting people into that then typically they've put hours down for that level of person.

Glatt added, but why are you having this person working on this? Do you feel more comfortable with a not to exceed number?

Schwindt thinks so. Like you said in my mind it hasn't been – it's a not to exceed number because they are only authorized to that level and if they spend more than that they have to come back before they actually spend it. They need to get authorized before we would pay more than that.

Glatt agreed that needs to be made clear as well and not after the fact. If they see that they are not going to be able to make not to exceed they need to get back to us right away. Right now we have not to exceed and if there are any changes they need to get to us first. We may or may not approve it.

Schwindt indicated in my mind it is not to exceed but we can allow more if it is requested and it is justified if you run into something you just didn't see.

Neubauer indicated if you have \$25,000 and you had all these hours but you had a whole bunch more in the associate than principal being charged off on that amount. Fewer hours here and more hours there at a more expensive rate, what happens? What is the justification?

Schwindt would like to have that kind of dialogue and have that kind of understanding.

Radig asked. Could this be discussed by a phone call at the next meeting?

Neubauer suggested if they are in a middle of a task and they anticipate exceeding the estimate that they get prior approval not to exceed. If we need to call a meeting in the middle of the week, we can do that. Our understanding is not to exceed as long as they are under that same understanding.

Glatt thought they operated under that. The thing that has raised a question for us now is they are having people working at a higher rate. We don't know how that all plays in the final dollar amount and that's our concern. If it looks like there is going to be an exceed cost then you would need to get to us and justify the cost. That's our understanding.

Schwindt indicated if there are task orders in the future, perhaps there is additional language. He asked Radig: Is Kenyon under the understanding that he is supposed to be coming up on a quarterly basis?

Radig answered. That is what we agreed to last year. It went from monthly to quarterly.

Glatt thought it was as needed at the request of the board.

Radig will change that to "as requested."

Neubauer added. It might be something MRT would want to do prior to a final sit down with the county to talk about conditions at the LEC and what R<sup>3</sup> found when they were pulling out the concrete. What was contaminated and what was not? And trying to get a handle on what they think the responsibility is in full.

Glatt asked. Can we talk to them [R<sup>3</sup>] if they are contracted by somebody else? Schwindt didn't see why not. Neubauer's point would be a conversation on the telephone might be a good idea. He suggested having Trauger attend next month with an update of the status. We should not get a request to pay until July. Glatt would like to talk to the contractors. Do you have any objection to that? Schwindt suggested if Trauger is here next week maybe we could do a conference call with Bob Kruck when he is here. Then there is no uneasiness on the part of Bob Kruck that he has talked to us absent the county if the county went directly with R<sup>3</sup> or whether they went through LBG to R<sup>3</sup>.

Neubauer indicated that we would have to come up with a percentage. This is now a \$400,000 project, what percentage is related to diesel contamination and what percentage is related to water. Separate it out that way. I'm not sure how you get to that number.

**Collins and Main Update.** Neubauer will meet with the owners tomorrow so he should be getting an update.

**HPC Building.** Schwindt asked if he should work with public works to take the HPC building down. The other thing is should we solicit bids to have those horizontal lines plugged?

Radig suggested we may want to package all the closure activities together. If they want to get rid of that building soon, then you have to do that ahead of time.

Glatt indicated that building may be there for a while. It might be the same contractor to do all of them. There are items in the building which include a motor, several tanks and a heating and air conditioning unit.

There are some valuable salvageable things in the building, Neubauer said. In talking with the Hopfauf's that are doing the project on the corner they were asking for a staging area. If you take this building down we will allow you to use part of the parking lot for your staging area. Neubauer can have the fire department employees go over and take a look in the building.

**Horizontal Well Lines.** Schwindt talked to Chief Construction about when the horizontal lines were replaced in the alley over there. He asked whether Chief would be interested in plugging those deeper lines and he said, yeah, we could probably do that. He says I think you probably need to go in and make sure there is not a lot of diesel that is trapped in those lines where they come up wherever the water table happens to be at because he had gone in there several times with HPC. Schwindt recalls when the water table had dropped and they were just kind of floating there. He dropped a pump in there to pump the diesel out. He was saying we should probably do that just to make sure that there isn't any diesel on either end. You push it someplace and then you have a big mess. The horizontal wells are probably a more discreet work item rather than plugging the vertical wells because of that. Essentially, we will not be using them. If we

wanted to do that we would have to put something together to get some quotes from some contractors whoever that might be. Would we need to go through a whole bidding process? Isn't there a state law that you have to bid over \$25,000 or \$50,000?

Neubauer indicated what we [city] do is equipment under \$25,000 and that's our limit is to go get three quotes to be sure you have done your homework.

**Next Meeting.** Tentatively set for June 8, 2010 at 10:00 a.m. for Schwindt's schedule.

Radig will update LBG that meeting attendance will be as requested rather than quarterly.

Neubauer will ask Trauger to attend the June 8, 2010 meeting.

**Motion to Adjourn.** Schwindt moved to adjourn; second by Glatt. All ayes. Motion carried.