

**MANDAN REMEDIATION TRUST (MRT)**  
**March 2, 2010**

**Meeting:** 199th Official Meeting  
**Date:** March 2, 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 February 2, 2010 minutes. Revisions were made.

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

**Bank Statement.** Acknowledgement of the February 1, 2010 bank statement from the Bank of North Dakota indicates as of January 31, 2010 we have \$8,939,073.30.

**2009 Audit.** All the information has been submitted to Mindy Piatz at Brady Martz. Neubauer e-mailed the last pieces of information for the SEP and MRT Disbursement Log the end of January. She was due to take leave on a short-term basis but will return.

**Payment Requests:** City of Mandan for the wastewater recovery charges statement dated January 31, 2010 in the amount of \$846.01.

**Motion.** Schwindt moved and Glatt seconded to approve payment to the city of Mandan in the amount of \$846.01 for the wastewater recovery charges for the remediation project. All ayes. Motion carried.

**LBG.** LBG's Invoice No. 21002337 dated February 16, 2010 in the amount of \$48,843.04. E-mails discussed the hourly charges. The main one was for Ken Kytta who apparently has been promoted to an associate of the company; therefore, his hourly rate has gone up from \$107.92 to \$166 per hour. Schwindt wasn't so concerned about the hourly rate for Mr. Oswald but was concerned about the hourly rate for Mr. Kytta. Schwindt did not know he was being promoted to an associate and his hourly rate was increasing almost \$60 an hour. Glatt doesn't object with being promoted within the organization but how many associates do we need to have working on this project? So if they promoted everybody does that mean we just pay the higher cost? Or do we stick to the cost of living? I don't know what recourse we would have.

Neubauer noted LBG gave us a credit for \$10.50 on water charge.

We mentioned last time what's our option here if we say the management of this project now requires someone at a lower level of pay be put on the project? Is that going to in turn cost us more because then that person will probably have to be brought up to speed on what is occurring versus having someone that's worked on the project being promoted. I don't think this is unreasonable to do. His hourly charge had not been updated for a couple of years. They are not billing us back for that but we missed a couple of years.

Schwindt suggested having that discussion with Tim Kenyon and saying what are the options to provide engineering services for the project, which to me is different than some of the more detailed things that Mr. Kytta would know about and he is familiar with and sees what the options might be. Do they have someone on staff that could readily step in? Some of the other folks that they have been charging time like Richard Stoor or Paul Donovan and others. Can they provide the engineering services rather than Mr. Kytta?

Schwindt indicated that becomes incumbent on us in being cognizant of the types of activities that we are asking them to provide input on. Another thing that floored me was almost \$24,000 for them to come up for two days for the meeting. I'm not sure we got \$24,000 worth of information.

We asked them to be up here and we knew there was going to be a cost; we weren't specific in what we asked for Neubauer replied. Do we trust them to be doing the best that they can to minimize the cost for the project? Schwindt sometimes questions that. Neubauer continued. From the Health Department standpoint and the MRT standpoint and city standpoint we asked them to be up here for two days. So things were scheduled for us to go in and start questioning what it cost for them to be up here, I think is disingenuous of us to do that.

I think what it does for us though, Glatt indicated, is that we are aware and clear about our expectations and associated cost before we ask them to do anything. To save funding we may ask them to send the report by mail or by e-mail for example.

Schwindt indicated I am not saying that I think their charges for the trip are inappropriate. I am just surprised that it cost that much for them to come up here.

In the future, we will be careful on what we ask them to come up for, Glatt says. How can we communicate back to them and let them know there has been some e-mail back and forth regarding the salary. We could pose it more as a question. Is this something that we should anticipate will increase cost of the overall project? Is the project cost still the same or less than what we anticipated? It raises a concern in that they will rapidly increase the cost of the project by giving promotions as people gain experience in their organization.

Neubauer indicated if we come in and say that the budget number for the project for 2010 was \$380,000 or whatever it was that's a number. If we are OK with that then

it is a matter of saying we have approved this amount of money to say that is what it will take to operate the system. Now how LBG managed that internally. . . .

Radig interjected that \$341K does not include project management, meetings, and some other types of oversight, that is just running the pumps and checking the fluid levels and in situ bio respiration. Schwindt agreed it is not a total picture at all.

Neubauer noted. Maybe then we can do a better job of communicating of what that total picture is. If we go in and say we are willing to spend \$450,000 on this for 2010 that's it. It's their job to manage it. How do you want to do that?

The only way you manage these other things – they are individual tasks and we approve the \$20,000 incremental as pending on each one of those noted Schwindt. If you want to talk about changing the approach and for everything we want to give you a lump sum that's a different ball game. Maybe that's not what you are saying.

Neubauer indicated what I'm saying is how we communicate this to the public is pretty critical. If we go and say if LBG comes in and does their annual report here is what it will cost the system I may take that as I have \$9 million in the MRT today. At the end of the day add my interests and subtract out my \$380,000 here is what I should have left at the end of the year barring unforeseen things. It is closer to \$.5 million when we add up the utilities. In there we approve the individual task. We will spend more time and more money trying to pick apart who they are going to assign on certain tasks.

Glatt doesn't disagree with that. We are very conscious how we spend money. So how do we move forward with this? Neubauer says this is the question we need to ask. Are Ken's promotion and his compensation package going to impact what we are projected to spend on the project for the year? Radig explained they don't give a projection on those other costs because it is on an as needed basis. Schwindt indicated all the future invoices aren't necessarily going to include the time that was spent on the site closure plan and coming up for meetings. Just for a year that difference would probably be \$10,000, \$12,000 or \$20,000. Glatt questioned. Now that he has expanded expertise and reflected in his salary does that expanded expertise and knowledge save us money in the long run? I don't necessarily mind paying \$166 an hour if that is better information and saves us money. I guess the argument we made at \$107 was we were getting that already.

Schwindt suggested sending an e-mail back to Kenyon saying I am concerned about the huge increase in Mr. Kytta's hourly rate. What are the options for providing engineering services to the project? What are the costs? And what improvement in service do we receive Glatt added. It is more of making a note than a concern to us. If overall the costs continue to go down, I'm kind of OK with it. But now we are going to look very closely at Kytta's involvement asking him questions or are you coming up? I do think the system is getting close to running without major changes so there are

things they need to do to tweak it but there are no major engineering that has to be done. We should congratulate him on his promotion.

Neubauer agrees it is fine to send a note that we are concerned. Will this impact the overall dollar that the MRT is spending on the project? Obviously, it will. Glatt noted to be consistent we have questioned all expenditures for the entire project and this would be no different. Any increase in expenditures we have a history of questioning. I don't know what we can do about that in this case. Others we were able to talk to contractors and work through things and prices have changed.

Neubauer noted concern about escalation in cost for the folks that are working on the project from a managing standpoint. Will some of the tasks that Kytta was doing prior to being promoted be moving to other folks in a less costly manner? That would be an appropriate question to ask. Kenyon and Kytta – now we have close to two management positions working on the project, therefore, is someone going to be moved down for two less costly employees. Glatt agreed it is a fair question. Schwindt indicated that was my point. What are the options for providing the engineer services that we need?

Radig noted if Kytta is at the level that he can make certain decisions maybe it will be decreasing the amount of time Kenyon spends on the project. Glatt agreed that was a fair question to ask. Radig noted Matt Perimaki is at the level that Kenyon is at and he occasionally puts in a few hours. He has a certain expertise on certain subjects. The MRT will pose that question to LBG.

Neubauer asked for other comments on the invoice. The other tasks are in line with what is typical. There are quite a few hours on the meeting Radig noted. The other things are the Website, developer interaction and operation of the system.

**Website Use.** Schwindt asked. Do we need to continue maintaining that Website? Do people even look at it? Is it serving a useful purpose? Neubauer asked. Is it being utilized more for their internal purposes? Schwindt recalls them using it for some type of operations as well. Neubauer doesn't recall the total on it -- about \$450. Schwindt presented the question, if they are not using it, why do it? Neubauer indicated LBG might be providing bid documents or attachments, the Site Strategy Plan.

**Motion.** Glatt moved approval of LBG's PR 200 for \$48,843.04 with the knowledge that we would be asking questions about the cost effectiveness of the personnel that are assigned to the project. Second by Schwindt. All ayes. Motion carried.

**Task 2010-1 Operations.** A task for 2010 operations, quarterly fluid level monitoring and in situ bio respiration testing which was tabled last month until this month because Glatt wanted to review it. Radig has reviewed and it appears to be in line with last year's so I would recommend approval. The amount is \$341,000. Last year it came in under budget for the full year.

Schwindt wanted to see what their task breakdown was on the O&M for one thing. They have 208 hours of senior engineer (4 hours per week) and then site visits – 55 hours each. There is one of those at an hourly rate of \$111.91. So you have 263 hours combined for those at a senior engineer level. Radig noted Paul Donovan came up for those visits.

Schwindt noted there are two of them for \$94.07 per hour for data entry analysis and communication with field personnel. Those are some engineers and a site visit as well. That's the bulk of the engineering time. Then there is routine O&M for 2,080 hours, which would be Jason Vander Linden and Rusty Krikava. There are zero hours in for an associate. It's not clear to me on the issue we were just talking about is Kytta going to be charged out as an associate at \$166 an hour or will they assign a senior engineer for those 260 hours at \$111 an hour. There were 11 hours of Kytta's time in O&M for the past month at \$166 related to that task. Maybe that is part of the concern that we enter into the communication that Radig is putting together. Radig will ask about that. He thinks those budgets were done prior. It goes directly to your point about does this hourly rate increase impact the project. Neubauer indicated will the number of senior engineer hours go down and your associate hours go up but you still have \$5 grand to spend on whatever. Radig will put that together. Do we wait on this budget to see? Glatt noted there is a budget change. Neubauer indicated we could make a motion to approve that task provided it would stay the same.

**Motion.** Schwindt moved to approve Task 2010-1 for Operation and Maintenance of the system for the quarterly fluid levels and the bio respiration tasks in the total amount of \$341,475. Second by Glatt. All ayes. Motion carried.

**LEC Floor Covering Option Summary.** Neubauer has the floor coverings option summary from Paul Trauger and Ken Kytta. A week after we had our meeting here Schwindt indicated there was some discussion of putting additional legs of drain system under the central area of the LEC building. That was something that Dick Bechtel with Custer District Health had suggested to the county commission and I wasn't sure how effective something like that would be. I briefly mentioned that to Trauger when talking but I think the county commission was meeting that day. I just caught him on break at noon. Later that afternoon they had decided to go ahead and do that before we even had time to talk about it. They had decided to expand the system. I think it was five additional legs so it would be costly. The cost was \$60 a foot; each leg was 10 feet so a range from \$3,000 to \$4,000 of increase. When Schwindt talked to Kytta about it, he said it is not really necessary for groundwater management. It may enhance some of the remediation, soil venting beneath the floor slab. He didn't have a strong feeling one way or another whether they did it or not. I am not convinced that it is going to be very effective because of the footings there they had to go down about 3 feet below the floor slab where they were putting these things in and it is down in the heavy clay. So how much venting you are going to get through that clay is probably not going to be very much.

In contrast to when they put a couple of those extensions in the weight room – there they brought them up and they could go through the sand layer underneath the floor. The county authorized them to go ahead and do that work. How we participate or not remains to be seen. The pipes are set up with a main drain line and you have a 10 foot extension off of it and stagger them. He doesn't know the exact layout. If they put in 5 legs they would have to do 2 from one side and 3 from the other side to get to the center. Schwindt received a summary of information that he had gotten from Kytta about the flooring and the areas disturbed by groundwater. There are two different items here for epoxy finish. One is a flake finish, which is a smoother type of finish, but it is thinner. The cost for doing that in the area disturbed by the groundwater system was \$31,560 and if you went to the quartz it was \$35,185 so about \$4,000 difference. There was also an epoxy base of \$23,610 plus \$22,725 for carpeting (estimate from Al Fitterer) for a total of \$46,335 for carpeting finish total. That is just the area disturbed by the groundwater system. The epoxy base is \$23,610 and then if you went with the flake finish of \$31,560 the cost would be \$55,170.

Glatt asked. Are there any benefits or non benefits to lay quartz or epoxy base? Schwindt was under the assumption that the county would be here today to talk about this because that is what they said they were going to do. My discussion with Trauger was they were thinking the quartz finish is thicker and kind of a rough surface. They were thinking of leaving that as the ultimate finish on the floor and not put carpet on top of it. If the people didn't like the feel, then they could carpet it at some time in the future. I don't know what they decided to do. Neubauer didn't know. Schwindt continued. If they do the entire floor with quartz finish and carpeting, it would be \$133,103. Trauger said during a conversation on the phone is that they had decided to go with the quartz finish but I don't know if they had decided to do the carpet as well. They were looking at doing the entire floor. If you do the entire floor with an epoxy finish coat and the quartz finish the total would be \$83,185. The carpet would add another \$50,000.

Glatt asked. Do you have to prep the floor or take off the glue? That's one of the questions I have. Schwindt indicated there is a bid in here or a price -- \$4,608 for additional carpet removal and that was a bid for R<sup>3</sup> at \$1.40 a square foot. When I talked to them I asked if that included the removal of all the glue that is down there now. They said no, we are just taking the carpet out so somebody has to remove that glue. Neubauer indicated the glue is the smelly part. Schwindt said, that has to come off because you can't reseal it with the epoxy until you get that done. About two weeks ago they were putting in the pea rock into the trenches. I think their plan was to start pouring the concrete back in last week. Trauger and Bruce Strinden said they would be in attendance at our meeting.

Neubauer indicated it appears the county is moving forward and doing what they think is appropriate and spending whatever money they feel is appropriate regardless of what reimbursement may or may not be forthcoming. At that point in time when they decide to come and ask for some type of reimbursements, we will have to go through the same discussions again.

Glatt asked. What is the total amount so far if we include the additional piping, the original piping and then the options of carpet? Neubauer indicated about \$210,000 plus if they go with the \$133,000 then you are up to \$343,000, if that is right. Schwindt recalls \$200,000. For doing the groundwater system, that was around \$200,000. I think that included engineering. They made that one tie-in to that well so they had a change order on that. There were some other tie-ins on the other end where they were tying it into the SVE system. It would be in that \$350,000 range.

Glatt indicated included in that discussion will be an agreement no matter what dollar amount we settle on with the county.

Neubauer suggested having Maggie Olson, the Department's attorney, and Malcolm Brown, city attorney draft a document that would be appropriate. Brown can be reached at 224.8825. He would have some of the site access agreements.

**Collection Numbers.** Collection numbers have not been received from LBG.

**Hopfauf Builders (HB).** HB did not close on the property March 1, 2010. They are on the agenda for the city's meeting tonight for a two-week extension. They are still negotiating with their main floor occupant -- second floor occupant. They are working on getting that sealed. They did have a letter of intent but not signed, sealed or delivered as of yesterday.

**Site Strategy Plan.** Radig has not received any comments on the SSP. It is not a formal comment period. The Department will allow 30 days for comments. The SSP will be finalized after that time period. Then the MRT and the Department can finalize it. Radig noted we will have to get some of the information back from LBG. Glatt suggested contacting OMB's risk management folks too. They would be looking at long-term insurance. What is the state's liability on long-term? Do we have responsibility for contamination? How do we address that? As far as closing or shutting down, he is not certain of that. What is the likelihood that the state would be asked to go back in and do their report?

Neubauer suggested Radig notify LBG what the Health Department's plan or steps are for the SSP and that it may include going through OMB's risk management folks. If they have any thoughts or whatever they may want to put into it, there are products available to you. Neubauer doesn't have that information available.

The MRT may contact Real Estate Recycling of Minnesota and ask which companies provide that kind of service. Or is it too early in the process?

Neubauer commented. On the other hand, if I wanted a quote of a product to find what the end point is I would ask what criteria needs to be met? How long does that have to be met? What is the system you have in place? What levels are you getting out of it? Then I would be contacting LBG to say: Where are your monitoring points? What do you have left down there? What are you getting out of there?

Glatt indicated the SSP lays out a lot of that stuff. Don't know what the end points are going to be or how long they have to prove those end points.

Radig indicated it is new for us but other parts of the country have had Brownfield's projects. I'm sure they have to deal with these same issues.

**Next Meeting.** April 6, 2010 at 10 a.m.

**Motion to Adjourn.** Glatt moved and Schwindt seconded to adjourn the meeting. All ayes. Motion carried.