

MANDAN REMEDIATION TRUST (MRT)
January 4, 2011

Meeting: 209th Official Meeting
Date: January 4, 2011
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 attending were Scott Radig and Marilyn Mertz, Department of Health; Ellen Huber, city of Mandan.

Minutes. December 7, 2010 minutes were reviewed. Revisions were made.

Motion. Glatt moved to approve the December 7, 2010 minutes; second by Schwindt. All ayes. Motion carried.

Pay Request. Pay request from Schwindt for July, August, September, October, November and December 2010 for 38 hours of activities.

Motion. Glatt moved; second by Neubauer to pay USSI – Schwindt for the activities in July, August, September, October, November and December 2010. Glatt and Neubauer ayes. Schwindt abstains. Motion passed.

City's Fourth Quarter Billing. Neubauer gave Radig the city of Mandan's fourth quarter billing mostly for utilities and some insurance to review for next month.

Progress Report. Neubauer handed out a memo requesting to do the annual progress report for the city of Mandan, which Huber has gone through and done. Right now she is looking at a 12 to 16 page magazine style report with a couple of pages dedicated to the remediation efforts. It is her request not to exceed \$1,200. What we are planning on doing in 2011 is basically what we did in 2010. Here's the report of the cleanup activities. The information will be similar to last year--here is the financial status of the MRT and SEP. Here are recovery numbers. It would be nice to say in 2009 we did the wells underneath Main Street and to have some idea what those are producing if we are going to do some decommissioning of the system or try and shut down some things. Maybe the Site Strategy Plan if that is finalized and approved I think those would be timely things to put in for the 2011 report.

Schwindt suggested putting in a series of product maps. Would that be helpful? Huber provided a copy of last year's report. We could start out where we were last year or two years ago and the latest product map we have now, Schwindt said. Also, some of the Site Strategy Closure things might be a good thing too. Glatt added. We are going to be talking about: What's the end of this project?

Huber indicated the portion of what you were discussing Fritz to do the costs would be dependent upon the total number of pages of publication and the...remediation topics. Right now it is based on two pages of a 12 to 16 page publication, but if we need to do more graphics than we need more than two pages and that would increase the cost.

Neubauer – Keep the first map and then go to the most recent one.

That's what we have been doing, Huber responded.

Radig noted they should have one for the fourth quarter. Glatt agreed the format looks good. Just update the information and do some more information on the next steps as far as closing.

Motion. Schwindt moved approval to spend up to \$1,200 for MRT's remediation efforts in the Progress Report. Second by Glatt. All ayes. Motion carried.

Fence Repair. Schwindt didn't get the information for the fencing.

Site Strategy Plan. Radig noted the Department of Health did not receive any comments. It is still in the same format. We do have a bill in with the legislature now to clarify the financial assurance. The way the law is currently written it is kind of open-ended. There is no ending date. We have a bill to clarify that. We can require to be maintained until the date is presented showing there is no significant risk to human health or the environment.

Glatt added. It doesn't do away with any liability but you may not have to maintain a trust or financial assurance indefinitely.

Schwindt asked. You didn't want to go with a 5 year or 10 year or 20 year?

Glatt noted. "Upon petition of the Department" is what it says. Realistically, we will need monitoring data to show that things are stable, nothing is moving, and there is no health risk so that data will have to be provided. We just decided not to put in a date.

Radig added. That's not to say it may not end up with a number.

Glatt added. As a policy they may say you may need to have the monitoring, you may need to have a minimum of so many years before we will consider it and put it into law.

Assuming that goes through as approved by the legislature, then that gives us a lot of flexibility to decide how long we want the financial assurance whether it is an insurance/accounting issue that we have, Radig responded.

Neubauer -- What are we going to do as far as monitoring and maintenance of a financial fund?

Glatt noted that's not the only issue. It takes one of the various ways—there is a path forward where you can do away with the financial assurance with a certain amount of science that will allow the Department to make that determination. The liability doesn't go away as it relates to the state. We will always have some liability and we still need to be looking at some long term insurance to provide that buffer. It may provide an opportunity to free up some of the trust fund.

Radig indicated that Tag Anderson with the division of Risk Management reviewed the way the law is now and then he also has worked with the Aon Environmental Company. He seemed comfortable with something like a 10-year policy after we determine everything is clean enough to shut down.

Neubauer – So if we were to write the Site Strategy Closure Plan for Mandan Remediation Site what other hurdles do we have to get there other than this one to be able to wrap that thing up and put a fork in it and say OK?

Glatt – I wouldn't think it would be too many. It is just where the state wants to be on still holding the bag on liability.

Schwindt asked. How does that impact this group as to when we cease functioning and purchase the insurance?

Glatt added when there is no more money in the trust fund.

Schwindt -- I am assuming there is going to be.

Glatt – There will but there will be some decisions that will be made after we quit monitoring, there is no longer a need for the fund or to buy insurance. I don't know when that money is decided to be turned over to the city or wherever. I think when all the wells are closed and everything is shut down and the monitoring shows there is no risk and the state says we don't need monitoring.

Does this group need to be around for the next 15 years yet, Schwindt asked?

Glatt – I don't know the answer to that. I think it will play out as we find out if there is an insurance vehicle. We are just in essence managing the money. Once the money is gone we are not going to manage it. Then it becomes as far as remediation it becomes the city's and the state will manage that. That's how I see it.

Once the trust goes away, Schwindt said, any and all liability falls back to the state.

Radig. Somehow the city would be tied in there as well, especially, if the money is turned over to the city. Glatt noted it would depend on how the agreement was written up. I will have to go back and look at that. That's why the attorneys are going to be deciding. Off the cuff I'm thinking once the SSP says you have enough monitoring data you can shut it down. We will abandon the wells and whatever else needs to be abandoned. Once that is all done, we can dissolve.

Neubauer summarized. What I'm taking from this discussion would be from last February there are no changes to those monitoring issues and things like that. The plan that was put together or the stuff you have, the legislature will have to decide that you guys can't simply decide without some type of legislation that says OK here is how we determine an end date to make sure the state is comfortable making that determination. Everything is the same other than that is the one missing piece.

Radig – That is the one piece that we have the authority to actually give it an ending. I don't think it was never intended to be open-ended. It was just the way it was written it wasn't clear.

Neubauer – If we get a question on the street, when is this going to be over? I'm going to get the question that says when can some of that money if there is money left over be turned over to the city? Right now, based on what I heard today, is that after this legislative session we will be able to put, hopefully, put the fork and call it done in the SSP. We have all the pieces except for this. I can't tell you right now because there is no statutory authority that allows the Health Department to give an end date and that's what we are working on this session now. Do you need help on testifying on whatever you feel you have? Maybe Schwindt or I say what we are talking about is the ability to put in an end date for us to go and say, look folks we are getting a half percent on \$9 million at the Bank of North Dakota. We are not able to put any money we have in reserve to good use. It just sits there and it doesn't make any sense to have it sit there. It can't be released until we have an end date.

Glatt added. It doesn't make sense to have it sit there if public health and environmental issues have all gone away. Then it doesn't make any sense to have that chunk of money sitting there when the risk is minimal.

Radig -- The bill will be presented as a housekeeping bill to clarify something that was left out in the initial legislation. I am going to use Mandan as the example.

Glatt indicated we are anticipating questions. Some we are anticipating are: Well then so these people can walk? No, they don't walk. What we are saying is that our experience with contaminated sites is that you go through an assessment, a remediation phase, assessment. Once you complete that, you know with pretty good certainty that is a problem or it isn't. If it isn't a problem, we should be able to move forward and put this land in use and put the money someplace else. But we won't release it until we have gone through that three step process.

Neubauer -- If you want us to attend, I will be more than happy to attend.

Radig will notify him of the committee hearing date.

Glatt – We need to put a fork in the SSP and make it official and put it in the record.

Neubauer – That may drive decisions among the trust on what are the next steps we need to take in order to move this?

Radig indicated some of that will need input back from LBG on things such as what is going to be an estimate on the cost to do the closure? You will need to set money aside in reserve for those types of costs.

Glatt added one of the complicating factors for us too is the high water table. That masks some of the remediation. We have a gut feeling that things are going really well and I believe they are, but we don't know how well until the water table drops.

Neubauer – When we first started, the water table was low and now we are hearing even the RTO unit doesn't necessarily have to be operating because the amount of gas being removed is less.

Neubauer – Do we have a measurement that says the water table and wells were showing a half a foot or six inches and now it is at 2.5 feet? Is there a drastic movement in it?

Schwindt -- We haven't seen any water table elevation data for a while. I don't remember the last time we saw any.

Glatt – It would be kind of nice if the baseline would show that where the water table was and product. My sense is we have removed a fair amount of product, but the amount of product we are showing as far as the maps may not be totally representative of what is going on.

Radig -- We can ask LBG to give us water level graphs.

Schwindt -- In the annual report, don't they typically have it in there?

Glatt – That is a question we might want to pose to them when they come up next. We may want to ask that question. Mention the RTO and keep it around because the water table. How much of an issue is that?

LBG Pay Request. LBG invoice dated December 15, 2010 for \$31,624.73. Radig questioned the \$10,000 charge from R3 for preventive maintenance. I'm not quite sure what things they changed out. I don't have any details on that. That was the only significant item out of the ordinary.

Schwindt indicated they typically come up once a year to go through the system and focus primarily on the RTO. That's what I remember from the past.

Motion. Schwindt moved to approve payment to LBG in the amount of \$31,624.73; second by Glatt. All ayes. Motion carried.

Amendment. Amendment 17-Task 2005-1-11-A, which is an annual increase of \$20,000 to deal with Project Management. Radig noted it has been almost two years since the last request.

Glatt -- Above and beyond what we normally have them do.

Schwindt responded. No, there is a separate category for that. That is Out-of-Scope tasks. The number is 36, Radig said. This is strictly Project Management, Schwindt added. If you look at the very first item generally Brad Peschong's time is in there and Tim Kenyon has time in there too.

Radig indicated there is also another one that is an ongoing, open-ended task for redevelopment issues where you can call up and ask them to look at a certain lot and review the data on that. There is still money in that task.

Motion. Schwindt moved to approve Amendment No. 17 to Task 2005-1-11A in the amount of \$20,000 for Project Management; second by Glatt. All ayes. Motion carried.

Neubauer will get the mayor's signature tonight and will get it to Glatt for Arvy Smith's signature.

Pay Request. City of Mandan wastewater charges for October and November for \$1,383.71.

Motion. Schwindt moved to approve payment to the city of Mandan for wastewater charges for October to November 2010 in the amount of \$1,383.71; second by Glatt. There is simply a volume charge for 89,271 cubic feet. All ayes. Motion carried.

LBG Update. Continued use on the RTO unit is there enough methane coming into that system to create an odor? I agree that we shouldn't decommission the RTO unit and try to sell it because we may have to buy another one and put it in there. If we just aren't operating it, Glatt noted, there may be some odor to it but it isn't a health issue or an air quality issue.

Schwindt – Let's ask the question what kind of O&M issues does that raise if we operate it intermittently? Secondly, if that doesn't create a big problem, what happens if

we go ahead and try it for a month or two and see what type of complaints we get. If people don't like it and we get a lot of odor off of it then we kick it back in.

Glatt indicated the first thing you need to do is go through the permit process as it relates to the Health Department to make sure that there are no public health issues. Then I would advocate shutting it down to see what we do get.

Schwindt -- The concern I have on the intermittent operation is some kind of a catalytic exchange inside there. If we don't continue to operate it, is it just going to deteriorate and then we have a big problem to start back up?

Glatt -- It would just be maintenance cost/startup costs. They aren't designed to switch off and on very much. It has been running continuously. As long as you have vapors being extracted from the wells, it is going.

Schwindt explained you have to heat up the thermo oxidizing portion of it and that has to be hot enough. The less contaminated gas that you run through there the more natural gas you have to burn to keep that section of the unit operational.

Glatt -- I think if they are testing and the modeling shows no problems of public health or ambient air quality, I don't have any problem shutting it down. If we get complaints, we can say it is not a public health hazard or air quality hazard but maybe an aesthetic issue.

Schwindt -- My biggest concern is if we would be generating some odors, we may have to continue operating it.

Glatt -- Public perception! Then you are going to get complaints of a smell. It sounds like they will provide some information in February that relates to the modeling. To not operate it, they would have to basically meet the lows of the parameters established in the permit and they would need to prove that has happened. So I think you need to wait for that. I did forward this e-mail over to Tom Bachman and Terry O'Clair and said some information would be coming.

Radig -- I would like to ask those other questions about startup and maintenance issues.

Website. Neubauer asked the question about the website. It looks like it is pretty tough to tell. Huber will look under city of Mandan's website stats to see what kind of hits they are getting.

Radig noted the last task was February 2009. Now they are asking for another \$5,000.

Schwindt -- I have mixed feelings on it. If we want to continue for another year, that is fine and if we don't want to continue it, I am almost fine with that too.

Glatt agreed with Schwindt that we could do away with it.

Neubauer – Do it for one more year. If we get some site closure out then it becomes maintenance valuable.

Radig -- I would probably say just shut it down, but I'm not the one....

Neubauer indicated spend \$2,500 elsewhere, if there is not a lot of use on there. The drilling activity is over. Any thoughts?

Huber – Unless you want to hold it for one month. I suspect that if people couldn't find what they are looking for they will call. Are they putting on cumulative monthly reports on that website? I would need to take a look at it. I think in the past I have found some photos and other information. I probably look at it once a year.

Glatt -- When there was a lot of construction I understand that was very critical. Now we are in a maintenance phase.

Neubauer -- So if we would shut that down. In essence, archive all that information they have out there.

Radig -- I could either download everything or have it put on disk.

Schwindt can you maintain the website and leave it as of today and not do anymore maintenance to it?

Radig – Well there are still ongoing charges.

Neubauer – Web hosting fee. Pay to have someone put that information....

Glatt – My vote is to do away with it.

Motion. Glatt moved to discontinue the use of the MRT/LBG website; second by Schwindt. Glatt noted that any pertinent information be put on the city's/Department of Health web page. I would still like to make that information available to the public.

Radig – You could put contact information for the Health Department on your page that you have.

Schwindt – Can we take the data as it exists today and put it on the Mandan site.

Neubauer -- We can put a map out there.

Schwindt – The data itself?

Huber – Without taking a look at what is there, I can't say.

Glatt – You may have all the data in the world but nobody looks at it.

Schwindt – Can we withdraw that motion?

Glatt – We can table it until we have a chance to see what is there.

Schwindt suggested taking all the information on the current website and put it someplace onto the Mandan website.

Huber – I don't know if that is even narrative. Photos from the excavation of 2006 and 2007.

Glatt – We may want to archive some place. Here is some information, if you have other questions, contact these folks.

Neubauer -- Here is a thumb drive. Put everything on it.

Schwindt – Keep that accessible.

Motion Tabled. Neubauer indicated let's table the issue and bring it back to the February meeting and the conversation we had here. Motion to table. All ayes.

Neubauer probably has a link on their website.

Ratz Lot. Radig recalled last month there was a question on the Ratz Lot and that the project is going back out for proposals. We need to do a complete set of samples on those wells.

Schwindt indicated they are thinking we are asking them to provide another recommendation. I didn't think that's what we were asking. I thought what we asked them to do was to make sure they sampled all the wells internally. I think that's what they are asking they would come back with a recommendation again on if we can dump the wells. Did I read that right?

Radig – The city also asked for the best estimate on whether all the interior wells can be abandoned or discontinued.

Neubauer – Their response was we would like to have all the wells measured next round of fluid measurements.

Schwindt – I don't think that is what we asked for. I thought we were going to ask them to do the monitoring of all the internal wells. I guess to me I am just concerned on the timing of this thing. We want the wells sampled before an evaluation is done, correct?

Glatt – We want the data first and then we will decide whether or not we want to ask them to give us a recommendation. What they have done is jumped ahead. What you are saying is get the data first. Let us look at it. If we are scratching our heads on it we will come to you and say, what do you think?

Schwindt agreed. I don't think that is the impression that they got from your message. I think they are going ahead to do an evaluation now.

Radig – They are going to have Rusty Krikava measure all the wells this month.

Neubauer – We think we have got, based on the past history you can decommission the interior [wells] or leave them.

Glatt suggested. Maybe you want to get back to LBG and say that is OK, but we don't want a big, detailed, drawn-out evaluation at this point in time with the costs associated with it. Get Krikava to get the water levels. We will all take a look at it and you (LBG) can give us a judgment saying it looks like it will work. But for us to really know we may have to do A, B, and C. We would like to hear that before they go off.

Schwindt – I think they were assuming we were asking for another full evaluation like they had done before. I don't think that is what we are asking for at this point in time.

Neubauer – That plays into a time frame of how do we as a city when I put my city hat on advertise that property for redevelopment? We won't know now until March. In January or early February the commission will give us some direction on what they want to do with that property if we put it out for proposal or do a multiple listing.

Glatt – You may not get that anyway. Maybe the better question to ask is OK LBG what do you anticipate you will have to do here? Now, if it is going to take you 60 days to do a report, then.... But if you can look at the data and we can do this and that within a couple of days that is something we can live with. Or are they going to do a full scale assessment modeling? What do you plan to do here? What more than just collecting water levels do you anticipate can be done here? Can you make an assessment just based on that?

Neubauer – Timing does matter for the developer because if you can't tell me what you need to do with the property until March, April, May or June I lose a whole construction season.

Glatt – Schwindt's question too we don't know how far they will take that. You may be waiting 60 or 90 days for a report.

Radig -- Well, they said they would have the recommendation by February so that is not a 60 to 90 day wait.

Glatt – If they get water levels maybe the question would be: Is it based just on the water levels or fluid levels to make a determination?

Schwindt – I don't know when they will be doing it again—maybe January or February.

Radig – Normally, they don't do every well each time because they are doing the rotating. We asked them to do all the wells in that section this time. They said fine.

Schwindt – So we are going to have them provide an evaluation by February.

Radig – They said they would.

Schwindt – Is that what we want them to do though?

Radig – The city wants it.

Schwindt – That's the question. Are we going to have them do an evaluation by February?

Neubauer – Are we looking for the whole technical white paper \$20,000 evaluation for a couple of hours or a \$1,000 evaluation based on fluid levels?

Huber – I thought back on the 200 West Main lot they did more of the simple.

Glatt -- I think we did that. We just looked at it. This is where the fluids have been and this is where they are now. It looks like we can get rid of this. We still have some coverage. We went back to LBG and asked will this work.

Schwindt -- They did provide us that analysis a year or so ago, correct? Huber said two years old by now.

Glatt – We made accommodations to make that work then. So I don't know why they think it changes.

Huber – I think we are asking for that to be updated so that it's developer friendly from a city perspective.

Glatt - Have things changed dramatically at that site to where we cannot abandon those wells?

Schwindt – Is your evaluation based on the last evaluation you did rather than having them go back through a full evaluation again. Has it changed? Does that make sense? It gets to the same point you are driving at too. We are asking for a brief evaluation not an extensive report.

Glatt – Has anything changed at the site that would change our previous opinion? Our previous opinion we could get rid of most of those wells.

Neubauer – Are we more concerned on the money and the hours they would put into their recommendation?

Glatt -- I think they will look at the data, look at what it was before and what it was today. Well, it hasn't changed that much. We can work around it. I think it would change if they would go to one of those wells and find 5 feet of product or 2 feet of product in there that wasn't in there before.

Neubauer – If things have significantly changed based on the most recent monitoring event, at that point if we have 5 feet in the well we really need to discuss further analysis.

Glatt – Where the city would like to go is to abandon all of those wells interior to the line based on some new water quality information, based on previous assessment that could be done. Ask them that.

LBG is suggesting that they come to the February meeting. Neubauer noted I know we have talked about how often they should come up. I don't have an issue with them coming up once a year. We have the minimum of one new commissioner. It might be good for Commissioner Frank to meet and see them. Chief Rohr has not been as interested in the entire project as he is now. Yes, it will cost us money to bring them up. I think when they see you or I give some type of an annual report to them. Here is some updated stuff. I know the person is going to ask us when are you going to close it down and how much is left and when can we have the money? Coming from them I think has a little more weight. This is what we have planned in the future.

Glatt – We are going to be the biggest anchor on this. I can attend the February 1 city commissioners meeting. You see a benefit for the commissioners. That probably is money well spent. Tim Kenyon does the talking; I think Ken Kytta looks at the system when he is up here. Kytta comes once a year to see if things are working.

Neubauer – I don't have a problem if they both come.

Schwindt does disagree. I don't see any reason for two people to give a report.

Glatt – What are they going to tell you? Kytta is not here to do the report. He is here to evaluate the system. That's what they will tell you. I think that's what they have done in the past.

Radig added. It says here and to discuss progress and Site Strategy Plan and order the shutdown or parts of the system. Kytta is probably more involved with that.

Glatt – Is Ken coming up to make the presentation to the commission or to have a discussion? If it is just for a discussion, we can have that over the phone. I'm OK with asking that.

Neubauer -- If I were to put myself in their shoes, and try and answer the question, I would just anticipate the answer would be he is going to come up and monitor the system, too. Then we are OK with both coming up.

Glatt – That is a normal routine In Scope services that's what you do and I understand having to go to the site. The Out of Scope services you do differently.

LEC Update. Schwindt provided a handout. I tried to sort through and started from the point where LBG had suggested before there were items specifically diesel fuel related as far as the R3 bid. That's the top half of the chart. They went 24 percent of the mobilization costs, ventilation was ours; the removal of the impacted soil was ours; the water treatment system and 24 percent of performance and payment bonds and the contaminated concrete was ours, as well. They came up with a total of \$32,815. That was their initial recommendation when the bids came in.

Then I came back and looked at the invoices because there were change orders and things like that and the final billing and that's the column right to the left of that. If you look at the fourth column from the left that is the total project as it was completed: \$144,169. That includes all the change orders and everything else and that's the final billing amount I found on R3's invoices. The final change amount is the column in between that LBG recommended and was totally completed. So the contaminated concrete for instance there was no billing. That was one of the points that the commissioners were making we have this contaminated concrete we have to get rid of. That just went out with everything else so. You see there is a slightly higher amount in the removed impacted soil. They didn't cover that with the change order but it was still within the total cost it ended up being \$2,112 higher than what the bid amount was.

Most of the change order things were related to the expansion of the system once they got into and started building things and they extended into the weight rooms and they bored some extensions into the center of the building, etc. Figured OK we will say all of those are diesel fuel related so I took those costs and moved them over into the very last column where I was suggesting that these were MRT related costs. I also included things like all the floor covering removal if we are going to put down the epoxy. My rationale was if we are going to put down the epoxy, we have to remove the flooring to put it down so I included all those costs as diesel related. So that's where the \$10,000 for removed floor covering came in. I think the additional increase in removing the basement floor that was directly related to the change orders where they expanded the system. So that's beyond where the water recovery system would have been. That's why I included the \$10,000 there. The open cut trench the same deal there. That's where they expanded the system into those areas. The tunnel pipe trench that was the same thing as well where they expanded for diesel recovery--impacted soils I

think is self-explanatory. The restoration of the concrete because they disturbed more areas I counted that towards diesel related. The treatment system is self-explanatory.

I left the payment and the bonds and mobilization quantities the same.

Radig -- Under the tunnel type trench line 8 is it \$6,671? The final exchange amount should that be \$6,671?

Schwindt -- No. According to the billing data, it seems like it might be a mistake on R3 on how they billed it out but the final quantities were only \$667.

Neubauer – Only \$671 more than the original bid when they had a \$6,000 change order. It seems odd. Whoever was doing the math on R3's part put \$667 and missed the 1.

Schwindt – Here's their final billing statement right here. Here's column F and they show \$6,004 the balance to finish. So \$6,004 and \$667 give you the \$6,671.

Neubauer – But they have the \$31,000 included in the total \$169,099.

Schwindt - This is the authorized amount.

Neubauer – So at the end of the day what actually was paid--the \$169,099?

Schwindt – The \$144,169 that's on their invoice.

Glatt – The \$144,169 and then you add these numbers down below, which comes up to their \$372,752.84.

Schwindt – I thought that was odd too, but that's what is on the invoice. I didn't change the mobilization and the bond payments. I left those at the 24 percent. Even though there were change orders those items were based on the original bid. I didn't change them. If you wanted to, we could go make and recalculate those percentages based on the increased amounts that were participating. The same way with the engineering. If you go down there I took the 24 percent of the engineering because that was what the original recommendation from LBG was. I also applied it to advertising. I figured that was no more than fair. I included all the costs for the epoxy the \$72,400; I included all the costs for the carpeting. In my mind we could argue you had flooring in there that was 24 years old or whatever it was, and it was coming loose. I don't know if that is our responsibility but historically we have tried to leave things better than when we went in so I included all the costs of the carpeting. The Fitterer stuff I don't know what that is, but they talked to him about different floor coverings. I included that and all the costs for the cleaning. When all is said and done, I included all those costs and I came up with \$164,000.

Neubauer – What is the Belden late bill? Is it a late payment?

Schwindt -- That's what they called it. I used the same terminology. No, it is not a late payment.

Neubauer – Have you heard from your attorney (Maggie Olson)? Has Maggie said anything about discussions with Malcolm Brown since our last meeting?

Glatt – I haven't talked to her yet.

Neubauer – The county is going to want to get Allen Kopyy involved. The hold harmless says this amount of money is paid as reimbursement for expenses related to repairs to the LEC. The county will continue to maintain the system—operate it and the MRT is not subject to a lawsuit by the county or any additional liability for....

Glatt – An eye opener to me is the concrete. We were all anticipating some really bad stuff and it wasn't so that is a positive. We are saying we will participate about 44 percent of the total cost: \$164,000 divided by \$372,000.

Schwindt – Just a logistic question: If this is what we want to go with, do we just want to send this over to the county with some proposed language that Neubauer has used in past agreements. This is what we are proposing or counter proposing. Or do we want to put it in a more formal offer and just say this is it?

Neubauer – I think it would be best if we had the language and the agreement at the same time so we have one discussion with them otherwise we can get into several different discussions because my thought on this it is worth a substantial amount of money to get that agreement. If I put myself on the county side, I would be looking at \$164,000 out of \$370,000 and I would be saying sure we will agree to that, but you guys maintain the system. That would be my initial shot back.

Glatt – I talked to Brown before Christmas and he said he was going to get it out soon. Olson will follow up with him now. I am OK with the rational. I think that creates some consternation with the county commission because I don't know how they got from where we were to where they are at now. But that is pulling back and same way taking a look at the bills and we are not quite buying into what you guys are proposing.

Neubauer -- We will have to go back with some history with the county on. They have done a decent job OK here is the original bid of that original amount on this date of November of 2009. The total bid for this project was \$138,000 and our conversation with LBG here is what their initial first blush at the costs related to the fuel spill were "x" amount and here are the change orders that have come in which are fine. Apply that same percentage that we get to this amount. We could even go with that original cost like you have. OK we will pay for the epoxy and we will pay for the floor. You would think the sheetrock and those kinds of costs are more related to water issues than fuel issues. Is that fair? But I think we will have to make a pretty logical step by step argument back to the county on how we get here.

Glatt – If you take the straight 24 percent across it is about \$90,000 and beyond that we cover the carpet. I think that is fair.

Neubauer – In my mind I don't know if that is going to be rational on the other side.

Glatt – I don't think they will be happy with it.

Neubauer – Our communication back to them is going to have to be pretty concise and pretty clear and there has to be some rationalization behind it because I know that when the time comes to sit down with more powers to be.

Glatt – Do they see this as a continued negotiation to come back with another number?

Neubauer - If we send out the \$164,000 number, I think we will be in a pretty healthy discussion. It is what it is.

Glatt – When you start looking at the sheetrock and all that. How should the MRT pay for that?

Schwindt – Their main argument is I suppose is that this whole water management system wouldn't be that extensive. That was the argument Mr. Strinden was making is that it wouldn't be this extensive if it wasn't for the diesel.

Glatt – Why did they do that because right now is there a diesel problem in the building? I think those have been remediated for the most part. The monitoring we have indoors does not show those issues.

Neubauer – And didn't show those issues before this work was done.

Glatt - So could they have gone in and put in their sumps? Does this do a good job of protecting the building in the future from water and potential from diesel fuel? That's why we are participating.

Schwindt - It's just kind of interesting as we have gone through this process their initial request back on the 9th of November the total cost was \$367,000 and they wanted the trust to pay \$346,000. Then when I started doing some checking they came back with a revised amount of \$372,000 and requesting \$319,000 out of it. Conveniently, there was several of these invoices supporting documents were not included in the initial invoices and that's what shows the final quantities to be different than what they were representing them to be to begin with.

Glatt – That was an oversight by them.

Neubauer -- And the initial cost back in November 2009 was \$138,000 plus the \$17,000 plus whatever and if you add that \$72,000 you have a \$200,000 project. I think we are going to have to show that. Here's where we were a year ago and here is where we ended up. I don't think anything changed logistically.

Glatt -- I think this is how it has to go. When they first came to us we were doing this. This was the initial price estimates. LBG indicated this was what was related to the fuel. We looked at the invoices, water issues and all that this is what we realistically can justify.

Schwindt -- Do you want me to put something together or do you want to do it?

Neubauer -- It's fine with me or if you want to get together and go over it, we can do that. Like I said we will have to assign a value to no further claims against the MRT or the city history. What's that worth? I'll touch base with Brown too.

Glatt -- You can touch base with Brown but will you also touch base with Paul Trauger.

Neubauer -- I can walk over and talk to Trauger and say we are still analyzing the numbers and trying to get a draft ready to go. I won't tell him we are at \$164,000. We will get a blurb in the county commission meeting. I'd rather not have that happen.

Glatt -- Tell him we are working on it.

Next Meeting. February 1, 2011 at 2 p.m.

Motion to Adjourn. Glatt moved to adjourn at 11:46 a.m.; second by Schwindt. All ayes. Motion carried.