

MANDAN REMEDIATION TRUST (MRT)
November 3, 2009 Minutes

Meeting: 195th Official Meeting
Date: November 3, 2009
Location: Mandan City Hall, 205 2nd Ave. NW
Time: 1:35 P.M.

The MRT meeting was called to order by Jim Neubauer. Fritz Schwindt was present. Dave Glatt was absent. Also, present were Marilyn Mertz, State Department of Health; Tim Kenyon and Ken Kytta, LBG; Mayor Tim Helbling, city of Mandan; Morton County Auditor Paul Trauger; Morton County Commissioners Bruce Strinden, Mark Bitz, Dick Tokach and Andy Zachmeier;

Minutes. Discussed October 6, 2009 MRT minutes. Revisions have been made.

Motion. Schwindt moved and Neubauer seconded to approve the October 6, 2009 minutes. All ayes. Motion carried.

LEC. Kytta and Kenyon met with the contractor this morning. R³ Contracting was the low bid. So the pre construction meeting was held this morning and we went over the schedule. They are looking at starting the week of November 30 the first full week of December estimating about a month project but with Christmas and New Years their completion date should be mid January. We went over the ventilation requirements, staging areas, disposal, etc. The bids received on the project ranged from \$138,000 to \$241,000. Four bids were received on the project. R³ was the low bid at \$138,000 and that includes removal of diesel impregnated concrete, which we estimated at about 25 cubic yards. Others were Associated Constructors, LLC, Veit and Company and Earthmovers Hazmat.

Neubauer explained the reason the county commissioners are here is they are looking at some kind of a cost share with the Remediation Trust. He opened it up to the county to present.

Morton County Commissioners. Strinden indicated he was chosen to speak on behalf of the county commission. I think that everybody knows the LEC is the home to both our Morton County Sheriff's Department and also our Mandan Police Department. The facility was originally built to house both those entities. For the most part does it very well. When the diesel fuel spill arrived, it essentially drove our personnel out of that basement level in terms of people located down there. As we all know our population has grown and our law enforcement needs have grown so in that period of time we have added more sheriff's deputies and also on the city side there have been more law enforcement personnel added. Right now we are in the LEC in a position of being fairly crowded. The county is not in a position right now to go to the taxpayers and say we need to build an addition on so I think it is very important right

now for us to consider making these repairs in the lower level of the LEC to make it mostly habitable again. I think both Chief Bullinger and Sheriff Shipman have been pretty forthcoming and telling us they are probably not going to want to forcibly assign anyone down there. But they both have indicated they probably would have people who would want to take office space down there once the fixes are made.

The engineering as I see it is a real piece of genius. I believe once these repairs are made, regardless of what the water table does we are never going to have any problem with diesel fuel and fumes being pushed into that lower level again so essentially this fix is going to give Morton County and Mandan back 10,000 square feet of space that largely has been utilized for not much more than storage for quite a number of years. I think it is very important and long overdue that we make these repairs. Really, the people in that building are responsible for the safety and welfare of our city. For whatever reasons we are not going to go into, we have really disregarded their health and welfare. I think this is really an important move on our part right now. The county chose to move forward on this.

We retained LBG to do the initial testing to find out where all the contamination was down there. They did that. I believe we had authorized \$17,700 expenditures not to exceed that amount. Once that was completed the county commission also authorized engineering costs of \$40,971 to LBG to design a fix which they did. Once that was done they came back to us and at that point they (the county) put out a request for proposals based on their recommendations. They came back with R³ Contracting being the cheapest of the three at \$138,380. We are looking at a total testing engineering and construction costs to bring that lower level back to an acceptable standard of \$197,051 in total. That includes only the actual construction part of it, the sealing of the floors. After that point -- floor covering. Those things are not included in this amount nor are we asking you, the Remediation Trust, to participate in those efforts at all.

The county commission is requesting the Remediation Trust pay for the entire amount that I mentioned and having said that I don't have anything further.

Neubauer clarified. So you are asking for the \$17,700 plus \$40,971 and that takes the project from start to completion. Commissioners: Some of the work is not done yet. We have paid for a substantial amount on both engineering and testing, which is reflected in this sheet we handed out you can see what we paid for.

Kenyon thought the total authorized rounded number is \$59,000.

So we take the roughly \$197,000 plus another \$20,000. Neubauer asked. Is that your request?

We have paid about \$17,621 basically on the first stage and paid \$31,000 on the second stage Trauger responded. Strinden's total of \$197,000 would be the total plus the contractor.

Neubauer said. Mr. Kenyon just indicated it is authorized up to \$59,000. You are saying we have spent \$197,000 plus another \$20,000 in construction. Kytta clarified. The \$59,000 includes what hasn't been spent yet; the \$59,000 plus the \$138,000 gives you the \$197,000. Trauger added roughly \$10,000 left to spend as far as under the construction supervision. This means we are at \$197,000 not \$207,000. The contractor plus our total authorized bid.

Kytta indicated as far as the permitting charge that is a pretty minor amount. It will have to be done at some point too. Trauger indicated the building permit. Richard Barta hasn't gotten back to me yet if we need a building permit or not.

What is the plan for the discharge of the groundwater that is taken up in the system? Neubauer asked. Kytta indicated we have talked to Steve Himmelspach about the city wastewater treatment plan. There is a pretreatment system that is part of that \$138,000 so the water is pretreated before it would be sent to the city's wastewater. Helbling asked. By a water separator or something? They are called bona fibers. They essentially take out the gross contamination prior to. It could include petroleum based products, Helbling added. Kenyon indicated it won't be at a 100 percent but just enough to get you started. I guess that was one of my questions I saw in the proposal, Helbling stated, but if you look at R³'s bid sheet provide and install a ventilation system they are way off compared to the other people. Are you guys stuck in the product that is used for the ventilation system? Kytta indicated no, he has to submit — the water treatment system that was spec'd everyone had the same specs for that. The ventilation system he is providing a submittal on what he is providing. We went over that this morning.

Helbling asked. So there was no spec where everybody bid off. There was a spec that everybody bid off, Kytta said, but when it came to ventilation they had to provide a submittal what they were going to do for ventilation -- performance. We contacted R³ before they knew what the other bids were and questioned along these line items. You guys are comfortable on what they are doing? Helbling asked. Kytta is comfortable. You're comfortable they won't come with a change order to bring it up to somebody else's. Kenyon confirmed we are comfortable that they are not going to do that. Strinden indicated we questioned that too because there is still quite a variation in the bids. Kenyon indicated that probably reflects R³'s experience and their knowledge and ability. That's why I questioned the \$1,500 vs. the \$3,100 on the \$16,000 ventilation system. What are they going to put in a bathroom fan? Helbling noted. Kytta verified I think it reflects that he is the only contractor that had already worked in the basement so he has a good understanding of the project and his workload to take on the project.

Neubauer indicated the filters will be put in for the pretreatment, costly change out. How often is the county going to assume any ongoing maintenance related to it? Neubauer questioned. Strinden indicated once the system is in there, the county will be responsible for maintaining filters. Operation and maintenance depends on the

groundwater Kenyon added. It may not happen for another 20 years or it may happen this spring.

Neubauer indicated. If payment is going to come for any part of the system would be that here is the amount that the MRT will agree to pay in conjunction with what the county has to do. You can't take the filters and say I don't want to use them anymore and throw them out. You are responsible for the upkeep and replacement of those filters. From an MRT standpoint we want an ongoing commitment here.

We have talked about the trust picking up a portion of the cost. Do we have a number on what would be a diesel related guess? Kenyon responded. We went through the bid and it looks like about \$33,000 of that \$138,000 has to be done because there is diesel. It is stuff not dependent on the diesel and is really the groundwater control system. Kytta has got the line items on the actual bid.

Kenyon indicated if you assume that a groundwater treatment system could be installed without LBG being there. Some of our activity certainly is because it is a groundwater treatment system and some of our activity is because of the diesel and that's a difficult split. I don't know where to split that. Our total authorized cost is \$59,000 so if you add the \$59,000 to the \$33,000 you end up with \$92,000. If you are looking at a place to start and if you want Kytta he can do the actual line items. Some of this is subjective Kytta noted but under mobilization we just pro rated the total we came up with. The removal and disposal of floor coverings is assigned to groundwater control. The ventilation system was put to remediation. The removal of the basement floor was groundwater control. That would need to be done to put the pipe in. The tunnel trenching and replacement of the sump for all the groundwater control, the removal and disposal of impacted soil would be remediation. Restoration of the concrete would be under groundwater control; groundwater treatment system under remediation; then performance and payment bond. I pro rate it and then the removal and disposal of diesel impregnated concrete under remediation. That's how we came up with the roughly \$32,105. And the removal of the diesel concrete Kenyon indicated it is an estimated quantity. There is a line item unit price on it. The price item is \$32,814; rounded it up to \$33,000.

Neubauer asked. Can we reasonably assume that the \$59,000 be pro rated? Also, based on the actual construction costs you would have had to pay an engineering firm to come in and design the groundwater control system no matter what. Kenyon indicated yes, that would be one way to do it. It's a good way to start.

Strinden gave one comment regarding the groundwater. If the issue were just a water removal system, we wouldn't be talking to you guys. We would be talking to somebody else. The system we would have used to remove the water would not have been anywhere to the extent that this one is. The water would have something we could have dealt with. The problem is when the water come the diesel came with it. The diesel is what caused the problem. The water we could have dealt with very nicely down there. The diesel fuel didn't leave us that option.

Kenyon explained if you were doing purely a groundwater system it might not have had to have been as engineered because the consequences of that corner in the basement are a lot less than the consequences of a wet diesel. How you cut that off at it is a negotiated thing.

Helbling asked. Floor coverings, painting and that type of stuff are you doing that on a separate bid? You were assuming the county was picking all of that up. The floor covering and the floor will have to be sealed Strinden indicated before we put the floor covering on. But again it should be covered under the joint maintenance agreement that we have between Morton and Mandan taking care of the LEC. I guess I would question that Helbling indicated because if it was just water you probably would be changing the floor coverings, you probably wouldn't be sealing the floor. Should that be part of this package. If you are going to pro rate part of it, I would think those costs were caused by water and diesel infiltration into the building. Strinden responded, you are absolutely right we wouldn't be talking about floor covering, having to rip it all out and seal it had it not been for the diesel. The floor covering and the sealing are not part of these numbers we are talking about. The sealing, Ken, I believe you made some recommendation as to a product that is out there — fairly expensive, but very good for sealing the floor.

Kytta explained about four years ago we did do some research on that. We can get you that information.

Strinden continued. If you pro rate out our cost like we did with the mobilization and the bond it comes to \$14,347. Schwindt asked for the numbers on mobilization and . . . bond. Mobilization is \$6,244 for the diesel portion.

Kenyon explained the rationale for prorating out mobilization. The mobilization also includes getting here and staying here. It takes them longer because there is diesel there. Kytta added we require the contractor to do a 40-hour hazwoper training because it is diesel. We couldn't just have any excavation contractor bid on it.

Neubauer indicated whatever agreement we reach. If I put my city hat on I wouldn't want the county to come and say well if there is a \$100,000 left to pay on the building I wouldn't want that part kicked onto the city through the LEC operations agreement. Again, it is a matter of looking at it from a standpoint of – we can talk all day about whether they had a groundwater system up and operating properly when the building was installed and whether a proper layer of bentonite was put down when the basement was installed instead of the Pixie dust. It still might not be here if that had been done properly. We are where we are today.

Schwindt indicated I don't understand the county's rationale for requesting the entire amount from the trust.

Strinden said. "I think the simple answer to that is if the diesel fuel were not present, we wouldn't be talking about it. It would have just been a water issue. But it is a diesel fuel issue and that's the rationale I believe for asking the Remediation Trust to cover that part of the construction." I encouraged the other commissioners to chime in. You are getting my opinion.

Schwindt indicated if the county feels that it was harmed by the diesel fuel, what efforts has the county taken to try to recover any expenses from Burlington Northern?

Strinden indicated as of this point as far as I know none but once again I'm the newest member of the county commission. Schwindt responded, we can go all the way back to when our lawsuit was started and property owners filed suit and were successful in getting some damages from the railroad. You didn't become part of the suit with the state and the city so just because we have a settlement now all of a sudden the trust is responsible? I'm trying to find the rationale.

If the LEC didn't house anyone other than Morton County personnel once again we wouldn't be here. But the fact is it houses both Mandan and Morton County employees, Strinden replied.

Strinden indicated as far as the lawsuit, I wasn't in office at the time. They could smell the diesel fuel and the carpet started rising because the glue was softening up from the diesel fuel. The water is easy to take care of if it is just plain water. I think we all agree there could have been some different engineering when it was built but that is gone too.

About a year or so ago, Schwindt indicated, we talked about it at one of the meetings about the possibility of going back to the Railroad to seek some participation from them. So far that hasn't occurred.

Strinden said, "No, it hasn't." I was probably the one you were having the conversation about. I think I threw that out as an option we could explore. The problem that I see in doing that and the exposure that it offers the taxpayers when it comes to — you all know when it comes to hiring attorneys and suing the Railroad it wouldn't take long to run up a bill \$200,000, \$300,000, \$400,000 just in legal fees. The Railroad has such a huge fleet of attorneys. They have to keep them busy. They get sued all the time. For them it is not a big deal. I guess for the amount of money we would have been going after them for the legal fees could have eaten us alive unless we could have gotten legal fees included in a settlement if we were to win. Once again, only my opinion.

Schwindt indicated I am not necessarily saying to begin some type of legal proceedings against the Railroad, but at least making some contact with them and see whether you can negotiate some kind of a settlement. That was my understanding when you discussed it about contacting them to see if you could get something excluding filing a lawsuit.

Neubauer indicated if I put my Remediation Trust hat on. I don't have a huge issue for items of contamination that are diesel related to the fix at the LEC but I don't think we should be paying for 100 percent of it that's why I asked for the breakdown on contracting costs for R³ for \$33,105. I don't think it is fair to come after the MRT for the entire \$197,000. This is not, in my opinion, solely a diesel related issue. It is somewhere in the middle.

Strinden indicated I don't think us as a building owner and the contractor had no idea that the water table from that standpoint pushing diesel fuel up because we had the other building on a floating slab since 1959 when it was constructed. This building was constructed on the same basis from that standpoint. We didn't know it would push diesel fuel through the floor and trap it underneath the floor.

Neubauer commented. From a trustee standpoint, I am not opposed to the trust, paying for R³'s bid that relate to diesel and also a portion of the engineering costs. Again, I am not in favor of MRT paying the full \$197,000.

Schwindt agreed that pretty well summarizes the position that we have talked about in the past. If there are some things directly related to the diesel I wouldn't have an objection to paying those costs. I don't think we are interested in paying the entire costs.

Neubauer noted that would be the \$33,000 plus the \$14,000 or \$47,000.

Commissioner Bitz asked. Did you use that same formula for pro rating fixes relating to the diesel fuel in Mandan, i.e., at Furniture First? Why is the LEC different? When I was on the city commission and a discussion Commissioner Boehm and I had before. . . and now it is the basis for the LEC.

Schwindt indicated that is where it all started from the state perspective it certainly was the LEC. It was a matter of getting the entire contaminated area cleaned up that was the basis.

Commissioner Bitz indicated the city went to the State Health Department for help on what was happening at the LEC and not because what was happening at Furniture First and those other places. They later joined in the lawsuit or a separate party to the lawsuit. I don't know how you guys think it is fair to the LEC.

Schwindt indicated we fixed the Berube Apartment building and put in a ventilation system that was \$10,000 or less.

Neubauer added we put in a warm air heater in the elevator at the LEC.

Commissioner indicated I can see both sides of this. I know how it started. I know they should have participated in a lawsuit. I know where you guys are at. But I

think asking the county to go after Burlington Northern I think any lawyers' fees are going to eat up more than what they are going to get. I don't think you are talking about a lot of money. Looking at it from a city side you ask the county to pay and they will come right back and ask the city for half of it or a portion of it. I think the settlement was set up to get rid of the diesel fuel to start with the contaminated soil and make things whole again. If this were a million dollar figure I think I could really see you guys' argument. It's not a huge dollar amount. It's a lot of money, but it is not huge in the scope of things. I think if we can get it over with and get it all cleaned up and walk away from it I don't think it is a bad expense of trust moneys. I think if you look at Furniture First, like Commissioner Bitz was saying the building costs weren't figured and whatever it was going to take to clean it up taken off of what was paid to the property owner. There was a fair market value assessed and that was what was paid by the trust. There were no deductions for tearing the building down, for cleaning the site up. I can see both sides. If we were talking about a lot more money I think it is worth a fight.

I am not suggesting it is a fight, Neubauer responded. I can understand what you are saying. Also, I think there is liability on the side of the county for not installing a groundwater treatment system. I hold the county fully responsible for doing that. Like I said I have no problem as a trustee of the trust recommending that these related items and this amount be paid for and maybe even a bit more. However, I don't think that it is the full amount. The county certainly went after BN for a heating and ventilation system issue in the 80s and 90s and received payments on that and could have taken basement issues to them before. Like you said that is in the past. I think there is some responsibility on the county's part. This situation came up with a property owner downtown. They wanted to build a basement on top of a diesel spill. They wanted money to help pay the bill. I don't think it is fair to the trust to say, you knew it was there when you built it. And you built it. And there were no precautions taken to try and help it so the trust should not contribute to this effort.

Commissioner indicated the developers could go back to the Health Department and tell them there are problems. They put bentonite on it to cover it and they find out there was only three/eighths of an inch of bentonite. Who took care of that?

Neubauer indicated I don't think it is 100 percent trust responsibility with the issue that went on at the LEC. It is still not going to be used. To say Dave Shipman put a deputy down there or a cop down there full time. No, I am not going to do it. It is being utilized today and has been for many different purposes so somewhere between 100 percent and paying for diesel related items. There is an area.

Helbling agreed with that. And agrees with what they are saying if it was not for the diesel you probably wouldn't have to take these measures. I do think they have some liability, but just to separate the diesel product out of there I don't think that is fair either because the diesel does bring about a different situation and a different remedy.

Trauger questioned what if the apartment building next door develops? They are on the same level we are. Are you going to require them to put in an underground dewatering system in?

Their basement isn't as deep as the LEC, Kytta responded. Commissioner Zachmeier commented. Has anybody met a citizen in the city of Mandan or Morton County who said, wow, the Remediation Trust. Let's go to the taxpayers to pay for it when the trust has the money to pay for it. If anybody has met this person who said, I have no problem with this being taken out of property taxes to complete the problem. I would like to meet that guy.

Helbling responded. Commissioner Zachmeier I can agree with that on the city side because the city did join the lawsuit right from the beginning. I personally don't think the city should have any expenditures to fix this problem. But the county was specifically asked. I need to go back to this — specifically asked to join the lawsuit. I think that does give it a different angle.

Commissioner Zachmeier agreed it might. I don't know if there are any statute of limitations that can even go back to redo it. Most civil lawsuits have to be raised within seven years so I think we have passed the seven-year time window. If we approached Burlington Northern and say, pretty please, can you help us? It's good public relations for you. Maybe I will. Maybe I won't. But we are all somewhere along here except LBG answerable to the Joe Public who put us in office or we are a public servant of some type who should still be held responsible for Joe Public. And Joe Public looks at the Remediation Trust. I have yet to find one that doesn't say that the Remediation Trust has the money to fix the LEC and fix it correctly so get it fixed. And it better not come out of property taxes. If this would be put to a vote, what do you think the vote would be?

Helbling noted I think that's why it was set up as a trust so it wouldn't get political.

Neubauer indicated that's why the trust was set up so it would eliminate politics. While the city of Mandan wanted the commissioners to decide to replace me as a Remediation trustee, the state can decide to replace Dave Glatt as a Remediation trustee. That's how that works.

Schwindt indicated there are constraints in the documents and the framework that established the trust where the trust funds can be used for cleaning up the diesel contamination. It can't be just used for anything.

Commissioner Zachmeier indicated where are those constraints? Are they in writing? Where are they?

Strinden indicated I also understand where Commissioner Zachmeier is coming from. I think what we are looking at here is getting this done in the easiest and least painful way possible. I can tell you that there is not a county commissioner sitting here

or the one that is absent that didn't wish they had been on the county commission when this all started because the result would have been different. We are unfortunately stuck right now with dealing things that happened in the past that we had no control over so we are just trying to move forward with this and trying to make the Law Enforcement the most useable without constraints and the stigma of the people.

Schwindt asked. Do we have any idea what the cost of the floor covering and the sealing will be? We should have the full picture.

Kytta indicated there are 10,000 square feet down there with some tiles that won't be done. He estimated \$25,000.

Helbling added you are looking at sealing the floor.

Strinden indicated he roughly calculated on the top end it would be \$30,000 for the sealing, carpeting and installation. That was going with the fairly expensive carpet. It was not part of the \$197,000. We didn't include it in that amount because we didn't think it was an appropriate part to the remediation. Maybe it was, I don't know.

Schwindt asked if there was a way to get better numbers on that.

Kytta indicated he could certainly go down there.

Schwindt would like to have some input from our other trustee as well before we make a decision. I will study this and if I could get some numbers that would be helpful to me. Neubauer indicated Schwindt and I are in agreement with the bare minimum we are willing to pay for diesel related in that bid and if you would put a portion of the engineering costs in that. We are willing to do that. Somewhere between that number and \$197,000. This is the first time we have seen the bids on this so I will visit with Schwindt and Glatt about it. I don't want to make a motion on this without Glatt. He has as much historical knowledge on what happened when, etc. At what extent -- I think it is somewhere between 47,000 and \$197,000. I think the trust has some responsibility to pay for the floor covering too. That's just my thought. To follow that up if we reach an agreement I think it would be if there is going to be a sealant and floor covering to be put on. I want to make sure it is accurate that LBG has put together. I don't want someone to come in and slap a coat of paint on and we are good — we're done because I won't pay for that. I am willing to pay for a part of the proper sealant but want to be sure that is done. I want to be sure that any water discharge goes through pretreatment and the county then agrees to replace and fix and continue that and not say I don't have \$200 to put in a new filter, therefore, we are not going to do it. I want to raise that issue for any of us that are not here in five years from now or 10 years from now so it is laid out clearly so we don't get into a situation like that.

Helbling thinks it should be a 100 percent package too. It should be a one-time shot the floor covering, the sealant, or painting or whatever. Come up with some type of agreement and move on.

Schwindt indicated that's what we have done with all the other property owners we have dealt with through all the construction activities down here. We have asked them to provide an agreement that says this is the last time we are asking. If we pay this, we are done.

Trauger indicated there will be a lot of contaminated soil to be removed, especially on the south end by the weight room.

Schwindt asked. So item H is not a quantity, it is a lump sum? Kytta indicated no, it is a quantity. It is going to be dependent on the actual quantities that are removed like the diesel impregnated concrete. That number depends on the volume there. Each of these is unit costs. The ventilation system is a lump sum and mobilization will be a lump sum. Schwindt requested a bid document for summary of bid items from R³. A copy will be provided.

Neubauer summarized four out of five of the county commissioners are here. We know we are willing to contribute something – the bare minimum would be the diesel related items. We would like to see the floor coverings added in here because it is part of the whole package. Take a look at that. There will be some cost to the trust for that somewhere between \$197,000 plus floor coverings of \$47,000. The trust will try to have discussions before our next meeting on December 1.

Schwindt asked. Have you guys signed the contract to do this work?

Kytta indicated they awarded the contract but it has not been signed yet.

They have been given the green light. If we delay for several months or a month it doesn't impact starting the project, Schwindt asked.

Strinden asked. Ken, if I understood correctly you will get the prices for the sealing and the carpet. Kytta will do that.

Neubauer indicated potentially you could have a carpet cleaner clean it at \$85 per hour, but it is part of the pie.

County commissioners and auditor left at 2:35 p.m.

Certificate of Liability Insurance. We have got LBG's Certificate of Liability Insurance which is required and part of their contract. It will be noted in the minutes.

Minutes. MRT minutes from October 6, 2009. Glatt and Schwindt have reviewed and made changes.

Motion. Schwindt moved and seconded by Neubauer to approve the October 6, 2009 minutes. All ayes. Motion carried.

Brady Martz. Received a request from Brady Martz for payment for preparation of the 2008 tax returns for the MRT in the amount of \$400.

Motion. Schwindt moved and seconded by Neubauer to approve payment of \$400 to Brady Martz. All ayes. Motion carried.

MRT Bank Statement. Neubauer acknowledged receiving the September 30, 2009 MRT bank statement. The September 30 statement shows a balance of \$9,095,852.52.

Certificate of Deposit. We have a \$9 million CD coming due on November 22, 2009 at 1 percent for 6 months.

City of Mandan Wastewater. City's wastewater charges for \$1,039.72 which would be the latest statement.

Motion. Schwindt moved and seconded by Neubauer to approve payment to city of Mandan for wastewater charges of \$1,039.72. All ayes. Motion carried.

City of Mandan Utilities. Received third quarter bill for city of Mandan in the amount of \$31,535.40 related to utility bills for the remediation buildings. This includes a Don's electric bill for \$1,941.18 and one to Dakota Ready Mix for \$3,329.69, which was related to the restoration for the slant wells under Main.

Motion. Schwindt moved and seconded by Neubauer to approve PR 189 in the amount of \$31,535.40 to city of Mandan for utility payments and for Don's Electric and Dakota Ready Mix charges . All ayes. Motion carried.

Neubauer asked LBG if they would want to see all the utility bills for the remediation buildings. Kenyon noted there might be some economies. Kytta indicated specifically the natural gas bills is what we would be most interested in as far as what the RTO is burning. He requested electric and gas for all three meters.

Neubauer will get the information for LBG and send a scanned copy by e-mail. It will be broken out by building.

LBG. PR 188 to LBG for \$32,002.85 from statement dated October 13, 2009.

Motion. Schwindt moved and seconded by Neubauer to approve PR 188 to LBG in the amount of \$32,002.85. All ayes. Motion carried.

Schwindt asked if a bill was received from Roger Schmid. Neubaueur has not received one.

LBG: Kenyon discussed the spreadsheet. In the last period from 10/1/09 to 11/01/09 190 gallons of vapor show up to 31,000; 2400 gallons of free product was the load that went out. That is up to 45,000 and change. The bio was 874 gallons so that is up to 155,000 gallons for total gallons recovered last period of 3,393 for a total of 231,851. Add the methane of 128 pounds in the last month brings the methane total of 93,627. If you add all that up and do the conversions it is 1.7 million pounds of hydrocarbons from the subsurface as of November 1, 2009.

Kytta indicated they did not have time to update the product graphs. What you are seeing here is cumulative. As we brought additional systems on line the regular removal increased. We are starting to see a tipping point especially when you start looking at individual components. It may be a function of the water table being up but also it might be a function of reaching the tipping point as far as removable goes. The bio is pretty linear and is starting to tail off a little bit, but again very much related to the water table coming up here recently. Kenyon added the wet fall has had an impact. The free phase – this is because you get the big loads of sludge going out so that is why there is a step to this. In the latest month you will get a step in this but you can kind of see we are actually increasing here once we have everything on line but the steps are starting to step out a little bit. Here's diesel vapor we are starting to see a little tail there. Gas vapor is probably the most pronounced one which actually makes the most sense because it is the most volatile. The VOC vapor – keep in perspective this is a lot smaller number than the other ones were. We have that one hit back there which we really don't know how to explain. We had a lot of methane early and now it is starting to tail off. It is doing what we thought it would, Kenyon added.

Kytta handed out a map and graphs.

Discussed the point at the Fire Station. This reading is 5 feet which is a function of -- when the water table goes up and down you will find pockets at varying water levels. You get in zones of more permeable area where the product will flow and I think that explains something like that.

Kytta continued. Six of the seven wells under Main have seen product in them since they have been installed. You actually look at the thicknesses. Those readings are on the incline. It's there. So the good news is we needed to go in and get that under there. The other good news is it is not feet so it shouldn't take forever to get it out of there.

Kenyon indicated it is information to convince the regulatory agency that when we shut it off we are not leaving something behind that we didn't know about.

Kytta noted when they drove by this morning there was this well in the sidewalk K8W1. Is it gone? No, Schwindt indicated it was not gone. We still have one there. Kytta asked about one north of the building that was just outside of the building. Schwindt indicated it got damaged when they were moving materials but it is still there but unserviceable because he has the system shut off. I talked to him this morning

about whether it would leak air and he said, they cracked the casing on top. They were in there moving dirt with front end loaders and they caught the apron on top and moved it. So he said they cracked the casing. I asked him if there were any materials that got down in the well. He said no, it just cracked the casing so they were going to repair it after all is said and done. They damaged another one a week or two ago when they were excavating and re-compacting the entire site. Well 45 is the well they cracked the casing on; 43 is the one they just hit this morning. It is moved over but you can't pull the cover off. You can see the casing off to the side here but they didn't have a wrench to take the cover off. But if there is any damage to it, we will find out when we pull the lid off.

Helbling asked. They did hit some contaminated soil on that site, correct. Yes, Schwindt responded. They ran into it at about 11 feet or so. They also ran into a bunch of flooring and footing materials. I think they hauled out about 8 loads of junk. Some of it was some of the soft clay. He did give me a sample of the clay that he had. It certainly had an odor to it.

Was that footing supposed to have been taken out when the building was taken out? Kytta asked. Kenyon indicated they should have taken everything out.

Neubauer indicated Malcolm Brown is looking at the contract, bond, and license of Midwest Testing. He is looking at taking recourse action.

Schwindt noted it was in the north end of the lot and this other small building that they have. That is where they found most of the debris and also the contaminated soil.

Neubauer noted that the bond had not been signed off.

Schwindt understands they hit some of that footing up in this area and excavated back but didn't follow it all the way through here because they didn't need to. It might have been the other deep wall from the west wall where Furniture First would be is my guess because that would have been 50 feet over.

Directional Wells Under Main Street. Which wells will be replaced? **Well 45 and 43** are outside; Schwindt is trying to move 46 as close to the theater building as we can get it. There is going to be a footing pad in here right on the center line of the building. It comes out about 6 or 7 feet. We may have to move it to one side or the other. It's complicated because we have those deeper pipes going across the south side. We haven't field verified where those are at yet. I talked to them this morning. Kytta has the file now so he will forward it on to Schwindt.

Well 46 will be inside the footprint of the building. They have a corridor that runs down the center of the building and they are trying to get it in there but because of that spread footing over here, there might not be enough room between that, the pipe and still keep it in the corridor. If they can field verify where those pipe(s) are at, they think they can get through. Kenyon suggested doing a vacuum extraction for field

verification. HDPE is tough enough to do that. Schwindt asked him about that this morning and he indicated maybe depending on how much that vacuum extractor that Do-Mor has.

Kytta asked. So the directional well idea has been scrapped. Schwindt indicated after they saw the cost of those they said "can't afford them."

Well 1047: Schwindt is trying to get it in the sidewalk as close to the theater building as we can within about 5 feet or so of the theater property line in the sidewalk. We will have to see how close Braun can get in there. Wherever **1047 is 1048** will be 35 feet to the east in the sidewalk. **Well 1049** is being eliminated. That's interior to the building. **Well 1042** will be abandoned and not replaced. **Well 1050** we will move basically into the driveway of this building. We talked about that this morning. Initially, we were trying to get it moved to the north outside the building. There is going to be a floor between the two buildings so what we talked about this morning is putting it right outside the corner of the building in the driveway so there won't be anything above us. Thoughts on that?

I tried calling Rusty Krikava today to see what his thoughts might be but he must be working so didn't talk to him. Kenyon added on an overhead it seemed to just be problems with storage and not future. Schwindt indicated it would just be how long do those drop tubes get when they are inserted? Kytta indicates it will work through the basement and more of a matter of install. Kenyon noted if you can get it installed before they build the building I don't know if you have a problem with putting a roof over it. The reason I looked at putting it further out is if you look at 50 it was here and the area of influence we are kind of overlapping where 43 is but we are leaving some area out here onto First uncovered. My rationale for doing that was to try to move this.

Kenyon mentioned overhead lines. That's why those were put where they were. The lines were put underground. Kytta thinks we can go either way. I think the reason is if you look at the historic product there is more to the west. We can live with it. **MW 50** gets moved out; **51** is eliminated; **52** will stay. It is not actually in that location. It is over to the west of this building and south of that property line. **MW44** we are trying to get down into that interior corridor. We are trying to maintain 35 feet east of where **46** goes. Kenyon commented given that there has not been a lot of product lately in those places. In **45** there was one-hundredth which is right at the threshold of being detectable. Does it make sense when those are put in the building not to put drop tubes or anything in them just monitor them? If they need drop tubes go ahead and put them in, that way when it comes to abandon it, you are not pulling a drop tube out with stinky water on it. If we need to remediate it OK then we may have to but not to fire it up for MPE unless it has to. Kytta added it would be part of the core monitoring program. We could always add a drop tube later.

Schwindt noted we had a half foot in there in September. We will wait. Otherwise it has been less than that and no readings at other times. **MW 44** had up to almost three feet of product in there. And the other readings have been more than a

foot. The two blanks are May and July 2009. I would be inclined to think we are going to need to be active in that one which is the furthest east one. Kenyon indicated **46** will stay clean. Schwindt indicated with the water table dropping back down it just messes everything up again. Kenyon noted that's the challenge of what does this mean. It is almost impossible to take out the groundwater effect and that's why the amount of extended period of monitoring when you are done. The take away from this is with that one exception everything below two feet. That is about the first time we have seen below two feet. Again withering the difference between the groundwater influence and remedial influence but even with groundwater influence you don't see 4 feet of product disappear. Kytta indicated the thing to look at even though relative to the last three years historically if you look at the product contours from back in the early 2000s, late 90s the footprint was still pretty big even in the higher water condition tables.

Kenyon agreed the footprint is shrinking with one stupid exception Mother Nature. Kytta noted the big thing is the footprint. Neubauer asked. Do you want to re-measure that thing and validate it? Kenyon indicated that's one of the beauties of the system that is configured that's why we did that well. Schwindt assumed that there are air connections on those individual pipes in the Remediation building there. Kenyon indicated it is an interior manifold so it is two pipes from each well that come up inside the building. Schwindt asked. So it should have an air attachment? Kytta questioned. What do you mean by air attachment? So we can pressure test them, explained Schwindt. Kytta noted there is where you can insert pressure in. Schwindt has been telling the contractors that after we make all these connections we would like to pressure test these.

Replacement Well Numbers. Kytta indicated when those wells are replaced they will be given a new well designation number because to use the old one would be confusing because we would have a new top up casing elevation. They will get new designated numbers when replaced. Kenyon confirmed anytime you replace a well you renumber it.

Site Strategy Plan (SSP). Kenyon discussed the SSP. As you see this footprint shrinking the SSP increases in importance. There was supposed to be a public meeting contemplated for this time frame to look at future schedules is the annual report that we give to you. I would propose that we would do that on February 2, 2010, the first Tuesday in February. The reason I say February is that way all the smoke from 2009 will have cleared. If we try to do it the first Tuesday in January, there will be a lot of stuff that will be estimated. It all gets into costs for 2010. By then we would have had the escalation factor or de-escalation factor and will be able to provide those 2010 adjusted costs. That's three months away and seems like an opportune time. So if there is a public hearing for the site strategy plan that might be an advantageous time. We can be there to answer any questions. Dave Glatt will be informed.

We also talked about our development item on Furniture First discussing what their progress was.

Neubauer noted there may be some action on the Ratz corner in the spring. If there is 5 feet of product there and we continue to beat on that site while we have everything in place.

Kytta asked. What is the schedule for the replacement of the wells and connections? Schwindt indicated they were hoping to get some of them drilled this week. The last two inside may be next week. It all depends on when Braun can get here. The reconnection should be this fall yet. We pulled out as much of the old pipe out in pieces as we could, intact pieces. He is going to take a couple of the longest ones and try to bridge all the way across the building so we don't have to fuse inside the building. They are using the pipe that we dug out. We are getting some couplings and transition units.

Rehook. It looks like Ric Stoor will be doing the initial oversight on the LEC due to start the 30th. He is also going to combine that with an O&M trip to the system so he will be around in the neighborhood for about a week and a half or so. It would be advantageous to have him around. Schwindt and Kytta indicated that would be covered over by then.

City Commission. Report to the city commission will be how the system is running. Things are going just the way they should and so forth. Right now our total billings as of the last billing period were just short of \$16.4 million.

2010 Costs. And recognizing everything we give you is unadjusted. The first thing is O&M. Kytta provided handouts. The top one is what our costs have been and what we are projecting for next year to give you a basis. All of the O&M costs are going down every year. The three things that you have there are the O&M costs, the water level monitoring costs and the bio respiration costs for next year.

Looking at the O&M we are projecting this year to be about \$290,000. We looked at what we could cut out. We could cut out some visits, some vendor visits and we did some paring down for next year and that's where we came up with the \$280,000 projected budget for next year. What I didn't take out was that we didn't spend this year would be some equipment maintenance or items. The reason I left those in there is because as the system gets older you never know when you are going to get those kind of things.

Kenyon commented that is where the SSP has an impact. As we begin to shut this down we will have some equipment that could be reused if one fails.

Schwindt – going back to your master the one that shows a bit of free product is now over by the LEC. Before it was out on the street, wasn't it? It is between the alley of Berube Apartments and LEC Kenyon noted. It was out in the street, correct Kytta stated, **well 1308 or 1408.**

Kytta indicated we are operating on one MPE well and now we are operating on the second one. Two at the most.

Are you still operating the one at the Library Square, Schwindt asked? That was an area where we always had free product. Rusty Krikava puts together the product matter. He not only sees the big picture well by well basis but he sees the big picture where he needs to be focusing his efforts explained Kytta. Kenyon noted really with free product if you shut the system down if you see one month you would see a hundred. It would go away and show back up something else. That is going to happen.

Kenyon continued. I did some extra math because we are trying to contain the O&M costs. It just shows the difference what we budgeted and what we actually spent per monthly basis. Since there is no actual it is what we budgeted next year over what we think we will actually spend this year. We are doing what we can to control it.

Neubauer asked. Do you think that \$290,000 number or \$280,000 as you look out at 2011 and 2012.

Kenyon indicated let's have the site strategy plan review and finalization. That is going to make a significant amount of difference. We talked about the hundredth that shows up here or over there. If the regulatory agency says every time it shows up you fire it back up that will have a huge effect. Kytta indicated the big change in the cost will be when you stop full time operation because a big part of these costs are in water treatment. I say full time operation you get to the point where you are just operating it during low water table periods during the year. When you don't have to be operating 24/7 that's when you are going to see the costs are really diving.

Neubauer asked. Does the \$280,000 include the \$29,000? No, it does not include that Kenyon responded. Kytta explained they have been separated every year because they have been separate tasks. And It doesn't include roughly \$100,000 to \$120,000 for MDU does it, Schwindt asked. Neubauer continued. What in total -- we have \$280,000 plus \$29,000 plus \$23,050. Kytta noted the big change in natural gas will come when the decision is made. Schwindt asked. What does the monitoring show as far as incoming gases because the methane is gone pretty much. The VOCs are gone pretty much. Kytta would like to take a look at the gas usage. I know it has increased, but how much. The first number of months that we were operating the first year we weren't using any assist gas, but now we are obviously using quite a bit. Kenyon added. It can be another measure of what you are getting. It does that on a real kind of basis and that's even a better measurement than a periodic analytical sample that you average over the whole period.

Schwindt asked. I guess I'm wondering what the analytical data is on the raw gas point to the RTO. Do you guys do that? What kind of concentrations? We had the Air Quality guys look at those a couple of years ago to see what impacts it might have if we re-route the plumbing on it or just shut it down. Kytta indicated that was three years ago. If we can get the gas data now would be a good time to look at that again.

Neubauer asked. Do you do an off peak for gas? Kenyon noted it might come to that. Schwindt indicated there is no real good way of storing it. You either turn the SVE on or turn it off. Or shut the RTO off Kenyon added. Then it runs all the time except when we are doing maintenance. Kytta added fall maintenance is part of that. Stoor does that too. Kenyon indicated being able to shut off some of those peripheral systems that is going to have a dramatic impact on the assist gas.

Schwindt's questions: Does the RTO work in phases? Is the whole RTO on? Or is the whole RTO off? Kytta indicated it can be throttled back. That was one of the issues in hindsight when we started. This phase worked out great because we ended up having so much methane. By starting in phases we were able to take the big slugs. Kenyon added. Sometimes we had to cut back on the SVE because it was too high. Kytta noted we are well past that point now and used quite a bit of assist gas.

LBG would like to have some kind of nod or heads up so we can just work on into January. That's why we are doing it today, Kenyon stated. Schwindt would like some time to look at it.

Helbling commented. You said you took out 231,851 total product. What was the 93,627? That was pounds of methane, Kenyon responded. Helbling asked. Does anybody have a clue of the free product taken out at Burlington Northern? Schwindt recalls 700,000. Kytta agreed. We are close to a million gallons. Helbling verified so if you converted that 700,000 it would be 7 pounds per gallon. Kenyon stated 7.31.

LBG will conceptually plan on coming back on February 2, 2010. Kenyon suggested having the public hearing on February 3 [regarding the Site Strategy Plan]. Schwindt indicated a public forum. Kenyon asked. Do you have any questions for us?

Neubauer asked if Krikava has been hearing anything on the street when he goes around checking houses. Kenyon indicated the only guy they received feedback from was Simply Wood – Larry in 2005. When they were installing wells they bumped a desk. It took him three years to send me an invoice. I might not be really interested in paying it right away because I don't know where the desk went. He may have sold it to somebody else. There is no validation, no verification. He also had in there a serious amount of man hours to re-sand and re-varnish some pieces of equipment because of dust that I have never heard of that had never come to my attention. Schwindt added. That was part of the original complaint as well. He never calls or never writes Kenyon added. If they had gotten the bill when he could have sent it to the contractor. Three years. That's it. Kytta indicated it is an issue because I think he told Krikava he doesn't want him to monitor wells anymore. Fortunately, I don't think there is any product left in there. No, there is none Kenyon responded. Schwindt stated. There has to be. Have there been any complaints from any store owners about odors in their buildings. Kenyon indicated not that Krikava has talked to me about. Kytta mentioned early on the chiropractor but that has been three years ago. Schwindt heard about one a couple of months ago when the guy at the theater complained about some kind of weird thing back by his stage. It didn't smell like diesel. When they were putting in those floor

borings outside in the Furniture First that's what that smells like. He was talking about way on the north end of the theater building and the borings were on the south side. Kenyon noted he didn't communicate that thought. I think he called Ellen [Huber] Schwindt replied. I stopped over and talked to him. He said, "It's a lot better now than what it had been in the past." I wonder if they were painting anything back stage and using paint thinner. It smells a lot like diesel, Kenyon stated. Helbling commented. You don't even hear Chief Construction – any rumors or nothing out of him anymore either. He suggested trying to resolve it. You might want to talk to him.

Just to reiterate you guys are OK with the way I described replacing the wells and placement, etc., Schwindt asked. Are you OK with that? Kenyon indicated if you are OK with it, we are OK with it. Kytta agreed those you described will work. Basically, that is what we have been discussing all along.

Swindt asked. Is there anything I have to watch out for in reinstalling the pipe. Do we need to insulate where those lines come out from the well casing. The wells that we have pulled out usually have some foam around them where the connection is. What do you use? Do they have some larger cans of foam stuff? Kenyon responded. Do you want to ask Bob Kruck actually what they used? On that issue, we have put a lot of pipes in at four foot deep. We thought we would lose some throughout the years, but it never happened. Kytta added. We have just gotten more condensate in the lines. That reminds me of something Schwindt commented, there was a lot of water in those. Should the SVE have gallons and gallons of water? Kytta responded. You do get water on the bottom of the pipe. That is pretty common. Schwindt asked. Do we need to be sure the pipe drains some place? Kytta indicated they blow those lines out especially during the winter. During the summer it is not as often because you get more buildup in the winter when the warm air is hitting the cold air so they blow those lines. I think on a monthly basis during the winter to keep the lines free. Schwindt asked. So we don't have to worry about draining them one way or another. Kenyon responded. You wouldn't want any big dips in the line.

Motion to Adjourn. Schwindt moved and seconded by Neubauer at 3:43 p.m. All ayes. Motion carried.

