

Randal Brown

From: Brader, Valerie (GOV) <BraderV25@michigan.gov>
Sent: Wednesday, November 22, 2017 4:50 PM
To: Randal Brown; Bill Wolfson; Laurie Koester
Cc: Baird, Richard (GOV)
Subject: FW: Defense of Flint GLWA Contract and Master Agreement
Attachments: Defense of Flint GLWA Contract and Master Agreement 11-22-17.pdf

Randal, Bill, and Laurie – if you could share both the below and the attached with your board members in anticipation of their vote early next week, it would be very much appreciated. –Valerie

Dear Board Members:

I write you today to encourage you to agree to excise language added in the first week of November to the Master Agreement and the agreement between the Great Lakes Water Authority (GLWA) and the City of Flint. I do so because happily, the circumstances that led you to require the additional protections against litigation or in the event the contract would be found to be void are no longer operable. Thus, I believe the additional protections GLWA negotiated are unlikely to provide much benefit given this change in circumstances, and the City of Flint stands ready to be a long-term contract customer if you can agree to forgo them.

1. Flint will be a customer of choice.

When the additional language was negotiated, it seemed very possible that if the contract were to be entered into, it would be done on the basis of a federal judicial action, not as a result of the typical municipal process. Happily, with an intervening election giving the Mayor of Flint (a consistent supporter of this deal) a clear vote of confidence from the people, and with a majority of the Council being new, a majority of Flint's City Council has voted to approve the Master Agreement and all its sub-agreements, including the Flint-GLWA contract, provided language that was inserted in large part due to a fear Flint would not be a customer of choice is removed.

2. Flint's new leadership has explicitly and prominently rejected arguments that suggested failure to pay GLWA's bill would not have consequences.

In the resolution approving the contract subject to removal of the additional terms added in November, the City Council took pains to not only request that the State stipulate to the withdrawal of all pleadings (which we have agreed to do), they explicitly rejected the argument of the prior council related to the failure to pay bills not resulting in a shut off. This new leadership has signaled as strongly as they can an intention to pay their bills, just as the City of Flint always has. To be clear, Flint is aware of the Highland Park/GLWA litigation, and new leadership took pains to state in explicit terms in the formal resolution that any statement indicating that Flint would follow the path of Highland Park was **not** the position of this City Council, and the Mayor's administration had clearly opposed that argument in Court. Therefore, you have strong, explicit statements from the City's leadership that they intend to pay their bills.

3. The City of Flint will stand beside GLWA in defense of the contract.

The City Attorney of Flint has a letter I have appended to this message making it clear that the City of Flint's intention to defend its power to contract and the validity of these agreements. Not only is this a commitment the City Attorney is empowered to make, and the City's vigorous defense of the decision by its democratically elected leaders is in fact standard operating procedure. Thus, the removal of the added language should not diminish your confidence that should any legal action arise, you have a partner in the City of Flint in defending the validity of the agreements.

4. Litigation costs should be minimal, and a challenger's odds of success would be low.

Given the actions that have come to pass since the first week of November – a willing customer who has pledged to defend the contract's validity, a vote of the democratically elected Mayor and City Council in favor of the proposed contracts, a City Council and Mayor that have indicated their intention to pay their bills, and the clear intent to withdraw all pleadings to the contrary – any litigation challenging the agreement's validity has a very low probability of success. Moreover, the defense is likely to be simple in nature and able to be handled in house. The State also fully expects the RTAB will approve the contract later this week. Thus, the fear that was seemed very reasonable in November -- that litigation expenses would become significant and thus Flint could not be served for the contracted rate fairly -- is no longer necessary because that possibility is now much more remote. Similarly, language added to the Master Agreement to protect GLWA in the event that the contract would be found invalid is now of little value. Flint's manner of adoption of this contract now being very standard, and thus any legal challenge unlikely to succeed and simple to litigate (especially with Flint's willingness to defend), has changed the situation significantly. Flint now looks like a standard GLWA customer in the adoption of the contract, and thus giving a standard GLWA contract provision is reasonable and appropriate.

As you have recognized in approvals of the prior versions of these documents, the agreements reached earlier in the year allowed both the City of Flint and GLWA to benefit from the overall agreement. The conditions that made that true then are restored now, with the added benefit of a clear statement from Flint regarding both its intent to pay its bills and a clear statement of an intent to defend the contract. Therefore, I ask you to honor the City Council's request to authorize entering into the Master Agreement and the long-term contact without those added provisions so all entities can receive the benefits we have all spent so much effort securing.

Each of you and GLWA's staff and attorneys have been excellent to work with in a long and challenging process. We appreciate your consideration of what we hope will be the final step in reaching a long-term agreement for safe, affordable water for Flint, and thus the beginning of a new chapter for all entities involved.

Best,

Valerie Brader
Special Legal Counsel to Gov. Rick Snyder