



GLWA / Highland Park / State of Michigan Proposed Agreement FAQ

What is that status on the approval of the term sheet related to the proposed settlement with the city of Highland Park and the state of Michigan?

The Great Lakes Water Authority (GLWA) Board of Directors, on October 25, 2023, approved the term sheet that represents the initial step in implementing a proposed agreement between GLWA, the city of Highland Park, and the state of Michigan. The term sheet can be found [here](#).

What are the benefits of this proposed agreement?

The proposed settlement has three main pillars that not only provide much needed assurances from Highland Park, but also support a fresh start with the GLWA-Highland Park relationship. The proposed agreement provides the following:

1. Payment Assurances from Highland Park (HP)

- Under the term sheet, HP has agreed to:
 - Enter into contracts based on GLWA's model contract through December 31, 2044;
 - Pay the full amount of GLWA's monthly charges;
 - Allow an independent rate analyst to annually calculate necessary adjustments to HP's local charges to ensure charges are sufficient to pay GLWA charges and HP's local system overhead, maintenance and operational costs;
 - Annually adjust its local water and sewer rates in accordance with the independent analyst's recommendations;
 - Direct all amounts paid for HP water, sewer, industrial waste control, and stormwater services into a trust from which a trustee will first pay GLWA, with remaining amounts distributed to HP;
 - Enter into an amended, or new, Administrative Consent Order issued by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) incorporating the terms of the settlement agreement to remain in effect until January 1, 2044;
 - Enter into a consent judgment to enforce the terms of the settlement agreement;
 - Resolve future disputes through arbitration:
 - HP and GLWA have agreed to mandatory, expedited, binding arbitration for all disputes over water and sewer services;
 - Arbitration must be filed if the parties are unable to resolve dispute within 30-days' notice of that dispute;
 - If a dispute is charge related, the amount of the dispute must be placed into escrow.

2. *Investment in Capital Improvements*

- The state of Michigan will release a previously appropriated \$25M wastewater infrastructure grant for GLWA by December 31, 2023, which will offset wastewater capital project costs;
- The state of Michigan will appropriate a \$5M drinking water infrastructure grant to GLWA to offset water capital project costs;
- The state of Michigan will provide assistance to HP to rehabilitate its water and sewer systems to reduce leakage.

3. *Meters will Increase Equity in Charges*

- To create confidence that HP is being billed equitably for its use of the system, the state of Michigan has agreed to:
 - Pay for the reasonable and necessary cost to install water master meters on all open wholesale drinking water service points of connection;
 - Pay for the reasonable and necessary cost to install temporary wastewater meters to estimate the sewage flow produced by HP.

Will GLWA use any of the \$30M it is receiving from the state of Michigan to provide credits to the Member Partners who absorbed the Highland Park bad debt?

- No. Those funds have restrictions on their use: \$25M must be used for wastewater infrastructure projects and \$5M must be used on water infrastructure projects. The funds will benefit member partners by covering costs associated with capital projects that would have otherwise been included in charges.

If GLWA cannot use the \$30M from the state of Michigan, is it considering any other options to provide credits to Member Partners?

- GLWA's Board of Directors is currently reviewing this topic.

Will any of the \$241,418.75 bond that is to be released to GLWA as outlined in the term sheet be refunded to Member Partners?

- This topic is being considered as part of the broader topic of credits to Member Partners described above.

Will Highland Park be required to enter into Water and Sewer Master Contracts similar to other GLWA Member Partners?

- Yes. Although HP's contracts will be slightly different to encompass terms set forth in the term sheet, such as the mandatory, expedited, binding arbitration and the trust account.

What happens to all the ongoing litigation between the parties?

- Upon implementation of the settlement agreement, including initial funding consistent with the agreement and after receipt by the trustee of one month of HP's water and sewer receipts, as well as one month's payment of funds to GLWA, all litigation would be dismissed.

Will Member Partners be made whole for the past bad debt they have covered?

- The proposed settlement did not provide funding for coverage of the past bad debt by Member Partners.

Why is Highland Park’s sewer bill being reduced by \$60,000 per month?

- The proposed adjustment was negotiated as part of the confidential settlement discussions during the court-ordered mediation. The credit will terminate no later than June 30, 2025. Once 12 months of quality metering data is available, GLWA charges to HP will be based on that data and future data.

How are the unpaid Highland Park balances being accounted for on GLWA’s books?

- The unpaid balance at June 30, 2023 was “fully reserved,” meaning that the bad debt expense and the offsetting account for the receivable was recorded. If and when final settlement agreements are executed pursuant to the term sheet, those accounts will be cleared out. The net impact for services provided through June 30, 2023, is zero on the budget. There will be some amount not collected this year that will be written off as part of the settlement agreement. That amount will not be known until we true-up billings and payments through December 31, 2023. Any true-up adjustment will not be charged to Member Partners.

One year seems like a very optimistic timeline for the completion of metering. Will the parties develop interim billing procedures to be prepared if the metering is not completed in one year?

- The term sheet states that HP “shall pay the full amount of GLWA’s monthly charges pursuant to the terms of any contract between GLWA and HP” and requires HP to “enter into contracts based on GLWA’s model contract by January 15, 2024, covering the period of January 1, 2014, to December 31, 2044, for water and sewer services.” As noted above, the term sheet also requires all amounts paid for HP water, sewer, industrial waste control, and stormwater services to be placed into a trust from which the trustee will pay GLWA first, with remaining amounts distributed to HP. In the event that quality meter data is not available to determine demands for establishing HP charges, the then current charge methodology will be used.

Will Member Partners (specifically the Analytical Work Group) have an opportunity to review the proposed usage factors for Highland Park before they are implemented?

- The methodology for determining HP’s usage factors for each future year’s charges will be based on the then current methodology and considering provisions in the settlement agreement until quality meter data is available. It is anticipated that the earliest charge year that HP may have quality meter data would be FY2027. Because of the provisions in the settlement agreement, HP will have the opportunity annually to update max day and peak hour demands for five years commencing on the date of the agreement.
- When quality meter data becomes available, GLWA and HP will evaluate the data and negotiate demands in a methodology consistent with the master metered customer class to the extent possible with the limited data. As with other members of the master metered customer class, demands will be negotiated between the parties and the results will be shared at each year’s Charges Rollout Units of Service meeting.

Why is HP not paying outstanding balances?

- On June 5, 2023, the state of Michigan filed a position statement in Wayne County Circuit Court Case No. 14-001974-CK (the “2014 Case”) advocating for a stay of proceedings, arguing that amounts HP owed for services and needed for infrastructure repair were “far too great to carry and yet can’t all be addressed by bankruptcy.”

- On August 29, 2023, the state of Michigan took the position in the 2014 Case that placing the judgment on HP's tax rolls was not acceptable.
- Recovery of amounts due from HP was highly uncertain and could have involved expensive and lengthy litigation and/or bankruptcy proceedings.
- The Wayne County Circuit Court declined to hear motions requesting summary disposition in GLWA's favor in Wayne County Circuit Court Case No. 20-011589-CB (the "2020 Case"). The court encouraged the parties to mediate and seek a political solution.

What has GLWA done to recover amounts due from HP?

- GLWA has utilized all appropriate means available to recover unpaid amounts.
- During the more than 12 years since this litigation was first filed there have been numerous cases filed between GLWA and Highland Park in Michigan's Third Circuit Court, Court of Claims, Court of Appeals, and Supreme Court. Federal cases were also filed in the United States District Court for the Eastern District of Michigan and appealed to the United States Court of Appeals for the Sixth Circuit. While GLWA has received favorable rulings throughout this litigation, absent this settlement, litigation would likely have continued for the foreseeable future. Key cases are listed below:
 - In the 2014 Wayne County Circuit Court case (14-001974-CK), judgment was entered for Detroit and DWSD in 2015. In 2021, the circuit court vacated the judgment. GLWA successfully appealed from that 2021 circuit court order and obtained an order from the Michigan Court of Appeals on August 18, 2022, remanding the case for reinstatement and enforcement of the judgment. GLWA then obtained an order reinstating the judgment from the trial court;
 - In the 2020 Wayne County Circuit Court case (20-011589-CB), after HP began paying \$0 for water and sewer services in April 2021, GLWA obtained an order on May 10, 2022, requiring HP to pay GLWA 65% of any and all amounts it received in payment of bills for water or wastewater treatment services. On September 1, 2022, GLWA obtained another order from the circuit court requiring HP to make such payments "based on 65% of all revenues collected pursuant to the billings for water and sewer services" after records showed HP was paying less than the full 65% of its water and sewer receipts. On December 30, 2022, GLWA obtained a third order requiring HP to pay all amounts due under the September 1st order by February 1, 2023, which resulted in a payment of over \$1 million from HP by that date. From April 2021 to May 2022, GLWA has received over \$9 million from HP pursuant to the court orders;
 - In the federal courts, GLWA successfully obtained dismissal of two lawsuits that HP filed in 2016 and 2017 in the United States District Court of the Eastern District of Michigan. The Sixth Circuit affirmed the dismissal of Highland Park's claims in a consolidated appeal. *City of Highland Park v. EPA*, 817 F. App'x 42, 44 (6th Cir. 2020). On January 6, 2022, GLWA obtained a \$241,418.75 attorney fee award from the district court. On September 20, 2023, the United States Court of Appeals for the Sixth Circuit affirmed that award.