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Title: Authorization to Apply Member Partner Bad Debt Recovery Credits #2023-2 Totaling \$20,026,500 Based Upon Achieving Satisfaction of Conditions Precedent Related to Highland Park Bad Debt Recovery

Sponsors: Nicolette Bateson

Indexes: Finance

Code sections:

Attachments: 1. 6B2 Bad-Debt-Recovery-Credit-Pending-Approved-11.16.2023.pdf

Date	Ver.	Action By	Action	Result
6/26/2024	1	Board of Directors	Approved	Pass

Authorization to Apply Member Partner Bad Debt Recovery Credits #2023-2 Totaling \$20,026,500 Based Upon Achieving Satisfaction of Conditions Precedent Related to Highland Park Bad Debt Recovery

Agenda of: June 26, 2024
Item No.: 2024-231

TO: The Honorable
Board of Directors
Great Lakes Water Authority

FROM: Suzanne R. Coffey, P.E.
Chief Executive Officer
Great Lakes Water Authority

DATE: June 26, 2024

RE: Authorization to Apply Member Partner Bad Debt Recovery Credits #2023-2 Totaling \$20,026,500 Based Upon Achieving Satisfaction of Conditions Precedent Related to Highland Park Bad Debt Recovery

MOTION

Upon recommendation of Nicolette Bateson, Chief Financial Officer/Treasurer, the Board of Directors (Board) of the Great Lakes Water Authority (GLWA):

- 1) Approves the Authorization to Apply Member Partner Bad Debt Recovery Credits #2023-2 Totaling \$20,026,500 Based Upon Achieving Satisfaction of Conditions Precedent Related to Highland Park Bad Debt Recovery noting that the City of Highland Park received debt forgiveness through the settlement agreement and therefore is not due any additional credits; and
- 2) Authorizes staff to apply the above credits to the June 2024 services which are billed and due at varying dates after July 1, 2024; and
- 3) Authorizes staff to withhold the above credit to any community that has a past due balance that is related to the Highland Park matter until such amount is paid in full; and
- 4) Authorizes the Chief Executive Officer to take such other action as may be necessary to accomplish the intent of this vote.

BACKGROUND

A comprehensive settlement agreement between the State of Michigan, the City of Highland Park and GLWA has now been approved and executed by all parties and resolves many years of litigation between the Detroit Water & Sewerage Department, then the Great Lakes Water Authority, and Highland Park. This follows an October 2023 Term Sheet which outlined the terms of the global resolution.

In addition to settlement discussions, consideration was given to how this settlement would impact other Member Partner communities - particularly those that funded some of the bad debt expense in previous years. At its November 16, 2023 meeting, the Board approved Resolution No. 2023-427 "Resolution Regarding Approval of Schedule of Member Partner Bad Debt Recovery Credits #2023-2 Totaling \$20,026,500 with Conditions Precedent Utilizing the Highland Park Bad Debt Recovery Credits Methodology." The Highland Park Bad Debt Recovery Credit Methodology provides for credit allocation among Member Partner communities of the Authority related to the settlement of the litigation between Highland Park and the Authority as discussed herein. Resolution 2023-427 authorized payment of Member Partner Bad Debt Recovery Credits totaling \$20,026,500 (\$5,026,500 for the Water System and \$15,000,000 for the Sewer System), conditioned upon satisfaction of certain conditions precedent necessary to effectuate the Term Sheet. It was expected that credits were to be provided no sooner than the fourth quarter of Fiscal Year 2024. A copy of a report that includes items from the Board action is posted on the GLWA website (also attached) and also follows this report.

JUSTIFICATION

Key actions to date indicate that the conditions precedent have been sufficiently met to authorize staff to set up the billing system to apply credits to June 2024 services which are billed and due at varying dates after July 1, 2024.

- On June 17, 2024, a payment was received for the \$5 million water system capital grant from the State of Michigan.
- Earlier in the calendar year, the capital grant from the State of Michigan to GLWA for the \$25 million sewer system grant was received.

- The U.S. District Court for the Eastern District of Michigan has advised that the check representing approximately \$241,000 in attorney's fees awarded to GLWA is being processed and will shortly be mailed to GLWA.
- The settlement agreement, new water and sewer contracts for Highland Park, and a trust agreement between Highland Park and US Bank as trustee are in place. Transfers appear to be deposited in the trust account as agreed upon and the initial distribution from the trustee to GLWA for services provided to the city of Highland Park has been made as agreed upon.
- The FY 2024 second quarter budget amendments included the commitment of funding for the Member Partner credits pending the cash collections to fund the budget commitments. As we approach the end of the year, the cash management plan has been designed to allow for the temporary decrease in collections in the first quarter of FY 2025 as a result of the credits.
- In early calendar year 2022, some Member Partners withheld payment as a means of expressing their frustration with the unresolved matter. The Charges & Outreach Modeling manager has been in communication with each of those communities. As of June 24, 2024, only one community has not responded to multiple attempts to request payment. It is recommended that credits not be applied to any communities that have a past due balance that is related to the Highland Park matter until such amount is paid in full.
- The Financial Services Area team, General Counsel personnel, and outside counsel are coordinating a few remaining details.
- The City of Highland Park received debt forgiveness through the settlement agreement and therefore is not due any additional credits.

BUDGET IMPACT

The budget impact as noted above and in the attached were reflected in the FY 2024 Second Quarter Budget Amendment report. That budget impact analysis remains valid today.

COMMITTEE REVIEW

The GLWA Audit Committee was briefed on the status of this matter at its June 17, 2024 meeting. No action was recommended at that time pending final analysis and legal update.

SHARED SERVICES IMPACT

This item does not impact the shared services agreement between GLWA and DWSD.