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January 18, 2013

Mr. Philip D'Angelo, Chairman  
Members of the Board of Fire Commissioners  
Midway Fire District  
1956 Central Avenue  
Colonie, NY 12205

Report Number: 2012M-210

Dear Mr. D'Angelo and Members of the Board of Fire Commissioners:

One of the Office of the State Comptroller's primary objectives is to identify areas where local government officials can improve their operations and provide guidance and services that will assist them in making those improvements. Our goals are to develop and promote short-term and long-term strategies to enable and encourage local government officials to reduce costs, improve service delivery, and to account for and protect their entity's assets.

In accordance with these goals, we conducted an audit of the Midway Fire District (District) which addressed the following question:

- Are claims audited in a timely manner in accordance with the Town Law?

We discussed our findings and recommendations with District officials and considered their comments in preparing this report. District officials generally agreed with the recommendations and indicated they have initiated or plan to initiate corrective action. The District's response is attached to this report in Appendix A. Appendix B includes our comment on the issues raised in the District's response letter.

### **Background and Methodology**

The District is a district corporation of the State, distinct and separate from the Town of Colonie and the County of Albany in which it is located. The District's general fund budget totaled \$968,200 for the 2012 fiscal year. The District's primary source of revenue is from real property taxes.

The Board of Fire Commissioners (Board) consists of five elected members, with one member being appointed as Chairman, and is responsible for the District's overall financial management. The Board appoints a Secretary-Treasurer (Treasurer) who acts as the District's chief fiscal officer. As such, the Treasurer is responsible for processing all of the District's claims for

payment, and the Board is responsible for providing a thorough audit of each claim before approving them for payment.

We examined the internal controls over the District's financial operations for the period January 1, 2011 to August 31, 2012. We interviewed appropriate District officials and reviewed financial records and Board minutes. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## **Audit Results**

The audit and approval of claims is one of the most critical elements of the District's internal control system. Town Law requires the Board to audit and approve all claims against the District prior to directing the Treasurer to pay them. The one exception to this is the Board may, by resolution, authorize payment in advance of audit of claims for public utility services (electric, gas, water, sewer, and telephone), postage, freight, and express charges. However, the claims for such prepayments must be presented at the next regular Board meeting for audit.

The Board audits District claims; however, the audit of some claims was not in compliance with Town Law. Although the Board approves claims at its monthly meetings, the Treasurer processes and pays certain claims prior to the Board's audit. In addition, District officials passed a resolution to pay "recurring" bills prior to the Board's audit instead of the specific exceptions allowed by Town Law.

Because of the weakness in the claims audit process, we selected 50 claims from the general fund totaling \$39,013 for testing. We traced the claims to approved abstracts and supporting claims packets to determine if the claims appeared to be for legitimate District purposes and were audited prior to payment. We found that the claims tested were for a proper District purpose.<sup>1</sup> However, 19 claims, totaling \$13,583, were paid prior to the Board's audit and approval.<sup>2</sup> Of the 19 claims paid prior to audit, four claims totaling \$10,541, were for allowable exceptions under Town Law. The Treasurer stated that he pays recurring District bills, allowable exceptions under Town Law, and any bills that would incur late fees if paid after approval at the Board's monthly meetings. In addition, the Treasurer pays lesser valued claims to small vendors and individuals prior to audit.

Without properly auditing and approving all claims before payment, the Board does not have adequate assurance that the purchases were properly approved or that the goods and services were actually received. In addition, by routinely paying claims without the Board's audit, there is an increased risk of the misuse or diversion of District funds.

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<sup>1</sup> We discussed the minor issues related to claims with District officials.

<sup>2</sup> These claims were audited by the Board at the next meeting.

## Recommendations

1. The Board should establish a proper resolution that allows the Treasurer to pay claims for allowable exceptions under Town Law prior to an audit by the Board.
2. The Board should ensure that all claims, other than those exceptions allowed by Town Law, are audited and approved by the Board before the Treasurer pays the claims.

The Board has the responsibility to initiate corrective action. Pursuant to Section 181-b of the Town Law, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and forwarded to our office within 90 days. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The Board should make the CAP available for public review in the Treasurer's office.

Sincerely,

Office of the State Comptroller  
Division of Local Government  
and School Accountability

## **APPENDIX A**

### **RESPONSE FROM DISTRICT OFFICIALS**

The District officials' response to this audit can be found on the following pages.

# MIDWAY FIRE DISTRICT

1956 Central Avenue  
Albany, New York 12205  
Telephone: (518) 456-1993  
Telefax: (518) 456-3342

Philip D'Angelo, Chairman  
Board of Fire Commissioners

Robert A. Walsh  
Secretary/Treasurer

John W. Clark  
Counsel

December 10, 2012

Office of the State Comptroller  
Division of Local Government & School Accountability  
PSU-CAP Submission  
110 State Street, 12<sup>th</sup> Floor  
Albany, NY 12236

Reference: Combined Audit Response and Corrective Action Plan (CAP)

Ladies and Gentlemen:

We have received the draft audit report as well as the brochure for response preparation. We find that the audit report provided to us permits a combined response and this letter serves as both the Audit Response and the Corrective Action Plan.

## **Audit Response:**

We are pleased with the Audit and the conduct of the auditor who was courteously informative while reviewing our books and transactions. We have reviewed the one criticism of the district's finances disclosed in the audit report for the treasurer paying some claims in advance of approval by the entire Board of Fire Commissioners. The rule which had been in place was a resolution that had been recommended by our counsel and was the recommended policy in this regard published in a well-respected treatise and formbook covering fire district operation entitled: "2012 Fire District Officer's Guide and Forms." The Policy in place stated as follows:

### **Resolution for Fire District Treasurer to Pay Claims in Advance of Audit**

BE IT RESOLVED that the Treasurer or the (Fire District) is authorized to pay, in advance of an audit by this Board of Fire Commissioners of the (Fire District), the following claims. Any such claims must be presented to the next meeting of the Board of Fire Commissioners of the (Fire District) for audit.

- i. Utility payments to the company providing electric, gas or other utility services to the district;
- ii. Telephone and similar payments to the company providing phone service, data service, cable TV service, and similar services on a monthly billing methodology to the district;
- iii. Payment to the U.S. Postmaster for postage expenses;
- iv. Payment to freight and express companies for freight or delivery charges.

The policy was too broad and did not technically comply with the Town Law. We recognize that the treasurer was making additional advance payments not authorized by Town Law and that process will

end. The advance payments made (and in every case approved by the entire Board of Fire Commissioners at the next monthly meeting) were often made prior to the meeting to avoid the imposition of a late fee or penalty charge had the payment been made at a date after the monthly meeting took place. The actions of the treasurer actually preserved taxpayer monies and it is hard to be critical of the treasurer and the board itself for permitting such activity.

**Corrective Action Plan**

The following information is provided as called for in your Corrective Action Plan template:

Unit Name: Midway Fire District  
Audit Report Title: None Provided  
Audit Report Number: 2012M-210

The Midway Fire District agrees with the findings as reported and concurs that the law does not permit claims to be paid by the treasurer in advance of audit and approval by the entire board even when those claims will bear a late charge and additional expense to the taxpayers. ~~The policy will be clarified to reflect the proper rule and it will be strictly enforced commencing on the date of this letter.~~ Should any taxpayer complain, we will explain the difficulty of getting the board of 5 non-compensated officials together for a meeting which may only occur on proper notice to the media and public for bill approval and that the law simply requires that such bills await payment until the entire board can act. We would have thought that cable TV charges would have been a permissible claim to pay on a recurring basis but will eliminate that from our list of pre-approved payments.

See  
Note 1  
Page 7

The new policy on this point will read as follows:

**Resolution for Fire District Treasurer to Pay Claims in Advance of Audit**

BE IT RESOLVED that the Treasurer or the Fire District is authorized to pay, in advance of an audit by this Board of Fire Commissioners of the Fire District, the following claims. Any such claims must be presented to the next meeting of the Board of Fire Commissioners of the Fire District for audit.

- A. Utility payments to the company providing electric, gas or other utility services to the district;
- B. Telephone and similar payments to the company providing phone service and data service;
- C. Payment to the U.S. Postmaster for postage expenses;
- D. Payment to freight and express companies for freight or delivery charges.

We sincerely appreciate the efforts of the audit team from the Comptroller's office.

Respectfully,

Philip D'Angelo  
Chairman

## **APPENDIX B**

### **OSC COMMENT ON THE DISTRICT'S RESPONSE**

#### Note 1

Town Law section 176(4-a) states that “Except as otherwise provided by this subdivision, no...claim shall be audited or ordered paid by the board of fire commissioners unless an itemized voucher therefor...shall have been presented to the board...for audit and allowance.” This statutory section authorizes the board, by resolution, to permit payment in advance of audit for “light, telephone, postage, freight and express charges.” Based on definitions set forth in Public Service Law, telephone and cable/data service are two different services. Therefore, in our view, the authority to provide for payment of telephone charges in advance of audit in Town Law section 176(4-a) does not cover cable TV/data service.