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Dear Local Government Official:

Please find attached a listing of the average estimated cost thresholds for your use in determining whether approval of the State Comptroller is necessary for certain special district actions in the year 2012.

Certain "low cost" special districts, i.e., those which are at or below average estimated cost thresholds contained in the enclosure, do NOT require approval of the State Comptroller. However, unless no debt is being issued, a certified copy of the notice of hearing for the "low cost" district must be sent to our office. This copy must be sent, on or about the date of publication, to the Office of the State Comptroller, Division of Legal Services, 110 State Street, 14th Floor, Albany, New York 12236. It should be sent no later than 14 calendar days after publication. This notice enables us to accurately calculate future average estimated cost thresholds.

In addition, certified copies of resolutions or orders which, among other things, finally establish or extend a district, and in the case of counties, authorize an increase and improvement of facilities, are required to be filed with this Office regardless of whether the Comptroller's approval is required. Resolutions or orders that are subject to permissive referendum should not be filed until the period for filing a petition has passed, or if a petition is filed, a referendum has been held.

We would be happy to provide advisory services and assist you in identifying and resolving issues in connection with special district actions, even if the proceedings are not subject to our approval. You can obtain additional information and guidelines on submitting applications by contacting our office. The information in this letter, as well as the Comptroller's regulations relating to applications for permission of the Comptroller to establish or extend special districts (Part 85), can also be found on our website:

<http://www.osc.state.ny.us/localgov/datanstat/files/part85regs.pdf>

If you have questions or need more information, please contact Ellen McDonald in our Division of Legal Services at (518) 474-3517 or Scott Waldorf in our Division of Local Government and School Accountability at (518) 486-3145.

Sincerely,

Steven J. Hancox
Deputy Comptroller
Division of Local Government
and School Accountability

Enc.

**AVERAGE ESTIMATED COSTS FOR COUNTY AND TOWN SPECIAL
IMPROVEMENT DISTRICTS
(EFFECTIVE FOR PROCEEDINGS FOR WHICH A NOTICE OF HEARING IS PUBLISHED
FROM JANUARY 1, 2012 THROUGH DECEMBER 31, 2012)**

The Comptroller's approval is required if debt is proposed to be issued by a town or county, and the "cost of the district or extension" to the "typical property" or, if different, the "typical one or two family home" as stated in the notice of hearing, is above the average estimated cost thresholds listed below¹.

Costs include debt service, operation and maintenance, including user fees, and other charges related to the improvement in the first year following formation of the district or extension, or the increase and improvement of facilities in counties (or, if greater, the first year in which both principal and interest and operation and maintenance will be paid). To ensure accurate calculations of estimated costs, towns and counties should not assume the receipt of federal or state aid in the absence of firm commitments from the appropriate agency. In addition, estimated borrowing costs should be based on the proposed maturity of the obligations and interest rate assumptions derived from market surveys or a letter of commitment. Charges imposed by other governmental entities, such as public authorities or other municipalities, should also be included in the computation. Costs, for this purpose, do not include hook-up fees.

A summary of the notice of hearing requirements for the establishment and extension of town special districts appear in Appendix A. Frequently asked questions (FAQs) on the establishment or extension of town special districts concerning required determinations and methods of assessment appear in Appendix B.

TOWN DISTRICTS

The following average estimated costs apply to town special district establishments, extensions, or increases in the maximum amount to be expended².

Sewer	\$ 816
Water	\$ 696

¹ For those proceedings that are subject to a permissive referendum requirement, the Comptroller's Office will accept the filing of an application prior to the expiration of the time for filing a petition requesting a referendum, or if a petition is filed, the vote on the proposition. However, no approval order will be granted until after the completion of all such requirements.

² Chapter 456 of the Laws of 2004 amended Town Law §§202-d and 209-h, with respect to proceedings pursuant to Articles 12 and 12-A of the Town Law that authorize an increase in the maximum amount to be expended for the improvement in a district. Under the amendment, the Comptroller's approval, if required, may be given only after a public hearing and, in the case of Article 12-A districts, permissive referendum requirements are met. Prior to the amendment, the public hearing and permissive referendum procedures were undertaken after the Comptroller's approval.

COUNTY DISTRICTS

The following average estimated cost applies to county special district establishments, extensions or increases in the maximum amount to be expended.

Sewer	\$ 352
Water	\$ 3

The following average estimated cost applies to county special district increases and improvements of facilities. Please note that this figure represents only the increased cost to the typical property as a result of the increase and improvement.

Sewer	\$ 6
Water	\$ 3

OTHER DISTRICTS

For all other types of districts, there was insufficient data to calculate meaningful average estimated costs. Therefore, any type of district not listed above will be subject to applicable requirements for obtaining the Comptroller's approval, irrespective of the cost to the typical property or home, if debt is proposed to be issued to finance the improvement.

Note that proceedings under Town Law § 202-b to, among other things, repair, improve, or replace facilities within an existing town district do not require the Comptroller's consent, except in certain cases within the Adirondack Park (see Town Law § 202-b[5] and Local Finance Law § 104.10[3]).

APPENDIX A

Notice of Hearing Requirements for Establishment or Extension of Town Special Districts

Articles 12 (§ 190 et seq.) and 12-A (§ 209 et seq.) of the Town Law set forth two methods for establishing or extending a town improvement district: (1) by the submission to the town board of a valid petition requesting the establishment or extension of the district (Article 12) ³; and (2) by town board motion, subject to permissive referendum requirements (Article 12-A)⁴.

Under both of these methods, the town board is required to adopt a resolution calling for a public hearing on the proposal to establish or extend the district. The following is a summary of the requirements for a notice of hearing. For more specific information on the requirements, please consult Town Law § 193, for Article 12 districts, and Town Law § 209-d, for Article 12-A districts:

- Posting and Publishing. The notice of public hearing must be posted on the town signboard and published in the town's official newspaper not less than ten and not more than twenty days before the date designated for the public hearing. The notice may also be made available on the town's website, if any.
- Time and Place for Hearing. The notice must specify the time when and place where the board will meet to hear all interested persons and, in the case of an Article 12 proceeding, consider the petition.
- Other Key Information. The notice must include
 - a boundary description
 - a description of the proposed improvements
 - the maximum proposed to be expended for the improvement
 - the estimated cost of hook-up fees, if any
 - the "cost of the district or extension" to the "typical property" and, if different, to the "typical one or two family home"⁵
- Filing of Petition. In the case of an Article 12 proceeding, the notice must recite in general terms the filing of a petition.
- Proposed Method of Financing/Map, Plan and Report. In the case of an Article 12-A proceeding, the notice must state the proposed method of financing and the fact that a map, plan and report describing the improvements are on file in the town clerk's office for public inspection.
- Statement as to Benefit Assessments. In the case of an Article 12 proceeding for a water district and certain other types of districts, if it is intended to finance the proposed district on a benefit basis (rather than on an ad valorem basis), the petition must contain a statement to that effect. In the case of an Article 12-A proceeding for a water district, and certain other types of districts, if the town intends to finance the proposed district on a benefit basis (rather than on an ad valorem basis), the notice of hearing must contain a statement to that effect.
- Detailed Explanation of Costs. Prior to the publication of the notice, the board must cause to be prepared, and file for public inspection with the town clerk, a detailed explanation of the how the estimated cost of hook-up fees, if any, and the cost to the "typical property" and, if different, the "typical one or two family home," was computed.

For further information on the notice of hearing requirement, please contact Ellen McDonald of the State Comptroller's Division of Legal Services at 518-474-3517.

³ The petition, among other requirements, must be signed by the proper number of owners of taxable real property in the proposed district or extension and, in the case of water, sewer, wastewater disposal and drainage districts, must be accompanied by an appropriate map, plan and report (see Town Law §§ 191, 191-a, 192).

⁴ The establishment or extension of an improvement district under Article 12-A is based on a map, plan and report (see Town Law §§ 209-b, 209-c; see also Town Law § 209-e [3] and Article 7 of the Town Law [§ 90 et seq.], relating to permissive referendum requirements).

⁵ The terms "typical property," "typical one or two family home," "cost of the district or extension to the typical property," and "cost of the district or extension to the typical one or two family home" are defined in Town Law §§ 193 (2) and 209-a.

APPENDIX B

FAQs ON THE ESTABLISHMENT OR EXTENSION OF TOWN SPECIAL DISTRICTS CONCERNING REQUIRED DETERMINATIONS AND METHODS OF ASSESSMENT

Q1. After the town board holds a public hearing upon proper notice¹, and considers the evidence presented at the hearing concerning the proposed district establishment or extension, what generally is the next step if the town board wishes to establish the district or extension?

The board would adopt a resolution making four determinations. The specific determinations vary depending on whether the district or extension is being established upon petition of property owners (Town Law art 12) or board motion subject to permissive referendum requirements (Town Law art 12-A; see also Town Law art 7).

In the case of a district or extension on petition of property owners (Town Law art 12), the resolution must contain determinations of the town board that (1) the petition of the property owners is signed, and acknowledged or proved, or authenticated, as required by law and is otherwise sufficient (Town Law § 194 [1] [a]), and (2) it is in the “public interest” to grant the relief sought in the petition (Town Law § 194 [1] [d]). In the case of a district or extension on board motion (Town Law art 12-A), the resolution must contain determinations of the town board that (1) the notice of hearing was published and posted as required by law and is otherwise sufficient (Town Law § 209-e [1] [a]) and (2) the establishment or extension of the proposed district is in the “public interest” (Town Law § 209-e [1] [d]).

In addition, the town board must also make the following determinations under both article 12 and 12-A proceedings:

- That all property and property owners within the proposed district or extension are benefited by the district or extension; and
- That all the property and property owners that are benefited by the proposed district or extension are included within the limits of the district or extension.

¹ Pursuant to the Town Law (§§ 193, 209-d), notice of the public hearing must be provided by posting on the signboard of the town and by publishing in the town’s official newspaper (see Matter of Carriero v Town Bd. of Town of Stillwater, 41 AD3d 1011, 838 NYS2d 243 (2007); lv dismissed and denied 9 NY3d 980, 848 NYS2d 16 (2007); lv dismissed 12 NY3d 838, 881 NYS2d 11 (2009); mod and lv dismissed 72 AD3d 1479, 899 NYS2d 452 (2010); compare Garden Homes Woodlands Co. v Town of Dover, 95 NY2d 516, 720 NYS2d 79 (2000). Additional forms of notice may also be provided, such as posting on the town’s website (see Town Law § 193 [1]).

Q2. May the expenses for any district or extension be raised on either a benefit or ad valorem basis?

Town Law § 202 contains provisions relative to assessments for the capital costs of town districts. Assessments for sewer, sewage disposal, wastewater disposal, drainage and water quality treatment districts always must be “in just proportion to the amount of benefit which the improvement shall confer upon” the lot or parcel (*i.e.*, a benefit basis; Town Law § 202 [2]; see also Real Property Tax Law § 102 [15]). In the case of park, snow removal, water supply, water storage and distribution, ambulance, harbor improvement and public dock districts, assessments always must be “in the same manner and at the same time as other town charges” (*i.e.*, an ad valorem basis; Town Law § 202 [3]; see also Real Property Law § 102 [14]).

Water, lighting, public parking, sidewalk, refuse and garbage, aquatic plant growth and beach erosion control may be assessed either on a benefit basis or an ad valorem basis, depending upon the property owners’ petition (in the case of an article 12 district or extension), or the notice of hearing (in the case of an article 12-A district or extension) (Town Law § 202 [3]). For these types of districts, if the petition or the notice of hearing, as the case may be, provides that the costs of the improvement will be assessed on a benefit basis, then the district will be on a benefit basis; otherwise, the district will be assessed on an ad valorem basis.

With limited exceptions, once a determination has been made to finance a district on an ad valorem or benefit basis, the manner of assessment for the district may not be changed (Town Law § 202 [4]; 1986 Ops St Comp No. 86-88, at 135). Any extensions to a district must be charged on the same basis (benefit or ad valorem) as the original district (Town Law § 202 [5]). The expenses of operation and maintenance of a district, if raised by assessments, also must be raised on the same basis as the capital costs of the improvement (Town Law § 202-a).

Q3. When is the consent of the State Comptroller required for the establishment or extension of an improvement district within a town?

The Comptroller’s approval is required for the establishment or extension of a town district if two factors are present: (1) debt is to be issued or assumed (see Town Law § 198[12]) by the town for the improvement, and (2) the “cost of the district or extension” to the “typical property” or, if different, the “typical one or two family home” as stated in the notice of hearing on the establishment or extension, is above the average annual estimated cost threshold for similar types of districts as may be computed by the State Comptroller (Town Law §§ 194[6], 209[f]).

Q4. What constitutes the “typical property” for this purpose?

The term “typical property” is defined by statute (Town Law §§ 193[2][a], 209-a[2]). “Typical property” means a benefited property within the proposed district or extension having an assessed value that approximates the assessed value of the “mode” (*i.e.*, the most frequently occurring assessed value as shown on the latest completed assessment roll) of the benefited properties within the district or extension that will be required to finance the cost of the proposed improvement. In other words, to determine the “typical property,” the town generally would review the assessment roll for parcels within the proposed district or extension, and determine the most commonly occurring assessed value within the proposed district or extension.

Q5. What is meant by the “cost to the typical property?”

This term is defined in the Town Law as the estimated amount that the owner of a typical property within the district or extension will be required to pay for debt service, operation and maintenance and other charges related to the improvements in the first year following formation of the district or extension (or, if greater, the first year in which both principal and interest, and operation and maintenance will be paid) (Town Law §§ 193[2][c], 209-a[4]). This includes benefit assessments and ad valorem levies, as well as user fees.

To ensure accurate calculations of estimated costs, towns should not assume the receipt of federal or state aid in the absence of firm commitments from the appropriate agency. In addition, estimated borrowing costs should be based on the proposed maturity of the obligations and interest rate assumptions derived from market surveys or a letter of commitment. The town may have a financial advisor who can assist in estimating borrowing costs. Charges imposed by other governmental entities, such as charges or fees imposed by public authorities or other municipalities, should also be included in the computation. In addition, if a proposed district will be sharing infrastructure costs with another town district or town improvement (see Town Law article 12-C; Town Law § 208; General Municipal Law § 119-o), the proportionate costs attributable to the proposed district should be included in the estimated annual cost to the typical property.

Q6. What if the Office of the State Comptroller (OSC) has not established a threshold for a particular type of district?

OSC only establishes a threshold when we have sufficient data to make the necessary calculation for that type of district or extension. If no threshold for a particular type of district or extension has been established by this Office, and debt will be issued by the town for the improvement, then OSC consent is necessary, irrespective of the cost to the typical property, and an application for the Comptroller’s approval would be required (see 2 NYCRR Part 85).

Q7. Are hook-up fees for a town water or sewer district included in the estimate for the “cost to the typical property?”

No. “Cost” for this purpose does not include hook-up fees, which are not recurring charges imposed to fund the district or extension.

In general, hook-up charges are the responsibility of the owner of each property connecting to the system. A town may use its employees to connect a property to the water or sewer system and charge the property owner for the cost of these services (Town Law §§ 198[1][h],198[3][a]). The service line for both water and sewer from the curb to the house is generally installed by a private contractor at the owner’s expense.

Note that the notice of hearing published by the town in advance of establishing or extending the district must separately list the estimated costs of any hook-up fees, in addition to, among other

things, the cost of the district or extension to the typical property (Town Law § 193[1][a], 209-d[1]).

Q8. Can hook-up fees be used to generate revenue for town district improvements or operations?

No. Towns are authorized to impose one time hook-up fees in certain circumstances for connections to town water or sewer districts (Town Law §§ 198[1][h]; 198[3][a]). These one-time fees, however, are limited to costs incurred by the town with respect to the connections of users to the water or sewer system and may not be used to otherwise defray costs of capital improvements or operations of the district (Video Aid v Town of Wallkill, 203 AD2d 554, 610 NYS2d 610, revd on other grounds 85 NY2d 663, 628 NYS2d 18; see also Coconato v Town of Esopus, 152 AD2d 39, 547 NYS2d 953, lv denied 76 NY2d 701, 558 NYS2d 891; Mark IV Construction v County of Monroe, 187 AD2d 985, 590 NYS2d 335; Phillips v Town of Clifton Park Water Authority, 286 AD2d 834, 730 NYS2d 565, lv denied 97 NY2d 613, 742 NYS2d 606; Matter of Torsoe Brothers v Village of Monroe, 49 AD2d 461, 375 NYS2d 612).

Q9. How does a town finance operating costs of a newly-formed district before assessments are levied and collected on behalf of the district?

Local Finance Law § 24.00 generally provides that in the case of a newly established improvement district, a town may issue tax anticipation notes for the “necessary expenses incidental to the creation of such district” and “the other necessary expenses incurred or to be incurred for” the district prior to the first levy of assessments (Local Finance Law § 24.00[d][2]). An appropriation to redeem the notes must be included in the first levy of assessments for the district (Local Finance Law § 24.00[d][3]). The notes must mature within one year from the date of their issuance, and while the notes may be renewed, each renewal shall be for a period not exceeding one year, and the notes must be repaid within the close of the second fiscal year succeeding the fiscal year in which the notes were issued (Local Finance Law § 24.00[d][3]). Note that when the only indebtedness proposed in connection with the establishment of a town district are tax anticipation notes, the Comptroller’s approval is not required (3 Ops State Comp No. 1990, at 125 [1947]).

Q10. May a town supersede the provisions of Articles 12 and 12-A of the Town Law by adopting an inconsistent local law?

No. Articles 12 and 12-A of the Town Law establish a comprehensive legislative scheme evincing an intent to pre-empt local laws relating to the establishment, financing and operation of town improvement districts (see Coconato v Town of Esopus, 152 AD2d 39, 547 NYS2d 953, lv denied 76 NY2d 701, 558 NYS2d 891; 2008 Ops St Comp No. 2008-4; 2001 Ops St Comp No. 2001-7, at 11; 2000 Ops St Comp No. 2000-17, at 44; 1992 Ops St Comp No. 92-33, at 84). In addition, although the Municipal Home Rule Law authorizes towns to adopt local laws that supersede, in certain respects, provisions of the Town Law (Municipal Home Rule Law § 10[1][ii][d][3]), there is an express restriction on this home rule authority with respect to provisions relating to a “special or improvement district” (Municipal Home Rule Law § 10[1][ii][d][3][3]).

Q11. A town has established a district and constructed improvements in accordance with the district map, plan and report. The town later needs to make additional improvements or repairs. Does the town need the Comptroller's approval before undertaking the additional improvements or repairs?

Generally no, even where debt will be issued (Town Law § 202-b[3]). Town Law § 202-b provides for increases and improvements of district facilities, upon notice and after a public hearing. A town board on behalf of water, water storage and distribution, ambulance, sewer, sewage disposal or drainage districts may (1) acquire or construct additional facilities and appurtenances, (2) improve or reconstruct existing facilities and appurtenances, (3) replace obsolete, inadequate, damaged, destroyed or worn out apparatus and equipment, and (4) acquire additional apparatus and equipment without seeking comptroller approval (Town Law § 202-b[1]). In addition, a town board, on behalf of a park, public parking, ambulance, lighting, snow removal, refuse and garbage, public dock or beach erosion control district may (1) acquire additional apparatus and equipment, (2) replace obsolete, inadequate, damaged, destroyed or worn-out apparatus and equipment, (3) construct additional facilities and appurtenances, and (4) reconstruct or replace obsolete, inadequate, damaged, destroyed or worn out facilities and appurtenances (Town Law § 202-b[2]).

Except in the case of certain towns within the Adirondack Park, the Comptroller's approval is not required for these expenditures. A town must obtain the consent of the State Comptroller for repairs or improvements to an existing district when the district is located within a town in the Adirondack Park and the district contains State lands assessed at more than 30% of the total assessed valuation of the district as determined from the assessment rolls of the town (Town Law § 202-b[5]).

Q12. What kinds of resolutions relating to town districts must be filed with the State Comptroller in connection with special districts?

A certified copy of any resolution to establish, extend, dissolve or diminish any district, or consolidate districts, adopted pursuant to articles 12 or 12-A of the Town Law, or article 17-a of the General Municipal Law, is required to be filed with the State Comptroller within ten days after adoption (Town Law §§ 195[1], 209-g[1]). In addition, a certified copy of the notice of hearing on the establishment or extension of a district when debt will be issued but the district or extension is below the cost threshold that would require the Comptroller's approval must be filed with the Comptroller on or about the date of publication of the notice (Town Law §§ 193[1][b], 209-d[2][a]). Filings should be addressed to the Division of Legal Services, 14th Floor, 110 State Street, Albany, NY 12236.