

October 26, 2009

The regular meeting of the Town Council of the Town of Newton was held on the above date at 7:00 p.m. Present were Mrs. Unhoch, Mrs. Becker, Mrs. Le Frois, Mr. Ricciardo, Mayor Elvidge and Town Manager, Mr. Thomas Russo, Jr.

Mayor Elvidge made the following declaration that “in accordance with the Open Public Meetings Act, notice of this public meeting was given to the two newspapers of record and posted on the official bulletin board on December 22, 2008.”

Mayor Elvidge led the Invocation and Pledge of Allegiance to the flag. The Clerk called the roll and upon completion of same, upon motion made by Mrs. Le Frois seconded by Mrs. Becker and carried that the minutes of October 14, 2009 (Regular) and October 14, 2009 (Executive Session) were approved.

### **PUBLIC**

Mr. Neil Flaherty, 154 Sparta Avenue, Newton, commended the recently mailed Town Newsletter “The Newton News” and suggested that an additional Saturday meeting should be held in order to have more participation from the public on the Circulation Plan. Mayor Elvidge noted that there has been no discussion of holding additional public hearings. Mrs. Millikin noted that there were a number of participants at the previous public hearing. Mr. Ricciardo agreed with Mr. Flaherty’s suggestion of holding a Saturday meeting.

### **Council & Manager Reports**

#### **a. Main Street Newton Funding**

Mr. Kevin Kelly, President, Main Street Newton, and Mr. Jim Shelton, Executive Director, addressed Council to update on the status of the Main Street Newton. Mr. Kelly indicated that Council received a memo dated October 9, 2009, which reflects the donations and pledges to date. Mr. Kelly indicated that Main Street Newton has new Executive Board members, which include Mr. Rick Bitondo, Mr. James Cunningham, Ms. Megan Sandow, Ms. Barbara Wortmann, Mr. Keith Mitchell and Mr. Bruce Tomlinson. Mr. Kelly disseminated a document to the members of the Town Council which outlines the goals and objectives for the third year of Main Street Newton. Mr. Kelly noted that it is fundamental to our success that the committee concentrate their efforts on a limited number of agreed upon and practical projects, as opposed to dispersing their efforts and talents to a wide range of activities. Mr. Kelly expressed that it is his intention to present a menu of suggestions and possibilities for consideration and hope others will add to this list and share in this process. This document will be shared with Newton officials, County officials, other organizations and any interested members of the public,

who have ideas and opinions regarding this information.

Mr. Kelly and Mr. Sheldon outlined some of the upcoming events for the benefit of Main Street Newton.

The governing body discussed the funding status of Main Street Newton and after a brief discussion, the consensus of the Town Council was to release the balance of the funds allotted to Main Street Newton, which is \$10,000.00. Mr. Russo will prepare a Resolution for the next Council meeting on November 9<sup>th</sup>. Mr. Ricciardo noted that this is the third year of a five year program and at the end of the fifth year, the Business Improvement District must be established which will include a tax obligation to the businesses within this district.

**b. Proclamation – American Education Week**

Mr. Russo read the following Proclamation proclaiming November 15–21 as the 88th Annual Observance of American Education Week in the Town of Newton.

**P R O C L A M A T I O N**

**American Education Week**

**November 15-21, 2009**

**WHEREAS**, America’s schools are the backbone of our democracy, providing each new generation with the tools to maintain our nation’s precious values of freedom, civility, and equality; and

**WHEREAS**, schools are the primary influence in children’s lives aside from their families; and

**WHEREAS**, by equipping young Americans with both practical skills and broader intellectual abilities, schools give them hope for, and access to, a productive future; and

**WHEREAS**, schools are community linchpins, bringing together adults and children, educators and volunteers, business leaders and elected officials in a common enterprise; and

**WHEREAS**, education employees – be they custodians or teachers, bus drivers or librarians – work tirelessly to serve our children and communities with care and professionalism; and

**WHEREAS**, there is nothing more crucial to the health and the future of our nation than education;

**NOW THEREFORE, WE**, the Mayor and Town Council of the Town of Newton, hereby proclaim November 15–21 as the 88th annual observance of American Education Week in the Town of Newton and we encourage all of our citizens to support efforts to make our public schools great for every child.

**c. Middlesex Regional Educational Services Commission**

Mr. Russo outlined the cause and efforts of Resolution #218-2009, which will result in a cost savings on the Town’s electricity expenses. Mr. Russo indicated that this Resolution will authorize the Town to join this Cooperative Pricing System through the Middlesex Regional Educational Services Commission. Mr. Russo indicated that this could potentially have a cost

savings of approximately \$10,000.00 to \$40,000.00 per year.

Mr. Ricciardo inquired about the overhead street lights on Main Street which are located above the newly installed street light posts on Main Street. Mr. Russo advised that he has made contact with First Energy several times and will continue to pursue the shut off of these lights with the assistance of Cory Stoner, Town Engineer.

**ORDINANCES**

Mayor Elvidge directed the Clerk to read aloud the following Ordinance relative to final adoption.

**ORDINANCE # 2009-26**

**AN ORDINANCE REDUCING THE NUMBER OF MEMBERS FOR THE TOWN OF NEWTON'S RECREATION COMMISSION**

**WHEREAS**, the Town of Newton's Revised General Ordinances Chapter 2, Section 21, established a Recreation Advisory Commission; and

**WHEREAS**, said Ordinance stipulates that the Recreation Advisory Commission consists of nine members, and

**WHEREAS**, it is the Town Council's desire to reduce the number of members allowed on the Recreation Advisory Commission from nine to seven; and

**WHEREAS**, it is also the desire of the Town Council that the current members of the Recreation Advisory Commission serve out their existing terms;

**NOW THEREFORE BE IT ORDAINED**, by the Town Council of the Town of Newton that Chapter 2, Section 21.1 Members, shall now read as follows:

"There shall be a Recreation Commission known as the Recreation Commission of the Town of Newton consisting of seven members each appointed by the Council on a staggered basis to serve a five-year term. The members shall serve until their respective successors are appointed and qualify."

Mayor Elvidge declared the hearing on Ordinance #2009-26 open to the public.

There being no one from the public to be heard, upon motion by Mrs. Le Frois, seconded by Mrs. Unhoch and carried, the hearing was closed.

The following **ORDINANCE** was offered by Mr. Ricciardo, who moved its adoption, seconded by Mrs. Becker and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	Yes
	Mayor Elvidge	Yes	

**BE IT RESOLVED** by the Town Council of the Town of Newton that the above Ordinance be adopted in its entirety according to law.

The Clerk will advertise the above Ordinance according to law.

**OLD BUSINESS**

There was no Old Business to discuss.

**CONSENT AGENDA**

Mayor Elvidge read the following statement:

“All items listed with an asterisk (\*) are considered to be routine and non-controversial by the Town Council and will be approved by one motion. There will be no separate discussion of these items unless a Council member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.”

Upon motion of Mr. Ricciardo, seconded by Mr. Elvidge, and carried, that Resolution #212-2009 be removed for separate discussion.

**RESOLUTION #213-2009\***

**SUPPORT OF THE 2010 U.S. CENSUS**

**WHEREAS**, an accurate census count is vital to our community and residents well-being by helping planners determine where to locate schools, day care centers, roads and public transportation, hospitals and other facilities, and achieving an accurate and complete count of the nation’s growing and changing population; and

**WHEREAS**, more than \$435 billion per year in federal and state funding is allocated to states and communities based, in part, on census data; and

**WHEREAS**, census data helps determine how many seats each state will have in the U.S. House of Representatives and often is used for the redistricting of state legislatures, county and city councils and voting districts; and

**WHEREAS**, the 2010 Census creates jobs that stimulate economic growth and increase employment; and

**WHEREAS**, the information collected by the census is confidential and protected by law;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Newton is committed to partnering with the U.S. Census Bureau to help ensure a full and accurate count in 2010.

As a 2010 Census partner, we will:

1. Support the goals and ideals for the 2010 Census and disseminate 2010 Census information to encourage those in our community to participate.
2. Encourage people in our community to place an emphasis on the 2010 Census and participate in events and initiatives that will raise overall awareness and ensure a full and accurate census.
3. Support census takers as they help our community complete an accurate count.
4. Create or seek opportunities to collaborate with the other like-minded groups in our community by participating in Complete Count Committees and/or utilizing high-profile, trusted voices to advocate on behalf of the 2010 Census; and

**BE IT FURTHER RESOLVED** that copies of this resolution be transmitted to Geraldine Clark, Partnership Coordinator of the U.S. Census Bureau and the New Jersey League of Municipalities.

**RESOLUTION #214-2009\***

**AUTHORIZE CREDITS DUE WATER AND SEWER UTILITY ACCOUNTS**

**WHEREAS**, the Water and Sewer Collector has determined that the following Water and Sewer Utility Accounts are due credits for the reasons stated;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the Water and Sewer Collector is hereby authorized to credit the following accounts for amounts billed incorrectly due to the reasons stated:

Account should have been in Final status & not charged

<u>Account</u>	<u>Address</u>	<u>Amount</u>
23745	20 Manor Drive	\$30.00

**RESOLUTION #215-2009\***

**RESOLUTION OF THE TOWN OF NEWTON DECLARING ITS OFFICIAL INTENT TO REIMBURSE EXPENDITURES FOR PROJECT COSTS FROM THE PROCEEDS OF DEBT OBLIGATIONS**

**WHEREAS**, the Town of Newton, in the County of Sussex, a municipal corporation of the State of New Jersey (the “Issuer”), intends to cause the construction of a facility consisting of light manufacturing, research and development, office space and associated storage space and parking components (the “Project”) on real property located on Block 1104, Lot 21 and commonly known as 56 Sparta Avenue (the “Property”); and

**WHEREAS**, the Issuer reasonably anticipates to issue obligations (the “Project Bonds”), the interest on which will be excluded from gross income under Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”) to loan the proceeds thereof to Thorlabs, Inc. (the “Borrower”) in order to undertake and finance the Project; and

**WHEREAS**, the Borrower may pay for certain costs of the Project (the “Project Costs”) prior to the issuance of the Project Bonds with funds of the Borrower that are not borrowed funds; and

**WHEREAS**, the Issuer desires to preserve its right to treat an allocation of proceeds of the Project Bonds to the reimbursement of Project Costs paid prior to the issuance of the Project Bonds as an expenditure for such Project Costs to be reimbursed for purposes of Sections 103 and 141 through 150, inclusive, of the Code.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Issuer as follows:

Section 1. The Issuer reasonably expects to reimburse expenditures of Project Costs paid by the Borrower prior to the issuance of the Project Bonds with proceeds of its Project Bonds.

Section 2. This resolution is intended to be and hereby is a declaration of the Issuer’s official intent to reimburse the expenditure of Project Costs paid prior to the issuance of the Project Bonds with the proceeds of same, in accordance with Tres. Reg. § 1.150-2.

Section 3. The maximum principal amount of the Project Bonds expected to be issued to finance the Project is \$10,000,000.

Section 4. The Project Costs to be reimbursed with the proceeds of the Project Bonds will be “capital expenditures” in accordance with the meaning of Section 150 of the Code.

Section 5. No reimbursement allocation will employ an “abusive arbitrage device” under Treas. Reg. §1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147, inclusive, of the Code. The proceeds of the Project Bonds used to reimburse the Borrower for Project Costs, or funds corresponding to such amounts, will not be

used in a manner that results in the creation of “replacement proceeds”, including “sinking funds”, “pledged funds” or funds subject to a “negative pledge” (as such terms are defined in Treas, Reg. §1.148-1), of the Project Bonds or another issue of debt obligations of the Issuer, other than amounts deposited into a “bona fide debt service fund” (as defined in Treasury Regulations §1.148-1).

Section 6. All reimbursement allocations will occur not later than 18 months after the later of (i) the date the expenditure from a source other than the Project Bonds is paid, or (ii) the date the Project is “placed in service” (within the meaning of Treasury Regulations §1.150-2) or abandoned, but in no event more than 3 years after the expenditure is paid.

Section 7. This resolution shall take effect immediately.

**RESOLUTION #216-2009\***

**AUTHORIZE EXECUTION OF AN AGREEMENT WITH THE UNITED PUBLIC SERVICE EMPLOYEES UNION**

**WHEREAS**, the terms of a contract covering the four-year period from January 1, 2009 to December 31, 2012 have been negotiated by representatives of the United Public Service Employees Union “UPSEU” and representatives of the Town of Newton; and

**WHEREAS**, an appropriate contract reflecting the changes from the previous agreement has been prepared and executed by UPSEU representatives;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that it hereby authorizes the Mayor and the Municipal Clerk to execute said four-year contract covering calendar years 2009, 2010, 2011 and 2012 with the United Public Service Employees Union.

**RESOLUTION #217-2009\***

**APPROVE BILLS AND VOUCHERS FOR PAYMENT**

BE IT RESOLVED by the Town Council of the Town of Newton that payment is hereby approved for all vouchers that have been properly authenticated and presented for payment, representing expenditures for which appropriations were duly made in the 2008 and 2009 Budgets adopted by this local Governing Body, including any emergency appropriations, and where unexpended balances exist in said appropriation accounts for the payment of such vouchers.

TOWN BILLS

CAPITAL

2,434.57	Delta Dental	26040
90.00	S K Office Supply	26041
2,850.30	Harold Pellow & Associates, Inc.	26042
3,676.00	Municipal Software, Inc.	26043
128.00	Decker’s Fire & Safety	26044
100.00	Sussex Car Wash, Inc.	26045
1,512.85	NUI Corporation	26046
266.56	G & H Service Inc.	26047
333.07	New Jersey Herald	26048
1,007.30	SCMUA	26049
30.00	Sussex County Plumbing	26050
47.97	EMBARQ	26051
11,394.00	Hollander, Hontz, Hinkes & Pasculli LLC	26052
179.86	Federal Express	26053
50.00	First United Methodist Church	26054
155.87	Miami Systems	26055
9.50	Newton Trophy	26056
275.00	Treasurer, State of New Jersey	26057
132.95	Gall’s Inc.	26058

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787.16	Weldon Asphalt Company	26059
180.00	Minisink Press Inc.	26060
28.25	Donald Donofrio	26061
92.65	R & R Electronics	26062
1,596.00	Treasurer, State of NJ DCA	26063
606.41	Dempsey Uniform & Supply Inc.	26064
1,153.91	Airgas	26065
575.00	Emergency Software Products	26066
149.09	Boonton Tire Supply	26067
152.35	McGuire	26068
611.00	Accurate Door, Inc.	26069
50.00	Robert Bittle	26070
73.15	Mr. John	26071
2,632.80	Vogel, Chait, Collins, Schneider, PC	26072
18.06	Advance Commercial	26073
1,358.97	The Home Depot	26074
87.00	Mid-Atlantic for Safety & Education	26075
2,035.20	Scarinci & Hollenbeck, LLC	26076
40.00	Lynn Dee Frost	26077
75.00	Newton Electrical Services, Inc.	26078
57.95	Ward's Flowers and Gifts	26079
56.35	Mid-county paper Stock Co., Inc.	26080
800.00	Michael Pelligrino, Esq.	26081
1,443.03	Staples Business Advantage	26082
96.00	CSS Test	26083
1,329.43	Hampton Body Works	26084
150.00	National Fire codes Subscription	26085
170.00	Treasurer, State of NJ Burial	26086
1,130.97	Rachles/Michele's Oil Company	26087
166.53	Action Office Supplies	26088
2,000.00	Laddey, Clark & Ryan, LLP	26089
269.00	Sussex County Chamber of Commerce	26090
15.00	QC Laboratories	26091
142.53	Cutting Edge Landscape Equip	26092
80.00	Northern Rain	26093
350.00	Gramco Business Communications	26094
520.00	Civic Plus	26095
168.00	Jersey Central Power & Light	26096
5,296.85	Atlantic Tactical	26097
9,725.00	Enforsys Police System, Inc.	26098

CAPITAL

28.79	Montague Tool & Supply	7421
4,976.26	Harold Pellow & Assoc., Inc.	7422
46.03	G & H Service, Inc.	7423
450.00	Hollander, Hontz, Hinkes & Pasculli LLC	7424
366.00	R.S. Phillips Steel Company	7425
39,722.27	McManimon & Scotland	7426
26,319.37	J & D Sales & Service	7427
524.48	Weldon Asphalt Company	7428
14,220.00	Houghton, Quarty, Warr	7429
10,250.00	Tony's Concrete Constr. Co., Inc.	7430
4,400.00	Accurate Door, Inc.	7431
104.54	The Home Depot	7432
10,805.99	Guardline Fire & Safety Co., Inc.	7433
50.71	Excelsior Lumber Company	7434
58.68	Lowe's	7435
7,126.45	Highland Products Group	7436
1,335.50	Barco Products	7437
2,149.75	Ricciardi Brothers, Inc.	7438
1,348.00	Gramco Business Communications	7439
3,818.00	FKA Architects	7440
27,919.22	Ranco Mechanical, Inc.	7441

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11,610.00	High Point Electric Inc.	7442
6,725.16	Harold Pellow & Assoc., Inc.	1038
5,296.85	Atlantic Tactical	1039

Total TOWN BILLS \$240,594.49

**WATER AND SEWER ACCOUNT**

75.25	Montague Tool & Supply	11052
829.44	Schmidt's Wholesale, Inc.	11053
1,676.47	Harold Pellow & Assoc., Inc.	11054
2,141.00	Municipal Software, Inc.	11055
753.18	Montgomery Watson Harza	11056
225.60	Fisher Scientific	11057
199.42	Lee Company	11058
364.74	NUI Corporation	11059
649.00	Pumping Services	11060
493.05	SCMUA	11061
30.00	Paul Baldwin	11062
30.00	Paul M. Havens	11063
4,169.85	Coyne Chemical Corp., Inc.	11064
236.67	EMBARQ	11065
28.24	EMBARQ	11066
702.00	Hollander, Hontz, Hinkes & Pasculli LLC	11067
72.44	Rowe & Company, Inc.	11068
11.40	Campbell's Small Engine	11069
4,344.00	Garden State Laboratories, Inc.	11070
12,751.62	Sparta Township Tax Collector	11071
1,241.00	Mitchell Agency	11072
1,750.00	Cosper Environmental Service Inc.	11073
246.21	Dempsey Uniform & Supply Inc.	11074
156.80	One Call Systems	11075
375.00	Frank Semeraro Construction, Inc.	11076
7,310.00	R & D Trucking	11077
102.24	Airgas	11078
48.00	Ervin Lasso	11079
76.88	Boonton Tire Supply	11080
1,273.50	Univar USA, Inc.	11081
1,250.00	John Smalley	11082
2,322.50	Main Pool & Chemical Company	11083
3.49	Advance Commercial	11084
342.99	The Home Depot	11085
22.24	Carquest	11086
437.50	Scarinci & Hollenbeck, LLC	11087
189.00	Process Tech Sales and Service	11088
3,133.74	Pall Corporation	11089
124.12	Staples Business Advantage	11090
190.08	Lowe's	11091
91.21	Action Office Supplies	11092
962.50	Andy Matt, Inc.	11093
1,968.95	Thomas English & Associates	11094
520.00	Civic Plus	11095
2,242.04	Basic Chemical Solutions	11096
4,835.00	Metro Energy Solutions	11097
15,207.50	D2L Associates, Inc.	11098

**CAPITAL**

2,691.08	Harold Pellow & Assoc. Inc..	2141
53.55	New Jersey Herald	2142

Total WATER & SEWER BILLS \$78,950.49

**DOG RESERVE ACCOUNT**

14,280.00                      Township of Wantage                      8504

Total DOG RESERVE BILLS    \$14,280.00

**RESOLUTION #218-2009\***

**COOPERATIVE PRICING SYSTEM AGREEMENT  
THE MIDDLESEX REGIONAL EDUCATIONAL SERVICES COMMISSION  
AGREEMENT FOR A COOPERATIVE PRICING SYSTEM**

This Agreement made and entered into this 26<sup>th</sup> day of October, 2009, by and between the, MIDDLESEX REGIONAL EDUCATIONAL SERVICES COMMISSION and the TOWN OF NEWTON who desire to participate in the MIDDLESEX REGIONAL EDUCATIONAL COOPERATIVE PRICING SYSTEM. WITNESSETH

**WHEREAS**, N.J.S.A. 40A:11-11(5), specifically authorizes two or more contracting units to establish a Cooperative Pricing System for the provision and performance of goods and services and enter into a Cooperative Pricing Agreement for its administration; and

**WHEREAS**, the MIDDLESEX REGIONAL EDUCATIONAL SERVICES COMMISSION is conducting a voluntary Cooperative Pricing System with other contracting units; and

**WHEREAS**, this Cooperative Pricing System is to effect substantial economies in the provision and performance of goods and services; and

**WHEREAS**, all parties hereto have approved the within Agreement by Resolution' in accordance with the aforesaid statute; and

**WHEREAS**, it is the desire of all parties to enter into such Agreement for said purposes;

**NOW, THEREFORE, IN CONSIDERATION OF** the promises and of the covenants, terms and conditions hereinafter set forth, it is mutually agreed as follows: The goods or services to be priced cooperatively may include supplies and materials, time and material bids, energy aggregation and such other items that two or more participating contracting units in the system agree can be purchased on a cooperative basis.

1. Items and classes of items which may be designated by the participating contracting units hereto may be purchased cooperatively for the period commencing with the execution of this Agreement and continuing until terminated as hereinafter provided.

2. The Lead Agency, on behalf of all participating contracting units, shall upon approval of the registration of the System and annually thereafter IN JANUARY OF EACH SUCCEEDING YEAR publish a legal ad in such format as required by N.J.A.C. 5:34- 7.9(a) in its official newspaper normally used for such purposes by it to include such information as:

- (A) The name of Lead Agency soliciting competitive bids or informal quotations.
- (B) The address and telephone number of Lead Agency.
- (C) The names of the participating contracting units.
- (D) The State Identification Code assigned to the Cooperative Pricing System.
- (E) The expiration date of the Cooperative Pricing System.

3. Each of the participating contracting units shall designate, in writing, to the Lead Agency, the items to be purchased and indicate therein the approximate quantities if required, the location for delivery and other requirements, to permit the preparation of specifications as provided by law.

4. The specifications shall be prepared and approved by the Lead Agency and no changes shall be made thereafter except as permitted by law. Nothing herein shall be deemed to prevent changes in specifications for subsequent purchases.

5. A single advertisement for bids or the solicitation of informal quotations for the goods or services to be purchased shall be prepared by the Lead Agency on behalf of all of the participating contracting units desiring to purchase any item.

6. The Lead Agency when advertising for bids or soliciting informal quotations shall receive bids or quotations on behalf of all participating contracting units. Following the receipt of bids, the Lead Agency shall review said bids and on behalf of all participating contracting units, either reject all or certain of the bids or make one award to the lowest responsible bidder or bidders for each separate item. This award shall result in the Lead Agency entering into a Master Contract with the successful bidder(s) providing for two categories of purchases:

- (A) The quantities ordered for the Lead Agency's own needs, and
- (B) The estimated aggregate quantities to be ordered by other participating contracting units by separate contracts, subject to the specifications and prices set forth in the Lead Agency's Master Contract.

The Lead Agency shall enter into a formal written contract(s) directly with the successful bidder(s) only after it has certified the funds available for its own needs.

8. Each participating contracting unit shall also certify the funds available only for its own needs ordered; enter into a formal written contract, when required by law, directly with the successful bidder(s); issue purchase orders in its own name directly to successful vendor(s) against said contract; accept its own deliveries; be invoiced by and receive statements from the successful vendor(s); make payment directly to the successful vendor(s) and be responsible for any tax liability.

9. No participating contracting unit in the Cooperative Pricing System shall be responsible for payment for any items ordered or for performance generally, by any other participating contracting unit. Each participating contracting unit shall accordingly be liable only for its own performance and for items ordered and received by it and none assumes any additional responsibility or liability.

10. The provisions of Paragraphs 7, 8, 9, and 10 above shall be quoted or referred to and sufficiently described in all specifications so that each bidder shall be on notice as to the respective responsibilities and liabilities of the participating contracting units.

11. No participating contracting unit in the Cooperative Pricing System shall issue a purchase order or contract for a price which exceeds any other price available to it from any other such system in which it is authorized to participate or from bids or quotations which it has itself received.

12. The Lead Agency reserves the right to exclude from consideration any good or service if, in its opinion, the pooling of purchasing requirements or needs of the participating contracting units is either not beneficial or not workable.

13. The Lead Agency shall appropriate sufficient funds to enable it to perform the administrative responsibilities assumed pursuant to this Agreement.

14. It is understood that all fees for each participating contracting unit are paid to the Lead Agency by the successful bidder as follows:

- Supplies, materials, goods and services at 2.2% of sales.
- Natural Gas .00325 per therm
- Electrical Aggregation.00125 per kilowatt hour
- Demand Response at 7% of reimbursement

All fees are included within the bid price and are subject to change with new awards and notice to all cooperative members will be provided.

15. This Agreement shall become effective on 4/23/2009 subject to the review and approval of the Director of the Division of Local Government Services and shall continue in effect for a period not to exceed five (5) years from said date unless any party to this Agreement shall give written notice of its intention to terminate its participation.

16. Additional local contracting units may from time to time, execute this Agreement by

means of a Rider annexed hereto, which addition shall not invalidate this Agreement with respect to other signatories. The Lead Agency is authorized to execute the Rider on behalf of the members of the System.

17. All records and documents maintained or utilized pursuant to terms of this Agreement shall be identified by the System Identifier assigned by the Director, Division of Local Government Services, and such other numbers as are assigned by the Lead Agency for purposes of identifying each contract and item awarded.

18. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed by their authorized corporate officers and their respective seals to be hereto affixed the day and year above written.

FOR THE LEAD AGENCY

BY: \_\_\_\_\_  
Patrick M Moran  
Business Administrator/Board Secretary

ATTEST BY: \_\_\_\_\_  
Name and Title

For: Town of Newton  
Participating Unit

BY: \_\_\_\_\_  
E. Kevin Elvidge, Mayor

ATTEST BY: \_\_\_\_\_  
Lorraine A. Read, RMC

COOPERATIVE PRICING AGREEMENT RIDER

Pursuant to Paragraph 18 of the Cooperative Pricing Agreement, the Town of Newton hereby requests that it be allowed to participate in the cooperative arrangement described in the above-mentioned Agreement.

The Town of Newton acknowledges that it has received and reviewed the Agreement in its entirety, and agrees to be bound by its promises, covenants, terms and conditions, as well as by any rules and regulations duly promulgated by the Lead Agency and the members of the Cooperative Pricing System.

The Town of Newton shall likewise be entitled to all the rights and benefits of a member of the Cooperative Pricing System.

IN WITNESS WHEREOF, the parties hereto have caused this Rider to be executed by their authorized officers on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

A motion was made by Mr. Ricciardo to approve the **COMBINED ACTION RESOLUTIONS**, seconded by Mrs. Becker and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	Yes
	Mayor Elvidge	Yes	

Mr. David Simmons, PE, Town Engineer, outlined the necessary steps taken to address the issues surrounding the Castle Ridge subdivision. Mr. Simmons addressed several questions of the governing body. After a lengthy discussion, it was noted that advice was given by our Town Attorney as well as our Town Engineer and believes it is in the best interest of the Town to

accept the offer of settlement on the Performance Bonds. Mr. Ricciardo expressed his disappointment with the settlement agreement and feels the Bonding Company has not fulfilled their obligation.

**RESOLUTION #212-2009**

**AUTHORIZING ACCEPTANCE OF SETTLEMENT OFFER ON CASTLE RIDGE PERFORMANCE BONDS**

**WHEREAS**, the Town of Newton is obligee on three performance bonds provided by obligor Castle Ridge at Newton, Inc., developer of the Castle Ridge at Newton subdivision, which bonds were underwritten by First Indemnity of America Insurance Company (“FIA”) and Axa Global Risks US Insurance Company (now known as Axa Corporate Solutions Insurance Company (“Axa”)) and numbered S03428, L04449, and S05642 (the “Performance Bonds”); and

**WHEREAS**, Developer Castle Ridge at Newton, Inc., defaulted in its obligations to complete certain work within the Castle Ridge subdivision covered by the Performance Bonds, resulting in the Town making claims against the Performance Bonds; and

**WHEREAS**, in response to the claims against the Performance Bonds, FIA and Axa engaged contractors to complete much of the work in default, but there remained certain work items disputed by FIA and Axa as being covered under the Performance Bonds or most efficiently addressed by the Town’s Department of Public Works; and

**WHEREAS**, FIA and Axa has offered the sum of \$5,000 in full and final settlement of all claims by the Town of Newton against them under the Performance Bonds; and

**WHEREAS**, with the advice of the municipal counsel and the municipal engineer, the Town Council believes it to be in the best interest of the Town of Newton to accept the offer of settlement on the Performance Bonds;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Newton accepts the offer of FIA and Axa to pay to the Town the sum of \$5,000 in full and final settlement of all claims against the Performance Bonds; and

**BE IT FURTHER RESOLVED** that the Town Manager is authorized to execute any necessary documentation memorializing the settlement pursuant to the advice of the municipal counsel.

A motion was made by Mrs. Becker to approve **RESOLUTION #212-2009**, seconded by Mrs. Unhoch and roll call resulted as follows:

Mrs. Unhoch	Yes	Mrs. Becker	Yes
Mrs. Le Frois	Yes	Mr. Ricciardo	No
	Mayor Elvidge	Yes	

**INTERMISSION**

**DISCUSSION (WORK SESSION)**

No further discussion was held at this time.

**OPEN TO THE PUBLIC**

There was no public to be heard.

**COUNCIL & MANAGER COMMENTS**

Mrs. Debra Millikin, Community Development Director/Deputy Town Manager, advised

October 26, 2009

the Governing Body of a recent violation issued by the Department of Environmental Protection (DEP). The water treatment plant has received a violation in the amount of \$11,000.00 for high ammonia content. It was noted that each occurrence is assessed a fine, making the total violation \$11,000.00. The three incidents occurred in January, February, and March 2009. Mrs. Millikin has been working with Montgomery Watson on this issue and noted that Montgomery Watson has allocated some funds toward the ammonia study. It is the recommendation of Mrs. Millikin and legal Counsel to accept the fine of \$11,000.00 with the condition of obtaining the ACO for the treatment plant.

After a brief discussion, Council agreed that the key to this settlement agreement should be the receipt of the ACO for the treatment plant.

Mrs. Millikin briefly updated Council on the timeline for unaccounted water in the Town of Newton. The total accounted for water, to date, is approximately 825,000 gallons a day which was a 1,000,000 gallons a day a year ago, Mrs. Millikin stated. Mrs. Millikin commended the Water and Sewer employees for their efforts in detecting the unaccounted for water.

There being no further business to be conducted, upon motion of Mrs. Le Frois, seconded by Mrs. Becker and unanimously carried, the meeting was adjourned at 8:47 p.m.

Respectfully submitted,

Lorraine A. Read, RMC  
Municipal Clerk