

# **BOROUGH OF MENDHAM**

MORRIS COUNTY, NEW JERSEY

## **ORDINANCE #03-2020**

### **ORDINANCE OF THE BOROUGH OF MENDHAM, IN THE COUNTY OF MORRIS AND STATE OF NEW JERSEY, AMENDING CHAPTER 215, ZONING, OF THE BOROUGH CODE TO PERMIT OUTDOOR DINING TO FACILITATE SMALL BUSINESS RECOVERY NEEDED IN LIGHT OF THE COVID-19 PUBLIC HEALTH EMERGENCY**

**WHEREAS**, recent changes in the economy, including a public health emergency and resulting social distancing requirements, have led the Borough's Finance Committee to review outdoor dining requirements; and

**WHEREAS**, the Governing Body desires to enable local restaurants, with appropriate guidelines, to serve customers and encourage social distancing requirements; and

**WHEREAS**, the Governing Body also recognizes that notwithstanding the changes in the economic climate in 2020, outdoor dining can accommodate the Borough's long-term Master Plan vision of protecting the small-town character of the community, while also helping to maintain a healthy business district, which is also a Master Plan vision; and

**WHEREAS**, the Borough Planner has proposed certain amendments to the Borough Code to permit and regulate outdoor dining, and the Borough Attorney has reviewed same; and

**WHEREAS**, the Governing Body recommends the amendments with respect to parking and approval as to outdoor dining.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Mendham, in the County of Morris and State of New Jersey, as follows:

**SECTION 1.** Chapter 215, Zoning, is hereby amended and supplemented to add new Article XVIII, Outdoor Dining; to read as follows:

#### **"Article XVIII Outdoor Dining**

##### **§ 215-62 Definitions.**

As used in this article, the following terms shall have meaning indicated:

- A. Principal Building – The building whose principal facade fronts on the sidewalk or adjacent to where the outdoor dining is proposed to be located. The "principal facade" shall be the face of the principal building facing the street right-of-way.
- B. Permitted Zone – Outdoor Dining shall be a permitted accessory use to a permitted restaurant in the Historic District Zone and East Business Zone as defined in the Mendham Borough "Land Use Ordinance" and as shown on the Zoning Map of the Borough of Mendham.
- C. Person – Any individual, partnership, corporation, limited liability company, association, or other entity.
- D. Restaurant – An establishment located within the principal building, the primary activity of which is the preparation of food or sale of prepared food for consumption by the public on its premises.
- E. Sidewalk – The paved surface provided for the exclusive use of pedestrians and situated between and extending from any building line to the curb of any street (excluding therefrom any unpaved area).
- F. Outdoor Dining – An accessory use to a restaurant as defined herein which also is characterized by the following and in accordance with §215-70.
  - (1) The consumption of food by the public at tables located outside of the restaurant on a patio, deck or within that more or less rectangular portion of the sidewalk

which lies within the area bounded by the public street, the principal façade, and the imaginary perpendicular lines running from the outer edge of such principal facade to the public street; and

- (2) Containing readily removable tables, chairs, umbrellas, temporary railings, barriers and/or planters; and
  - (3) Unenclosed by fixed walls or ceilings, excepting fences, landscaping walls less than four (4) feet in height, retractable awnings, removable barriers, umbrellas or other nonpermanent enclosures.
- G. Obstruction – Any tree, trash receptacle, street curb, parking meter, newspaper box, street sign or basement entry hatch lying within the area of the outdoor dining.
- H. Service Items – All dishes, utensils, containers, tablecloths, napkins, cutlery and other items used in the operation or decoration of the outdoor dining area.

**§ 215-63 Permit required.**

No person shall operate an outdoor dining area within the Borough of Mendham without obtaining an outdoor dining permit by satisfying all the requirements of this Article. The permit shall be issued by the Zoning Officer and may contain conditions. The permit must be renewed annually. If an application is denied, the Applicant may file an appeal with the Zoning Board.

**§ 215-64 Application.**

- A. Each applicant for an outdoor dining permit shall submit and file an application with the Borough, Zoning Officer together with five (5) copies of a layout plan (as defined below), and the appropriate fee. The application shall set forth:
- (1) The name and address of the Applicant,
  - (2) The name and address of the owner of the principal building (if other than the applicant), and
  - (3) The name and address of the person who has prepared the layout plan; and shall be accompanied by the written authorization and approval of the owner of the principal building (if other than the applicant).
- B. The term “layout plan” shall mean a written plan setting forth the following information and such other additional information, if any, as may be subsequently requested by the Borough.
- (1) A description of the principal building and description of all properties immediately adjacent to such building; and
  - (2) A description of the proposed design and location of the outdoor dining, its dimensions and all temporary structures, equipment, and apparatus to be used in connection with its operation, including tables, temporary fences and barriers, planters, service carts, chairs, awning, umbrellas (including any name to be displayed thereon), lighting and electrical outlets (if any); and
  - (3) A statement of the seating capacity of the proposed outdoor dining and of the existing restaurant actually operated by the applicant in the principal building; and
  - (4) A diagram demonstrating that pedestrian traffic along the sidewalk or outdoor area on which the outdoor dining is proposed to be located will in no way be blocked by obstructions; and that the provisions of Section 215-70 be satisfied. Such diagram shall also include a drawing of the outdoor dining area itself with all appurtenances and shall show all obstructions’ location within the area of the outdoor dining area. The diagram shall be drawn to scale and shall include all dimensions of any and all items located or proposed to be located within the area of the outdoor dining. The layout plan shall be referred to the Zoning Officer, or other appropriate official designated by the Borough administration from time

to review such plans, who shall thereupon recommend approval, disapproval or modification of the plan within 10 business days following its submission. The Zoning Officer may also refer the layout plan to the Fire Chief, Chief of Police, Construction Official, Health Officer, Borough Engineer and/or the Borough Planner for their review and recommendation. The Zoning Officer may seek referral to the Planning Board for initial applications or renewals deemed by any Borough official to present potential impact to health, safety, welfare or morals of the community; and

- (5) If any service items shall be made of disposable or non-reusable materials, the proposed means for disposal of such service items, together with a drawing of the design of the proposed trash receptacles to be utilized.

C. In the application to be submitted, the Applicant may request that the Borough Council grant the Applicant a waiver from compliance with any aspects of the requirements of §215-70 of this article.

**§ 215-65 Insurance required.**

No outdoor dining permit shall be issued unless the permit shall have first filed with the Zoning Officer and a copy of an insurance policy or certificate of insurance, issued by a company duly authorized to transact business under the laws of this State, providing for the payment of not less than \$1,000,000 to satisfy all claims for damage by reason of bodily injuries to, or the death of, any person as a direct result of the operation of the outdoor dining or for injury to any person occurring on the premises occupied by such cafe, and further providing for the payment of not less than \$10,000 to satisfy all claims for property damage occurring as a direct or indirect result of the operation of such outdoor dining and naming the Borough of Mendham as an additional insured.

**§ 215-66 Indemnification agreement required.**

No outdoor dining permit shall be issued unless the permit holder shall have first executed with the Zoning Officer an indemnification agreement pursuant to which the permit, in further consideration of the issuance of the permit, shall agree to forever defend, protect, indemnify and save harmless the Borough of Mendham, its officers, agents and employees, from, and against, any and all claims, causes of action, injuries, losses, damages, expenses, fees and cost arising out of, or which may arise out of, the permit holders operation of such an outdoor dining area.

**§ 251-67 Maintenance agreement required.**

No outdoor dining permit shall be issued unless the permit holder shall have first executed and filed with the Zoning Officer a maintenance agreement pursuant to which the permit, in further consideration of the issuance of a permit, shall agree, at the option of the Borough, to either repair at its sole cost and expense, any damage caused to the sidewalk by the operation of the cafe, or to reimburse the Borough in full for all costs and expenses incurred by it making any such repairs.

The Zoning Officer may require a bond to be filed by the permit in an amount to be fixed by the Borough.

**§ 251-68 Permit fee.**

The fees for an outdoor dining permit shall be as follows:

Type	Fee
1-10 seats, no more than 2 tables	\$100
11-25 seats	\$250
26-50 seats	\$350
Over 50 seats	\$450

**§ 215-69 Term of permit: renewals.**

All outdoor dining permits shall be issued for the period commencing March 1 and ending November 30 (inclusive) of a particular year. Permits may be renewed by filing of an application in accordance with the provisions of § 215-64. If a permit renewal is denied by the Zoning Officer, the Applicant may file an appeal with the Zoning Board.

**§ 215-70 Rules, regulations and specifications.**

An outdoor dining area authorized and operating pursuant to this Article shall comply with all of the following regulations and specifications and such others as may be adopted from time to time by the Borough Council of the Borough of Mendham.

- A. The outdoor dining area shall be operated and maintained in conformance with the layout plan as finally approved.
- B. No furniture, apparatus decoration or appurtenance used in connection with the operation of the outdoor dining shall be placed within 50 feet of any fire hydrant, plug or standpipe without the specific written authorization of the chief of the Fire Department; and
- C. No furniture, apparatus, decoration, appurtenance used in connection with the operation of the outdoor dining area shall be located in such a way as to impede the safe and efficient ingress and egress to or from any building or structure. At least four (4) feet of unobstructed walkway shall be provided for access from any door or opening on the business facade to the street.
- D. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor dining area shall be located in such a way that less than four (4) feet of paved sidewalk unobstructed remains open for the exclusive use of pedestrians (the "required pedestrian passageway"), nor shall any such furniture, apparatus, decoration or appurtenance project or protrude into, on or above, the required pedestrian passageway. All outdoor dining areas shall have portable barriers or planters not less than three feet nor more than four feet in height which shall be placed around the outdoor dining area on the sidewalk to define the cafe areas and the unobstructed pedestrian passageway. If the outdoor dining is not on a sidewalk a fence or barrier that conforms to the Borough's ordinances shall be permitted.
- E. Service items shall be made of non-disposable and reusable materials; provided, however that upon a showing of need by the Applicant and of adequate provision of outdoor waste receptacles for the disposal of disposable and non-reusable materials, an outdoor dining permit may provide for the use of disposable and non-reusable items. The furniture to be used in the operation of the outdoor dining area shall be made of durable materials and tables shall be of adequate size to serve the patrons of the outdoor dining area.
- F. The outdoor area utilized by the outdoor dining shall be kept clean and free of litter. Sidewalks/patios shall be washed daily, if needed, and trash receptacles shall be provided as required and approved from time to time by the Borough.
- G. Outdoor lighting shall be in accordance with the requirements of §195-47 of the Borough Code and shall adhere to the following standards:
  - (1) No colored lighting is permitted.
  - (2) All lighting must be directed towards the outdoor dining area and away from adjoining properties.
  - (3) All lighting exclusively lighting the outdoor dining area must be turned off when the outdoor dining area is closed.
- H. Noise shall be kept at such a level as to comply with all aspects of the provisions of the NJ State Noise Control Act (N.J.A.C. 7:29-1 et seq.).
- I. Outdoor dining areas shall be permitted to operate only with a permit granted pursuant to this Article and only from 7:00 a.m. until 10:00 p.m. Monday through Thursday and

7:00 a.m. to 11:00 p.m. Friday and Saturday from March 1 through November 30 (inclusive) of a particular year.

- J. Within 30 minutes after the closing of the restaurant, the operator shall have all furniture, apparatus, decorations, barriers, planters and appurtenances and any other items used in connection with the operation of such outdoor dining removed from any sidewalk. Outdoor enclosed patios may maintain sturdy furniture overnight, however other movable items such as umbrellas, bus areas, etc. shall be stored in a safe and secure interior location.
- K. One (1) outdoor menu display is permitted, not to exceed three (3) square feet.
- L. The outdoor dining area shall be operated and maintained by the same person who operates and maintains the related restaurant to which the outdoor dining is an accessory use.
- M. The operator shall comply with all ordinances of the Borough of Mendham, however outdoor dining shall be exempt from site plan review and parking requirements.
- N. Notwithstanding anything to the contrary in this Article or any other laws and ordinances of the Borough but subject to review and approval of the Borough Zoning Officer, a person may be permitted to display the name of the establishment operating the outdoor dining area on umbrellas to be used at the outdoor dining area.
- O. Fire pits and LP-gas fire pits are not permitted within any sidewalk area. LP-gas mushroom-type heaters are permitted but shall not be used in buildings, including tents, or partially covered canopy-type enclosures, foyers, and enclosed courtyards. For LP-gas mushroom-type heaters, the minimum safety instructions are, but not limited to, the following:
  - (1) The mushroom-type heater unit shall not be left unattended.
  - (2) The unit shall be placed on a hard and level surface.
  - (3) The unit's LP-gas tank shall be turned off when the heater is not in use.
  - (4) The unit shall not be used if wind velocity is greater than 10 mph to prevent flame-out.
  - (5) LP-Gas maximum inlet pressure shall meet the manufacturer's recommendations.
  - (6) After the use, the heater unit shall meet the manufacturer's recommendations.
  - (7) The unit shall only be used outdoors in a well-ventilated area.
  - (8) The unit shall not be handled while in use.
  - (9) The unit shall be so placed as to keep children away.
  - (10) The units shall be placed at least five (5) feet from any flammable materials, such as carpet, drapes, decorations, chemicals, paper goods, furniture, etc.
  - (11) Units shall be sufficiently anchored so as to prevent accidental tip-over.
  - (12) Units shall be sufficiently cordoned-off as to prevent casual contact by the public.
  - (13) Unit hook-up may require the use of a suitable crescent or box-end wrench only.
  - (14) Tanks shall be stored five feet from any doorway or building opening.

**§ 215-71A Outdoor dining outside permitted zone; other ad hoc variations.**

Notwithstanding anything to contrary contained in this Article or any other laws and ordinances of the Borough of Mendham, the Zoning Officer may issue permits to operate outdoor dining which may otherwise vary from certain of the other requirements of this Article. The issuance of such permits shall be on terms and conditions as the Zoning Officer may deem fit and may include, but shall not be limited to, the following situations: (a) the issuance of permits to establishments that are not situated in the permitted zone; (b) the issuance of permits to establishments which may not be deemed to be restaurants under this article; (c) the inclusion of certain private property as part of a particular outdoor dining area; and (d) the establishment of hours of operation which may differ from the requirements otherwise set forth in this article.

**§ 215-71B Temporary suspension of Borough permit.**

Notwithstanding anything to the contrary contained in this Article or any other laws and ordinances of the Borough of Mendham, the Borough may Temporarily suspend an outdoor dining permit in the event of emergency or for other reasons or purposes including, but not limited to, the facilitation of Borough-sponsored events.

**§ 215-72 Alcoholic beverages.**

The outdoor dining area of an establishment that holds a Class C Plenary Retail Consumption permit (permit holder) upon which a restaurant has been authorized to operate pursuant to this Article may constitute premises for the sale and consumption of alcoholic beverages provided that the permit holder of the restaurant of which the outdoor dining is a part obtains a place to place transfer of its existing liquor permit to include the outdoor dining area pursuant to the applicable provisions of Chapter 65 of the Code of the Borough of Mendham and N.J.S.A. 33:1-1 et seq. Such approval shall be separate from, and must be obtained in addition to, the permit to operate an outdoor dining area pursuant to this Article.

An establishment that does not hold a Class C Plenary Retail Consumption permit may permit patrons, as provided by N.J.S.A. 2C:33-27, to consume wine and beer in the outdoor dining area upon which the restaurant has been authorized to operate. All restrictions placed on establishments pursuant to N.J.S.A. 2C:33-27 will be strictly enforced.

**§ 215-73 Enforcement officer; notice of violation; failure to comply.**

The Zoning Officer of the Borough of Mendham (or his designee) shall be charged with the responsibility for enforcing the provisions of this Article. Upon a determination by the Zoning Officer (or his designee) that a permit holder has violated one or more of such provisions, the Zoning Officer shall give written notice to the permit holder to correct such violation within a time specified by the Zoning Officer. In the event that the permit holder fails or refuses to correct such violation within such time period, the outdoor dining permit shall thereupon, and automatically, be revoked.

Upon the revocation of such permit, the permit holder, upon written request, shall be entitled to a hearing before the Zoning Board.

**§ 215-74 Penalties.**

Any person convicted of violation of this Article shall be subject to a fine not to exceed \$500. Each violation of a section or subsection of this Article, and each day that a violation continues shall constitute a separate offense.”

**SECTION 2.** Chapter 215, Zoning, Article VI, Historic Business Zone, Section 215-17B(5) is hereby amended to read as follows:

“Eating Establishments (excluding drive-throughs).”

**SECTION 3.** Chapter 215, Zoning, Article VI, Historic Business Zone, Section 215-17C is hereby amended to read as follows:

“Accessory uses and structures customarily incidental to permitted uses, including required off-street parking and solar panel systems subject to the standards set forth in § 215-31.1. The

storage of all goods and materials shall be in the rear of any structure and shall be screened from view by a solid fence or wall enclosure. Outdoor dining is subject to § 215-62 through § 215-74.”

**SECTION 4.** This Ordinance may be renumbered for the purpose of codification.

**SECTION 5.** All ordinances of the Borough of Mendham that are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 6.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**SECTION 7.** This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

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Introduced: May 13, 2020  
Public Hearing: June 10, 2020

**BOROUGH OF MENDHAM**  
MORRIS COUNTY, NEW JERSEY

**RESOLUTION #075-2020**

**RESOLUTION AUTHORIZING THE REFUND OF OVERPAYMENT OF PROPERTY TAX FOR PROPERTY  
LOCATED AT 30 KERBY LANE [BLOCK 2201, LOT 10.06] FOR YEARS 2018 AND 2019**

**WHEREAS**, an appeal of the real property tax assessment for property located at 30 Kerby Lane [Block 2201, Lot 10.06] was filed in the New Jersey Tax Court for the years 2018 and 2019; and

**WHEREAS**, the New Jersey Tax Court judgment reduced the assessed value of the property for tax years 2018 and 2019, decreasing the tax levy for both years and thereby creating an overpayment in property taxes paid as follows:

<u>BLOCK/LOT</u>	<u>PROPERTY LOCATION</u>	<u>AMOUNT TO BE REFUNDED</u>
2201 / 10.06	30 Kerby Lane	2018: \$3,322.50
		2019: <u>\$3,370.50</u>
		TOTAL \$6,708.46

**THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Mendham, County of Morris, and State of New Jersey that the Treasurer is authorized to process a refund in the amount of \$6,708.46 as herein referenced to:

Irwin & Heinze, PA  
383 Main Street, Ste 100  
Chatham, NJ 07928  
c/o Attorney Trust Account: John & Krystyna Jakimowicz  
30 Kerby Lane, Mendham  
Block 2201, Lot 10.06

Dated: May 13, 2020



# **BOROUGH OF MENDHAM**

MORRIS COUNTY, NEW JERSEY

## **RESOLUTION #076-2020**

### **RESOLUTION AWARDING A CONTRACT FOR CURBSIDE COLLECTION AND DISPOSAL OF SOLID WASTE TYPE 13 TO BLUE DIAMOND DISPOSAL, INC.**

**WHEREAS**, the Borough of Mendham ("Borough") solicited bids for the collection and disposal of Solid Waste Type 13 for the period June 15, 2020 through December 31, 2020; and

**WHEREAS**, two (2) sealed bids were received and opened on April 28, 2020, in accordance with the advertised date for acceptance of bids; and

**WHEREAS**, the lowest apparent bid was from Blue Diamond Disposal, Inc. ("Blue Diamond") in the amount of \$51,025.00; and

**WHEREAS**, the Administration has reviewed the bid from Blue Diamond and found that it complies with the required technical specifications; and

**WHEREAS**, the Borough Attorney has reviewed the bid from Blue Diamond and found it in substantially proper form and in compliance with the provisions of the Local Public Contracts Law, N.J.S.A. 4A:11-1 et seq., rendering Blue Diamond the lowest responsive, responsible bidder; and

**WHEREAS**, the Borough's Chief Financial Officer has certified that sufficient funds are available for this contract.

**THEREFORE, BE IT RESOLVED** by the Mayor and Borough Council of the Borough of Mendham, County of Morris, State of New Jersey, as follows:

1. The Borough hereby awards a contract to Blue Diamond Disposal, Inc. for the curbside collection and disposal of Solid Waste Type 13 in an amount not to exceed \$51,025.00, for the period June 15, 2020 through December 31, 2020, in accordance with its bid.
2. The Mayor and Borough Clerk are hereby authorized and directed to execute said contract.
3. This Resolution and contract shall be available for public inspection in the office of the Borough Clerk.

This Resolution shall take effect immediately.

Dated: May 13, 2020

**BOROUGH OF MENDHAM**

MORRIS COUNTY, NEW JERSEY

**RESOLUTION #077-2020**

**RESOLUTION AUTHORIZING THE HIRING OF A SEASONAL EMPLOYEE  
IN THE DEPARTMENT OF PUBLIC WORKS**

**WHEREAS**, the Department of Public Works has a need to hire a seasonal employee for the Class 2 Public Works Laborer/Drivers/Operator position (Roads, Buildings, Grounds & Parks); and

**WHEREAS**, after considering all interested and qualified candidates, the Director of Public Works has recommended that Patrick McCarthy should be hired for the part-time seasonal position in the Department of Public Works at the pay rate of \$12.00 per hour and with an effective starting date of May 18, 2020.

**THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough of Mendham that they hereby approve and authorize the hiring of Patrick McCarthy for the part-time seasonal Class 2 Public Works Laborer/Drivers/Operator position (Roads, Buildings, Grounds & Parks) in the Department of Public Works at the rate of \$12.00 per hour and with the effective starting date of May 18, 2020.

Dated: May 13, 2020

**BOROUGH OF MENDHAM**  
MORRIS COUNTY, NEW JERSEY

**RESOLUTION #078-2020**  
**RESOLUTION AUTHORIZING THE HIRING OF A SEASONAL EMPLOYEE**  
**IN THE DEPARTMENT OF PUBLIC WORKS**

**WHEREAS**, the Department of Public Works has a need to hire a seasonal employee for the Class 2 Public Works Laborer/Drivers/Operator position (Roads, Buildings, Grounds & Parks); and

**WHEREAS**, after considering all interested and qualified candidates, the Director of Public Works has recommended that Patrick Seamus Oram should be hired for the part-time seasonal position in the Department of Public Works at the pay rate of \$12.00 per hour and with an effective starting date of May 18, 2020.

**BE IT RESOLVED**, by the Mayor and Council of the Borough of Mendham that they hereby approve and authorize the hiring of Patrick Seamus Oram for the part-time seasonal Class 2 Public Works Laborer/Drivers/Operator position (Roads, Buildings, Grounds & Parks) in the Department of Public Works at the rate of \$12.00 per hour and with the effective starting date of May 18, 2020.

Dated: May 13, 2020

# BOROUGH OF MENDHAM

MORRIS COUNTY, NEW JERSEY

## RESOLUTION #079-2020

### RESOLUTION AUTHORIZING THE EXECUTION OF A THREE-YEAR INTERLOCAL SERVICE AGREEMENT BETWEEN THE BOROUGH, MENDHAM TOWNSHIP AND CHESTER TOWNSHIP

#### FOR ANIMAL CONTROL SERVICES

**WHEREAS**, the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 et seq., permits a local unit of the State to enter into an agreement with any other local unit to provide or receive any service that each local unit participating in the agreement is empowered to render within its own jurisdiction; and

**WHEREAS**, the Borough of Mendham (“Borough”), Township of Mendham (“Mendham Township”) and Township of Chester (“Chester Township”) desire to enter into a three-year Interlocal Service Agreement (the “Agreement”) for the provision of animal control services; and

**WHEREAS**, Mendham Township shall serve as the lead agency; and

**WHEREAS**, the Borough shall remit a yearly assessment to Mendham Township for the provision of these services in the amounts set forth in the Agreement, attached hereto, which memorializes the terms and conditions agreed upon by the parties.

**THEREFORE, BE IT RESOLVED** by the Council of the Borough of Mendham, in the County of Morris and State of New Jersey, as follows:

1. The Mayor and Borough Clerk are hereby authorized and directed to execute the Agreement between the Borough, Mendham Township, and Chester Township, for the period May 1, 2020 through April 30, 2023.
2. Borough officials and employees are hereby authorized and directed to take all action necessary and appropriate to effectuate the Agreement.
3. A copy of this Resolution and Agreement shall be kept on file in of the office of the Borough Clerk for inspection by the public.

This Resolution shall take effect immediately.

Dated: May 13, 2020

[Attachment: Shared Service Agreement]

Attest:

BOROUGH OF MENDHAM

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Robin R. Kline, Borough Clerk

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Christine Serrano-Glassner, Mayor

**INTERLOCAL SERVICE AGREEMENT  
FOR THE PROVISION OF ANIMAL CONTROL SERVICES BETWEEN CHESTER  
TOWNSHIP, MENDHAM BOROUGH, AND MENDHAM TOWNSHIP**

**WHEREAS** each of the municipalities which are a party to this Agreement require animal control services for municipal residents and properties; and

**WHEREAS** studies have determined that the most cost effective and efficient method of providing these services is through a Shared Services Agreement wherein the costs of certain officials and employees are shared by the participating jurisdictions; and

**WHEREAS** it is necessary to set forth the terms and conditions and procedures for the sharing of Animal Control Services among the municipalities which are a party to this Agreement; and

**WHEREAS** the Interlocal Services Act (N. J. S. A. 40:65-1 et seq.) provides the mechanism for local governments to enter into contracts for the joint provision of required services.

**NOW THEREFORE BE IT AGREED by the TOWNSHIP OF CHESTER, the TOWNSHIP OF MENDHAM, and the BOROUGH OF MENDHAM as follows:**

**1. LEAD AGENCY** Mendham Township will serve as the lead agency in this Interlocal Service Agreement

**2. TERM** The term of this Agreement shall be for 36 months from May 1, 2020 to April 31, 2023, with an option to extended the Agreement for an additional 3 year term. The Lead Agency shall notify all participants 4 months prior to the expiration of the initial term as to its intention to renew or non renew the contract. This notice is required to allow the participating municipalities the time necessary to obtain alternate animal control services. Each participating municipality must notify the Lead Agency and all other participating municipalities of its intention to renew or non renew this Agreement at least 3 months prior to the expiration of the term of this Agreement.

**3. SCOPE OF SERVICES**

a. The Lead Agency shall provide to the other participating municipalities the services of a qualified and certified Animal Control Officer who will serve as the designated Animal Control Officer for the participating municipality performing those functions and duties assigned to the Animal Control Officer in the Code of Ordinances of the participating municipality, except that the Animal Control Officer shall not perform any functions or duties in excess of those set forth in the Consolidated Animal Control Contract, Appendix A to this Agreement.

b. Each Participating municipality shall provide the information/services as specified in the Animal Control Service Contract which is attached to and made a part of this Shared Service Agreement (Appendix A).

- i. There will be a communication system established to provide for both telephone and emergency communication with the Animal Control Officer for receiving all requests for assistance, as well as administering the other provisions the participating municipality's animal control ordinance.
- ii. Emergency animal control response services will be available on a 24 hour seven day a week basis. "Emergency Response Services" shall be defined to mean those situations involving risk to human life and / or animal life (e.g. bite cases, injured or trapped regulated animals). Ordinary services such as the pick up of animals being held in captivity which can be held in a humane manner and which are not injured, have not bitten a person or another animal, or are not considered to be a vicious dog shall not be considered as an emergency activity and can be handled provisions set out in Appendix A.
- iii. Non emergency animal control services will be available pursuant to the provisions set out in Appendix A
- vi. The Animal Control Officer shall provide monthly reports to the Lead Agency for disbursement to each participating municipality listing all services rendered to each municipality, complaints responded to, rabid and vicious dogs handled, summons issued and other enforcement activities.
- vii. The Animal Control Officer shall be available to meet with the governing body of the Lead agency on a periodic basis to provide information on animal control activities

within their municipality. Other participating municipalities shall be advised of and invited to participate in this meeting.

- viii The Animal Control Officer shall attend those Municipal Court sessions required for the proper enforcement of the animal control ordinances within each participating municipality.

c. Each participating municipality shall use their own impound facility or, in the absence of such facility, will use the facilities use in Appendix A.

d. Each participating municipality shall advertise and make its residents aware of their responsibilities under the participating municipality's animal control ordinance.

e. Each participating municipality will advise its residents on the methods to file complaints under their animal control ordinance and to obtain the assistance of the animal control officer.

f. Each participating municipality shall be responsible for receiving and responding to any and all complaints from its residents and citizens on the operation of the Animal Control function and reporting all such complaints to the Lead Agency. If the investigation by the municipality should indicate that the actions or lack thereof of the Animal Control Officer were not in keeping with the terms and conditions of this Agreement, or the general regulations governing animal control in the State of New Jersey, or if the actions or lack thereof were inappropriate, the Mayor of that municipality shall so advise the Mayor of the Lead Agency. If the municipality within which the incident occurs believes that the incident is so serious as to question the capability or continued employment of the Lead Agency employee, the Mayor of that municipality shall request a meeting of the Mayors of all participating municipalities to this agreement. Within 30 days of this request the Mayors or their designee shall met, review the incident and the concerns of the affected municipal officials and render a recommendation to the Lead Agency as to the disposition of the matter. The final decision of the disposition of any complaint resides with the Mayor and Committee of the Lead Agency. If the Mayor and Committee of the municipality within which the incident occurred disagree with the decision of the Committee of Mayors and/or the Lead Agency, they may withdraw their approval of this employee to serve as Animal Control officer in their municipality and may withdraw from this Agreement upon provision of 30 days notice. The withdrawing municipality shall be responsible for the payment of all assessments and funds due to the effective date of this withdrawal.

g. This Agreement presupposes the employment of an Animal Control Officer by the Lead Agency and the availability of this Animal Control Officer to other participating municipalities in accordance with the contract set forth in Appendix A. In the event an Animal Control Officer is not employed by the Lead Agency prior to the effective date of this Agreement, or if the position of Animal Control Officer shall be vacant for a period of more than 30 days at any time during the term of the Agreement, participating municipalities shall be entitled to receive a pro rata refund of funds paid for this service, or a credit on future billings for the period of time when there was no coverage of the functions to be performed by the Lead Agency.

h. In the event that there is a current or future cost incurred by the Lead Agency relating to the provision of these required services which do not relate to activities in the Lead Agency's municipality these increased costs will be shared by all of the municipalities participating in this Agreement at the time of the incident pro rata in the same ratio as the total expenses of the program are shared.

**4. CHANGE IN CONTRACTED SERVICES.** The Lead Agency shall e contract with a qualified individual / agency to serve as the Animal Control Officer for the participating municipalities. This person / agency shall possess all of the required certifications and training necessary to accomplish the tasks delineated in this agreement.

a. Selection. Although the individuals serving as Animal Control Officer are selected by the Lead Agency, the Mayors of the participating municipalities shall be consulted in the determination of the qualifications of the individuals to be employed to provide this service and shall be given the opportunity to participate in the recruitment and selection process. If the individuals selected by the Lead Agency do not meet the approval of a participating municipality the participating municipality shall have the right to terminate this agreement after providing a 3-month notice.

b. Contract Requirements. The Lead agency is responsible for insuring that the appointed Animal Control Office / agency performs in accordance with the terms and conditions contained in Appendix A. If there is to be a change in these terms and conditions, the Lead Agency must first advise the participating agencies of the proposed change, the reasons for the change, and the financial impact of the change. The Mayors of the participating municipalities shall meet and

discuss the changes and if the changes are significant in scope and cost increases, each municipality shall have 30 days to advise if they wish to continue in the Shared Service Agreement.

c. Required Training, Equipment and Supplies. The Lead Agency will supply the necessary training, equipment and supplies for the implementation of this Agreement with the cost of any training, materials, supplies and equipment being shared by all participating municipalities through the mechanisms contained in this Agreement.

**5. COSTS** It is anticipated that for the fiscal year 2020, the total cost of these services to be shared by the participating municipalities shall approximate \$33,636 with each jurisdiction sharing in these costs according to the following schedule:

	<u>Population</u>	<u>Assessment</u>
CHESTER TOWNSHIP	7,838	\$ 14,107
MENDHAM TOWNSHIP	5,869	\$ 10,564
MENDHAM BOROUGH	4,981	\$ 8,965
Total:	18,688	\$ 33,636

"Assessment " represents the pro-rata sharing of a portion of the total cost based upon the population in each jurisdiction as determined in the 2010 Census. The "Assessment" cost may change in future years as the population as determined by the US Census changes.

a. In future years, each participating municipality shall share in the cost of providing these services in the same manner as delineated above.

b. the population data shall be updated when the official census data is released by the US Government and the assessment ratio changed accordingly.

c. Should one or more municipality withdraw from this agreement their assessment as delineated above shall be removed from the equation and the percentages redistributed to the remaining participants in accordance with the methodology outlined above. If any of the remaining municipalities should object to their designated cost share, the Mayors of all of the remaining municipalities shall meet within 45 days of receiving the protest and shall determine if the revised cost sharing agreement is reasonable, or should be revised, and if so, the methods to be used. Failure to reach agreement of their revised cost sharing is grounds for withdrawal from the Agreement as provided for elsewhere in the agreement.

**6. FINANCIAL PROCEDURES**

a. In December of each year the Lead Agency shall provide to the other participating municipalities an estimate of the anticipated cost for providing services under this Agreement.

b. The Mayors of all participating municipalities shall meet within 30 days of receiving this estimate to review and approve the proposed budget.

c. Each municipality shall budget their designated cost in the budget for the upcoming fiscal year.

d. The Lead Agency shall maintain accurate and complete records of all costs and expenses relating to this contract and shall make these records available to the participating municipalities upon request.

e. In February of each year the Lead Agency shall provide an accounting of all costs incurred by the Lead agency under this contract in the prior year. All costs in excess of the amount originally budgeted shall be added to the payments payable during the upcoming year. If the amounts paid by participating agencies are in excess of the final costs, any excess payments shall be taken as a credit against the payments due during the upcoming year.

f. The Lead Agency shall invoice the participating agencies quarterly in advance for the anticipated costs for the upcoming quarter. All invoices shall be payable within 30 days of the receipt of the properly executed voucher by the Lead Agency. Invoices not paid in 45 days shall accrue interest at the legally established rate.

g. Failure of a participating municipality to pay a voucher within 75 days of billing shall be grounds for immediate termination of services to that municipality by the personnel of the Lead Agency.

h. If a participating municipality takes exception to an invoice of the Lead Agency, the Lead Agency must review the dispute and render a decision on the contested matter within 30 days of receiving the notice of the dispute. Pursuant to 40:8A-7, the participating municipality must pay to the Lead Agency the full amount invoiced. If through subsequent negotiation or arbitration, the amount should be determined to be less than was actually paid, the Lead Agency shall repay the

excess to the participating municipality within 30 days of the date of the final resolution of the dispute.

**7. DISPUTE RESOLUTION** The Mayors of the participating municipalities shall be responsible for resolving any disputes over the implementation of this contract. Should they be unable to do so, a meeting will be held with the Mayor and one member of the Council of each municipality to resolve the dispute. Should these officials be unable to resolve the dispute, the dispute may be referred to binding arbitration as provided by the American Arbitration Association. The distribution of the costs of this arbitration shall be determined by the Arbitrator so selected.

**8. CANCELLATION** This agreement may be cancelled by the Lead Agency after providing a six-month notice of intention to do so. Participating in the Agreement may be cancelled by any participating municipality after providing a three-month notice of intention to do so. During this three or six-month period all parties shall meet to determine if any differences and disputes can be reconciled.

## **9. MISCELLANEOUS**

a. In consideration of assistance rendered by either municipality to one another, the participating municipalities do hereby covenant and agree to save and hold harmless, defend and indemnify, the other participating municipalities their agents, servants and employees from any and all liabilities and costs arising out of the assistance rendered by its agents, servants and employees, unless said liabilities or costs are the result of the gross negligent acts, errors or omissions of the assisting municipality, its agents, servants, and employees.

b. Each participating municipality shall provide to the other participating municipalities proof of Public Liability insurance with at least \$1,000,000 in coverage for all actions taken by the Lead Agency's employees in the participating municipality in administering this agreement including the services contract contained therein.

c. No Assignment. The parties agree that there will be no assignment of their respective rights or obligations under this Agreement, unless agreed in writing by both parties and with proper official action.

d. This Agreement represents the entire agreement between the parties and cannot be changed or modified orally. This Agreement may be supplemented, amended or revised only by a writing, which is signed by all of the parties hereto.

e. If any part of this Agreement shall be held to be invalid, illegal or unenforceable, the parties agree to negotiate in good faith and agree to such amendments to this Agreement or to such other appropriate action as shall implement and give effect to the intention of the parties as reflected herein and the other provisions of this Agreement, as so amended, shall nevertheless remain in full force and effect.

f. Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement at any one time shall not be deemed a waiver of such term, covenant, or condition at any other time nor shall any waiver or relinquishment of any right or power herein at any time be deemed a waiver or relinquishment of the same or any other right of power at any other time.

g. Any notice required under this agreement shall be served upon the Municipal Clerk of the municipality with a copy provided to the Municipal Attorney.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be signed by their respective mayors and their corporate seals affixed hereto and attested by their respective clerks the day and year first above written.

## **TOWNSHIP OF MENDHAM**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Township Clerk



**TOWNSHIP OF CHESTER**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Township Clerk

**BOROUGH OF MENDHAM**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Borough Clerk