

INTERMUNICIPAL AGREEMENT ESTABLISHING THE OAK GROVE
MULTI-MUNICIPAL COMPOST PROCESSING PROGRAM

THIS AGREEMENT, executed this 30th day of December, 2013, but effective the date provided below (the "Effective Date"), by and among the Townships of Middle Smithfield and Smithfield, Monroe County, and Lehman Township, Pike County, Pennsylvania, each a second class Township existing under the laws of the Commonwealth of Pennsylvania, herein collectively referred to as the "Participating Municipalities".

WHEREAS, Section 1506 of the Second Class Township Code (the "Code"), generally permits the Board of Supervisors of second class Townships to make and adopt any ordinances, by-laws, rules and regulations not inconsistent with or restrained by the Constitution and the laws of this Commonwealth necessary for the proper management, care and control of the Township, and its finances, and maintenance of peace, good government, health and welfare of the Township and its citizens, trade, commerce and manufacture; and

WHEREAS, Article XXI of the Code authorizes Boards of Supervisors, either separately or jointly with a county or municipal corporation, to: (i) provide for the collection, storage, and or composting of leaf and yard waste (together, "Recyclables"), (ii) provide for the payment of the costs thereof out of the funds of the Township, (iii) establish, alter, charge and collect rates, and other charges for the collection of Recyclables, including the cost incurred for the construction, purchase, improvement, repair, maintenance and operation of any facilities therefor, (iv) make appropriations to any county or municipal corporation for the construction, purchase, improvement, repair, maintenance and operation of any facilities for the collection, removal, disposal or marketing of Recyclables; and

WHEREAS, the Participating Municipalities recognize that the growth and development within their Municipalities have increased the need for municipal services to their residents; and

WHEREAS, the Participating Municipalities also recognized that establishment of an intermunicipal compost processing facility would provide efficient and economic services beneficial for their residents; and

WHEREAS, the Participating Municipalities have recognized that the development of separate compost processing facilities to perform similar or identical tasks within each Municipality could result in the duplication of effort to the detriment of the residents of the Municipalities; and

WHEREAS, the Participating Municipalities recognize that the coordination of services would enable each Municipality to minimize the costs of the operation and administration of a compost processing facility; and

WHEREAS, Sec. 1507 of the Code provides that Boards of Supervisors may by ordinance make agreements with other municipal corporations in performing governmental powers, duties and functions and in carrying into effect provisions of the Act of July 12, 1972, P.L. 762, as amended, 53 P.S. § 2301, et seq., also known as the Intergovernmental Cooperation Act.

NOW, THEREFORE, with the foregoing background incorporated herein by reference and made a part hereof, and in consideration of the mutual promises and obligations set forth herein, and intending to be legally bound hereby, the parties agree as follows:

1. ESTABLISHMENT OF THE OAK GROVE MULTI-MUNICIPAL COMPOST PROCESSING PROGRAM

(a) The Participating Municipalities hereby establish a joint compost processing program to be known as the "Oak Grove Multi-Municipal Compost Processing Program" (hereinafter referred to as the "Compost Processing Program" or the "Program").

(b) The Program shall consist, at a minimum, of: (1) the provision of facilities for disposal of compost for the purpose of recycling; (2) operation of such compost processing facilities; (3) processing of compost and (4) sale or other disposal of the compost to third parties, or the Participating Municipalities. Additional Program services may also include, upon the determination of the Compost Processing Board: material delivery and product delivery.

(c) The Program shall be managed generally by the Compost Processing Board, as defined below. Day to day operation of the Program shall be the responsibility of the Middle Smithfield Township (the "Lead Municipality").

(d) The Program shall be located at the Leased Premises, as defined below, which shall be known as the "Oak Grove Multi-Municipal Compost Processing Facility" (hereinafter referred to as the "Compost Processing Facility" or the "Facility"). Program activities shall not begin at the Facility until it is fully permitted in accordance with all federal, state and local laws and regulations.

(e) "Compost" shall be limited to: leaves, shrubbery, brush and tree trimmings, and Christmas trees. Materials must be delivered in bulk and, to the extent practical, segregated. The Compost Processing Facility will only accept organic materials as specified above and reserves the right to reject any unacceptable materials or materials containing contaminants. The Facility shall not accept plastic bags, metal, tree stumps, construction debris or municipal waste or rubbish of any kind.

(f) Disposal of the compost at the Compost Processing Facility shall be limited to residents of, and businesses located in, the Participating Municipalities, or such municipalities that have a current service contract with the Compost Processing Board.

2. ESTABLISHMENT OF THE COMPOST PROCESSING BOARD

(a) There is hereby established a board, to be known as the "Compost Processing Board" (the "Board"), to manage generally the Compost Processing Program.

(b) Members. The Board shall consist of six (6) members

(i) Each of the Participating Municipalities shall appoint two (2) Members of the Board. Each appointee must be a resident of the appointing municipality.

(ii) If other municipalities become parties to this Agreement, then each such municipality shall have such representation on the Board as determined by an amendment of this Agreement.

(c) Voting. Each Member shall have one (1) vote. A majority of the Members shall constitute a quorum at any meeting of the Board. The Board shall act on the majority of Members present at meetings at which a quorum of Members is in attendance.

(d) Liaison. Each Member shall serve as liaison for his/her appointing Participating Municipality. The Members are responsible for keeping their respective Participating Municipalities informed of Board business so that the Members can reflect and represent the position and views of their respective Participating Municipalities.

(e) Terms.

(i) Each Member shall be appointed for a term of three (3) years with terms beginning on January 1st and expiring on December 31st.

(ii) In order to create terms that expire in alternating years, for the first term of this contract only, members terms shall end as follows:

Middle Smithfield:	One Member - December 2014
	One Member - December 2015;
Smithfield:	One Member - December 2014
	One Member - December 2015;
Lehman:	One Member - December 2014
	One Member - December 2015.

Terms shall expire every three years following expiration of the first term.

(f) Removal. Members shall serve at the pleasure of their appointing Participating Municipality and may be removed with or without cause by the appointing Municipality.

(g) Vacancies. In the event of vacancy due to removal or resignation of a Member, the appointing Participating Municipality of such Member shall, within sixty (60) days of vacancy or resignation, appoint a successor to the unexpired term of any of such Member.

(h) Alternates. Each Participating Municipality may appoint an alternate member annually to act on behalf of its regularly appointed member in cases where the regularly appointed member is unable to attend a Board meeting. The alternate may represent the municipality regarding Board business provided that the appointed member has notified the Board Chair of his/her inability to be present at a meeting.

(i) Officers and Committees. Officers of the Board shall be a Chairman, Vice-Chairman, Secretary/Treasurer (one combined office), and such other officers, as the Board may deem necessary. The Board may establish or organize itself into such committees as it sees fit to carry out its duties.

(j) Rules. The Board shall adopt and promulgate written rules and policies to govern its operation, establish procedures for the conduct of its meeting, and prescribe the duties of its members and officers.

3. DUTIES AND POWERS OF THE BOARD

(a) Subject to the provisions of this Agreement, The Board duties and powers shall consist of the following:

(i) Establishing fees for (1) disposal of compost, (2) sale of recycled compost, and (3) other Program services, including any additional terms and conditions in connection with such transactions.

(ii) Establishing regulations for the delivery, disposal, processing, distribution and sale of any compost being accepted at the Compost Processing Facility.

(iii) Determining the services to be provided by the Program beyond those established by the Agreement.

(iv) Establishing operating rules for the Compost Processing Facility, including hours of operation.

(v) Contracting with a consultant to assist in management of the overall Compost Processing Program.

(vi) To the extent not accomplished prior to Effective Date of this Agreement:

- A site analysis, determination if the candidate site meets PADEP Guideline Criteria.
- A conceptual design of the facility. Ingress, egress, compost pads, processing and curing areas.
- Identification of program participants, types and volumes of organics, equipment to be used at site for processing, material handling and distribution, security measures and stormwater controls.
- Details of operations, processing procedures, material and product volumes, monitoring procedures, record

keeping/tracking
procedures.

- Development of an Emergency Plan.
- Preparation of an application for facility development and operations.
- PADEP review and approval of the application.

(vii) Contract with other municipalities who desire to utilize the Compost Processing Program for their residents and local businesses.

(viii) Preparation of a proposed annual budget for operation of the Compost Processing Program, including capital costs.

(ix) Establishment of financial accounts in connection with the operation of Compost Processing Program.

(x) Maintain an accounting of all Program expenses, and determine additional assessment against Participating Municipalities for expenses in excess of budgeted amounts.

(b) Equipment, Supplies and Services. The Board may determine capital needs of the Program, but all procurement shall be done through the Lead Municipality. All Program personal property shall be titled in the name of the Oak Grove Multi-Municipal Compost Processing Board.

(c) Real Property. Participating Municipalities intend to enter into a Lease with PennDOT for a specific site to be utilized as the compost processing facility located at Oak Grove Road in Middle Smithfield Township (the "Leased Premises"). The Municipalities may assign the Lease to the Board, or enter into a sublease or license with the Board for use of the Lease Premises.

(d) The Board shall not employ any personnel.

(e) Conduct of Business. The Board shall establish by-laws and operating procedures that shall not be inconsistent with this Agreement. By-laws shall incorporate any and all provisions set forth in this Agreement as to the conduct of business. The Board shall operate within and abide by all applicable laws of the Commonwealth of Pennsylvania.

(f) Board Meetings. The Board shall meet monthly or at such times as the Board determines to be appropriate. Special meetings of the Board may be called at the request of members of two or more Participating Municipalities and/or by the Compost Processing Program Manager, defined below.

(g) Quorum. A quorum shall consist of a majority of the members of the Board.

(h) Annual Report. The Board shall submit an annual report of its activities to the Participating Municipalities not later than March 15th of each year for the previous year. The report shall include, but not necessarily be limited to, the following:

(i) Year-end Income and Expense Report for all accounts.

(ii) Statement of assets and liabilities.

(iii) Statement of in-kind contributions received from each Participating Municipality.

(iv) Listing of capital projects completed or in progress.

(v) General review of programming.

4. DAY TO DAY OPERATION OF THE COMPOST PROCESSING PROGRAM

(a) Day to day operation of the Compost Processing Program shall be the responsibility of the Lead Municipality. The Lead Municipality shall carry out the stated purposes of the Board, employ personnel to appropriately staff operations at the Compost Processing Facility and maintain all Program equipment and the Facility.

(b) All persons employed in the operation of the Compost Processing Program shall be employees of the Lead Municipality.

(c) The Lead Municipality shall designate one of its employees as the "Compost Processing Program Manager", who shall have the following responsibilities:

(i) Oversight of the day to day operations at the Compost Processing Program facilities, including personnel;

(ii) Provide such information as requested by the Board concerning Program operations;

(iii) Assist the Board in budget preparation and other management decisions within the scope of the Board's authority;

(iv) Attend all meetings of the Board; and

(v) Carry out other tasks as determined by the Board, with the consent of the Lead Municipality.

5. FINANCIAL

(a) Fiscal Year. The fiscal year shall be the calendar year.

(b) Municipal Contributions for Operating Costs. The Participating Municipalities shall contribute to the overall annual operating costs (as opposed to the costs of capital items such as equipment) of the Compost Processing Program, net of expected revenues, in accordance with the following formula, which is based on the relative populations of the Participating Municipalities, (as determined by the 2010 United States Census):

(i) Middle Smithfield:	47%
(ii) Smithfield:	22%
(iii) Lehman:	31%.

The Lead Municipality, however, shall receive a credit for expenses incurred in its day-to-day operation of the Program. The Participating Municipalities shall pay an estimated amount towards the costs based on the approved budget. Participating Municipalities, however, remain responsible for actual costs incurred, and shall be assessed for actual costs in excess of budget at such times as the Board shall determine, but in any event, no later than three (3) months after actual costs exceed budget amounts.

(c) Municipal Contributions for Capital Costs. Costs of capital items for the Program, such as equipment (as opposed to operational costs) shall be paid by either (i) grant monies received for such items or (ii) in accordance with Section 7, Non-Grant Asset Purchases, of this Agreement. The Participating Municipalities are not required to contribute to the costs of

capital items except as may be agreed to in accordance with Section 7, Non-Grant Asset Purchases, of this Agreement.

(d) Budget Submission. Each year the Board shall prepare and approve by majority vote a proposed annual budget. The budget shall be submitted to the Participating Municipalities for consideration and approval no later than October 1st of the year immediately preceding the fiscal year for which the budget is proposed. By November 15th, each Participating Municipality shall provide written notice to the Board and all other parties of its approval or disapproval of the proposed budget. Notice of the disapproval shall state with particularity the reasons for disapproval and identify the line items and other portions of the budget with which the Municipality disagrees. A Participating Municipality that fails to give written notice of disapproval by November 15th shall be deemed to have approved the proposed budget.

If one or more of the Participating Municipalities votes to disapprove the budget, two-thirds of the Participating Municipalities must approve the entire budget and provide the Board of written notification of their approval. If only one-third of the Participating Municipalities approves the budget, then parties shall meet to negotiate a budget. If approvals are not reached by December 31st, the budget shall be deemed to be an amount equal to the prior year's budget plus 3% increases.

(e) Payment Schedule. Each municipality shall make three (3) equal payments of their amount due. Payments shall be due on March 31st, July 31st, and November 30th of each year. Payments not made within thirty (30) days of the scheduled due date will be charged a late fee of an additional 1.5% per month.

(f) Initial Contributions. Prior to the commencement of operations at the Compost Processing Facility or the first organizational meeting of the Compost Processing Board, which ever shall occur first, the Board of Supervisors of each of the Participating Municipalities shall approve by resolution an agreed upon schedule itemizing the initial monetary or in-kind contributions each Participating Municipality is to make, or has made, to the Program. Any Participating Municipality, upon 30 days advance written notice to the other Participating Municipalities, may suspend its participation in the Program and any associated future financial obligations to the other Participating Municipalities, until such time as the Participating Municipalities have approved the schedule of initial contributions.

(g) Receipt of Funds. The Board may apply for, secure, acquire, receive, administer and dispense funds from municipal, state, federal, private or other sources.

(h) Fees. The Board may charge reasonable fees for the use of Compost Processing facilities, and the sale of ground materials. Such fees shall be accounted for in the operation of Board business.

(i) Contracts. The Chair or the Vice-Chair of the Board is authorized to sign all contracts on behalf of the Board.

(j) Audit. All financial accounting records of the Board shall be audited by an independent auditor at the close of each fiscal year. A copy of the audit report shall be provided to the Participating Municipalities.

(k) Debt. The Board shall not borrow funds without the unanimous consent of the Participating Municipalities.

6. GRANTS.

Each Participating Municipality shall take every reasonable step to obtain from federal, state and other agencies such grants and aid as may be from time to time available. If grants may be obtained for the purchase of processing equipment for dedicated use at the Compost Processing Facility, the Oak Grove Multi-Municipal Compost Processing Board shall coordinate the application and shall take title to any such equipment.

7. NON-GRANT ASSET PURCHASES.

Each Participating Municipality acknowledges and agrees that if grants are not obtained for the purchase of processing equipment for dedicated use at the Compost Processing Facility, the Participating Municipalities will issue an addendum to this agreement that outlines the specific financial terms and conditions of the purchase. Once executed, the addendum will be made part of this agreement and shall be subject to the same conditions of Program assets as outlined herein.

8. INSURANCE AND IMMUNITY

(a) Insurance, Waiver of Claims. The Participating Municipalities shall maintain adequate liability insurance against claims arising out of Program activities, including those of the Board. In the event of a dispute between the

Participating Municipalities as to the appropriate level of insurance, the level shall be determined by a consultant engaged by the Board. The Board and the Participating Municipalities shall be named as named insured on all liability insurance policies. Each Participating Municipality hereby waives any and all claims and causes of action against the Board and all other parties to this Agreement that may arise out of the activities of the Board. The Board and the Participating Municipalities shall cause any insurance policy providing liability coverage against claims arising out of their activities to contain a waiver of subrogation clause or endorsement under which the insurance company waives its right of subrogation against each party to this Agreement as to any and all causes of action or claims that may arise out of the activities hereunder.

(b) Immunity. The services performed and the expenditures incurred under this Agreement shall be deemed for public and governmental purposes, and all immunities from liability enjoyed by each Participating Municipality shall extend to its participation in services outside its boundaries. Similarly, as a matter reciprocal to the responsibilities, duties, authority and jurisdiction delegated under this Agreement, the Board and its officers shall have the same immunities from liability, the same limitations on damages, and the same rights, protections, and benefits as the Participating Municipalities have under all applicable law.

(c) Proportional Liability. For purposes of liability in actions arising out of program operation, all participating parties shall be proportionately liable for actions against any municipality for program operations lawfully provided. The proportion of liability shall be the same as provided in Subsection 5(b), Municipal Contributions for Operating Costs, of this Agreement. This provision does not and should not be construed as expanding the liability of the Board or the Participating Municipalities. All immunities, limitations on liability and damages, protections, and defenses under the law of the United States and of the Commonwealth of Pennsylvania shall apply and are expressly preserved.

9. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of ten (10) year commencing with the Effective Date hereof. This Agreement shall be automatically renewed for an additional term of two (2) years at the conclusion of the initial term and each renewal term thereafter unless, at least ninety (90) days prior

to the beginning of the renewal term, the Municipality which does not desire to renew the Agreement gives written notice of such refusal to renew the Agreement to the Township in writing.

10. PARTICIPATION OF OTHER MUNICIPALITIES.

Additional Municipalities may become a party to this Agreement only upon an addendum executed by all of the then Participating Municipalities. Any joining Municipality will be expected to make an initial contribution so as to compensate the prior Participating Municipalities for their prior contributions.

11. WITHDRAWAL.

(a) Any municipality desiring to withdraw from the Program has to provide written notice of its intent to do so to the Board and all other municipalities at least one (1) year prior to the effective date of such withdrawal. A municipality may only withdraw as of the end of a calendar year. In the event of early withdraw (ie, before the end of the term of this Agreement), the withdrawing party shall forfeit any interest in the assets of the Program. In addition, any insurance and indemnification obligation shall survive withdraw for any liability which accrues prior to the date of permitted withdrawal.

(b) Any municipality desiring to withdraw acknowledges that any funds expended to the point of separation that have been expended for the purposes of matching grant funds and or operation costs are not refundable.

12. TERMINATION.

Upon termination of the Agreement, the then remaining parties to the Agreement shall decide how to divide Program assets including equipment, after providing for a reasonable reserve for Program expenses. In the event the disposition of property cannot be agreed upon, the remaining parties shall proceed as follows (and in this order of precedence):

(i) First, the remaining parties shall first make the necessary arrangements to pay all expenses, and create any necessary reserve for future expected expenses;

(ii) Second, in the event that there has been a non-grant asset purchase pursuant to Section 7 of this

Agreement, such asset shall be distributed to the remaining parties in accordance with the addendum prepared at the time of the purchase of the asset;

(iii) Third, if there are any remaining assets, they shall be liquidated, and the proceeds distributed to the remaining parties. The remaining parties shall first receive back their initial contributions under Subsection 5(f), Initial Contributions, of this Agreement, to the extent funds are available, and if there are any remaining funds thereafter, they shall be distributed to the remaining parties in proportion with their contribution obligations for operational expenses as provided in Subsection 5(b), Municipal Contributions for Operating Costs, of this Agreement.

Notwithstanding the foregoing paragraph of this Section 12, in the event any asset is purchased with a State or Federal grant, disposition of such asset shall be done in accordance with any requirements of the applicable State or Federal grant.

13. AMENDMENT.

This Agreement may be amended only by written instrument signed by Participating Municipalities.

14. INTERPRETATION.

This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

15. SEVERABILITY.

The provisions of this Agreement are severable, and if any section, sentence, clause, part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Agreement. It is hereby declared to be the intent of the governing bodies of each Participating Municipality that this Agreement would have been entered into if such illegal, invalid or unconstitutional section, sentence, clause, part or provisions had not been included herein.

16. ENACTMENT OF ORDINANCE.

The governing body of each Municipality agrees to enact an ordinance within ninety (90) days from the date hereof pursuant to and in accordance with the Pennsylvania Intergovernmental

Cooperation Act for the purpose of authorizing and effectuating this Agreement.

17. CONSTRUCTION.

When the tense so requires, word of any gender used in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, and vice versa.

18. COUNTERPARTS.

This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one in the same instrument.

19. FURTHER ACTIONS.

The Participating Municipalities agree to take all action necessary to carry out the provisions of this Agreement.

20. EFFECTIVE DATE.

This Agreement shall only be effective upon the last Participating Municipality to adopt an Ordinance authorizing the agreement. The effective date (the "Effective Date") of this Agreement shall be the date of enactment of such last authorizing Ordinance.

21. JOINT MUNICIPAL AUTHORITY.

The Participating Municipalities agree that in the future they may incorporate a joint municipal authority to operate the Compost Processing Program. The relationship between the parties would remain the same except the Compost Processing Board would be replaced by the municipal authority. All responsibilities of the Compost Processing Board would be transferred to the municipal authority. The composition of the board of the municipal authority shall be determined in the same manner as the Compost Processing Board. The terms of the board members of the municipal authority, and their appointment and removal, shall be modified so as to be consistent with the Pennsylvania Municipalities Authorities Act.

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IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals the day and year first written above.

Attest

Michelle Y. Clewell

TOWNSHIP OF MIDDLE SMITHFIELD

By: Michael J. Dy
(Vice) Chair
Board of Supervisors

Attest

Brian J. Bennett

TOWNSHIP OF SMITHFIELD

By: Brian J. Bennett
(Vice) Chair
Board of Supervisors

Attest

Michelle Y. Clewell

TOWNSHIP OF LEHMAN

By: John P. Surich
(Vice) Chair
Board of Supervisors