

Sample Food Recovery Agreement Silicon Valley Food Recovery Council

Based on the CalRecycle Model Contract

DATE



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We strongly encourage language ensuring that if the main recovery organization listed in this agreement cannot pick up the excess, another organization may be contacted and prevent food from being wasted. We also strongly suggest that the types of food rejected be recorded and communicated to Santa Clara County, so that solutions can be developed to recover more food.

Food Recovery Agreement
between the
Food Recovery Organization/Food Recovery Service (FRO/FRS)
and
the Commercial Edible Food Generator

This Agreement (“Agreement”) is dated _____, 20__ between the Parties to this Agreement, _____ (“FRO/FRS”) and, _____ (“Commercial Edible Food Generator”).

The Commercial Edible Food Generator wishes to provide its Edible Food that would otherwise be disposed to FRO/FRS pursuant to the terms of this Agreement.

SECTION 1: FOOD SAFETY AND ALLOWABLE FOODS

1.1 FOOD SAFETY PROTOCOLS AND ALLOWABLE FOODS

Both FRO/FRS and Commercial Edible Food Generator will maintain compliance with all federal, State, and local regulations for safe food handling and food safety record-keeping requirements prior to and during transportation, storage, and handling. When applicable, Commercial Edible Food Generator shall at all times maintain all licenses and permits required by the State of California and any other governmental authorities, including, without limitation, local and municipal governmental authorities, to operate a food establishment in accordance with the services provided by Commercial Edible Food Generator.

In the event of a food recall, Commercial Edible Food Generator will notify FRO/FRS of the specifics of the recall. All food advisories, warnings, and recalls, including voluntary recalls, must be handled in compliance with all issued local, State, and federal instructions.

Cut at paste our protocols in here, which include details of allowable foods, or use as an attachment, Attachment B.

1.2 FOOD LABELING

Good food labeling is an important part of food safety. All prepared food items intended for donation should be labeled with the date of preparation, so that safe food choices can be made in the handling and distribution of that food.

1.3 CONDITIONS FOR REFUSAL

FRO/FRS reserves the right to refuse food at any time if it meets the conditions for refusal. Conditions for refusal of food include but are not limited to food safety concerns,

improper storage, provision of items not agreed upon for Food Recovery, lack of transportation capacity or storage space, and/or food not currently needed by FRO/FRS. If FRO/FRS is not able to pick up available donation, then another FRO/FRS may collect donatable food.

Commercial Edible Food Generator agrees to provide food that meets all food safety standards in accordance with Section 1.1 of this Agreement and not knowingly or intentionally provide foods that do not meet these standards.

In the case of refusal or rejection, FRO/FRS must inform Commercial Edible Food Generator of the rejection and reason as soon as possible. Any rejected Edible Food that cannot be redirected to another FRO/FRS with the approval and consent of the alternate FRO/FRS will be treated as organic waste and shall not be disposed in a landfill, regardless of which Party is in possession of the food.

SECTION 2: TRANSPORTATION AND STORAGE

2.1 TRANSPORTATION

Option 1a: Under this Agreement, FRO/FRS agrees to collect Edible Food that would otherwise be disposed from Commercial Edible Food Generator's site and transport it to FRO/FRS address provided in Attachment C.

Option 1b: Commercial Edible Food Generator agrees to self-haul their Edible Food that would otherwise be disposed to the FRO/FRS address provided in Attachment C. If Commercial Edible Food Generator self-hauls food to FRO/FRS outside the delivery or drop off window specified in this Agreement, FRO/FRS may reject the food. In addition, self-hauling food outside the delivery or drop off windows specified in this Agreement may result in FRO/FRS's immediate termination of the Agreement.

Provisions related to the staging, pick up, transport, and delivery of collected and donated food are listed and described in Attachment C.

2.2 MISSED OR DELAYED PICK-UPS

In the event of a delayed collection or delivery outside of the drop off window, the transporting Party will contact the receiving Party as soon as possible to notify them of the delay. If the delay cannot be accommodated (for example, delay results in a delivery after hours), Commercial Edible Food Generator will retain possession of the food and maintain safe storage and handling of the food until the delivery/collection can be rescheduled, or find alternative solutions if the food cannot be delivered in a safe or timely manner. Examples of alternative solutions may include redirecting Edible Food to another FRO/FRS, with the approval and consent of the alternate FRO/FRS; lawful use as animal feed; organic waste recovery or recycling such as composting or anaerobic digestion; or alternative diversion strategy that does not result in landfill disposal.

In the event that Commercial Edible Food Generator does not have food available for the scheduled pick-up day specified Attachment C, Commercial Edible Food Generator will notify FRO/FRS as soon as possible. In the event that Commercial Edible Food Generator does not contact FRO/FRS in advance, FRO/FRS may charge Commercial Edible Food Generator for any costs incurred.

Both Parties will notify each other of closures and holidays that may affect transportation at least two weeks prior to the closure.

FRO/FRS retains the right to reject the food in the event of a delayed delivery (see Section 1.3 of this Agreement).

Multiple delays or missed pick-ups without notification from the transporting Party to the receiving Party may be grounds for termination of this Agreement.

2.3 DONATION DUMPING

Commercial Edible Food Generator will not knowingly provide unusable or unsuitable food, force Food Recovery after capacity has been reached, or intentionally deliver food outside of the specified collection/Food Recovery windows to the FRO/FRS (“donation dumping”). FRO/FRS will be compensated for costs incurred as a result of the donation dumping and Commercial Edible Food Generator may be reported to the local jurisdiction.

SECTION 3: EQUIPMENT PROTOCOLS

To assist in the execution of this Agreement, FRO/FRS/Commercial Edible Food Generator agrees to provide the FRO/FRS/Commercial Edible Food Generator with the equipment listed in Attachment D.

All equipment must be used and maintained as required by FRO/FRS/Commercial Edible Food Generator and the equipment manufacturer guidelines. FRO/FRS/Commercial Edible Food Generator will read all product manuals prior to use, and maintain equipment accordingly. All equipment must remain in FRO/FRS/Commercial Edible Food Generator’s possession until returned to FRO/FRS/Commercial Edible Food Generator. Equipment may not be loaned, stored at a different location, or transferred without prior approval from FRO/FRS/Commercial Edible Food Generator.

Guidelines for using and storing equipment are included in Attachment D to this Agreement.

All equipment provided under this Agreement must be cleaned, sanitized and returned in good, working condition. Loaned equipment will be returned to the FRO/FRS/ Commercial Edible Food Generator by <equipment return protocol here, such as duration of loan, time windows for equipment drop off, etc.>.

Food-related and utensil-related equipment shall meet all federal, State, and local requirements, in accordance with Section 2 of this Agreement.

SECTION 4: DOCUMENTATION/ RECORDKEEPING

Option 1: Documentation required by Commercial Edible Food Generator

FRO/FRS will provide the following information to Commercial Edible Food Generator about the food that was recovered from Commercial Edible Food Generator: types of food recovered (perishable/nonperishable), weight in pounds, date, signature/confirmation.

The requirements outlined in this Section shall not take the place of any recordkeeping and reporting obligations required by local, State, and federal regulations.

Documentation shall be compiled electronically, including reports or data compiled through the use of cloud-based tracking, use of bar or QR codes, or other data collection platforms.

This information will be provided to Commercial Edible Food Generator on a <frequency> basis on <day>, and transmitted to <contact> via <US mail, email, etc.>. Guidance: Note that SB 1383 regulations (14 CCR Sections 18991.4 and 18991.5) specify that Commercial Edible Food Generators and FRO/FRSs shall maintain records of the quantity of Edible Food (in pounds) recovered per month. Consider this when selecting measurement units and documentation frequency.

FRO/FRS is required to retain all records for a minimum period of ___ years.

FRO/FRS agrees to cooperate with Commercial Edible Food Generator or designee for reporting to local, State, and federal agencies, as applicable.

Option 2: Documentation required by the FRO/FRS (this is optional)

Commercial Edible Food Generator will provide the following information to the FRO/FRS for food provided by Commercial Edible Food Generator: <donation type and description, weight (in pounds), types of food that were recovered, established frequency that the food is recovered, location, date, signature/confirmation.

The requirements outlined in this Section shall not take the place of any recordkeeping and reporting obligations required by local, State, and federal regulations.

Documentation shall be compiled via hard copy or electronically, including reports or data compiled through the use of cloud-based tracking, use of bar or QR codes, or other data collection platforms. This information will be provided to FRO/FRS on a monthly basis. Note that SB 1383 regulations (14 CCR Sections 18991.4 and 18991.5) specify that Commercial Edible Food Generators and FRO/FRSs shall maintain records of the quantity of Edible Food (in pounds) recovered per month. Commercial Edible Food Generator is required to retain all records for a minimum period of 2 years.

Commercial Edible Food Generator agrees to cooperate with FRO/FRS or designee, for reporting to local, State, and federal agencies, as applicable.

SECTION 5: COMMERCIAL EDIBLE FOOD GENERATOR SERVICE FEES OR CONTRIBUTIONS

Option 1: Fee for service

In fulfillment of the services provided in this Agreement, Commercial Edible Food Generator agrees to pay a fee for service to FRO/FRS. The fee structure is as follows:

Option 1: Commercial Edible Food Generator will pay a flat rate of \$____ per month or other frequency, for __ months or other frequency.

At the end of each month, FRO/FRS will prepare a statement that will be sent to Commercial Edible Food Generator's designated billing contact for payment.

Commercial Edible Food Generator's designated billing contact is: <name, contact information>

Commercial Edible Food Generator shall submit payment, including a copy of the monthly statement, to the FRO/FRS by <the due date>.

Delayed or late payments may be grounds for termination of this Agreement.

Option 2: Financial Contribution

In fulfillment of the services provided in this Agreement, there is no fee for service and the foods are recovered by FRO/FRS free of charge. However, Commercial Edible Food Generator will make a financial contribution to FRO/FRS in the amount of <financial amount>, on a < monthly basis, annual basis, etc.>.

Upon receipt of the financial donation, FRO/FRS will prepare <specify necessary documentation> and submit to Commercial Edible Food Generator <and other relevant parties/agencies> within __ days.

SECTION 6: TERMS AND CONDITIONS

- A. This Agreement contains the entire Agreement between the Parties to this Agreement with respect to the subject matter herein and supersedes all prior understandings, agreements, representations and warranties, if any, whether oral or written, expressed, or implied, with respect to said subject matter.
- B. This Agreement reflects the intent and understanding of the Parties. Any amendment or modification to this Agreement must be in writing, with approval by both Parties. Minor changes to this Agreement, including the attachments, may be re-

vised in writing or email, without having to revise the full Agreement, upon agreement by both Parties.

- C. Definitions applicable to this Agreement are attached hereto as Attachment E.
- D. Both FRO/FRS and Commercial Edible Food Generator agree to appoint at least one individual to act as a contact person for notices and other communications, as well as reporting and receipting of activities conducted under this Agreement. The initial contact person(s) are identified in the Assignments in Attachment A. A Party to this Agreement may change its contact person(s) at any time by written notice transmitted electronically or via U.S. Mail to other Party.
- E. This Agreement shall become effective as of the Effective Date when it has been executed by all of the Parties to this Agreement.

Option 1: Effective until terminated

This Agreement shall continue in full force and effect until terminated by either Party. Either Party may terminate this Agreement, with or without cause, upon written notice to the other Party with 30-day notice to the other Party.

Option 2: Extended with fulfillment of terms and conditions

This Agreement shall continue upon fulfillment of certain terms or conditions <specify terms and conditions>. Upon fulfillment, the Agreement term can be extended for/to <term or date specified>.

Option 3: Automatic renewal with notice of termination This Agreement will automatically renew each <term> for an additional <term> unless either party notifies the other in writing, no later than <notice period> before the end of the current term, of its decision not to renew.

Option 4: Defined term

This Agreement is effective for a term of <term> and will expire on <date>. Any renewal or extension will require a new Agreement between the Parties.

F.

In instances where any of the terms of this Agreement are violated by either Party, this Agreement may be terminated. The Parties have the right to terminate this Agreement at any time for non-performance, as defined by the Parties and listed below.

<Specify non-performance under the Agreement>

In the event of non-performance or substandard performance under the terms of this Agreement, the violating Party will cooperate with non-violating Party in addressing the problem. The non-violating Party may take such actions as it consid-

ers appropriate to cure or remedy the issue, including, without limitation, increasing site visits/ride-along, monitoring, additional training, or other support to the violating Party, establishing a formal corrective action plan, or terminating the Agreement immediately.

FRO/FRS may charge a fee to Commercial Edible Food Generator to cover expenses of missed or delayed pick-ups, including finding alternative solutions for unsuitable or unusable donations in the event that Commercial Edible Food Generator delivers such material. This fee will consist of the actual expenses incurred in the disposal of the unsuitable or unusable items, plus an additional fee of \$__.

- G. If, as a result of a case of force majeure, either Party was unable to fulfill its obligations under this Agreement, the execution of it would be suspended during the duration of this force majeure. Each Party shall immediately notify the other Party of any such event of force majeure. In the event that the event of force majeure lasts for a duration greater than one month, the other Party may terminate this Agreement as of right and with immediate effect.
- H. Information gained under this Agreement shall not be sold or shared in any manner by either Party without express approval. Neither Party shall use the name, nor any trademark or reference related to such in connection with the recovered food, use or disposal of the foods, without express approval.
- I. This Agreement shall be governed by and construed in accordance with the laws of the State of California and applicable federal law, including, without limitation, the Bill Emerson Good Samaritan Food Donation Act and the California Good Samaritan Food Donation Act). Both Commercial Edible Food Generator and FRO/FRS are familiar with the Good Samaritan laws referenced in this subsection that limit liability to gross negligence and intentional misconduct.
- J. Each of the Parties shall, at the signing of this Agreement, provide third party liability insurance covering all of its activities and the harmful consequences of its activity.

The undersigned hereby agree to the terms of this Agreement:

Signed: _____ Date: _____

Name of Signatory
Title of Signatory
FRO/FRS

Signed: _____ Date: _____

Name of Signatory
Title of Signatory
Commercial Edible Food Generator

**ATTACHMENT A:
CONTACTS FOR AGREEMENT**

Primary Contact for FRO/FRS:

<Name>

<Title>

<Address>

<Phone>

<Email address>

Primary Contact for Commercial Edible Food Generator:

<Generator Type: Tier One, Tier Two>

<Name>

<Title>

<Address>

<Phone>

<Email address>

**ATTACHMENT B:
ACCEPTABLE FOODS AND PROTOCOLS FOR SAFE FOOD DONATION**

FOOD SAFETY

Bacteria that cause food poisoning grow and multiply to dangerous levels when allowed enough time in the temperature danger zone. The temperature danger zone is above 41°F and below 135°F. Potentially Hazardous Foods are those that require time or temperature control to limit the growth of harmful, disease-causing and toxin-forming bacteria. These include foods such as meat, poultry, seafood, raw eggs, cooked vegetables, cooked meats and entrees, and sliced fruit. Below are details about the types of foods we are willing to accept, and those we are not.

The federal Bill Emerson Good Samaritan Food Donation Act protects food donors from civil and criminal liability if donated product later causes harm to a recipient. This law sets a floor of "gross negligence" or intentional misconduct for donors, meaning that as long as the food is donated in good faith with the understanding that it is safe for consumption, the liability of the donor is protected.

Prepared Food
<ul style="list-style-type: none">• All food shall be pure and free from adulteration, contamination, and spoilage and shall otherwise be fully fit for human consumption.
<ul style="list-style-type: none">• Food shall be limited to foods or food portions which have not been previously served to a consumer.
<ul style="list-style-type: none">• Food containers must be clearly labeled with date of preparation, date of preparation must be communicated to the recipient so that the recipient may either write down a date or serve immediately, or an online food tracking system that includes a date stamp for the transaction must be used.
<ul style="list-style-type: none">• Food must be stored in food-grade packaging.
<ul style="list-style-type: none">• Refrigerated product must be stored at 41° F or less while awaiting pickup, or pick up must be arranged within 2 hours of time when food was kept at appropriate temperature.
<ul style="list-style-type: none">• Hot product must be stored at 135 F or higher while awaiting pickup. If food is not stored in a warming unit it must be cooled to 70F within 2 hours after removal from the warmer, then to 41F within 4 hours. Food that is not maintained at 135 may be served within 4 hours after removal from active hot holding. Food remaining after the four hour period must be discarded.

**ATTACHMENT B:
ACCEPTABLE FOODS AND PROTOCOLS FOR SAFE FOOD DONATION**

Prepared Food

- Hot product must be left in the warmer for no longer than 4 hours.
- Someone at pick-up location must be able to either verbally or in written form account for the state of the food, and be able to precisely delineate time/temperature history. This may happen at the time of pick up, or it could be delineated as part of a pre-arranged contract between parties verifying the safety of the food before time of pick up.
- If food is to be cooled before pick-up, a rapid form of cooling must be deployed: Food should be brought down from 165F to 70F within 2 hours, and once at 70F or below it can be placed in the walk-in in a form for rapid cooling (no lids, food is spread out for rapid cooling. This gives 4 hours to bring it down to 41F or below).

Meat, Poultry, Fish

Acceptable Conditions

- Product must be securely sealed in its original packaging, be dated appropriately, and have labeling intact, where appropriate
- Product must be frozen on or before the date on the package

Unacceptable Conditions

- Product held above 41° F for more than two hours
- Product staged in non-food grade packaging
- Opened or damaged packaging resulting in leaking and/or the loss of the sanitary barrier

**ATTACHMENT B:
ACCEPTABLE FOODS AND PROTOCOLS FOR SAFE FOOD DONATION**

Dairy & Eggs

Acceptable Conditions

- Product must be securely sealed in its original packaging, dated appropriately, with labeling intact
- Product must be donated no later than 2 days past the date on the package
- Refrigerated product must be stored at 41° F or less while awaiting pickup
- Frozen product must remain frozen while awaiting pickup

Unacceptable Conditions

- Product held above 41° F for more than two hours
- Product staged in non-food grade packaging
- Opened or damaged packaging resulting in leaking and/or the loss of the sanitary barrier
- Product with bad odor, discoloration, and/or bulging packaging

Produce

Acceptable Conditions

- Product must be stored in a cool, dry, and clean area while awaiting pickup
- Perishable product, such as cut produce, must be stored at 41° F or less while awaiting pickup

Unacceptable Conditions

- Highly perishable product held above 41° F for more than two hours
- Product staged in non-food grade packaging

**ATTACHMENT B:
ACCEPTABLE FOODS AND PROTOCOLS FOR SAFE FOOD DONATION**

Produce

- Opened or damaged packaged produce resulting in leaking and/or the loss of the sanitary barrier Significantly rotten, moldy, damaged, decayed, or overripe product

Deli Foods

Acceptable Conditions

- Product must be securely sealed in its original packaging
- Food must be clearly labeled with date of preparation and have ingredient labeling intact, where appropriate
- Refrigerated product must be stored at 41° F or less while awaiting pickup and donated no later than the date on the package

Unacceptable Conditions

- Product held above 41° F for more than two hours
- Product staged in non-food grade packaging
- Opened or damaged packaging resulting in leaking and/or the loss of the sanitary barrier
- Product with mold, bad odor, discoloration, and/or bulging packaging

Bakery

Acceptable Conditions

**ATTACHMENT B:
ACCEPTABLE FOODS AND PROTOCOLS FOR SAFE FOOD DONATION**

Bakery

- If product is pre-packaged, must be securely sealed in its original packaging, be dated appropriately, and have labeling intact
- Product must be donated no later than 2 days past the date on the package
- If product is not pre-packaged, date of preparation and name of item must be included, as well as food-safe packaging
- Room temperature product must be stored in a cool, dry, and clean area while awaiting pickup
- Refrigerated product must be stored at 41° F or less while awaiting pickup

Unacceptable Conditions

- Highly perishable product held above 41° F for more than two hours
- Product staged in non-food grade packaging
- Opened or damaged packaging resulting in leaking and/or the loss of the sanitary barrier
- Product missing ingredient label and/or a date on the package
- Product with mold, bad odor, or discoloration

Dry Grocery

Acceptable Conditions

- Product must be securely sealed in its original packaging, dated appropriately, with labeling intact
- Product with compromised external packaging may only be donated if internal packaging is uncompromised
- Product must be donated no later than 30 days past the date on the package

**ATTACHMENT B:
ACCEPTABLE FOODS AND PROTOCOLS FOR SAFE FOOD DONATION**

Dry Grocery

- Product must be stored in a cool, dry, and clean area while awaiting pickup

Unacceptable Conditions

- Product staged in non-food grade packaging
- Opened or damaged packaging resulting in leaking and/or the loss of the sanitary barrier
- Product missing ingredient label and/or a date on the package
- Broken or chipped glass, severely dented cans
- Medications, nutritional supplements, and alcohol

Prepared by Joint Venture Silicon Valley for the Silicon Valley Food Recovery Council, December 2020, <https://jointventure.org/initiatives/silicon-valley-food-recovery>.

ATTACHMENT C: TRANSPORTATION AND STORAGE

<Commercial Edible Food Generator/FRO/FRS/Third Party> will provide suitable transportation to pick and up and deliver food from <Commercial Edible Food Generator(s)>.

Pick Up Address: <office, address, main contact name, email, phone number>	Delivery Address: <office, address, main contact name, email, phone number>
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Collection or Self-haul Delivery Frequency:

Collection or Self-haul Delivery Day(s)	Time of Collection or Self-haul Delivery	Location of Collection or Drop off Location of Self-hauled Deliveries
Collection will occur <frequency> on <day(s)> Self-hauled deliveries will occur <frequency> on <day(s)>	Collection will occur between <time window> Self-hauled deliveries will occur between <time window>.	Driver will collect <food types> at <designated location(s)>. Driver will deliver <food types> to <designated location(s)>.

Special Instructions:

- This section may also include additional Covid-19 related protocols, and may include temporary guidelines during this unique time.
- Driver will check in at <office, address> with <name of main contact>.
- Driver agrees to wear easily identifiable clothing and/or identification during the pickup.
- FRO/FRS and Commercial Edible Food Generator agree to maintain proper food safety, temperature, and storage conditions to maintain integrity of the food before and during the collection/delivery.
- Commercial Edible Food Generator agrees to compile donation(s) at <designated collection location(s)>
- The driver shall collect food from <designated collection location(s)>.
- Driver shall park at <insert location> and shall enter the premises through <insert entry instructions, if applicable>. If Driver must wait longer than <time frame> for assistance or does not receive assistance, Driver may depart and reschedule the collection.
- Upon arrival, the Commercial Edible Food Generator or FRO/FRS may inspect the food, including taking temperature. Any product that does not meet the ac-

**ATTACHMENT C:
TRANSPORTATION AND STORAGE**

ceptable temperatures or other food safety standards may be rejected in accordance with Section 1.

- Prior to pick up/delivery, Commercial Edible Food Generator shall inspect the donation and confirm the integrity of packaging and labeling; confirm it is an acceptable food item pursuant to this Agreement; and, ensure that the donation meets all food quality and safety standards set forth in this Agreement and applicable law.

- Prior to distribution to the community, FRO/FRS will inspect all donated product to ensure it meets packaging, labeling, quality, and safety standards set forth in this Agreement and applicable law.

ATTACHMENT D: EQUIPMENT USE AND STORAGE

Equipment List:

<FRO/FRS/Commercial Edible Food Generator> agrees to provide the <FRO/FRS/Commercial Edible Food Generator> with the following equipment:

- <Insert list of specific equipment>

Guidelines for using and storing equipment are described as follows:

1. Store all equipment in an indoor, clean location, away from pests, trash, or any other potential source of contamination.
2. Immediately store any food storage containers and equipment used for Food Recovery when not in use to avoid contamination. Do not place containers on the ground, take them into toilet facilities, or store them in a manner that may lead to contamination.
3. Document the cleaning of equipment with the appropriate documentation.

Cleaning and maintenance procedures for Food Recovery equipment:

1. Trained workers must inspect all equipment prior to each use to ensure that it is still functioning properly and has been cleaned and sanitized to prevent contamination.
2. Containers, coolers, and other equipment used for Food Recovery must be washed, rinsed, and sanitized as needed before and after each use.
3. For sanitization, use approved chemical sanitizers and concentrations according to label instructions for “sanitizing,” for example:
 - a. Chlorine (bleach): 100 parts per million with contact time of 30 seconds.
 - b. Quaternary ammonium: 200 parts per million with contact time of 1 minute.
4. Use sanitizer test strips to ensure proper concentration levels.
5. After equipment use and cleaning, immediately store containers in a way that avoids contamination and maintains cleanliness as described in subsection A above.