Food Recovery Agreement
between the
Food Recovery Organization/Food Recovery Service
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”).

**Background.** Both Parties wish to engage in this Agreement to reduce the amount of Edible Food going to landfills to be in line with Senate Bill 1383 local ordinances implementing SB 1383. Generator wishes to provide its Edible Food that would otherwise be disposed of to the named FRO/FRS according to the terms and conditions outlined in this Agreement. Terms in this Agreement shall have the meaning set forth in Chapter 4.106 of the San Mateo County Code of Ordinances unless otherwise provided herein.

## 1. Foods Acceptable and/or Preferred And Foods Not Accepted for Food Recovery

Foods accepted and/or preferred and foods not accepted for Food Recovery under this Agreement are listed and described in Attachment B. All food collected/delivered under this agreement shall be considered donated.

## 2. 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.

## 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 collection/delivery schedule specified in attachment C to the FRO/FRS (“donation dumping”) unless the FRO/FRS agrees to accept this food. 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 County of San Mateo Office of Sustainability if donation dumping is suspected.

Commercial Edible Food Generator will provide adequate advanced notice for unusually large or unique surplus food recovery requests of the FRO/FRS.

## 4. Food Safety Requirements

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 recordkeeping requirements prior to and during transportation, storage, and handling. In the event of a food recall, Commercial Edible Food Generator will notify FRO/FRS of the specifics of the recall.

## 5. Transportation And Storage

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

## 6. 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 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.

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.

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

## 7. Record Keeping and Reporting

FRO/FRS will report the annual amount of Edible Food recovered from Commercial Edible Food Generator via hard copy or email annually. FRO/FRS will also include information on the tax benefits available to those who donate edible food to non-profits. This requirement shall not take the place of any recordkeeping and reporting obligations required by local, State, and federal regulations.

## 8. Financial Contributions

In fulfillment of the services provided in this Agreement, Commercial Edible Food Generator agrees to provide financial contributions as outlined in Attachment D.

**9. Terms and Conditions**

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.

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

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.

This Agreement shall become effective as of the Effective Date when it has been executed by all of the Parties to this Agreement. 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.

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 $\_\_.

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.

Information gained under this Agreement shall not be sold or shared in any manner, with the exception of mandated reporting under Federal, State, and Local law, 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.

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.

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

Guidance: The best person to list as "primary contact" is the person who will interact most regularly with donations and collections. A contact for the contract/legal can also be listed on this page, but a day-to-day, on the ground contact should be named as well.

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>

Guidance: Attachment B can be used in multiple formats, such as the list and/or table formats presented in Option 1 and Option 2, respectively. Use of the Attachment can also incorporate other items such as examples, labeling requirements, and/or packaging requirements.

Option 1: List

**Acceptable Foods/Goods:**

1. Non-Perishable Foods
	1. Shelf Stable Packaged Foods (e.g., canned, boxed or packaged foods)
2. Perishable Foods
	1. Dry Foods (e.g., bread, produce)
	2. Refrigerated Foods (e.g., produce, dairy, juice, meat)
	3. Frozen Foods (e.g., meat, bread)
3. Prepared Foods
	1. Hot Prepared Foods
	2. Cold Prepared Foods
	3. Frozen Prepared Foods
	4. Baked Goods
	5. Edible Trimmings from Preparation Process (e.g., edible vegetable trimmings)

**Preferred Foods/Goods**

1. <Add list of Preferred Foods for FRO/FRS >

**Unacceptable Foods/Goods:**

1. Foods (e.g., sodas, alcohol, candy, energy drinks, vitamins, diet supplements)
2. Food Conditions (e.g., unsafe foods, previously opened Shelf Stable foods, items previously thawed)
3. Conditional Acceptance (e.g., check first if donating large sized or bulky items)

**Packaging and Labeling Requirements**

It is agreed between the Parties that food donations, according to their type, must meet specific packaging and labeling criteria, as listed below. All labels must be legible and intact.

1. Non-Perishable Foods:
	1. Non-Perishable foods must be in unopened packaging that maintains the container integrity with no leaks, cracks, missing or incomplete labels, or other indicators that the contents have been compromised.
	2. Labels must be labeled with the following: Common name of the product; and place of business of the manufacturer, packer, or distributor; net quantity of the contents; ingredients listed in order of prominence; allergen disclaimer; and, code date. Shelf stable and packaged foods should have all original and legible labels from the manufacturer.
2. Perishable Foods:
	1. Perishable foods, excluding whole/unpackaged produce, must be in their original, sealed packaging to maintain the integrity of the contents; and shall be stored in temperature-controlled packaging, including a time/temperature log if applicable.
	2. Labels must be labeled with the following: Common name of the product; and place of business of the manufacturer, packer, or distributor; net quantity of the contents; ingredients listed in order of prominence; allergen disclaimer; code date
3. Prepared Foods:
	1. Prepared Foods must be contained in clean, sealable, and food safe containers; packaged separately to avoid cross contamination; and shall be stored in temperature-controlled packaging and include a time/temperature log, if applicable.
	2. Labels must be labeled with the following: The name and location of donor; production and/or recommended discard date; allergen disclaimer.

Option 2: Table

Acceptable Food Types

| Acceptable Food Types | Non-Perishable | Perishable | Prepared |
| --- | --- | --- | --- |
| Food Type | Shelf Stable packaged foods  | Dry foods, refrigerated foods, frozen foods  | Hot Prepared Foods, cold Prepared Foods, frozen Prepared Foods, baked goods, edible trimmings from preparation process |
| Original Sources of Food Donations | National and local donors, national and local vendors, retail store donations, reclaim and food drives  | National and local donors, national and local vendors, retail store donations, reclaim and food drives  | Hotels, Restaurants, institutes, food service facilities, bakeries  |
| Examples of Food Items | Canned, boxed or packaged foods | Bread, produce, meat, bread, dairy, juice,  | Prepared meat, poultry entrees, pasta, pizza, vegetables, chilled foods, etc.  |
| Packaging Requirements | Non-Perishable foods must be in unopened packaging that maintains the container integrity with no leaks, cracks, missing or incomplete labels, or other indicators that the contents have been compromised. | Perishable foods, excluding whole/unpackaged produce, must be in their original, sealed packaging to maintain the integrity of the contents; and shall be stored in temperature-controlled packaging, including a time/temperature log if applicable.  | Prepared Foods must be contained in clean, sealable, and food safe containers; packaged separately to avoid cross contamination; and shall be stored in temperature-controlled packaging and include a time/temperature log, if applicable. |
| Label Requirements | Common name of the product; and place of business of the manufacturer, packer, or distributor; net quantity of the contents; ingredients listed in order of prominence; allergen disclaimer; and, code date. Shelf stable and packaged foods should have all original and legible labels from the manufacturer. | Common name of the product; and place of business of the manufacturer, packer, or distributor; net quantity of the contents; ingredients listed in order of prominence; allergen disclaimer; code date | The name and location of donor; production and/or recommended discard date; allergen disclaimer. |

|  |  |  |  |
| --- | --- | --- | --- |
| Unacceptable Foods/Goods | Foods | Food Conditions | Conditional Acceptance |
| Fill in descriptions of specific food types/ conditions for refusal. |  |  |  |
|  |  |  |  |

**Unacceptable Foods/Goods**

**Preferred Foods/Goods**

1. <Add list of Preferred Foods for FRO/FRS

|  |  |
| --- | --- |
| **Pick Up Address:**<office, address, main contact name, email, phone number> | **Delivery Address:**<office, address, main contact name, email, phone number |

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:

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 scan out or remove edible food from its inventory system, if applicable, and stage Edible Food in food grade containers in accessible food safe areas before the pick window begins.

Upon arrival, driver shall park at <insert location> and shall enter the premises through <insert entry instructions, if applicable>. Driver will check in at <office, address> with <name of main contact>. Commercial Edible Food Generator agrees to promptly gather Edible Food into one conveniently accessible loading area. If Driver must wait longer than <time frame> for assistance or does not receive assistance, Driver may depart ,reschedule the collection, and/or charge an additional fee.

Upon arrival, the Commercial Edible Food Generator or FRO/FRS may inspect the food, including taking temperature. Any product that does not meet the acceptable temperatures or other food safety standards may be rejected.

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.

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:

Commercial Edible Food Generator will pay an introductory per-pick up fee of $ per pick up.

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 (name, contact information) for payment. 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.