SB 1383 & ORRO

Template Food Recovery Agreement

Introduction

This Guidance Document was adapted from CalRecycle’s Model Food Recovery Agreement. The Template was developed to support commercial edible food generators (“generators”), and/or food recovery organizations and food recovery services (“FRO/FRS”) that will be entering into new contracts or written agreements or amending existing contracts or written agreements to be in line and comply with SB 1383, the Organics Reduction and Recycling Ordinance (ORRO) in Alameda County (Alameda County Waste Management Authority Ordinance No. 2021-02), and other local ordinances implementing SB 1383. By establishing a contract or written agreement for food recovery, generators and/or FRO/FRS’s can address provisions that support compliance with SB 1383 regulations as well as other provisions related to safe food handling, self-hauling edible food, cost-sharing, recordkeeping, and other needs.

This Template has been developed to provide an easy-to-use and highly customizable template for creating a new edible food recovery agreement with SB 1383 regulatory provisions, or as a source of agreement provisions related to SB 1383 regulations for amending an existing agreement. This Template may also be used by those who are not subject to SB 1383 regulations.

template Considerations & Tips

The Template is intended to be customized and used by commercial edible food generators, food recovery organizations, food recovery services, and jurisdictions to assist with SB 1383, ORRO or other local ordinance compliance as well as meet their unique edible food recovery needs.

* The Template can be used by parties drafting new food recovery agreements and those amending existing agreements.
* Guidance notes are integrated into the Template for reference only to explain how specific sections and provisions of the Template can be customized for a party’s needs. General guidance notes are highlighted in green. Notes in blue identify various options or areas where specific information is to be inserted or selected. Highlighted guidance notes should be removed by the user when preparing its final Food Recovery agreement. In cases where the Template offers multiple options, provisions that are not selected should be deleted and section numbers modified accordingly.
* The Template addresses common variations of programs and service options; however, addressing all food recovery scenarios was not practical. Given this, parties to the agreement may need to customize or eliminate some sections of the Template to reflect their conditions, drawing on example provisions in the Template as a starting point.
* Any contract or written agreement that results from use of the Template shall not be considered to have undergone legal counsel review. Each party to the agreement is responsible for performing any legal review or approval processes typically required by the parties for approval of such agreements.
* Adjust the Template language to fit the user’s specific needs. For example, “Generator” and “FRO/FRS” are used throughout the document, and will need to be changed to the parties’ names, as applicable.

Important Considerations

1. Solutions for Rejected Food

* For food that is rejected under the terms of the agreement or otherwise not accepted for human consumption, it is urged that the parties to the agreement utilize alternate solutions that prioritize the highest and best use of food to the extent possible (e.g., redirection to another FRO/FRS, use as animal feed), followed by organic waste recovery methods (e.g., composting, anaerobic digestion) rather than landfill disposal, in accordance with local requirements, SB 1383 regulations, ORRO and other applicable laws. Options for how to handle rejected food may vary depending on the location and infrastructure in place for the processing of food waste.

2. Alignment of Defined Terms

* The Template includes dozens of defined terms, some of which were obtained from SB 1383 regulatory definitions and many from existing food recovery agreements and programs. The nuances of defined terms and their relationship to one another can have a significant impact on the meaning of the provisions of the food recovery agreement. For this reason, parties to the agreement are advised to carefully review the definitions of the Model and SB 1383, ORRO and local regulations, as well as any definitions contained in existing agreement(s), if applicable. Users should modify existing definitions and/or integrate new ones where needed.

3. Food Handling/Food Safety Certifications

* Parties to a food recovery agreement should consider including a requirement for having one or more staff or volunteers on site with a safe food handling/food safety certification or food handler card. It is also highly recommended that the parties to a food recovery agreement contact the Alameda County Department of Environmental Health for guidance on safe food handling practices.

4. Food Waste Source Reduction

* Although not required under the SB 1383 regulations, a commercial edible food generator and FRO/FRS may also consider including language in the agreement regarding sharing information about food production and donation to decrease excess food production and prevent the creation of food waste. For example, if an FRO/FRS learns through observation or data collected that food donations are larger on certain days or events, that information could be shared with the commercial edible food generator so that the commercial edible food generator can adjust orders or produce less product on those days or events if possible, therefore generating less food waste.

5. Non-Food Items

* A FRO/FRS may also accept non-food items for collection.  While the Template only addresses food, the Template is intended to be highly customizable to reflect the agreement between the specific parties. If a FRO/FRSs program does accept non-food items, the Template can be amended to include those items.

6. Reference to Local, State, and Federal Regulations

* The Template refers to compliance of local, State, and federal laws by reference. Parties utilizing the Template may elect to incorporate these regulations by reference, list specific relevant regulations in the agreement, or include the text of the relevant regulations as an attachment to the agreement.

FREE Assistance

StopWaste staff are available to provide free phone, email, virtual and in-person support to help set up food recovery agreements and/or a system to recover and donate surplus edible food. Request support at [**www.StopWaste.org/Request-Help**](http://www.StopWaste.org/Request-Help) or call our Ordinance Information line at (510) 891-6575.

Disclaimer

This Template is for informational and example purposes only. It should not merely be duplicated without consideration of the individual food recovery organization, food recovery service, or commercial edible food generator’s particular needs or circumstances. It is not intended to cover each and every situation, nor can it anticipate specific needs. This Template does not constitute legal advice. Users of the Template are encouraged to seek legal counsel appropriate to their particular circumstances regarding compliance with regulatory requirements.

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Template Food Recovery Agreement
Attachments

A. Contacts for Agreement

B. Acceptable and/or Preferred Foods, Unacceptable Foods, and Packaging/Labeling Requirements

C. Transportation and Storage

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

This Agreement (“Agreement”) is dated \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_, 20\_\_ between the Parties to this Agreement, \_\_\_\_\_\_\_\_\_ (“FRO/FRS”) and, \_\_\_\_\_\_\_\_\_\_\_\_\_ ("CEFG”).

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

**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, the Organics Reduction and Recycling Ordinance in Alameda County, and other 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 the ORRO unless otherwise provided herein.

# Section 1: Allowable Foods and conditions for Refusal

## 1.1 Foods Acceptable and/or Preferred for Food Recovery

Use this section to specify food types accepted and/or preferred by the FRO/FRS or include that information as an Attachment to the Agreement.

Specify food types here or

Foods accepted and/or preferred for Food Recovery under this Agreement are listed and described in Attachment B.

## 1.2 Foods Not Accepted for Donation or Collection

Use this section to addresses specific food/food types that the FRO/FRS will not accept or include that information as an Attachment to the Agreement. The FRO/FRS may choose to also include nutritional guidelines to accompany this section.

Specify food types here or

Foods that are not acceptable for donation or collection under this Agreement are listed and described in Attachment B.

## 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.

CEFG agrees to provide food that meets all food safety standards in accordance with Section 2 of this Agreement and not knowingly or intentionally provide foods that do not meet these standards.

**1.4 DONATION DUMPING**

CEFG will not knowingly provide unusable or unsuitable food, force FRO/FRS to recover food after capacity has been reached, or intentionally provide food outside of the specified collection schedule 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 CEFG may be reported to the local jurisdiction or jurisdictions in which the CEFG is providing food pursuant to this agreement if donation dumping is suspected.

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 must be de-packaged (if applicable) and composted.

# Section 2: Food Safety Requirements and Protocols

If the Parties have other specific food safety protocols in addition to the food safety requirements of local, State, and federal laws, those may be specified here or added as an Attachment to this Agreement.

Both FRO/FRS and CEFG 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.

CEFG 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 CEFG.

In the event of a food recall, CEFG 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.

**2.1 FOOD LABELING**

Food labeling and good packaging is an important part of keeping food safe to consume. All donated prepared and other perishable food items should be labeled with the date of preparation so that safe food choices can be made in the handling, storage and distribution of that food by the FRO/FRS.

# Section 3: Transportation and Storage

## 3.1 Transportation

Detail on transportation and storage can be incorporated into this Agreement as Attachment C.

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: CEFG agrees to self-haul their Edible Food that would otherwise be disposed to the FRO/FRS address provided in Attachment C. If CEFG 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.

Both parties will notify each other of closures and holidays that may affect transportation.

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

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

Both Parties will notify each other of closures and holidays that may affect transportation.

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.

# Section 4: Documentation and Recordkeeping

Option 1: Documentation required by CEFG

Upon request by CEFG, FRO/FRS will provide the following information to CEFG about the food that was recovered per month from CEFG:

* types of edible food that were recovered (perishable/non-perishable)
* weight (in pounds)
* date(s) of recovery
* signature/confirmation of donation, etc.

The requirements outlined in this Section shall not take the place of any recordkeeping and reporting obligations required by local, State, and federal regulations including, but not limited to, the Organics Reduction and Recycling Ordinance (ORRO) adopted as Ordinance 2021-01 by the Alameda County Waste Management Authority where applicable.

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 Commercial Edible Food Generator on a <frequency> basis on <day>, and transmitted to <contact> via <US mail, email, etc.>.

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 five years.

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

Option 2: Documentation required by the FRO/FRS

CEFG will provide the following information per month to the FRO/FRS for food provided by CEFG:

* types of edible foods donated (perishable/non-perishable)
* weight (in pounds)
* date of donation
* signature/confirmation of donation, etc.

The requirements outlined in this Section shall not take the place of any recordkeeping and reporting obligations required by local, State, and federal regulations including, but not limited to, the Organics Reduction and Recycling Ordinance (ORRO) adopted as Ordinance 2021-01 by the Alameda County Waste Management Authority where applicable.

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 <frequency> basis on <day>, and transmitted to <contact> via <US mail, email, etc.>.

Note that SB 1383 regulations (14 CCR Sections 18991.4 and 18991.5) specify that CEFG’s and FRO/FRS’s shall maintain records of the quantity of Edible Food (in pounds) recovered per month. Consider this when selecting measurement units and documentation frequency.

CEFG is required to retain all records for a minimum period of three years.

CEFG 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, CEFG agrees to pay a fee for service to FRO/FRS. The fee structure is as follows:

Option 1a: CEFG will pay a per-pick up fee of $\_\_\_ per pick up.

Option 1b: CEFG will pay a per-pound fee of $\_\_\_ per pound picked up.

Option 1c: CEFG 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 CEFG’s designated billing contact for payment.

CEFG’s designated billing contact is: <name, contact information>

CEFG 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 2a: 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, CEFG 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 CEFG <and other relevant parties/agencies> within \_\_ days.

Option 2b: In-lieu Payment

In fulfillment of the services provided in this Agreement, there is no fee for service. In lieu of payment, FRO/FRS/CEFG agrees to provide the following:

<Specify the in-lieu compensation, for example a tax benefit may offset the cost of the program/donation; cost sharing, or an in-kind donation such as vehicles, refrigeration, or storage space may be provided. This section would specify the structure and specify the necessary documentation and procedure for the Party(ies) to receive the benefit>.

# Section 6: Terms and Conditions

The parties to any agreement should include the standard terms and conditions that they include in other agreements with respect to matters such as term, notice, intent to be bound, notice, remedies, ownership of information, governing law, and venue. SB 1383 and the ORRO do not require use if any particular terms and conditions with respect to these terms and conditions.

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

CEFG

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 >

<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> |

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:

* 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 acceptable 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.

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