

MEMORANDUM OF UNDERSTANDING

Between
San Bernardino County Department of Public Health
Environmental Health Services
And
City of INSERT NAME
For
Environmental Health Services
INSERT DATE (MONTH, XX, 20XX)

This Memorandum of Understanding (MOU) is made and entered into by and between San Bernardino County Department of Public Health, Environmental Health Services Division ("County") and the City/Town of INSERT NAME ("City").

This MOU addresses the procedures to be followed by the County and the City for the provision of environmental health services in the City's incorporated areas.

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, County desires to provide environmental health services in the areas designated below; and
WHEREAS, City desires the provision of environmental health services in the areas designated below; and
WHEREAS, County is qualified to provide the environmental health services designated below; and **WHEREAS**,
City desires that such services be provided by the County, and the County agrees to perform these services as
set forth below;
NOW THEREFORE, County and City mutually agree to the following items and conditions:

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I. DEFINITIONS

- A. **COMMERCIAL EDIBLE FOOD GENERATOR:** Includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in Section 33.1503 of San Bernardino County Code of Ordinances (“Code”) or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).
- B. **EDIBLE FOOD:** Food intended for human consumption and collected or received from a Tier One or Tier Two Commercial Edible Food Generator. For the purposes of the Code or as otherwise defined in 14 CCR Section 18982(a)(18), “Edible Food” is not solid waste if it is recovered and not discarded. Nothing in the Code, or in 14 CCR, Division 7, Chapter 12 requires or authorizes the recovery of food that does not meet the food safety requirements of the California Retail Food Code.
- C. **EDIBLE FOOD RECOVERY:** Actions to collect, receive, and/or redistribute Edible Food for human consumption from Commercial Edible Food Generators that otherwise would be disposed.
- D. **ENFORCEMENT ACTION:** An action of the County or its Enforcement Officers to address non-compliance with the Code including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.
- E. **FOOD DISTRIBUTOR:** A company that distributes food to entities including, but not limited to, supermarkets and grocery stores.
- F. **FOOD FACILITY:** Has the same meaning as in Section 113789 of the Health and Safety Code.
- G. **FOOD RECOVERY:** Actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).
- H. **FOOD RECOVERY ORGANIZATION:** An entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:
 - 1. A food bank as defined in Section 113783 of the Health and Safety Code;
 - (a) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety Code, and
 - (b) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.
 - 2. A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of the Code and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).
- I. **FOOD RECOVERY SERVICE:** A person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery. A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of the Code and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).
- J. **INSPECTION:** For the purposes of Edible Food Recovery, actions to review contracts and other records related to the recovery of Edible Food that may occur off-site via email and other forms of electronic communication, as well as the on-site review of an entity’s records and collection, handling, and other procedures for the recovery of Edible Food to determine if the entity is complying

with the requirements of the Code.

II. COUNTY RESPONSIBILITIES

- A. The County will provide to the City those specific services selected from this list and as set forth in San Bernardino County Code of Ordinances Title 3, Division 3, Chapter 15, as provided in the Schedule of Services (Attachment A).
 - 1. Identify, confirm, and notify entities that meet the definitions of Commercial Edible Food Generators, Food Recovery Organizations, or Food Recovery Services, as agreed by the City
 - 2. Conduct inspections of Commercial Edible Food Generators to monitor compliance with SB 1383 requirements and gather data for the City's reporting purposes during inspections.
 - 3. Conduct inspections of Food Recovery Organizations and Food Recovery Services to monitor compliance with SB 1383 requirements and gather data to determine the capacity to accept edible food donations during inspections.
 - 4. Maintain up-to-date information available to the City regarding Food Recovery Organizations, Food Recovery Services, and Commercial Edible Food Generators within its the City upon request.
 - 5. Conduct education and outreach to the City, Commercial Edible Food Generators, Food Recovery Organizations and Food Recovery Services regarding the requirements set forth in the SB 1383 regulations.
 - 6. Conduct enforcement action to address non-compliance including, but not limited to, issuing administrative citations, notice of violation, fines, penalties, or using other remedies.
- B. During the term of this MOU, the County Enforcement Officers and their deputies shall exercise the same powers and duties, including methods of enforcement, within the jurisdiction of the City as are conferred upon such officers by law as County officers. The County officers and their deputies shall enforce all provisions of the County Code relating to those services provided.
- C. For purposes of this MOU, the jurisdiction of the City encompasses only the incorporated areas of the City.

III. CITY RESPONSIBILITIES

- A. The City will compensate the County as provided in Fiscal Provisions (Section V).
- B. If the City does not agree with the County's identification of an entity as a Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery Service, the City will notify the County in writing
- C. Upon discovery, the City will notify the County of any Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services not previously identified by the County including, but not limited to, large events, large venues, state agencies, and non-local entities.
- D. The City will increase edible food capacity if inspection data provided by the County indicates insufficient capacity available to commercial edible food generators within the City.
- E. Regarding matters related to compliance with SB 1383 regulations, the City will act as primary point-of-contact with California Department of Resources Recycling and Recovery (CalRecycle).

IV. MUTUAL RESPONSIBILITIES

A. In the performance of this MOU, County, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of this City.

B. Indemnification

1. The City agrees to indemnify, defend, and hold harmless the County and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of its negligent acts or omissions in performing its obligations under this MOU.
2. The County agrees to indemnify, defend, and hold harmless the City, its officers, agents, and volunteers from any and all claims, actions or losses, damages and/or liability resulting from the County's negligent acts or omissions in performing its obligations under this MOU.
3. In the event the County and City are found to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under this MOU, the County and City shall each indemnify the other to the extent of its comparative fault or negligence.

C. Insurance

1. County and City are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability, and Worker's Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms and conditions of this MOU.
2. The City shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the City or the City's employees or agents from waiving the right of subrogation prior to a loss or claim. The City hereby waives all rights of subrogation against the County.
3. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to, and approved by, each party's Risk Management.

V. FISCAL PROVISIONS

- A. City and County agree that all fees and revenue, including citation penalties and late fees, collected by the County for services performed hereunder, including the issuance of permits, the conducting of inspections and so forth, shall be retained by the County as payment for the services provided to City under the terms of this MOU. Fees shall be charged in accordance with the County Fee Ordinance, which may be amended from time to time. The current County Fee Ordinance shall be provided to City.
- B. Any additional services requested by City to be performed by County shall be performed at an additional cost and in a manner mutually agreed upon by the City and County prior to the rendering of services. City shall reimburse County for additional services at the hourly rate prescribed in the County Fee Ordinance for such category of services.

VI. TERM

This MOU shall be effective upon execution by all parties and terminate on December 31, 2030.

VII. EARLY TERMINATION

This MOU may be terminated without cause by either party by serving a written notice to the other party thirty (30) days in advance of termination. The Director of Public Health is authorized to exercise the County's rights with respect to any termination of this MOU.

VIII. GENERAL PROVISIONS

- A. When notices are required to be given pursuant to this MOU, the notices shall be in writing and mailed to the following respective addresses listed below.

City: CITY NAME
 Address
 Address Line 2
 City, State, Zip

County: San Bernardino County
 Environmental Health Services
 385 N. Arrowhead Avenue 2nd floor
 San Bernardino, CA 92415-0160

- B. Any alternations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this MOU. No oral understanding or MOU not incorporated herein shall be binding on any of the parties hereto.

IX. CONCLUSION

- A. This MOU, consisting of seven (7) pages and Attachment A, is the full and complete document describing services to be rendered by County to City, including all covenants, conditions, and benefits.
- B. The signatures of the parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.
- C. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed contract upon request.

SAN BERNARDINO COUNTY

►

Department of Public Health Director

Dated: _____

(Print or type name of corporation, company, contractor, etc.)

By ►

(Authorized signature - sign in blue ink)

Name

(Print or type name of person signing contract)

Title

(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form

►

Adam Ebright, Deputy County Counsel

Date _____

►

Date _____

►

Date _____

Attachment A: Schedule of Services

The County agrees to perform these services as set forth below

1. Conduct education and outreach to City, Commercial Edible Food Generators, Food Recovery Organizations and Food Recovery Services regarding the requirements set forth by SB 1383, now the Code.
2. Conduct inspections of Commercial Edible Food Generators to monitor compliance with the Code and SB 1383 requirements and to gather data for the City's reporting purposes during inspections.
 - a. Verify Commercial Edible Food Generators, Food Recovery Organizations and Food Recovery Services arrange and maintain contracts or written agreements outlining terms for edible food donation and acceptance.
 - b. Verify Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services keep required records including a list of food recovery partners, the name and contact information of food recovery partners, types of foods that will be collected or self-hauled, the quantity of food per month, in pounds, that will be collected or self-hauled, and the established frequency.
 - c. Verify Commercial Edible Food Generators have established an employee edible food recovery training program and maintain records of employee training.
 - d. Verify that Edible Food capable of being recovered by a Food Recovery Organization or Food Recovery Service is not intentionally spoiled.
3. Obtain data from Food Recovery Organizations and Food Recovery Services during inspections to determine the capacity to accept edible food donations, including:
 - a. Names, telephone numbers, and types of Food Recovery Organizations and Food Recovery Services within the City.
 - b. Quantity, in pounds, of Edible Foods recovered from Commercial Edible Food Generators.
4. Maintain up-to-date information available to the City regarding Food Recovery Organizations, Food Recovery Services and Commercial Edible Food Generators within the City.
5. Conduct enforcement action to address non-compliance including, but not limited to, issuing Administrative Citations, Notices of Violation, fines, penalties, or other remedies available to the County.