

PROJECT DEVELOPMENT AGREEMENT
(PHASE 1 WASTE TRANSFER STATION)

THIS PROJECT DEVELOPMENT AGREEMENT (“**PDA**”) is made and entered into and is effective as of November 23, 2021 (the “**Effective Date**”), by and between **THE COUNTY OF SAN BENITO (“San Benito County”)** and **VICO INFRASTRUCTURE COMPANY LLC (“VICO”)**, a Delaware limited liability company (San Benito County and VICO are sometimes collectively referred to herein as the “**Parties**” and individually, as a “**Party**”).

R E C I T A L S:

- A. This PDA is executed by the Parties with respect to the proposed infrastructure necessary for the San Benito County Integrated Waste Management Regional Agency (SBCIWMRA) to comply with California Senate Bill No. 1383 approved by Governor Brown on September 19, 2016 (the “**Project**”) to be located in San Benito County, California (the “**Property**”).
- B. This PDA is executed by the Parties with respect to SBCIWMRA submitting a notification of intent to comply with California Senate Bill No. 619 approved by Governor Newsom on October 5, 2021.
- C. This PDA is executed by the Parties to govern the initial two-tasks of the Project, including Task 1 (Project Evaluation) and Task 2 (Project Development and Preliminary Design). Task 1 and Task 2 are defined and further described in Exhibit “A”, attached hereto.
- D. SBCIWMRA and VICO desire to have VICO complete Task 1 (Project Evaluation) and Task 2 (Project Development and Preliminary Design) as described in Exhibit “A”, and prior to completion of Task 2, prepare a term sheet for a Definitive Project Agreement (the “**Term Sheet**”) upon the terms and conditions set forth herein.

NOW, THEREFORE, the Parties agree as follows:

1. **Type and Amount of Service.** VICO shall devote such time as is necessary to complete Task 1 within forty-five (45) days of the Effective Date and complete Task 2 within one-hundred twenty (120) days following receipt by VICO of a written notice to proceed with Task 2 from SBCIWMRA. Upon completion of Task 1 and prior to the commencement of Task 2, VICO will provide SBCIWMRA a proposed fee for Task 2 (the “**Task 2 Development Fee**”) as further described in Exhibit “A”.
2. **Exclusive Negotiation.**
 - 2.1. **Task 1 (Project Evaluation):** Following execution of this PDA by the Parties, SBCIWMRA agrees not to, directly or indirectly, discuss, negotiate with, or contact, any other person or entity with regard to the Project for a period of ninety (90) days from the Effective Date (the “**Task 1 Exclusive Negotiation Period**”).
 - 2.2. **Task 2 (Project Development and Preliminary Design):** Following receipt by VICO of a written notice to proceed with Task 2 from SBCIWMRA, SBCIWMRA agrees not to, directly or indirectly, discuss, negotiate with, or contact, any other person or entity with regard to the Project, unless SBCIWMRA has paid VICO (or the Project Company, as applicable) the Task 2 Development Fee, as described herein.
3. **Authority of VICO.** In the preparation of Task 1 and Task 2, VICO and any contractor or consultant retained by VICO shall at all times be an independent contractor, contracting services to SBCIWMRA

solely pursuant to this PDA, and VICO is not, nor shall VICO represent VICO to be at any time, an agent, fiduciary, or employee of SBCIWM except as expressly set forth herein.

4. **Ownership and Use of Work Product.** Except as otherwise set forth herein, Task 1 and Task 2, and the information contained therein is confidential and proprietary information of VICO (the “**VICO Work Product**”) and shall at all times, as between SBCIWMRA and VICO, be the sole property of VICO. SBCIWMRA and SBCIWMRA’s officers, directors, affiliates, agents, and employees shall not, at any time, whether during or subsequent to the term of this PDA, in any fashion, form, or manner, unless specifically consented to in writing by VICO, either directly or indirectly use or divulge, disclose, or communicate to any person, firm, or corporation, in any manner whatsoever, any VICO Work Product; provided, however, that this PDA shall impose no obligation on SBCIWMRA with respect to maintaining the confidence of the VICO Work Product that is: (i) generally known or available by publication, commercial use, or otherwise through no fault of such party; (ii) known by SBCIWMRA at the time of disclosure and is not subject to restriction; (iii) independently acquired, developed or learned by SBCIWMRA; (iv) lawfully obtained from a third party who has the right to make such disclosure; (v) released for publication by VICO in writing; or (vi) required to be disclosed by law or judicial process; provided, however, further, that SBCIWM may deliver a copy of the VICO Work Product to their member agencies, consultants, and advisors for review without any confidentiality limitation.

4.1. **California Public Records Act.** VICO acknowledges that San Benito County and the other member agencies of SBCIWMRA are public agencies subject to the California Public Records Act (PRA), Government Code section 6250, et. seq., which must withhold disclosure of information in its possession pursuant to certain statutory exemptions, including but not limited to those set forth in Government Code section 6254, subdivisions (aa) and (ab), with respect to facilities vulnerable to terrorist attack, and critical infrastructure information as defined by federal law, including the Critical Infrastructure Information Act, 6 U.S.C.A § 671 (3) (formerly 6 U.S.C.A § 131), as specified in 6 U.S.C.A. § 673 (a)(1)(E); Government Code section 6276.06 with respect to air pollution data, confidentiality of trade secrets, as specified in Section 6254.7, and Sections 42303.2 and 43206, Health and Safety Code, Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code, or other applicable law. San Benito County may also withhold information if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure, pursuant to Government Code section 6255. Public Agencies must provide an initial response and produce documents not subject to applicable exemptions to requesters within 10 days of receipt of a PRA request. Nevertheless, if San Benito County or other member agencies of SBCIWMRA receive a Public Records Act request for information subject to this Agreement, San Benito County will immediately notify VICO in writing by email, and VICO may take whatever legal action it may deem appropriate and in accordance with law to prevent the disclosure of information that it considers confidential and proprietary, at VICO’s sole cost and expense.

5. **Expenses.** Except as otherwise provided herein, VICO shall be solely responsible for payment of all costs, fees, and expenses incurred by VICO in the preparation of Task 1 and Task 2, unless VICO obtains the prior written approval by SBCIWMRA for the reimbursement of any costs, fees, or expenses, which approval may be withheld in the sole discretion of SBCIWMRA.

6. **Payment of Taxes.** VICO shall be solely responsible for the timely payment of all taxes imposed upon VICO in connection with the receipt of the VICO Work Product Fee. SBCIWMRA shall be solely responsible for timely payment of all taxes imposed upon SBCIWMRA in connection with the Project.

7. **Termination.**

7.1. **Automatic Termination.** If the Term Sheet has not been executed within thirty (30) days from the completion date of Task 2, this PDA will automatically terminate (the “**Termination Date**”). In the event this PDA is terminated per this section 7.1, within ten (10) days of the Termination Date, SBCIWMRA

will reimburse VICO for the Task 2 Development Fee, and VICO will assign all the rights and property of the VICO Work Product to SBCIWMRA.

7.2. **After Default.** Following a breach of this PDA by either Party, the other Party may terminate this PDA effective thirty (30) days following written notice if the breaching Party has not cured such breach before the end of such thirty (30) day period, or if such breach is not curable within such thirty (30) day period, the breaching Party has not commenced such cure within such thirty (30) day period and diligently prosecuted such cure to completion.

7.3. **Rights on Termination.** Following the Termination Date and following payment in full of the Task 2 Development Fee, due hereunder, this PDA shall be of no further force and effect, except that Sections 3, 4, 5, 7, and 9 hereof shall survive any termination of this PDA.

8. **Miscellaneous Provisions.**

8.1. **Notices.** All notices, demands, or other communications given hereunder shall be in writing and shall be delivered personally, by electronic mail, by commercial overnight courier, or by United States certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

If to VICO: VICO Infrastructure Company LLC
4695 MacArthur Court, Suite 1430
Newport Beach, CA 92660
Attention: Mr. Brian Cullen, President & CEO
Email: briancullen@vicoinfrastructure.com

If to SBCIWMRA: County of San Benito – Resource Management Agency
2301 Technology Parkway
Hollister, CA 95023
Attention: Mr. Michael Chambliss
Interim Resource Management Agency Director
Email: MChambliss@cosb.us

or such other address or to such other person as any Party shall designate to the other for such purpose in the manner hereinafter set forth. All notices shall be deemed given upon the earliest of: (i) receipt; (ii) the next business day after delivery via non-returned electronic mail, or deposit with a commercial overnight courier for next business day delivery; or (iii) three (3) business days after deposit in the United States mail.

8.2. **Governing Law.** This PDA shall be construed and enforced in accordance with the laws of California.

8.3. **Assignment.** This PDA may not be assigned or transferred, in whole or in part, either voluntarily or by operation of law, without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed. Any attempted assignment or transfer without such consent shall be null and void and of no force and effect.

8.4. **Successors and Assigns.** This PDA shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, representatives, successors, and permitted assigns.

8.5. **Remedies.** All the remedies contained herein are cumulative and may be exercised in any order deemed desirable, whether at law or in equity.

8.6. **Attorneys' Fees.** In the event of any proceeding arising out of, or relating to, this PDA, the prevailing Party shall be entitled to recover from the losing Party all of its costs and expenses incurred in connection with such proceeding, including court costs and reasonable attorneys' fees, whether or not such proceeding is prosecuted to judgment.

8.7. **Counterparts; Signatures.** This PDA may be executed in multiple counterparts, each of which shall be deemed an original but all of which taken together shall constitute but one and the same PDA. The exchange of copies of this PDA and of signature pages by facsimile or other electronic means shall constitute effective execution and delivery of this PDA by the Parties. Signatures of the Parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

8.8. **Amendments.** This PDA may not be amended, supplemented, canceled, or discharged except by written instrument executed by the Parties.

8.9. **Waivers.** All waivers hereunder shall be in writing. No waiver by any Party of any breach or anticipated breach of any provision of this PDA by any other Party shall be deemed a waiver of any other contemporaneous, preceding, or succeeding breach or anticipated breach, whether or not similar, on the part of the same or any other Party.

8.10. **Severability.** In the event that any provision of this PDA shall be unenforceable or inoperative as a matter of law, the remaining portions or provisions shall remain in full force and effect.

8.11. **Section Headings.** The section headings used in this PDA are inserted for reference purposes only and shall not in any way affect the meaning or interpretation of this PDA.

8.12. **Entire Agreement.** This PDA, the Exhibits attached hereto, and the documents referred to herein, all of which are hereby incorporated herein, constitute the entire agreement between the Parties pertaining to the subject matter hereof, and are the final, complete, and exclusive expression of the terms and conditions thereof. All prior or contemporaneous agreements, representations, negotiations, and understandings of the Parties in connection with or related to the Project, and/or the VICO Work Product, oral or written, express or implied, are hereby superseded and merged herein.

8.13. **Further Assurances.** Each of the Parties agrees on behalf of such Party and its permitted successors and assigns, that such Party will, without further consideration, execute, acknowledge, and deliver such other documents and take such other action as may be necessary or convenient to carry out the purposes of this PDA.


8.14. **Due Authority.** Each of the signatories of the Parties represent and warrant that they have the authority to duly execute and deliver this PDA on behalf of such Party and that such Party has duly authorized the execution, delivery, and performance of this PDA.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Project Development Agreement as of the Effective Date.

APPROVED BY VICO

VICO INFRASTRUCTURE COMPANY LLC, a Delaware limited liability company

By: _____
Brian Cullen, President & CEO

APPROVED BY SAN BENITO COUNTY

COUNTY OF SAN BENITO, Lead Agency to the San Benito County Integrated Waste Management Regional Agency

By: _____
Bea Gonzales, Chair
Board of Supervisors

ATTEST:

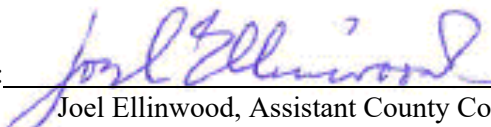
Jennifer Frechette, Clerk of the Board

By: _____
Clerk of the Board

Date: _____

APPROVED BY LEGAL FORM

Barbara J. Thompson, County Counsel

By: _____
Joel Ellinwood, Assistant County Counsel

EXHBIT “A”

VICO PROJECT DEVELOPMENT AGREEMENT
AND DEFINITIVE PROJECT AGREEMENT PROPOSAL

[TO BE ATTACHED]