

MEMO



Discussion/Action

Item #: 16

Meeting Date: May 19, 2023

To: Board of Directors
From: Director of Engineering & Compliance, Guy R. Petraborg
Approved by: General Manager, Felipe Melchor

Subject: Approve Lease and Feasibility Study Agreement for the Sitos Group Biochar Technology Pilot Study

Recommendation

That the Board approve the agreement with the Sitos Group for the Biochar Technology Pilot Study for signature by the General Manager, Felipe Melchor, and as approved to form by District Legal Counsel.

Background

Windrow composting of yard waste (aka “green waste”) materials and food wastes have been conducted at ReGen’s facility in northwestern Monterey County since about 1985 (~37 years). The Keith Day Company, Inc. (KDCI) has been ReGen’s contracted operator of the windrow composting since about 2009 (~13 years) and is well established as a service provider in the tri-county area of Monterey, San Benito, and Santa Cruz counties. The main product that KDCI produces at the ReGen site is an organic certified compost for agricultural customers. One of those agricultural customers is Monterey Pacific, Inc. (MPI), a Soledad based company whose mission is to provide professional Applied Agricultural Science services for vineyards located in the Central Coast region. MPI has interest in a higher quality compost product that has improved moisture and nutrient retention characteristics and subsequent extended dispersal behavior such as exhibited by some biochar materials. MPI has connected with Mayo Ryan, CEO of the Sitos Group, LLC (Sitos Group), regarding biochar production and has also joined the Sitos Group’s Board of Directors in support of further developing biochar production. Last year they approached KDCI to explore the potential for producing biochar from the feedstock materials, or their derivatives, present at the ReGen facility. Potential biochar feedstocks were initially identified as natural woody materials and “compost overs” which are larger wood chips that are difficult to use other than as ground cover. With unanimous interest by the three parties (KDCI, MPI, and the Sitos Group) for those feedstocks, they approached ReGen in November 2022 to propose a Pilot Study.

The proposed contract terms for the attached agreement were presented to the Board at the January 2023 meeting. District Legal counsel then drafted the attached agreement for the Pilot Study for your review and consideration for approval.

Physical Address

14201 Del Monte Blvd.
Salinas, CA 93908

Mailing Address

P.O. Box 1670
Marina, CA 93933

Phone / Fax

831-384-5313 PHONE
831-384-3567 FAX

Web / Social

ReGenMonterey.org
@ReGenMonterey

Let's not waste this.



Discussion

The Sitos Group was formed in 2021 and consists of the following persons: Mayo Ryan is the CEO of the Sitos Group and is an experienced farm management, agricultural, and food industry executive with a Master of Business Administration (MBA) focused on Agribusiness and Food from Santa Clara University. The Sitos Group's Central Coast connection is Steve McIntyre of MPI, a long term customer of organic compost produced at the ReGen facility by KDCI. Collectively the parties have proposed a Biochar Technology Pilot Study at the ReGen Facility. The partnership for the Pilot Study also includes Applied Gaia as the major equipment supplier; KDCI to assist in feedstock transfer to Sitos Group for biochar production and subsequent blending of biochar with organic compost and delivery to MPI; and MPI's use of the biochar amended compost and associated field studies of those materials.

Natural woody materials and "compost overs" (aka wood chips) available at the ReGen facility are the initial biochar feedstocks of interest. Other organic materials and a relatively dry WWTP biosolid waste are possible materials that may also be investigated as part of the Biochar Technology Pilot Study. The Pilot Study will be located in the onsite Compost facility area at the concrete slab-on-grade of the former (original) Last Chance Mercantile building. The pyrolysis equipment has already been delivered and set on the concrete slab foundation. The Monterey Air Resources Board has issued an initial air permit in the form of an Authority to Construct (ATC) Permit.

Biochar is produced when plant matter is heated at elevated temperatures such as in nature by forest fires or by man in a controlled process called Pyrolysis. Pyrolysis is an oxygen limited (deficient) process with temperatures between 600 and 1500 degrees Fahrenheit that can transform woody materials or "compost overs" (aka wood chips) into a stabilized "coral like" carbon structure with relatively high surface area and related moisture/nutrient retention capacity characteristics. There are less carbon emissions in the Pyrolysis process as compared to the aerobic decomposition process of composting operations or the anaerobic decomposition process of landfills and digestors. This is known as 'carbon sequestration'. Heat is the primary emission as the volatile gases released from the organic materials is used inside the chamber combustion process to maintain the temperature levels of the chamber.

The Pyrolysis process does generate significant heat that can have other beneficial uses; such as to generate electricity, used as heat in other treatment processes, and/or for drying of materials biosolids, for example). These beneficial use alternatives are not proposed as part of the Pilot Study. However, the biochar alternative will be studied over the next six to twelve months as part of the Joint Feasibility Study (JFS) that M1W-ReGen have approved and for which GHD is conducting at this time. The JFS will take into consideration these other potential beneficial uses of the Pyrolysis process and options such as a biosolids produced biochar as a concrete industry admixture. The Pilot Study will investigate the carbon content and the carbon stabilization process using the "Puro.earth" lifecycle assessment for the purpose to define the carbon efficiency of the process and to establish a basis for a Carbon Removal Certification (CORC), a trading market unit of monetary value.

**Financial Impact**

There is no anticipated financial impact associated with ReGen's hosting of the proposed Biochar Technology Pilot Study with the Sitos Group. ReGen is not anticipating any increased revenue during the Pilot Study period (none are proposed). Additionally, ReGen is not anticipating any increased expenses during the Pilot Study period (ReGen's costs for any land, utilities, or other support are proposed as 'reimbursable costs'). ReGen staff is anticipating to be necessary periodically as part of the Pilot Study and are not proposed to be compensated for during the Pilot Study.

Strategic Plan

The proposed Biochar Technology Pilot Study aligns with ReGen's Strategic Plan as it is intended to provide a higher beneficial reuse of an organic waste material by transforming that material to a biochar and using the biochar as an admix agent to organic compost produced onsite by the Keith Day Company. The biochar amended organic compost is an upgraded material as an agricultural product of higher quality which is desired by some Monterey County farmers.

Recommendation

Given the potential to i) increase beneficial use of woody feedstock and "compost overs" (aka wood chips), ii) produce a biochar-organic compost mix desired by the local agricultural industry, and iii) create a marketable asset of monetary value associated with carbon sequestration characteristics; staff recommends the Board's consideration and approval of the agreement with the Sitos Group for the proposed Biochar Technology Pilot.

ATTACHMENTS:

LAND LEASE AND FEASIBILITY STUDY AGREEMENT

EXHIBIT A - Map showing location of premises [to be initialed by the parties and attached.]

EXHIBIT B - Insurance Requirements

EXHIBIT C – Mutual Confidentiality and Non-Disclosure Agreement

LAND LEASE AND FEASIBILITY STUDY AGREEMENT
for
Biochar Technology Pilot Study

THIS LAND LEASE and AGREEMENT (the “Agreement” or the “Agreement and Lease”) is made and entered into on May [REDACTED], 2023, by and between the MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT, dba ReGen Monterey, a public entity duly organized pursuant to the provisions of California Health and Safety Code §§4170 *et seq.*, (the “District”), and SITOS GROUP, a LLC (“Sitos”), as follows:

Recitals

This Agreement is entered into with reference to the following facts and circumstances, which are hereby found and determined by the parties:

- A. The District owns and operates under a Use Permit from the County of Monterey for a Class III sanitary landfill for the disposal of municipal solid waste and other acceptable waste streams. A portion of the permitted 315-acre landfill site has also been set aside for an extensive composting facility, which is operated under a lease from the District by the Keith Day Company, Inc.
- B. Sitos has been involved in developing a new technology to repurpose wood and yard debris (aka “green waste”) materials and biosolids into a stable carbon product called biochar, which has a value when sequestered in a soil amendment or in construction materials. Sitos proposes to set up pyrolysis equipment on a one-to-two-acre District land area that would use woody and green waste feedstock provided by the District from the Keith Day Company facility to convert same to biochar.
- C. The proposed Biochar Technology Pilot Study aligns with the District’s ReGen Strategic Plan as it is intended to provide a higher beneficial reuse of an organic waste material by transforming that material to a biochar and using the biochar as an admix agent to organic compost produced onsite by the Keith Day Company, an upgraded material as an agricultural product of higher quality which will be desired by Monterey County farmers.
- D. The biochar pilot study is proposed to operate for one year, from approximately June 2023 to June 2024, after which time the results of the pilot study would be evaluated by the parties, both separately and together, to determine if they agree that it is practical and worthwhile to continue the pilot study and use of the pyrolysis equipment on the District’s property for a longer term of up to one year and ending on June 30, 2025.
- E. It is mutually agreed by the parties hereto that this Agreement is entered into upon and subject to the following terms, covenants, conditions and provisions, and Sitos covenants, as a material part of the consideration of this Agreement, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to

be kept, performed and complied with, and this Agreement is made and entered into upon the condition of such performance and compliance.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, District and Sitos agree to the following terms and conditions:

Terms and Conditions

ARTICLE I. PREMISES AND TERM

1.02 Leased Premises. District, for and in consideration of the covenants and conditions herein contained to be kept, performed and observed by Sitos, does hereby lease to Sitos, and Sitos does hereby lease and accept from District, a parcel of real property, hereinafter referred to as the "Premises," consisting of approximately one-to-two (1-2) acres, more or less, of the District's sanitary landfill site near the Salinas River west of Salinas, California and north of Marina, California, the specific location of which Premises are designated and outlined on the map of the landfill site and the Premises which is attached as **Exhibit A** hereto, and which is incorporated herein and initialed by both parties hereto. The specific acreage of the leased Premises shall be determined by a survey of the property, along with a legal description. Any redesignations or changes in the specific location of the Premises during the term of this Agreement, or any extensions hereof, or any revisions in the total number of acres leased to Sitos, shall be done only within the sole discretion of the District's General Manager, with the approval of the District's Board of Directors, and upon 90 days prior written notice to Sitos.

1.03 Term of Agreement/Lease. The base term of this Agreement and this Lease shall be for one year, commencing on or about on the first day of June 2023, and continuing for thirteen (13) months thereafter, to June 30, 2024. Prior to June 1, 2024, the parties will meet and confer to evaluate the results of the study, at which time the parties may mutually decide to discuss and negotiate a further continuance of this Agreement and Lease for another twelve (12) months ending June 30, 2025, at terms and provisions to be mutually agreed upon in writing by the parties hereto.

ARTICLE 2. LEASE PAYMENTS/RENT

2.01 Rent. During the limited one-year term of this Agreement and Lease, and the twelve (12) month optional extension if mutually agreed to, no rent or lease payments shall be due and payable by Sitos to the District.

2.02 Holding Over. Any holding over of or leaving equipment on the Premises by Sitos after the expiration of three months following the end of this Agreement and Lease, with the consent of the District, shall be construed to be a tenancy from month-to-month at a monthly rental to be established in writing in the sole discretion of the District. Sitos's occupancy during any period of holding over shall otherwise be on the same terms and conditions herein specified so far as applicable.

ARTICLE 3. UTILITIES AND TAXES

3.01 Sitos to Pay Utilities. Sitos shall pay all charges for water, heat, gas, electricity, telephone service, rubbish removal, portable toilet service and any and all other utility services of any kind and nature whatsoever, supplied to and used on the Premises, or any office trailer located off the Premises, throughout the term of this Agreement and Lease. All utility lines shall be installed underground by a California licensed and registered public works contractor retained by the District for Sitos, at Sitos' expense. With the written permission of District, Sitos shall have the right of first refusal for any excess potable as well as non-potable water resulting from the District's landfill operations, charged at actual cost.

3.02 Sitos to Pay Any Levied Taxes. Sitos is hereby specifically notified that although the District is a public entity not normally subject to property taxes upon its real property, the Premises leased hereby to Sitos and its possessory interest therein may possibly be subject to the payment of property taxes levied thereon, for which Sitos shall be liable.

ARTICLE 4. USE AND OCCUPANCY

4.01 Use of Premises. Sitos shall use the premises solely for the purpose of conducting and carrying on its biochar technology pilot study project, and for other uses normally incident thereto, and for no other purpose without first obtaining the prior written consent of the District. Sitos agrees to utilize woody and yard debris (aka "green waste") material and if available, biosolids, feedstock provided by the District, or by the Keith Day Company, to the extent possible, provided to Sitos at cost or without cost. Sitos may also import feedstock materials. To the extent such imports may interfere with use of District's feedstock materials, District and Sitos agree to discuss and resolve such issues in writing. In no event may any imported feedstock materials be accepted by Sitos without a District tipping fee have been received by the District.

4.02 Maintenance and Restoration. Sitos shall, at its own cost and expense, keep and maintain the Premises and all improvements and facilities on the Premises in good order and repair and in as safe and clean a condition as they were when placed by Sitos on the Premises or received from the District, reasonable wear and tear excepted, and upon termination of this Agreement and Lease, Sitos shall restore the Premises to a reasonably similar condition as existed prior to the entry thereon by Sitos, and shall remove all improvements, personal property and stored feedstock materials therefrom.

4.03 Access to Premises. The District shall provide Sitos with access to said Premises by means of an access road across District's property.

4.04 Tenant Improvements. Sitos shall be financially responsible for the construction of any tenant improvements that may be necessary to its pilot study operations for which Sitos has received the District's prior consent for said improvements. Improvements to/on District property shall be completed in accordance with applicable local, state, and federal regulations and applicable requirements of California public works provisions.

4.05 Drainage. Drainage from any improvements to or alterations of the Premises shall be engineered by Sitos, with assistance from the District, so that District's remaining lands are not adversely affected and so that surface flows over and above those generated by such land in its present unimproved state are retained and disposed of on site by means of a percolation pond. Sitos shall be responsible for maintaining the working surface grade to avoid the accumulation of standing water caused by creation of low spots.

4.06 Public Health and Safety. Sitos shall supply systems on the Premises for the protection of public health and safety, including without limitation, a fire control program and provisions for vector control. Tenant shall operate the pyrolysis facility so as to minimize potential health and safety problems for employees of both Sitos and District, users of the landfill site and neighboring properties. Sitos shall operate and maintain the pilot study facility in a neat and orderly manner and shall police the area as frequently as necessary to prevent litter from blowing off the premises of the facility.

4.07 Odor Control. Sitos shall conduct the pilot study operation in such a manner as to minimize odors, especially the migration of odors to adjacent properties on and off the landfill disposal site. The feedstock material shall be maintained to the extent possible in an aerobic condition to avoid odors produced by anaerobic conditions. It is specifically acknowledged by District that by its nature, even a well-designed and operated aerobic facility may occasionally generate odors which are perceived by some to be offensive. Sitos shall not be considered in default if offensive odors are generated occasionally, provided the facility is operated according to the provisions of this Agreement and Lease and the requirements of all applicable permits and regulations for the pilot study facility. In the event that offensive odors are generated occasionally which result in complaints and Sitos is operating the facility in accordance with this Agreement and Lease and applicable permits and regulations, Sitos and District shall work together in resolving such complaints.

4.08 Waste and Nuisance Prohibited. Sitos shall not commit or permit the commission by others of any waste spillage or disposal on the Premises, shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code on the Premises, and shall not use or permit the use of the Premises for any unlawful purpose.

4.09 Dust Control. To minimize the generation of fugitive dust leaving the Premises, Sitos shall apply water and/or dust mitigation measures to operational emission points of the pilot study facility area as may be necessary to control fugitive dust emissions from the pilot study activities and site.

4.10 Fire Control. Sitos shall design the pilot study facility so that a fire control program can be implemented. The fire control program shall be implemented in accordance with requirements of the local fire department providing fire protection and suppression services to the District's landfill disposal site, insurance underwriters requirements and all applicable local rules.

4.11 Materials Storage Requirements. Long-term storage of feedstock materials is only acceptable to the extent that satisfactory odor, vector, dust, and fire control measures are employed to eliminate nuisance, health and safety problems. In the event Sitos fails to store materials in an

acceptable manner as set forth in this Agreement and Lease, Sitos shall defend and indemnify the District from all liability and expense resulting from such failure, including, without limitation, nuisance claims by neighboring land users and owners.

4.12 Environmental Requirements. Sitos shall ensure that the operations of the pilot study facility are in compliance with all permit conditions that may be issued for the facility, including without limitation, permits issued by the California Integrated Waste Management Board, the California Regional Water Quality Control Board, the Monterey Bay Unified Air Pollution Control District, and the County of Monterey. The District holds the Land Use Permit from Monterey County.

4.13 Educational Opportunities. Upon notice, and with supervision, Sitos may agree to allow for public education opportunities. Such opportunities may be arranged and conducted by either Sitos or the District with the mutual consent of the other party.

4.14 Compliance with Governmental Authorities. Sitos shall comply with and shall observe in its use of the Premises all requirements of all governmental authorities, local, state, and federal, in force now or in the future, affecting the Premises or the pilot study operations of Sitos.

4.15 Inspection by District. Sitos, upon notice, shall permit the District or District's agents, representatives or employees to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether Sitos is complying with the terms of this Agreement and Lease and for the purpose of doing other lawful acts that may be necessary to protect District's interest in the Premises under this Agreement/Lease.

4.16 Liens and Claims. Sitos shall promptly pay when due all amounts payable for labor and materials furnished to Sitos, so as to prevent any lien or other claim under any provision of law from arising against the District or the Premises and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

ARTICLE 5. INDEMNITY AND INSURANCE

5.01 a) No Liability of District for Acts of Sitos. The District, its Board of Directors, officers, employees and agents shall not be liable at any time for any loss, damage, injury to the property or person or any person whomsoever, claims, lawsuits, costs, expenses, attorney's fees, court costs or any other cost at any time occasioned by or arising out of any act or omission of Sitos, or any employee or agent of Sitos, or of anyone holding under Sitos or from the occupancy or use of the Premises or any part thereof by or under Sitos, or directly or indirectly from any state or condition of the Premises or any part thereof during the term of this Agreement and Lease.

b) Indemnification of District. Notwithstanding anything to the contrary in this Agreement and Lease, to the full extent permitted by law, Sitos shall defend, protect, indemnify, and hold the District, its Board of Directors, officers, employees and agents, and the Premises, free and harmless from any and all damages, liabilities, claims, suits, actions, proceedings, costs and expenses of whatsoever nature, without limitation or restriction, arising under the terms of

this Agreement/Lease or arising out of or in connection with the operation carried on by Sitos on, or the use or occupancy of, the Premises.

5.02 Insurance Requirements. Without limiting the duty of Sitos to indemnify, Sitos shall maintain in effect throughout the initial and any extended term of the Agreement and Lease the insurance coverage set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Sitos will have the District, its board, officers, employees and agents named as additional insureds or covered parties with respect to claims arising out of the performance of Sitos's operations under this Agreement and Lease, including ongoing and completed operations, and shall further provide that its coverage is primary to any insurance or self-insurance maintained by the District, and that the insurance of an additional insured or covered party shall not be called upon to contribute to a loss covered by the Sitos's primary coverage.

5.03 Certificate of Coverage. A certificate of coverage, certifying the Sitos's coverage, which shall meet all requirements of this Agreement and Lease, shall be provided to the District prior to the execution of this Agreement/Lease. Acceptance of the certificate of coverage shall in no way modify or change the indemnification provisions of this Agreement/Lease, which shall remain in full force and effect. District shall be provided with thirty (30) days' prior written notice of any reduction in coverage or limit, cancellation or intended cancellations.

5.04 Compliance with Insurance Policies. Sitos shall comply with all of the terms and conditions of each insurance policy maintained pursuant to the terms of this Agreement and Lease to the extent necessary to avoid invalidating such insurance policy of impairing the coverage available thereunder.

5.05 Limits. The limits of insurance maintained by the Sitos shall not be construed as limits on its indemnification obligations set forth in this Agreement/ Lease.

ARTICLE 6. DEFAULT AND REMEDIES

6.01 Default. District may, at its option and without limiting District in the exercise of any other right or remedy it may have on account of a default or breach by Sitos, exercise the rights and remedies specified in paragraph 6.02 if:

a) Payment Default. Sitos defaults in the payment of any money agreed to be paid by Sitos to District for rent, if and when required, or to be paid for utilities, improvements, or for any other purpose under this Agreement and Lease, and if such default continues for ten days after written notice to Sitos by District.

b) Other Default: Sitos defaults in the performance of any other of its agreements, conditions or covenants under this Agreement and Lease and such default continues for ten days, plus such period of delay as Sitos may encounter in the performance of its agreements by reason of matters beyond the control of Sitos.

6.02 Remedies. On any breach or default District may exercise any of the following rights after the periods of time stated in paragraph 6.01:

a) Re-entry and Removal and Storage of Property and Repairs. After a 5-day advance written notice from the District to Sitos the District may re-enter and remove all persons and property from the Premises, storing the personal property in a public warehouse or elsewhere at the cost of, for the account of, and at the risk of Sitos.

b) Termination of Agreement/Lease and Damages. Terminate this Agreement and Lease, in which event Sitos agrees to immediately surrender possession of the Premises, and to pay to District, in addition to any other remedy District may have, all damages District may incur by reason of Sitos's defaults, including the cost of recovering the Premises.

6.03 No Waiver of Default. District's failure to take advantage of any default or breach of covenant on the part of Sitos shall not be, or be construed as, a waiver hereof, nor shall any custom or practice which may grow up between the parties in the course of administering this Agreement and Lease be construed to waive or to lessen the right of District to insist upon the performance by Sitos of any term, covenant, or condition hereof, or to exercise any rights given it on account of any such default. A waiver of a particular breach, or default, shall not be deemed to be a waiver of the same or any other subsequent breach or default.

6.04 Remedies Cumulative. The rights, powers, elections, and remedies of the District contained in this Agreement and Lease shall be construed as cumulative and no one of them is or shall be considered exclusive of the other or exclusive of any rights or remedies allowed by law, and the exercise of one or more rights, powers, elections, or remedies shall not impair District's right to exercise any other.

ARTICLE 7. GENERAL PROVISIONS

7.01 Confidentiality and Non-Disclosure. With regard to the biochar technology pilot study provided for by the parties in this Agreement and Lease, it is anticipated that each party on occasion may furnish to the other certain confidential and/or proprietary information and property, and therefor the parties have prepared and agreed upon a separate Mutual Confidentiality and Non-Disclosure Agreement to apply to their activities under this Agreement and Lease, and same is attached as **Exhibit C** hereto and is incorporated herein by this reference thereto.

7.02 Dispute Resolution.

a) Duty to Meet and Confer. If any dispute arises between the parties as to proper interpretation or application of this Agreement and Lease, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. Representatives of each party will personally meet and attempt in good faith to resolve the dispute.

b) Mediation. If their representatives are unable to resolve the dispute within 15 days thereafter, the parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of the Judicial Arbitration and Mediation Service ("JAMS"). The expenses of witnesses for either side shall be paid for the party producing such witnesses. All other expenses of the mediation shall be borne equally by the parties, unless they agree otherwise. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation shall be inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 through 1128), unless otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. Mediation shall be completed within 30 days after request for the mediation by either party or such additional time as may be mutually agreed upon in writing by both parties.

c) Arbitration. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted under the rules of JAMS. The decision of the arbitrator shall be binding, unless within 30 days after issuance of the arbitrator's written decision a party files an action in a court of law. Venue and jurisdiction for any legal proceeding between the parties shall lie in the Superior Court for the County of Monterey.

7.03 Conditions and Covenants. All of the provisions of this Agreement and Lease shall be deemed as running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

7.04 No Waiver of Breach. No failure by either District or Sitos to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Agreement and Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement and Lease, but each and every covenant, condition, agreement, and term of this Agreement/Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

7.05 Time of Essence. Time is of the essence of this Agreement and Lease, and of each provision hereof.

7.06 Subleasing and Assigning. Sitos shall not encumber, assign or otherwise transfer this Agreement and Lease or any right or interest in this Agreement/Lease, or any right or interest in the Premises, without the express written consent of the District first had and obtained. Neither shall Sitos sublet the Premises or any part thereof or allow any other persons, other than Sitos's agents, employees and customers to occupy or use the premises or any part thereof without the prior written consent of District.

7.07 Insolvency of Sitos. The insolvency of Sitos as evidenced by a receiver being appointed to take possession of all or substantially all of the property of Sitos, the making of a general assignment for the benefit of creditors by Sitos, or the adjudication of Sitos as a bankrupt under the Federal Bankruptcy Act, shall terminate this Agreement and Lease and entitle District to re-enter and regain possession of the Premises.

7.08 Binding on Heirs and Successors. This Agreement and Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

7.09 Entire Agreement. This Agreement and Lease contains the entire agreement of the parties with respect to the matters covered by this Agreement/Lease, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement/Lease, shall be binding or valid.

7.10 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement and Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

7.11 Attorney's Fees. Should either party commence any legal action or proceeding against the other based on this Lease, the prevailing party shall be entitled to an award of attorney's fees.

7.12 Modification. This Agreement and Lease is not subject to modification except in a writing signed by both parties.

7.13 a) Delivery of Notices-Method and Time. All notices, demands, or requests from one party to another may be personally delivered or sent by mail, certified or registered, postage prepaid, to the addresses stated in this section, and shall be deemed to have been given at the time of personal delivery or at the end of the second full day following the date of mailing.

b) Notices to District. All notices, demands, or requests from Sitos to District shall be given to District at the District's offices at 14201 Del Monte Boulevard, Monterey County (Salinas), California, or at Post Office Box 1670, Marina, California, 93933-1670.

c) Notices to Sitos. All notices, demands, or requests from District to Sitos shall be given to Sitos at 31901 Sanchez Rd, Soledad, CA 93960.

d) Change of Address. Each party shall have the right, from time-to-time, to designate a different address by notice given in conformity with this section.

7.14 Counterparts. This Agreement and Lease, consisting of ten (10) pages, plus Exhibits A, B and C, has been executed by the parties hereto in two counterparts, each of which shall be deemed to be an original copy.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement in duplicate on the date first hereinabove stated at District's office at 14201 Del Monte Boulevard, Monterey County (Salinas), California 93908.

MONTEREY REGIONAL WASTE
MANAGEMENT DISTRICT

SITOS GROUP, LLC

By _____
Chairman

By _____
Mayo Ryan, CEO

And by _____
General Manager

EXHIBIT A - Map showing location of premises [to be initialed by the parties and attached.]

EXHIBIT B - Insurance Requirements

EXHIBIT C - Mutual Confidentiality and Non-Disclosure Agreement

EXHIBIT A - Map showing location of premises



Sitos Group (initial)

MRWMD (initial)

EXHIBIT B

INSURANCE REQUIREMENTS

Without limiting Sitos's indemnification obligations to District under this Agreement and Lease, Sitos shall provide and maintain for the duration of this Agreement and Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Sitos's operation and use of the leased premises. The cost of such insurance shall be borne by Sitos.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.

B. Automobile Liability covering all owned, non-owned and hired auto, Insurance Services Office Form CA0001.

C. Workers Compensation, as required by the State of California and Employer's Liability Insurance.

D. Property Insurance against all risk or special form perils, including Replacement Cost and debris removal coverage for any Improvements, without deduction for depreciation, constructed or erected by Sitos, and the personal property of Sitos, its agents, and employees.

E. Pollution Legal Liability and Remediation and/or Errors & Omissions applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year. This policy shall be endorsed to cover materials to be transported by Sitos.

2. Minimum Limits of Insurance

Sitos shall maintain limits no less than:

A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.

B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.

C. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of the District.

D. Property: Full replacement cost with no coinsurance penalty provision.

3. Deductibles and Self-Insured Retentions

Any liability deductible or self-insured retention must be declared to and approved by the District's General Manager or designee. The property insurance deductible shall not exceed \$5,000 per occurrence and shall be borne by Sitos.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

A. Additional Insured Endorsement: Any general liability policy provided by Sitos shall contain an additional insured endorsement applying coverage to the District, the members of the District Board of Directors and the officers, agents, and employees of the District, individually and collectively.

B. Primary Insurance Endorsement: For any claims related to this Agreement and Lease, Sitos's insurance coverage shall be primary insurance as respects the District, the members of the Board of Directors of the District and the officers, agents, and employees of the District, individually and collectively. Any insurance or self-insurance maintained by the District, the members of the Board of Directors, the District's officers, officials, or employees shall be excess of the Tenant's insurance and shall not contribute with it.

C. Notice of Cancellation: Each required insurance policy shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District at the address shown in section of the Agreement/Lease entitled "Notices".

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by District's Risk Manager.

6. Evidence of Insurance

Prior to commencement of this Agreement and Lease Sitos shall furnish the District with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Sitos shall furnish certified copies of the actual insurance policies specified herein, within thirty days after commencement of the Agreement and Lease. Thereafter, copies of renewal certificates and amendatory endorsements shall be furnished to District within thirty days of the expiration of the term of any required policy. Sitos shall permit District at all reasonable times to inspect any policies of insurance of Sitos which Tenant has not delivered to the District. Policies, renewal certificates and amendatory endorsements shall be delivered to the District at the address shown in the section of the Agreement and Lease entitled "7.13 a) Delivery of Notices-Method and Time".

7. Failure to Obtain or Maintain Insurance.

District's Remedies. Sitos's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Lease, and District may, at its option, terminate the Agreement/Lease for any such default by Sitos.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Sitos, and any approval of said insurance by the District are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Sitos pursuant to the Agreement and Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

District retains the right at any time to review the coverage, form and amount of insurance required herein and may require Sitos to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Sub-tenants' Insurance

Sitos shall require any District-approved sub-tenant, of all or any portion of the Premises, to provide the insurance coverage described herein prior to its occupancy of the Premises.

EXHIBIT C

SITOS GROUP, LLC. & MONTEREY WASTE MANAGEMENT DISTRICT MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

The purpose of this agreement between SITOS GROUP, LLC. ("SITOS") and MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT, dba ReGen Monterey ("DISTRICT") is to set forth the obligations of mutual confidentiality covering discussions, evaluation, design, planning and implementation of biochar manufacturing and/or bioenergy project(s), pyrolysis equipment deployment, and related business development and project partnerships ("Opportunities") between SITOS and DISTRICT("the Parties").

In connection with the discussions, evaluation, and implementation of the Opportunities between SITOS and DISTRICT, each party may furnish to the other certain confidential and/or proprietary information, including, but not limited to, confidential ideas, inventions, intellectual property, patented and unpatented technologies, business and economic plans, data and other information related to the design, function, and the implementation of the Parties' biochar and bioenergy plans. As a condition of each party furnishing the other with such confidential and proprietary information, each party agrees to treat any such information which is furnished to it by or on behalf of the other party, regardless of the manner in which it is furnished (hereinafter referred to as the "Confidential Material"), as confidential in accordance with the provisions of this agreement. For purposes of this agreement, the term Confidential Material does not include information which: **1.** was or becomes generally available to the public other than as a result of a disclosure by either party or its respective personnel or agents, **2.** becomes available to either party on a non-confidential basis from a source other than the other party or its representatives, provided that such information is not known to such party to be bound by a Confidentiality Agreement with the other party by a contractual, legal or financial obligation, **3.** is in the possession of either party prior to its being furnished to it by the other party, provided that the source of such information was not bound by a Confidentiality Agreement with the other party or otherwise prohibited from transmission of the information to such party by a contractual, legal, or fiduciary obligation, or **4.** is information requested to be disclosed by any judicial or other governmental order, including pursuant to a request to the DISTRICT under the California Public Records Act (Govt. Code section 6250 et seq.), to which the parties agree the DISTRICT is subject as a California public agency, provided, however, that the DISTRICT shall, before any disclosure, provide written notice to SITOS as soon as practical, but within three (3) days of receipt of an order or request, to provide SITOS an opportunity to lawfully object and defend any rights it may have to keep the Confidential Material confidential. DISTRICT may cooperate with SITOS in any of its efforts to prevent any release of the Confidential Material, however DISTRICT shall not be responsible to expend any monies in that regard in excess of its actual costs of notifying SITOS of an order or request, as noted above, and DISTRICT shall not be liable for any damages arising from any requirement under the law to disclose Confidential Material

Each party agrees that the Confidential Material will be used solely for the purpose of the Opportunities, and such information will be kept strictly confidential by each party and its employees, agents, and advisors; provided, however, that any of such information may be disclosed to such persons who need to know such information solely for the purpose of the Opportunities. Such persons shall be informed of the confidential nature of such information and shall be directed to treat such information confidentially as defined in this agreement. Each party agrees that the Confidential Material specifically discussed may not be used by the other party for the design, fabrication, manufacture, or assembly of equipment that performs the function detailed in the Confidential Material or functions, business practices, economic modeling or operational plans substantially similar thereto in any manner without the prior written approval of the releasing party.

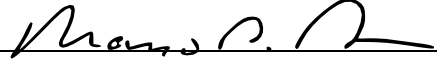
All Confidential Material disclosed by either party shall be and shall remain the property of such party. Within ten (10) days after a return request by the disclosing party, the recipient party shall return or destroy all documents furnished by the disclosing party except to the extent either required or prohibited by law. Any destruction of materials shall be verified in writing. Any Confidential Material that is not returned or destroyed, including, without limitation, any oral Confidential Material, shall remain subject to the confidential obligations set forth in this agreement. Each party acknowledges and agrees that the remedy of the other party at law for any breach of this agreement will be inadequate and that the other party shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for the breach of this agreement but shall be in addition to all other remedies available at law or in equity. The parties are entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain judgment costs and attorney's fees as permitted by law.

This agreement shall be governed by and construed in accordance with the laws of the state of California, excluding that body of law applicable to conflicts of law. If any provision of this agreement is for any reason found by a court of competent jurisdiction to be unenforceable, the remainder of this agreement shall continue in full force and effect. The parties hereto agree to submit themselves and this agreement to the jurisdiction of the federal and state courts in the state of California.

Each party acknowledges and agrees that no failure or delay by the other party in exercising any right, power or privilege under this agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this agreement.

Term: Survival of Provisions. Each party shall be bound by the obligations set forth in this Agreement regarding non-disclosure and otherwise for a period of two (2) years from the date first set forth below; provided that such expiration shall in no way limit the Parties' respective rights and obligations with respect to any breach that occurs prior to such expiration.

SITOS GROUP, LLC.

BY: 
Mayo P. Ryan

TITLE: CEO

DATE:

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

BY: _____

TITLE: _____

DATE: _____