

COMMUNITY BENEFITS AGREEMENT

between

CONTRA COSTA COUNTY

and

EMBARC CONTRA COSTA, LLC

County File CDLP20-02017

This Community Benefits Agreement (“Agreement”) is entered into as of _____, 2022, by and between Contra Costa County, a political subdivision of the State of California, (“County”) and Embarc Contra Costa, LLC, a California limited liability company (“Embarc”).

Recitals

- A. On _____, the Contra Costa County Board of Supervisors approved issuing a land use permit (the “LUP”) for Embarc’s storefront cannabis dispensary (the “Dispensary”), located at 3503 Pacheco Boulevard, in the unincorporated Pacheco area of Contra Costa County (County File No. CDLP20-02017).
- B. In addition to obtaining the LUP and other discretionary state and local approvals to operate the Dispensary, Embarc will obtain a County building permit and make improvements to the Dispensary. After those improvements are complete and have passed all required inspections by the County, Embarc will receive a certificate of occupancy from the County (“Occupancy Certificate”). Embarc will be able to commence commercial operation of the Dispensary at any time after the Occupancy Certificate is issued.
- C. Commercial cannabis storefront dispensaries are a unique land use with unique impacts on the community. When Embarc submitted a proposal to apply for one of four storefront dispensary land use permits, it pledged to enter into this Agreement with the County and to contribute two percent (2%) of gross sales to the County – one percent (1%) of gross sales to a community benefits fund, and one percent (1%) of gross sales to an enforcement fund – among other community benefits. Because there is no designated enforcement fund, Embarc has agreed to direct the contribution it would have made to that fund to the community benefits fund. This Agreement includes the voluntary commitments made by Embarc when it submitted a proposal to seek an opportunity to apply for one of four land use permits to operate commercial cannabis storefront dispensaries in unincorporated Contra Costa County.

Agreement

NOW, THEREFORE, the County and Embarc agree as follows:

1. **Purpose.** The purpose of this Agreement is to memorialize Embarc’s commitment to providing community benefits in connection with its Dispensary, including by paying the County a percentage of Gross Sales at the Dispensary.
2. **Term.** The term (“Term”) of this Agreement begins on the Effective Date, and it expires upon the earliest of any of the following to occur: (a) the expiration of the LUP and any extensions and renewals thereof; (b) the revocation of the LUP; (c) the effective date of any court decision that invalidates the LUP (following any appeals or the lapse of the time to appeal the decision) or; (d) the effective date of any change in the law that invalidates the LUP or that prohibits the sale of cannabis and cannabis-containing products at the Dispensary.
3. **Community Benefits Payment.**
 - a. Payment for Each Operating Year. Embarc shall make an annual community benefits payment (each a “Payment”) to the County for each year or portion thereof during the Term that the Dispensary operates (each an “Operating Year”). The first Operating Year begins on the date the Occupancy Certificate is issued, and it ends one year thereafter. Each subsequent Operating Year begins on the anniversary of the issuance of the Occupancy Certificate, and it ends one year thereafter.
 - b. Calculation of Payments. For each Operating Year, Embarc shall pay the County a Payment that is equal to two percent (2%) of the Dispensary’s Gross Sales during the Operating Year for which the Payment is made. For the purpose of this Agreement, the term “Gross Sales” shall mean all income from the sale of cannabis, cannabis-containing products, and all other products and goods sold at the Dispensary before any deductions, including but not limited to taxes, overhead, labor, rent, utilities, and cost of goods sold.
 - c. Survival. The requirements of this Section 3 shall survive the termination or expiration of this Agreement.
4. **Timing, Verification, and Use of Payments.**
 - a. Timing of Payments.
 - (i) *Annual Payments.* Except as specified in Sections 4(a)(ii) and 4(a)(iii), Embarc shall make each Payment to the County within 60 days after the end of the Operating Year for which the Payment is made.
 - (ii) *Final Payment.* Embarc shall make its final Payment to the County within 60 days after the expiration of this Agreement.

- (iii) *Payment Following Assignment.* If Embarc sells, conveys, or transfers the Dispensary to a third party during an Operating Year, within 60 days after the effective date of that sale, conveyance, or transfer, Embarc shall make a Payment to the County in the amount of two percent (2%) of the Dispensary's Gross Sales during the portion of the Operating Year occurring before the effective date of sale, conveyance, or transfer; and, within 60 days following the end of that Operating Year, the new owner of the Dispensary shall make a Payment to the County in the amount of two percent (2%) of the Dispensary's Gross Sales during the remainder of that Operating Year.
- b. Payment Documentation. When Embarc makes a Payment to the County, Embarc shall include with the Payment a financial statement showing the Dispensary's Gross Sales for the Operating Year, or portion thereof, for which the Payment is made.
- c. Verification of Gross Sales. During the Term of this Agreement and for three years following its expiration or assignment, the Director of Conservation and Development ("Director") may request copies of Embarc's state and federal tax returns, cash-flow reports, financial statements, income statements, books, journals, receipts, and other financial records for the Dispensary ("Financial Records"), to enable the Director to independently verify the Dispensary's Gross Sales for any Operating Year. Within 30 days after receiving the Director's written request for Financial Records under this section, Embarc shall provide the Director copies of all Financial Records requested by the Director. If the Director determines that Embarc has underpaid any Payment, Embarc shall pay the County the balance owed, as determined by the Director, within 30 days following a written request for payment from the Director.
- d. Deposit and Use of Payments. The Director will ensure that all Payments are deposited in an account administered by the County. The use and allocation of all Payment revenues, and any interest that accrues thereon, will be determined by the Board of Supervisors, in its sole discretion, consistent with the County's "Policy for Allocating Community Benefit Funds Received from Approved Commercial Cannabis Businesses" if then in effect, or any subsequent policy then in effect.
- e. Survival. The requirements of Section 4 shall survive the termination, expiration, or assignment of this Agreement.

5. **Other Community Benefits and Requirements.**

- a. Local Workforce. To the extent permitted by applicable local, state, and federal laws and regulations, and to the extent practicable, Embarc shall ensure that its Dispensary workforce is composed of residents of the incorporated and unincorporated areas of Bay Point, Clyde, Concord, Crockett, Hercules, Martinez,

8. **No Third-Party Beneficiaries.** Nothing in this Agreement confers any rights or obligations on any person or entity that is not a party to this Agreement.
9. **Counterparts.** The Agreement may be executed in counterparts.
10. **Governing Law.** This Agreement shall be governed by the laws of the State of California.

[Signatures on next page.]

Contra Costa County and Embarc Contra Costa, LLC, have executed this Agreement as of the Effective Date.

CONTRA COSTA COUNTY

By: _____

Name: _____

Title: _____

EMBARC CONTRA COSTA, LLC

DocuSigned by:

By: George Miller

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Name: George Miller

Title: Managing Partner

By: _____

Name: _____

Title: _____

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