

DOCKETED

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From: renee.robin@engie.com
Sent time: 02/18/2025 10:22:24 PM
To: Israel Dominguez <idominguez@saddleback.edu>
Cc: jalvord@powerflowdev.com; justin.amirault@engie.com; Jeff@venturestrategic.com; rwaterman@bhfs.com; jessica.oo@engie.com; diego.lopezlana@engie.com
Subject: Donation/Community Benefits Agreement for Saddleback College Foundation
Attachments: image001.png Compass Community Benefits Agreement with Saddleback College Foundation_v1.docx



**COMMUNITY BENEFITS AGREEMENT BETWEEN
COMPASS ENERGY STORAGE LLC AND
SADDLEBACK COLLEGE FOUNDATION**

This COMMUNITY BENEFITS AGREEMENT ("Agreement") is made and entered into as of _____, 2025, by and between COMPASS ENERGY STORAGE LLC, a Delaware limited liability company ("Compass"), and SADDLEBACK COLLEGE FOUNDATION, a non-profit corporation ("Saddleback"). Compass and Saddleback are herein referred to each as a "Party" or collectively as the "Parties." This Agreement is entered into with reference to the following recitals.

RECITALS

- A. Compass is developing the Compass Battery Energy Storage Project (the "Project") in San Juan Capistrano, County of Orange, California.
- B. The Project as proposed would construct and operate a battery energy storage system ("BESS") project with the capacity to store from and discharge to the grid up to 250 megawatts ("MW") and 1,000 megawatt hours ("MWh") of electricity.
- C. Energy storage projects, like the Project, have been identified as a critical component for California to meet its 2045 target of 100% greenhouse gas-neutral retail electricity by storing renewable energy during times of surplus and discharging that energy to the grid when it is needed.
- D. The Project has applied for Opt-In Certification by the California Energy Commission ("CEC") and will undergo an environmental analysis under the California Environmental Quality Act to analyze the Project's potential environmental impacts (collectively, the "Approvals").
- E. To satisfy the application requirements for Opt-In Certification by the CEC, Compass must enter into a legally binding and enforceable agreement with, or that benefits, a coalition of one or more community-based organizations where there is mutual benefit to the parties to the agreement. The Parties intend for this Agreement to satisfy that obligation under Public Resources Code Section 25545.10(a).
- F. Saddleback is a Section 501(c)(3) non-profit corporation which aims to enhance the quality of higher education by gaining financial support for the academic, athletic, and cultural programs of Saddleback College in Mission Viejo, County of Orange, California. Saddleback College offers various associate degrees, academic certificates, and occupational skills programs designed to assist students transfer to four-year colleges or prepare for the workforce.
- G. In light of the foregoing, Compass desires to make multiple contributions to Saddleback totaling \$750,000.00, and Saddleback desires to accept said contributions for the benefit of the higher-education programs at Saddleback College in accordance with the terms and conditions agreed to below.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties, and for other good and valuable consideration, Compass and Saddleback agree as follows:

AGREEMENT

1. CONDITIONS PRECEDENT

This Agreement is conditioned upon the following conditions precedent:

- a. The CEC has issued a certification to the Project, which is final and unappealable, allowing 250 MW (1,000 MWh) of installed battery energy storage capacity;
- b. The CEC Compliance Division has issued a Notice to Proceed (NTP) to the Project;
- c. Any secondary permits or approvals required from any other agency to construct and operate the Project have been issued to the Project and are final and unappealable;
- d. Any litigation challenging the CEC certification and/or any secondary permits or approvals has concluded and is final and unappealable;
- e. Compass has received, as determined by it, appropriate assurances related to construction financing for the Project; and
- f. Compass has issued a Notice To Proceed (“NTP”) with the construction contractor to build the Project.

2. CHARITABLE DONATION

All payments made under the terms of this Agreement (the “Donations”) shall be treated as charitable donations for all purposes. It is the intent of the Parties that the Donations be made and used in compliance with all applicable federal and state laws governing donations made to charitable organizations. Saddleback represents and warrants to Compass that it is a tax-exempt entity pursuant to Section 501(c)(3) or other applicable sections of the Internal Revenue Code. The Parties acknowledge that they may be required by law to report information about the Donations and each Party agrees to report such information as legally required.

3. ACTIONS BY COMPASS

- a. Subject to the Conditions Precedent identified in Section 1 above, Compass will make a contribution to Saddleback in the amount of \$150,000 annually for five (5) years—for a total of five (5) contributions (totaling \$750,000.00)—for the benefit of the higher-education programs at Saddleback College, including construction, electrical, renewable solar and battery related apprenticeships, and/or Saddleback College’s general fund. Compass will make the first contribution within thirty (30) calendar days of the NTP date, which is defined as the day that Compass authorizes the construction contractor to build the full scope of work for the Project under the Engineering, Procurement, and Construction contract. Compass will make the remaining

contributions on an annual basis thereafter. Compass grants Saddleback irrevocable ownership, right, title, and interest in the Donation upon the terms and conditions set forth in this Agreement and without monetary payment to Compass. The Donation will be transferred to Saddleback free and clear of any liens, claims, or encumbrances.

4. ACTIONS BY SADDLEBACK

- a. Saddleback will utilize the Donations described in Section 3, above, for the benefit of the Economic and Workforce Development and the Career and Technical Education Programs. including but not limited to construction, electrical, renewable solar and battery related apprenticeships. Saddleback commits to use its best efforts to begin using the Donations for these programs within one (1) calendar year of receiving Compass' first yearly contribution.
- b. Upon request by Compass, Saddleback agrees to provide an accounting that evidences the usage of the Donations. Saddleback also agrees to report the Donation to the CEC, the public, or any other interested entity in accordance with applicable law and consistent with Section 6 below.
- c. Saddleback, on its own behalf, and/or through its officers, representatives, business managers, agents, and/or attorneys, will not challenge, oppose, contest, take adverse action or bring suit, administratively or judicially, regarding the Project or its Approvals. Saddleback may also independently submit a written letter stating its support for the Project to the CEC. The officers, representatives, business managers, agents, and/or attorneys of Saddleback may also act independently as private citizens regarding approval of the Project, provided they are not acting on behalf of Saddleback.

5. ASSIGNMENT; BINDING ON SUCCESSORS

- a. Compass may assign or transfer its interest in this Agreement with prior written notice to Saddleback.
- b. Compass shall ensure that this Agreement shall inure to the benefit of and be binding upon Compass and any person or entity that acquires over fifty (50%) percent of Compass' rights, title or interest in the Project whether by sale, lease, merger, or other transfer, as though they were parties hereto, wherever located.
- c. This Agreement and its terms shall inure to the benefit of and be binding upon Saddleback and each and all of its respective successors, assignees, buyers, grantees, vendees, or transferees, and their past, present or future, direct or indirect, affiliates, partners, joint venturers, subsidiaries, parents, receivers, trustees, officers, directors, employees, agents, and shareholders of each of them.

6. CONFIDENTIALITY

The Parties agree to take all reasonable measures to keep in confidence the execution, terms, and conditions, as well as performance, of this Agreement, and the confidential data and information of any Party that the other Party may know or gain access to in relation to this Agreement (“Confidential Information”), and shall not disclose such Confidential Information to any third party without the prior written consent of the Party. Notwithstanding the foregoing, either Party may disclose this Agreement, including any Confidential Information contained herein, to any relevant local, state, and/or federal government entity for the purpose of obtaining a permit or other approval or certification, if required, or as otherwise required by law.

7. UNDERSTANDING OF TERMS

The Parties each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and on the advice of counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants as they may have desired prior to executing this Agreement. In the event an ambiguity or question of intent or interpretation arises under this Agreement, this Agreement shall be construed as if drafted jointly by each Party and no presumption or burden of proof shall arise favoring any Party by virtue of the authorship of any provisions of this Agreement.

8. AUTHORITY TO EXECUTE AGREEMENT

Each person signing this Agreement warrants that they have authority to execute this Agreement and to thereby bind the Party on whose behalf they are signing to the terms of this Agreement.

9. WAIVER AND RELEASE

Saddleback itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, members, successors, and assigns hereby expressly releases, waives, and forever discharges Compass and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, permitted successors, and permitted assigns from any and all claims, actions, causes of action, suits, losses, expenses, liabilities, obligations damages, and demands of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law or equity, arising out of or in connection with this Agreement, whether arising out of the negligence of Compass or Saddleback, or otherwise, except for any claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Agreement and any liabilities that cannot be released or waived under applicable law.

10. INDEMNIFICATION

Saddleback shall indemnify and defend Compass and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, “Indemnified Party”) against any and all losses, damages, liabilities, deficiencies, claims, actions judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees, that are incurred by Indemnified Party arising out of or relating to any third-party claim alleging:

- a. breach or non-fulfillment of any provision of this Agreement by Saddleback or Saddleback's employees;
- b. any negligent or more culpable act or omission of Saddleback (including any reckless or willful misconduct) in connection with the Donation;
- c. any alleged bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or culpable acts or omissions of Saddleback (including any reckless or willful misconduct); or
- d. any failure by Saddleback to comply with any applicable federal, state, or local laws, regulations, or codes in connection with the Donation.

11. LIMITATION OF LIABILITY

In no event shall Compass be liable for any consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, lost profits or revenues, or diminution in value, arising out of, or relating to, or in connection with the Donation, or any breach of this Agreement, regardless of:

- a. whether such damages were foreseeable;
- b. whether or not Compass was advised of the possibility of such damages;
- c. the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based; and
- d. the failure of any agreed or other remedy of its essential purpose.

12. AMENDMENTS

No provision of this Agreement may be modified, unless in writing and signed by the Party against whom the enforcement of such modification is sought.

13. PARAGRAPH HEADINGS

Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the Parties.

14. SEVERABILITY

If any portion of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole.

15. TIME OF THE ESSENCE

Time is of the essence in this Agreement.

16. COUNTERPARTS

This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on the Parties.

17. TERM AND TERMINATION

The term of this Agreement shall commence on the date it is executed by the last party to execute the Agreement and shall terminate on the earlier of the Project ceasing operation, or completely satisfying the terms set forth in Sections 3 and 4, above. If the Opt-In Certification for the Project expires or is terminated by the CEC for cause, then this Agreement will terminate automatically without further action from the Parties, unless there is an approved time extension or reissuance of the Certification.

18. GOVERNING LAW

The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any litigation relative to the formation, interpretation, and performance of this Agreement shall be in Orange County, California.

19. FORCE MAJEURE

No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such Party's failure or delay is caused by or results from the following force majeure events: (a) an act of God; (b) flood, fire, earthquake, epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; and (h) other similar events beyond the control of the Party(ies).

The impacted Party shall give notice within seven (7) days of the force majeure event to the other Party, stating the period of time the occurrence is expected to continue. The impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized. The impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following the notice given by it under this Section 19, the other Party may thereafter terminate this Agreement upon seven (7) days' notice.

20. ENTIRE AGREEMENT

This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

21. NOTICE

All letters, statements, or notices required pursuant to this Agreement shall be sent to the following addressees. Any letter, statement or notice sent shall be deemed served at the time of delivery when personally served, transmitted by facsimile machine or electronic mail, or by overnight parcel service. Any letter, statement, or notice sent by registered or certified mail shall be deemed served on the business day following deposit thereof in the U.S. Mail.

To: Saddleback College Foundation

[NAME]

[TITLE]

[]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

Telephone: [PHONE]

[EMAIL]

To: Compass Energy Storage LLC

Compass Energy Storage LLC

Attn: Director of Planning & Permitting

1360 Post Oak Blvd, Suite 400

Houston, TX 77056

Telephone: (510) 525-0062

With a copy to:

Ryan Waterman

Brownstein Hyatt Farber Schreck, LLP

225 Broadway, Suite 1670

San Diego, CA 92101

Telephone: (619) 702-7569

rwaterman@bhfs.com

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

Compass Energy Storage LLC agrees to the terms of this Community Benefits Agreement, as set forth above.

Compass Energy Storage LLC

By: _____
Justin Amirault, Chief Development
Officer

Dated: _____, 2025

Saddleback agrees to the terms of this Community Benefits Agreement, as set forth above.

Saddleback College Foundation

By: _____
[NAME], [TITLE]

Dated: _____, 2025