

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of the _____ day of _____, 2026 (the “Effective Date”), by and between SWAN ENERGY STORAGE LLC, a Michigan limited liability company, whose address is _____ (“Swan”), and CYGNET ENERGY STORAGE LLC, a Michigan limited liability company, whose address is _____ (“Cygnet”) and the CHARTER TOWNSHIP OF COMSTOCK, a Michigan municipal corporation, whose address is 5858 King Highway, Kalamazoo, MI 49048 (“Township”) (collectively, Swan, Cygnet and Township may be referred to herein as the “Parties”).

RECITALS:

A. Swan and/or Cygnet own or control approximately 140 acres of property (or portions thereof) located within the Township as more particularly described on Exhibit A (“Property”).

B. Swan and Cygnet (together the “Applicant”) submitted an application for Site Plan approval and Special Land Use approval for a 400 MW Battery Energy Storage Project (“Project”) to be located on the Property.

C. The Township approved a Special Land Use Permit and Site Plan for the Project on _____, 2026 (“Permit”). A copy of the Permit is attached hereto as Exhibit B.

D. As part of the Project, the Applicant will be constructing the Project in two phases on approximately 40 acres as depicted on Exhibit C.

E. In accordance with Section 3.1.T(1)(B), of the Township’s Zoning Ordinance the Parties desire to enter into this MOU to establish a preliminary understanding and framework for the remaining approximately 100 acres of the Project (“Additional Land”) as either “Open Space” or to be used by the Township for “Public Recreational Indoor/Outdoor Use,” as depicted on Exhibit C.

NOW, THEREFORE, in consideration of the promises hereinafter made and other good and valuable consideration, the Parties hereby agree as follows:

1. **Additional Land Designation.** The Township shall have one-year (365 days), from the date of issuance of the Permit, to determine whether it intends to utilize the Additional Land as either (1) Open Space; or (2) Public Recreational Indoor/Outdoor Use. Upon designation, the Township shall notify the Applicant in writing of its decision (“Designation Notice”). Time is of the essence with respect to the foregoing one-year period. If the Township fails to deliver a Designation Notice within such one-year period, the Township’s designation right shall automatically lapse and expire, and, thereafter, the Applicant shall hold the Additional Land as open space during the life of the Project. Prior to the delivery of a Designation Notice and the execution of any definitive agreement contemplated herein, the Township shall have no obligation, responsibility, cost, or liability with respect to the maintenance, condition, or security of the Additional Land. Nothing in this MOU grants any right of public access to the Additional Land.

Until the execution of a definitive agreement contemplated herein, the Applicant shall maintain the Additional Land in material compliance with applicable law and free of conditions constituting a public nuisance.

2. **Open Space Designation.** In the event the Designation Notice selects Open Space, the Applicant shall, subject to a mutually acceptable agreement between the Parties, keep the Additional Land as open space for the Duration of the Project (as defined herein). Under such designation, no structures shall be built on the Additional Land, provided that the Applicant reserves the right to construct, install, operate, maintain and repair and replace roads for emergency access, operation and maintenance and utility, interconnection and other related purposes across or upon the Additional Land, and the Parties shall work, in good faith, to establish a mutually acceptable form of non-perpetual conservation easement over the Additional Land. Any such conservation easement shall: (i) be coterminous with the commercial operation of the Project and terminate automatically upon completion of decommissioning of the Project, and shall not be perpetual; (ii) identify the holder of the easement and the party responsible for baseline documentation, monitoring, maintenance, insurance, and related costs; and (iii) be subject to the prior written consent of any mortgagee, lender, or other holder of a security interest in the Project or the Property. As between the Parties, the Applicant shall not be responsible for any cost, maintenance, insurance obligation, or liability arising from third-party or public access to the Additional Land except as expressly agreed in a mutually acceptable definitive agreement.

3. **Recreational Indoor/Outdoor Use Designation.** In the event the Designation Notice selects Recreational Indoor/Outdoor Use, the Parties shall work in good faith to determine an appropriate and mutually acceptable agreement to facilitate such use. The Applicant shall acknowledge receipt of any such Designation Notice, and the Parties shall commence negotiation of such definitive agreement, within sixty (60) days after the Applicant's receipt thereof.

a. **Property Rights.** By way of example only, the Parties may agree to a long term lease, easement, or license. The Applicant shall not be required to, but may convey and dedicate the Additional Land to the Township. The Township shall not be required to pay more than a nominal fee for such use.

b. **Uses.** The Township may, by way of example only, but shall not be required to, utilize the Additional Land for the following purposes:

- i. Picnic Areas;
- ii. Nature Trails;
- iii. Biking/Walking Trails;
- iv. Frisbee or Recreational Golf Course;
- v. Athletic Fields;
- vi. Dog Park;
- vii. Playgrounds;

viii. Community Gardens.

a. Funding. To the extent permitted under Michigan law, the Township may, but shall not be required to, use among other avenues the following funding sources for the Additional Land:

- i. Project Tax Revenue;
- ii. EGLE grants;
- iii. Federal or State grants;
- iv. Community Host Payments;
- v. Municipal appropriations;
- vi. Private Donations;
- vii. Public-Private partnerships.

4. **Required Protections**. The Parties acknowledge that the Additional Land is adjacent to an operating battery energy storage facility. Accordingly, any definitive agreement facilitating Public Recreational Indoor/Outdoor Use shall, at a minimum: (i) require the Township, to the fullest extent permitted under Michigan law, to indemnify, defend, and hold harmless the Applicant and its affiliates, and their respective members, managers, officers, employees, and agents, from and against any and all claims, damages, and liabilities arising out of the recreational use of the Additional Land; (ii) require the Township to maintain commercially reasonable liability insurance covering such use and to name the Applicant and its affiliates as additional insureds; (iii) establish a reasonable buffer or setback between any recreational area and the Project's infrastructure; (iv) ensure that recreational access does not interfere with the operation, maintenance, security, or emergency access of the Project; and (v) provide that no use of the Additional Land shall constitute a Sensitive Land Use as defined in the Definitions, Section 2.2 of the Township Zoning Ordinance or otherwise cause the Project to become nonconforming under, or in violation of, any applicable setback or other requirement of the Township Zoning Ordinance. No Public Recreational Indoor/Outdoor Use of the Additional Land shall commence until a definitive agreement addressing the foregoing has been executed by the Parties.

5. **Future Agreements**. This MOU sets forth present intentions and a preliminary framework only. It is the intent of the Parties to negotiate and enter into one or more definitive agreements, in good faith, with respect to the subject matter herein, including, but not limited to, land rights, ownership, maintenance, insurance, and other rights and responsibilities with regard to the Additional Land. The failure to timely reach a future agreement between the Parties, however, shall not impact, invalidate, or adversely affect the Permit or the operation of the Project and battery energy storage facilities thereon.

6. **Binding Provision; Limitation of Liability**. This MOU sets forth a preliminary understanding and framework with respect to the designation of the Additional Land. The provisions of this MOU are statements of the Parties' present intentions and shall not create binding

obligations upon any Party as to the use of the Additional Land. No Party shall have any liability to any other Party for the failure to negotiate or enter into any definitive agreement contemplated herein. In no event shall any Party be liable to any other Party under this MOU for indirect, incidental, consequential, special, exemplary, or punitive damages, or for lost profits or lost revenues. Nothing in this MOU shall constitute: (i) a waiver of any governmental immunity available to the Township under Michigan law; (ii) a dedication of the Additional Land to public use; or (iii) a grant of any right or benefit to any third party, it being understood that there are no third-party beneficiaries of this MOU.

7. **Term; Termination.** This MOU shall take effect on the Effective Date and shall terminate upon the earliest of: (i) the execution of the definitive agreement(s) contemplated herein, in which case such definitive agreement(s) shall govern the subject matter thereof; (ii) the expiration, revocation, or permanent surrender of the Permit, or the abandonment of the Project by the Applicant prior to the commencement of construction; (iii) in the event a Designation Notice has been timely delivered, the election of either the Applicant or the Township, upon thirty (30) days' prior written notice, if the Parties have not executed a definitive agreement within eighteen (18) months following delivery of the Designation Notice; and (iv) the mutual written agreement of the Parties. The termination of this MOU shall not impact, invalidate, or adversely affect the Permit or the operation of the Project and battery energy storage facilities thereon.

8. **Dispute Resolution; Venue.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this MOU through negotiation and, failing that, non-binding facilitation, before commencing litigation. Any litigation arising out of or relating to this MOU shall be brought exclusively in the state courts located in Kalamazoo County, Michigan or, if federal jurisdiction exists, in the United States District Court for the Western District of Michigan, and each Party consents to the personal jurisdiction and venue of such courts.

9. **Duration of the Project.** As used in this MOU, "Duration of the Project" means the period beginning on the Effective Date and ending upon completion of decommissioning and site restoration of the Project in accordance with the Permit and applicable law.

10. **Notices.** All documents and any notices required or permitted to be given pursuant to this MOU shall be in writing and mailed, postage prepaid, by certified or registered U.S. mail, return receipt requests, or via a commercial reputable over-night delivery service to the address as set forth at the beginning of this MOU, or such other address as the party to whom such notice is to be given may specify from time to time by notice to the other party. Notices shall be deemed to have been given upon actual receipt (or upon refusal of delivery), as evidenced by return receipt for said delivery. Notice may also be made by email or other electronic transmission, provided that the recipient of such email or other electronic transmission has acknowledged receipt.

11. **Assignment; Successors and Assigns.** The Applicant may freely assign this MOU and its respective rights and obligations hereunder, in whole or in part, to any affiliate, to any successor owner or operator of the Project, or as collateral security to any lender, in each case without the consent of the Township, provided, that the Applicant shall provide the Township with written notice of any such assignment (other than a collateral assignment), and any assignee (other than a collateral assignee) shall assume the assigning Party's obligations under this MOU. The

Township may not assign this MOU. This MOU shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

12. **Michigan Law.** This MOU shall be governed by the laws of the State of Michigan.

13. **Entire Agreement.** This MOU sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof.

14. **Representation.** Each Party represents and warrants that it has full power, capacity, and authority, and has obtained all required approvals, to execute this MOU, and that the individual signing on its behalf is duly authorized to do so.

15. **Amendment.** The Parties may amend, modify or alter this MOU or any of its provisions only by a written agreement of all the Parties.

16. **Drafting and Construction.** The Parties have collectively prepared and reviewed this MOU and, accordingly, any rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be invoked in connection with any interpretation of this MOU. The headings in this MOU are for convenience only and do not represent substantive provisions of the MOU.

17. **Counterparts.** This MOU may be executed by any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one agreement. To facilitate execution of this MOU, the Parties may execute and exchange by email or other electronic counterparts of the signature pages.

[Signatures Follow]

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the date first above written.

SWAN ENERGY STORAGE LLC

By: _____

Name: _____

Its: _____

CYGNET ENERGY STORAGE LLC

By: _____

Name: _____

Its: _____

CHARTER TOWNSHIP OF COMSTOCK

By: _____

Name: _____

Its: _____

EXHIBIT A

EXHIBIT B

EXHIBIT C