

RESOLUTION NO. R-20-02

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN
THE VILLAGE OF CAMPTON HILLS, KANE COUNTY, ILLINOIS AND
VIVID ENERGIES CORPORATION FOR THE INSTALLATION OF CERTAIN
LIGHTING AND ELECTRICAL PRODUCTS**

WHEREAS, the Village of Campton Hills, Kane County, Illinois (the "*Village*") is a duly organized and existing municipal corporation created under the provisions of the laws of the State of Illinois and under the provisions of the Illinois Municipal Code, as from time to time supplemented and amended; and

WHEREAS, the Village and Vivid Energies Corporation desire to execute an agreement, attached hereto as Exhibit A, for the installation of certain lighting and electrical products (the "*Agreement*"); and

WHEREAS, the Agreement provides for the provision of goods and services below \$25,000, and,

WHEREAS, section 3-1-5(B)(2) authorizes the execution of such an agreement with specific approval of the Board of Trustees of the Village of Campton Hills, and

WHEREAS, the Village President and Board of Trustees of the Village of Campton Hills (the "*Corporate Authorities*") deem it advisable and in the best interest of the health, safety and welfare of the residents of the Village to enter into the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Campton Hills, Kane County, Illinois, as follows

Section 1. That the above recitals and legislative findings are found to be true and correct and are hereby incorporated herein and made a part hereof, as if fully set forth in their entirety.

Section 2. The Agreement by and between the Village and Vivid Energies Corporation,

which is attached hereto and made a part hereof as Exhibit A, is hereby approved in substantially the form presented to the Village Board with such necessary non-material changes as may be authorized by the Village President, the execution thereof to constitute the approval by the Village of any and all changes or revisions therein contained.

Section 3. That the officials and officers of the Village are further hereby authorized to undertake actions on the part of the Village as contained in the Agreement to complete satisfaction of the provisions, terms or conditions stated therein.

Section 4. If any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity thereof shall not affect any other provision of this Resolution.

Section 5. All ordinances, resolutions, motions or orders in conflict with this Resolution are hereby repealed to the extent of such conflict.

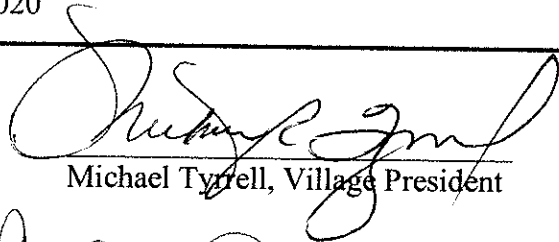
Section 6. This Resolution shall be in full force and effect upon its passage, approval, and publication in the manner provided by law.

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Passed this 4th day of February 2020, pursuant to a roll call vote as follows:

	AYES	NAYES	ABSENT	ABSTAIN
Trustee Darlene Bakk	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Susan P George	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Jim McKelvie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Mike Millette	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trustee Michael O'Dwyer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trustee Wendy K. White Eagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Michael Tyrrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

APPROVED this 4th day of February 2020


Michael Tyrrell, Village President

(SEAL)

ATTEST:

Lynn Baez, Village Clerk


Ashley Gregory, Deputy Clerk

Exhibit A

Agreement

(see attached)

Installment Sale and Security Agreement

This Installment Sale and Security Agreement (hereinafter "**Agreement**") is made this 4th day of Feb, 2020 between VIVID ENERGIES CORP., an Illinois Corporation (hereinafter "**Seller**") and Village of Campton Hills (hereinafter "**Buyer**") designated below by their signatures and seals. Seller and Buyer may hereinafter each be individually referred to as a "**Party**" or collectively as "**the Parties**".

WHEREAS, Seller desires to provide, sell, and install certain lighting and/or electrical products to and with Buyer, with the intent of said products allowing Buyer to experience energy savings, and Buyer desires to accept and purchase such products from Seller;

WHEREAS, Buyer has requested the ability to pay for such products and services in installments and Seller has agreed, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the other, the Parties hereto agree as follows:

1. **Recitals Incorporated.** The foregoing Recitals shall be considered a part of this Agreement, and the recitals shall be binding on the Parties.

2. **Sale and Purchase.** Seller sells Buyer the products and installation services described in detail on the Invoice, attached and incorporated hereto as **Exhibit 1** (hereinafter also known as the "**Products**"). Buyer, given the choice of paying the net price set forth on the Invoice, has requested the ability to pay Seller in installments at the address shown above or at any other address which seller may direct in writing delivered to Buyer.

3. **Payment.** The terms of payment for the Products are as follows:

<u>Total Purchase Price:</u>	<u>\$ 13,152</u>
<u>Down Payment:</u>	<u>\$ 3,070 plus ComEd incentive estimated at \$7,012</u>
<u>First installment due:</u>	<u>Upon commitment to project</u>

Seller estimates that, as a result of the Products, Buyer may receive a rebate from its energy provider. Based upon its best calculations, Seller estimates that the rebate will be \$7,012. This amount is calculated with Seller's best efforts, but is only an estimate, and primarily due to the fact that Buyer's energy provider will ultimately calculate and issue the rebate, Seller cannot guarantee or represent that Buyer will receive a rebate, or that if Buyer receives a rebate, it will be of a certain amount.

Regardless of the amount of the rebate, Buyer agrees that it will pay or assign to Seller the amount of any rebate(s) that it receives from its energy providers, and that any and all such rebates will be due and owing to Seller within thirty (30) days after receipt of same by Buyer. Upon receipt of the rebate by Seller, the amount of the rebate will be credited to the Total Purchase Price and

thereafter Buyer's installment payments will be recalculated for the remainder of the term to reflect the adjusted Total Purchase Price. In the event that the Total Purchase Price and installment payments are adjusted, the Parties will execute an addendum to this Agreement to reflect the change in payment terms. Absent such an addendum, the payment terms as outlined in this Agreement will remain in place.

Payment shall be rendered in 2 consecutive installments of \$ 3,070 each, except the last installment shall be the balance due on the Total Purchase Price plus any fees, interest, or other amounts owed by Buyer to Seller under the terms set forth herein.

All payments will be made via check, or debited via an electronic funds transfer, on the 1st (or next business day if the 1st is not a business day) of each month. Buyer shall not be charged interest on amounts timely paid. Any failure of funds to be transferred and payment not made within 5 business days following the 1st of the month will act as an Event of Default by Buyer and, along with any and all other remedies contemplated by this Agreement, result in the remaining balance becoming due immediately.

Bank Information (if utilizing electronic funds transfer for payment):

Bank Name: _____

Bank Address: _____

Account Holder Name: _____

Bank Routing Number: _____

Account Number: _____

4. **No Representation of Specific Savings or Profits.** Although Seller anticipates that the Products will result in a reduction of energy costs to Buyer when compared to pre-installation costs, Seller makes no representations, warranties, or statements of any kind that Buyer will actually experience any such savings, or, if Buyer does experience savings, that said savings will be of any certain amount. Additionally, Buyer's savings, if any, are wholly and completely separate from the payment amounts and obligation as set forth herein, and Buyer acknowledges and agrees to make the Payments regardless of any savings or the amount thereof.

5. **Default.** The following shall be "Events of Default": (1) failure of Buyer make any payment under this Agreement when due; (2) failure of Buyer to perform any obligation specified in this Agreement, or if any representation made under this agreement by Buyer should prove to be materially incorrect; (3) the dissolution, merger, consolidation, sale, acquisition, closing, or reorganization of Buyer; (4) the institution of any proceeding in bankruptcy, receivership or insolvency by or against Buyer; or (5) any condemnation, levy, forfeiture or similar action against the Collateral or any part of them.

Payments not received on or before the 1st day of the month (or as otherwise become due and owing to Seller as set forth in this Agreement) shall be considered late and immediately subject

to the Finance Charges referenced below. If any payment is not received by the 5th day after it is due, Seller may exercise all rights and remedies under this Agreement, without notice, including bringing suit or exercising its rights as a Secured Party under the Uniform Commercial Code.

6. **Finance Charges.** All amounts not timely paid when due shall be subject to finance charges at the rate of 18% per annum, or 1.5% per month.

7. **Warranties.** No representation or statements have been made by Seller concerning the goods except as stated in this Agreement, and no warranty, express or implied, by Seller, arises apart from this writing. Buyer warrants that any property offered in trade for the goods is free from any lien, claim, encumbrance or security interest.

8. **License.** Subject to all terms and conditions in this Agreement, Seller grants Buyer a non-exclusive, non-transferable, non-sublicensable right and license to use the Products without modification.

9. **Retention of Security Interest.** Until all installment payments, and all other amounts due under this Agreement, have been paid in full ("**Full Payment**"), any and all Products placed and/or installed by Seller pursuant to this Agreement shall remain the property of Seller; until Full Payment, Seller shall retain all right, title, and license to all such Products, and Seller shall retain a security interest in the Products more particularly described on **Exhibit 1**, as well as any and all Seller-supplied equipment, parts, accessories, attachments, additions and other goods, and all replacements of them, installed in, affixed to, or used in connection with the Products ("**Collateral**"). Until Full Payment, Buyer shall keep Seller's right, title, and interest in the Products free from any and all liens, claims, encumbrances, and legal process whatsoever. The parties acknowledge the aforementioned Seller's retention of title to the Products until Full Payment, despite the placement of same inside property owned or otherwise possessed by Buyer or its affiliates. As security for Seller's agreement to allow Buyer to make installment payments, Buyer hereby assigns and grants to Seller, as secured party, a continuing lien on and security interest in the Collateral until Full Payment. Until Full Payment, Buyer further agrees that neither it nor any affiliate, related entity, agent, or employee shall damage, remove, move, sell, change, discard, dispose, or otherwise materially alter the Products, absent the prior written consent of the Seller, and that, if Buyer damages, removes, moves, sells, changes, discards, disposes, or otherwise materially alters any of the Products in violation of the terms of this Agreement, it shall be considered an event of Default, the entirety of the amounts under this Agreement shall become immediately due and payable to Seller.

10. Liens. Buyer further acknowledges and agrees that Seller may, but is not required to, file and secure any and all necessary liens on the Products, including but not limited to UCC liens and all other necessary filings. Buyer agrees to cooperate and otherwise assist in facilitating any necessary documents or agreements in order to allow for such lien filings. Seller agrees to amend, to the extent necessary, any lien filing after completion of all payments owed by Buyer to Seller.

11. **Insurance.** Buyer will insure the goods against all hazards in form and amounts and with an insurer satisfactory to Seller. If Buyer fails to obtain insurance, Seller shall have the

right to obtain it at Buyer's expense (without waiver of any other remedy) and Buyer assigns to Seller all right to receive proceeds of insurance not exceeding the unpaid balance (including any costs of collection, attorney's fees or other costs actually incurred in connection with it) and directs any insurer to pay all proceeds directly to Seller and authorizes Seller to endorse any draft for proceeds.

12. **Maintenance.** Buyer will keep the goods in good condition and free from any and all liens and other security interests, will pay promptly all taxes and assessments upon them or with respect to their use, will not use the goods illegally or dispose of or encumber them, will not remove the goods from the premises to which they are delivered as stated on the face of this contract, without the prior written consent of Seller and will not permit the goods to be fixtures, or to become accessions to other goods unless on the front page of this Agreement it is indicated that the goods are to be attached to real estate in which case buyer agrees to furnish seller with a disclaimer or disclaimers, in form satisfactory to seller, signed by all persons having an interest in the real estate, of any interest in the goods which is prior to seller's interest.

13. **Buyer Shall Not Install, Replace and/or Modify Products.** Buyer acknowledges that Seller shall have no liability or responsibility for any lighting, electrical, or energy products that are placed or installed by Buyer or its agents, employees, and contractors, or for any modifications, changes, or replacements that are made to the Products or the Products adjoining fixtures by Buyer. This excludes Buyer serviceable replacement of bulbs. In the event that Buyer installs, replaces, changes, or modifies any of the Products or their adjoining fixtures, it shall defend, indemnify, and hold harmless Seller for any actual or claimed loss, damage, or event as set forth in Section 14 of this Agreement.

This agreement does not require Buyer to purchase future lighting products or services from Seller. This agreement includes no commitment from Buyer outside of the scope of work set forth on the invoice.

14. **Indemnification.** Buyer shall defend, indemnify, and hold harmless Seller (as well as Seller's subsidiaries, owners, members, affiliates, officers, agents, partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by Seller as a result of any claim, tender, judgment, damages, costs, loss, or adjudication against Seller related to or arising from, directly or indirectly, the actual or claimed negligence, acts, or omissions of Buyer and/or its agents, contractors, affiliates, or employees; any breach of this Agreement by Buyer and/or its agents, contractors, affiliates, or employees; or the death of, or bodily injury to, any person as a result of negligence or willful misconduct of Buyer or any affiliate, officer, director, employee or agent thereof. Buyer shall have no obligation under this provision for losses, damages, expenses, accidents, judgments, and/or claims that have occurred through Seller's **Remedies on default.** In the event of a default, Seller shall have the right to: (1) obtain judgment for the amount of the total of all installments delinquent under this Agreement, plus finance charges and reasonable attorneys' fees and costs for both prosecution and collection; (2) exercise any and all rights and remedies contemplated by this Agreement or the law, including but not limited to the filing of liens, lawsuit, and/or injunctive relief, and/or (3) exercise the rights on default of a secured party under the Uniform Commercial Code. Seller may require Buyer to

disassemble the Collateral and make it available to Seller at a place to be designated by Seller which is reasonably convenient. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of the Buyer shown on the Invoice attached as **Exhibit 1**, at least five days prior to such action. Buyer will pay any deficiency that may remain after exercise of such rights plus expenses of retaking, holding, preparing for sale, selling or the like, including seller's reasonable attorney's fees.

16. **Right of Entry and Repossession**. During the term of this Agreement and for the Seller to fulfill its warranty obligations under this Agreement, Buyer authorizes and agrees that Seller will be allowed access to the premises where all Product is located, should said Products need to be inspected or repossessed by Seller, and/or to assist Seller to gain access to the premises for said purposes. Nothing in this agreement, including this section, shall obligate seller to attempt to repossess or collect its equipment in lieu of its right to payments or its right to pursue any other rights or remedies contemplated by this agreement or by the law.

17. **Choice of Law**. All matters arising out of or relating to this Agreement and all terms set forth herein shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to principles of conflicts of law. Seller hereby irrevocably agrees that all disputes arising out of this Agreement or the Invoice attached hereto as **Exhibit 1** shall be resolved only by the State or Federal courts located in Cook County, Illinois. Both Buyer and Seller hereby irrevocably consent and submit to the exclusive jurisdiction and venue of such State and Federal courts and waives any objection or right to contest said jurisdiction or venue or that any such action or proceeding was brought in an inconvenient court.

18. **Limitation on Liability**. In no event will Seller be liable for any indirect, incidental, special, consequential, punitive, or similar damages to Buyer, including, but not limited to, lost profits and loss of data or business interruption losses. These liability limitations shall apply even if Seller has been notified of the possibility or likelihood of such damages occurring and regardless of the form of action, whether in contract, negligence, strict liability, tort, product liability or otherwise.

19. **Assignment**. Buyer shall not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of Seller, which consent will not be unreasonably withheld. Any unauthorized assignment or delegation will be null and void.

20. **No Third-Party Beneficiaries**. The Parties intend that this Agreement will not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

21. **Modification and Waiver**. No modification of this Agreement and no waiver of any breach of this Agreement will be effective unless in writing and signed by an authorized representative of the Party against whom enforcement is sought. No waiver of any breach of this Agreement and no course of dealing between the Parties will be construed as a waiver of any subsequent breach of this Agreement.

22. **Applicability.** The provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties, as well as their respective heirs, administrators, executors, successors, assigns, agents, representatives, officers, directors, shareholders, servants, employees, attorneys, successors, parents, subsidiaries, divisions, and affiliates.

23. **Entire Understanding.** This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the Parties with respect to the subject matter hereof. No waiver or modification of this Agreement will be binding upon either Party unless made in writing and signed by a duly authorized representative of each Party and no failure or delay in enforcing any right will be deemed a waiver. Recipient acknowledges that he has not relied upon any representation or statement not contained herein. This Agreement will not be modified, amended, or in any way altered except by an instrument in writing signed by the Parties.

24. **Prevailing Party.** The prevailing party in any action brought as a result of a breach of this Agreement shall be entitled to recovery of all costs of prosecution and collection, including its reasonable attorneys' fees and costs.

25. **Cumulative Remedies.** The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

26. **Severability.** If any term or provision of the Purchase Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

VIVID ENERGIES, CORP.

Signature

Title

Date

Signature

Title

Date