

## LETTER OF AGREEMENT

This Letter of Agreement (“Agreement”) is entered into by and between the City of Killeen (“City”) and Zone Industries, LLC (“Contractor”); collectively, the “Parties”.

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

Scope of Agreement. The purpose of this Agreement is to enlist the services of the Contractor to:

Deliver one (1) pump (XFP 356M-CB3 PE 1040/8 460/3/60) for Lift Station #6 to replace the existing pump, which is significantly past its end of life and is not expected to remain operational until the planned rehab in FY2026, as described is attached hereto and incorporated herein for all purposes as Exhibit “A” Installation performed by others. (the “Services”).

Term of Agreement. This Agreement shall become effective on the date that the last required signature is affixed and shall automatically terminate 365 days after that date.

Consideration. Contractor agrees to provide the Services stated above:

\_\_\_\_\_ at the rate of \$ \_\_\_\_\_ per hour;

X for the lump sum payment of \$86,191.87; or

\_\_\_\_\_ for progress payments in the total amount not to exceed \$ \_\_\_\_\_.

Independent Contractor. Contractor shall act as an Independent Contractor. Under no circumstances shall Contractor be deemed an employee or partner of Owner.

Applicable Laws. Contractor shall follow all applicable local, State, and Federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, and other routinely encountered hazardous substances. If any unusual substances or extraordinary amounts of the aforementioned substances are encountered, the Contractor will contact the City to contact the State and the relevant agency with authority for regulation of the substance.

Standard of Care. The standard of care for all services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of the Contractor’s profession practicing under similar circumstances at the same time and in the same locality.

Insurance. Contractor shall procure and maintain insurance in the following amounts:

Worker’s Compensation	Statutory
Automobile Liability	\$500,000 Combined single Limit for each accident (Bodily injury and property damage).
General Liability	\$1,000,000 each occurrence (Bodily injury and property damage).
Professional Liability	\$1,000,000 general aggregate.

On all policies, except Worker’s Compensation and Professional Liability, City shall be listed as an additional insured with a full waiver of subrogation. A certificate of coverage shall be provided to the City prior to commencing work on the Project.

Subcontracts and Assignments. Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned. Any assignments shall be void and of no effect.

Indemnification. To the fullest extent permitted by law, City or Contractor, as applicable, shall indemnify and hold harmless the other party, and the other party's officers, directors, partners and employees from and against any and all costs, losses and damages (including, without limitation, all fees and charges of attorneys and other professionals, and all court or dispute resolutions costs) caused by the negligent acts or omissions of the City or Contractor, as applicable, or their respective officers, directors, partners, employees and consultants with respect to the performance under this Agreement.

Termination. This Agreement may be terminated by either party for cause upon thirty (30) calendar days' written notice, provided such cause cannot be reasonably cured within such thirty (30) day period. City may terminate this Agreement for convenience effective upon receipt of written notice declaring the same and Contractor shall be compensated for all work completed at that time in accordance with this Agreement.

Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

Severability. If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

Survival. Any provision of this Agreement providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Agreement shall continue in full force and effect until such a time as all duties have been fully performed.

Non-waiver. Failure to enforce any provision of this Agreement by either party shall not constitute a waiver of that provision for purposes of the subsequent enforcement of that provision or the remainder of this Agreement.

Contract Verification. Texas law provides that a governmental entity may not enter into contracts over for goods and services valued at \$100,000 or more with a company that employs at least 10 full-time employees unless the company provides written verification regarding aspects of the company's business dealings. By signing, Contractor agrees to the following:

- Texas Government Code, Chapter 2271 – Contractor must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. Boycott Israel is defined in Texas Government Code Chapter 808.
- Texas Government Code, Chapter 2274 – Contractor must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Discriminate, firearm entity and firearm trade association are defined in Texas Government Code Chapter 2274.
- Texas Government Code, Chapter 2276 – Contractor must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. Boycott energy company is defined in Texas Government Code Chapter 809.

Entire Agreement. This Agreement shall represent the entire agreement by and between the Parties and it may not be changed except by written amendment duly executed by all Parties.

**SIGNED, ACCEPTED, AND AGREED** to by the undersigned Parties, on the dates indicated, who acknowledge that they have read and understand this Agreement and that the Agreement is issued in accordance with local, State, and Federal laws, and the undersigned Parties hereby execute this legal document voluntarily and of their own free will.

City

Contractor

\_\_\_\_\_  
Kent Cagle                      Date  
City Manager

\_\_\_\_\_  
Name:                              Date  
Title:

ZONE INDUSTRIES, LLC  
PO Box 73149  
Houston, TX 77273  
713-783-8530



# QUOTATION

Order Number	
10024947	
Order Date	Page
03/28/2025 09:29:25	1 of 7
Quote Number	
<b>Inside Sales</b>	Alex Reyna
<b>Email</b>	areyna@zoneindustries.com
<b>Account Mgr</b>	Ray York
<b>Email</b>	ryork@zoneindustries.com

Quote Expires On: 06/21/2025

See below

**Bill To:**

Killeen, City of  
City of Killeen  
PO Box 1329  
Killeen, TX 77547

254-501-7729

**Ship To:**

Killeen, City of  
City of Killeen  
101 North College Street  
Killeen, TX 76540

**Customer ID:**11751

**Job Name:**

PO Number					Ship Route	Inside Sales		
FLGYT PUMP REPLACEMENT/672-22						ALEX.REYNA		
Quantities					Item ID	Pricing	Unit	Extended
Ordered	Allocated	Remaining	UOM	Disp.	Item Description	UOM	Price	Price
			Unit Size			Unit Size		

**Order Note:** BUYBOARD 672-22

**Delivery Instructions:**

FREIGHT ALLOWED

1.00	0.00	1.00	EA	PUMP PACKAGE	EA	78,995.00	78,995.00
		1.0		Pump Package Non-Skidded	1.0		

**Order Line Notes:** PUMP PACKAGE  
INCLUDES

PUMP  
XFP 356M-CB3 PE1040/8  
460/3/60

flygt adapter  
41426073  
62306468-316

Installation is NOT  
Included in this proposal

ZONE INDUSTRIES, LLC  
 PO Box 73149  
 Houston, TX 77273  
 713-783-8530



# QUOTATION

Order Number	
10024947	
Order Date	Page
03/28/2025 09:29:25	2 of 7
Quote Number	
<b>Inside Sales</b>	Alex Reyna
<b>Email</b>	areyna@zoneindustries.com
<b>Account Mgr</b>	Ray York
<b>Email</b>	ryork@zoneindustries.com

Quote Expires On: 04/27/2025

See below

Quantities					Item ID	Pricing	Unit	Extended
Ordered	Allocated	Remaining	UOM	Unit Size	Item Description	UOM	Price	Price
1.00	0.00	1.00	EA		TARIFF SURCHARGE	EA	3,599.91	3,599.91
				1.0	Subject to Tariff Surcharge	1.0		
					Subject to Tariff Surcharge 15% on loose parts			
1.00	0.00	1.00	EA		TARIFF SURCHARGE	EA	3,596.96	3,596.96
				1.0	Subject to Tariff Surcharge	1.0		
					Subject to Tariff Surcharge 6% on the pump			

Total Lines: 3

**SUB-TOTAL:** 86,191.87

**TAX:** 0.00

**AMOUNT DUE:** 86,191.87

U.S. Dollars

As the situation remains highly volatile, Zone Industries reserves the right to adjust the surcharge amount with notice on both new and expired quotes. Zone Industries may increase or decrease the surcharge percentage in response to any future changes to U.S. tariffs. Additional major risks include potential tariff hikes on China, as well as the reinstatement of tariffs on Mexico, Canada, and/or Europe, should they be enforced.

## **ZONE INDUSTRIES LLC - TERMS AND CONDITIONS**

**1. Construction and Legal Effect:** Zone Industries, LLC shall hereinafter be referred to as “ZONE”, and the applicant shall be referred to as “CUSTOMER.” The CUSTOMER desires to purchase goods and/or services (collectively, the “Goods”) from ZONE, and CUSTOMER agrees in consideration thereof to be bound by the terms and conditions stated in this agreement. ZONE's sales to CUSTOMER are limited to and expressly made conditional on CUSTOMER's assent to these Terms and Conditions (“Terms”). The issuance of a purchase order by CUSTOMER or CUSTOMER's acceptance of the Goods and/or services or payment for the Goods and/or services shall operate as acceptance by CUSTOMER of these Terms. ZONE hereby objects to any terms or conditions at variance with, different from or additional to the Terms stated herein unless such terms and conditions are hereafter set forth in a writing signed by ZONE. Anything herein to the contrary notwithstanding, no amendment to, or waiver, modification or deletion of, any of the terms and conditions stated herein shall be deemed effective unless any such amendment, waiver, modification or deletion, as the case may be, shall have been approved and accepted in writing by an officer of ZONE.

**2. Credit:** ZONE reserves the right to approve, approve with conditions or disapprove any request for extension of credit in its sole discretion. Credit will be extended by ZONE to CUSTOMER based on the information provided in this application. CUSTOMER agrees that any financial documents provided ZONE are true and correct. ZONE is authorized to check CUSTOMER's credit background. The amount of credit extended to CUSTOMER will be determined by ZONE and may vary from time to time. CUSTOMER waives notice of any change in CUSTOMER's credit limit. All amounts charged to the open account are CUSTOMER's responsibility. CUSTOMER agrees to pay any and all invoices, charges, fees and costs which CUSTOMER or any authorized person incurs on CUSTOMER's account. Unless CUSTOMER notifies ZONE in writing within five (5) days of any unauthorized use of CUSTOMER's credit account, CUSTOMER agrees that any other person who incurs charges on CUSTOMER's account is authorized to do so. Notwithstanding the foregoing, any and all contracts, certificates, invoices and other writings signed on behalf of CUSTOMER by any employee of CUSTOMER shall be deemed to have been executed on behalf of CUSTOMER with full authority.

**3. Payments:** Payment of amounts due hereunder shall be made by CUSTOMER to ZONE net thirty (30) days after shipment date. ZONE, at its sole discretion, may offer early payment discounts to customers based on the customer's credit history and payment history with ZONE. ZONE reserves the right at any time to alter or suspend credit, or to change credit terms provided herein, when in its sole opinion CUSTOMER's financial condition so warrants. ZONE further reserves the right to amend the timing of payments if necessary due to vendor payment requirements. All payments made by credit card shall be subject to a three percent (3%) processing fee. Failure to pay an invoice at due date, at ZONE's election, makes all subsequent invoices immediately due and payable, irrespective of terms, and ZONE may withhold all subsequent deliveries under all outstanding orders until full payment is received. Any payment not made when due shall be subject to interest to be paid by CUSTOMER at the lesser of 1.5% per month or the highest rate permissible under applicable law. CUSTOMER agrees to notify ZONE in writing, of any error in any invoice within ten (10) days after the date of that invoice. If not so noticed, the invoice shall be deemed to be correct, and accepted as rendered. In the event of insolvency of CUSTOMER, default in payment or repudiation by CUSTOMER, or any breach of the terms of this agreement, ZONE shall have the right to stop delivery of the Goods and CUSTOMER shall be liable to ZONE for any and all liabilities incurred by ZONE as a result thereof including, but not limited to liabilities to third parties, collection costs, attorneys' fees, and any associated costs incurred by ZONE.

**4. Price:** CUSTOMER shall purchase the Goods from ZONE at the price(s) (the “Price”) set forth in the purchase order or invoice issued by ZONE. All Prices are exclusive of all Federal, State or local sales, use and excise taxes, and any other similar taxes, duties and charges of any kind on any amounts payable by CUSTOMER. CUSTOMER shall be responsible for all such charges, costs, and taxes; provided, that, CUSTOMER shall not be responsible for any taxes imposed on, or with respect to, ZONE's income, revenue, gross receipts, or commercial activity.

**5. Progress Billing:** When the CUSTOMER has agreed in writing that payment for Goods shall be made periodically throughout a project, based on ZONE's completion of predefined milestones as defined in the purchase order, ZONE shall invoice CUSTOMER as the milestones are reached, and CUSTOMER shall pay the invoice within thirty (30) days after receipt of the invoice.

**6. Tariffs:** To the extent that any materials, equipment, or other components of the Goods are subject to any tariff that could materially affect cost or shipping time, ZONE shall solely bear the risk of all tariffs that have been imposed by any governmental body as of the date of CUSTOMER's execution of these Terms and Conditions. CUSTOMER shall bear the cost and schedule risks associated with tariffs that are adopted, increased, or imposed subsequent to the date of CUSTOMER's execution of these Terms and Conditions. With respect to any materials, equipment, or other components of the Work that may be impacted by tariffs, whether or not adopted as of the date of CUSTOMER's execution of these Terms and Conditions, ZONE shall investigate and advise the CUSTOMER regarding potentially acceptable alternatives. ZONE shall notify CUSTOMER of any cost or schedule changes made necessary by the adoption, increase, or imposition of any tariff through the issuance of an amended purchase order.

**7. Action for Breach:** Any action by CUSTOMER arising out of or relating to this agreement must be commenced within one (1) year after the cause of action has accrued.

**8. Warranty and Limitation of Liability:** ZONE warrants that all Goods delivered hereunder shall, for twelve (12) months from startup of the Goods or eighteen (18) months from the date of receipt of the Goods by CUSTOMER, whichever comes first (the "Warranty Period"), be (i) free from defects in workmanship and materials, (ii) free from defects in design except to the extent that such goods comply with the detailed designs provided by the CUSTOMER; (iii) suitable for the purposes, if any, which are stated on the face of the purchase order, and (iv) in conformity with all other requirements of the purchase order and the specifications for such Goods that have been provided to ZONE. Provided that CUSTOMER gives written notice to ZONE within the Warranty Period, if Goods sold hereunder are found to fail to meet the requirements set forth in this Article 8, demonstrated to ZONE's satisfaction to have existed at the time of departure from ZONE's plant, ZONE, reserving the right to inspect Goods, shall, at ZONE's option, repair or replace at ZONE's expense the Goods determined by ZONE to be non-conforming. ZONE shall not be obligated to repair or replace Goods that shall have been subjected to alteration, contamination, improper maintenance or storage, misapplication, misuse, negligence or accident during or after shipment from ZONE's plant or to Goods to which CUSTOMER's tests used an unrepresentative sample. The remedy set forth in this Article 8 shall be the sole and exclusive remedy available to CUSTOMER for breach of warranty.

No employee or agent of ZONE is authorized to make any warranty, statement, promise or understanding other than that which is specifically set forth in this Article 8. The provisions in any Technical Data sheet issued by ZONE or attached hereto are descriptive only and are not warranties or representations.

THE WARRANTIES SET FORTH IN THIS ARTICLE 8 ARE THE ONLY WARRANTIES APPLICABLE TO THE GOODS AND SERVICES SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE SPECIFICALLY DISCLAIMED AND SHALL NOT APPLY.

If the Goods sold hereunder are resold by CUSTOMER, without any alteration or processing by CUSTOMER or incorporation into any of CUSTOMER's products, CUSTOMER agrees to include in the agreement for resale provisions which limit recoveries against ZONE in accordance with this Article 8.

In no event shall ZONE be liable for any direct, indirect, special, consequential or incidental damages under this agreement (including but not limited to any such damages arising out of late, partial and/or non delivery, the sale, use, furnishing of Goods, or suitability for general or particular use). CUSTOMER is solely responsible for determining suitability for use and ZONE shall in no event be liable in this respect. The giving or failure to give advice, recommendations or safety warnings of any character by ZONE shall not impose any liability upon ZONE.

Upon transfer of title to the Goods, ZONE agrees to assign to CUSTOMER any and all manufacturers' warranties relating to materials and labor used in production of the Goods and further agrees produce the Goods in such manner so as to preserve any and all such warranties. ZONE further agrees to reasonably cooperate with CUSTOMER should ZONE's assistance be required in connection with the enforcement of such warranties.

Should CUSTOMER breach any of the duties and warranties set forth within this Article 8, CUSTOMER AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD ZONE HARMLESS from and against any and all liability, claims, and suits of any third party including but not limited to employees or insurers of CUSTOMER, in any way, in whole or in part, alleged to have arisen out of exposure to or use of Goods supplied by ZONE. Further, upon acceptance of Goods and services supplied by ZONE or in the absence of any written notice of nonconformity of such Goods, CUSTOMER AGREES TO FULLY RELEASE, INDEMNIFY, DEFEND AND HOLD ZONE HARMLESS from and against any and all liability, claims, and suits it may possess or that may be asserted against ZONE by any third party (including but not limited to contractors, subcontractors or property owners who have purchased, installed or otherwise used products or services of CUSTOMER or have had such products incorporated into their property or products, or insurers of any of such parties or of the CUSTOMER) in any manner arising in whole or in part, out of the production, marketing, distribution, sale, installation, use or deficiencies of any products of the CUSTOMER produced using the Goods supplied by ZONE. The provisions of this Article 8 shall survive the expiration, or earlier termination as provided herein, of this agreement.

**9. Indemnity:** CUSTOMER will release, hold harmless, indemnify and defend ZONE from any liability (including without limitation liability for negligence or strict liability) claims, losses, suits and costs resulting from the design of Goods supplied by ZONE

**10. Delivery:** Delivery and shipment dates are estimated dates only and are not guaranteed. In estimating such dates, no allowance has been made nor shall ZONE be liable for any damages, losses, penalties, whether direct, indirect, special, incidental or consequential, resulting from ZONE's failure or delay in performing, carriers' failure or delay in performing or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining Goods, acts of government affecting ZONE directly or indirectly, bad weather, or any causes beyond ZONE's control, or causes designated as acts of God or force majeure by any statute or court of law. In the event any failure or delay to ship Goods continues for a period of ninety consecutive days, CUSTOMER may cancel its order for the subject Goods upon three days' written notice to ZONE.

**11. Shipping:** Unless CUSTOMER specifies otherwise in writing: (a) Goods will be shipped as ZONE may deem proper, and (b) routing and manner of shipment will be at ZONE's discretion. If special routing instructions are given, CUSTOMER agrees to pay additional handling and transportation charges, if any. Title and risk of loss passes to CUSTOMER upon delivery of the Goods to CUSTOMER or when the Goods otherwise leave the care, custody and control of ZONE. CUSTOMER shall be solely responsible for maintaining any insurance against loss or damage in shipment. ZONE shall not be liable for loss, damage, detention, delay or completion of an order due to acts of God, acts of terrorism, war, riots, civil insurrection, strikes, work stoppages, fires, accidents, acts of civil or military authority including governmental laws, embargoes, orders, priorities, or regulations, delay in transportation, shortages, delay by suppliers of materials, or any other causes whatsoever beyond the reasonable control of ZONE.

**12. Security Interest:** ZONE reserves a purchase money security interest in the Goods sold hereunder and the proceeds thereof, in the amount of the Price. In the event of default by CUSTOMER on any of its payment obligations to ZONE, ZONE will have the right to repossess the Goods sold hereunder that have not been paid for without liability to CUSTOMER or any third party in possession of such Goods, if not CUSTOMER. In such event, CUSTOMER agrees to make the Goods available to ZONE so that ZONE can repossess them without a breach of the peace. This security interest will be satisfied by payment in full. ZONE may file a financing statement to perfect ZONE's security interest, provided that ZONE terminates any such financing statements once the Goods are paid for. CUSTOMER shall cooperate fully with ZONE to execute such other documents and to accomplish such filings and/or recordings thereof as ZONE may deem necessary for the protection of ZONE's interests in the Goods furnished hereunder.

**13. Termination:** ZONE may by written notice to CUSTOMER terminate the whole or any part of this agreement in any one of the following circumstances: (1) if CUSTOMER fails to remit payment within the time specified herein or any extension thereof authorized by ZONE; or (2) if CUSTOMER fails to perform any of the other provisions of this agreement so as to endanger performance of this agreement in accordance with its terms; or (3) if CUSTOMER becomes insolvent, or engages in any act which reasonably causes the ZONE to deem itself insecure. ZONE shall not by reason of such termination be liable to CUSTOMER for any compensation, reimbursement, or damages including, in particular, but not limited to any direct, indirect, special, incidental or consequential damages or losses whatsoever, on account of expenditures, investments, or commitments.

**14. Cancellations:** CUSTOMER may not cancel any order of Goods without ZONE's express, written consent. Immediately upon the cancellation of an order, ZONE shall stop all performance hereunder and CUSTOMER must pay to ZONE an amount equal to those reasonable and documented costs incurred by ZONE prior to cancellation plus a cancellation fee equal to 25% of the purchase price; provided, however, that the above amount plus any prior payments shall in no event exceed the purchase price of the Goods. All Goods completed or partially completed prior to cancellation shall become the property of CUSTOMER, or at CUSTOMER's option, the salvage value of the Goods may be deducted from the amount due ZONE by reason of the cancellation. Unused Goods, processed material or specially manufactured Goods not normally carried in ZONE's inventory may not, under any circumstances, be returned for salvage value.

**15. Assignment:** The rights and obligations of CUSTOMER hereunder may not be assigned without the prior written consent of ZONE. Any purported assignment without ZONE's prior written consent shall be void and of no force and effect.

**16. Non-Waiver:** Any failure by ZONE to require full payment or strict performance by CUSTOMER of any of the provisions herein or to exercise any right or remedy hereunder, shall not waive or diminish ZONE's right thereafter to demand strict compliance therewith or with any other provision or to exercise any such right or remedy. Waiver of any default shall not waive any other default.

**17. Applicable Law:** This agreement shall be governed by and construed under the laws of the State of Texas, notwithstanding the principles, if any, that would otherwise govern the choice of applicable law. If legal action is brought to enforce this agreement, Harris County, Texas, shall be the exclusive jurisdiction and legal venue for said action, unless ZONE initiates said legal action is brought to enforce statutory remedies (such as mechanic's lien, stop notices, payment bonds, etc.) in connection with a debt incurred by CUSTOMER; in such case, the jurisdiction and legal venue will be determined by the requirements of the Texas Civil Code or Code of Civil Procedure in order for ZONE to enforce such statutory rights



**18. Claims:** It shall be the duty of CUSTOMER to thoroughly inspect the Goods purchased from ZONE. All claims of any nature relating to the Goods subject to this agreement, including but not limited to claims of defect in Goods, non-conformity or discrepancy in quantity or delivery date, shall be made in writing to ZONE within fifteen (15) days of receipt of such Goods by CUSTOMER. Failure to make any such written claim within the above-prescribed period shall constitute waiver of any such claims and shall be deemed acceptance of such Goods, quantities or delivery dates.

**19. Nondisclosure:** In consideration of the disclosure of Proprietary and Confidential information by the parties to each other, both parties agree that the information relating to requirements, processes, specifications, schedules, materials, financial data and pricing exchanged between parties is hereby designated as Proprietary and Confidential whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Sales and may not be disclosed or copied unless authorized in advance by the other party in writing. Upon request, each party shall promptly return all Proprietary and Confidential materials received from the other party. Either party shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to the other party at the time of disclosure; or (c) rightfully obtained by the other on a nonconfidential basis from a third party.

**20. Force Majeure:** ZONE will not be liable for failure in the performance of any of its obligations caused by accidents, labor disputes, shortages of labor, materials, fuel or power, or fires, floods or other acts of God, acts or omissions of CUSTOMER, priorities required, requested, or granted for the benefit of the national or any local government, restrictions imposed by national or local legislation or regulations, or any cause, whether similar or dissimilar to those enumerated in this section, including without limitation cease of production/operation by a vendor or other company due to economic hardship, which is beyond the control of ZONE.

**21. Intellectual Property:** ZONE shall retain sole ownership of all right, title, and interest in and to all its intellectual property, including, without limitation, ideas, methods, trademarks, service marks, trade names, symbols, logos, copyrights, patents, trade secrets, and know-how (collectively, the "Intellectual Property"), and no licenses to any Intellectual Property are created hereunder.

**22. Relationship of the Parties:** The relationship between ZONE and CUSTOMER is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the ZONE and CUSTOMER.

**23. Authorized Representative:** CUSTOMER hereby represents and warrants that its signatory to these Terms is a duly authorized representative with the authority to bind CUSTOMER to these Terms.

**24. Electronic Signatures:** An "electronic signature" is any electronic symbol or process attached to or logically associated with a document sent by electronic transmission and executed or adopted by a person with the intent to sign such document. The use of electronic signatures (including, without limitation, through DocuSign and Adobe Sign) to execute these Terms shall be of the same legal effect, validity and enforceability as a manually executed signature to the fullest extent permitted by Texas law or other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

**25. Acceptance / Enforceability of Copies:** CUSTOMER agrees that ZONE may, at ZONE'S sole discretion, accept, utilize and rely upon a facsimile copy or photocopy of this agreement and the foregoing Continuing Personal Guaranty or Corporate Guaranty, in lieu of an original document. CUSTOMER acknowledges that, by transmitting a facsimile copy, electronic copy or photocopy of this document to ZONE, CUSTOMER, and the Guarantor (if applicable), agree to be bound by the terms and conditions contained in this document to the same extent as if an original were transmitted to ZONE. CUSTOMER, and Guarantor (if applicable), consent to ZONE's use of this document and waive any right to object to the use of a copy in place of the original and any right to require Seller to subsequently produce an original document. This Credit Application and Agreement cannot be altered, amended, revised, or otherwise modified unless an officer of ZONE provides prior written consent thereto.

By signing and returning this Credit Application and Agreement, CUSTOMER certifies and agrees as follows: (i) The information contained herein is true and correct; (ii) CUSTOMER authorizes ZONE, at any time and from time to time so long as CUSTOMER does business with ZONE, to obtain credit reports about CUSTOMER and to obtain credit information from banks or others with whom CUSTOMER has dealt. CUSTOMER authorizes all references named herein to release credit information to ZONE. The authorized individual signing on behalf of CUSTOMER, recognizing that his or her individual credit history may be a factor in evaluation of the credit history of the CUSTOMER, hereby consents to and authorizes the use of a consumer credit report on such individual, from time to time, so long as CUSTOMER does business with ZONE; (iii) CUSTOMER agrees to furnish such additional information as ZONE may request to warrant future extensions of credit or to enable ZONE to perfect liens or to recover upon any bond issued for its protection; (iv) CUSTOMER agrees that all purchases will be made under the Terms and Conditions set out herein; and (v) CUSTOMER agrees that ZONE may, for any reason and at any time, elect to terminate any credit that is extended to the CUSTOMER or modify the conditions under which credit is to be extended. OFFICER, AUTHORIZED AGENT OR OWNER SIGNATURE IS REQUIRED.

**CUSTOMER:**

**Print Name:**

**Signature:**

**Title:**

**Date:**