

MAX RIEKE & BROTHERS, INC.
MASTER SUBCONTRACT AGREEMENT

This **Master Subcontract Agreement** ("Agreement") is between Max Rieke & Bros., Inc., ("Contractor"), and _____ ("Subcontractor").

CONTRACTOR AND SUBCONTRACTOR AGREE AS FOLLOWS:

1. **WORK ORDERS.** This Agreement governs all work performed by Subcontractor pursuant to written, or oral work orders issued by CONTRACTOR to Subcontractor after the Effective Date (as defined below) of this Agreement ("**Work Orders**"). All Work Orders must be in writing and signed by an authorized representative of CONTRACTOR. This Agreement sets forth the entire Agreement between CONTRACTOR and Subcontractor with respect to any work performed by Subcontractor for CONTRACTOR, and no terms or conditions in any acceptance, acknowledgement, proposal, bid, invoice or other documents submitted by Subcontractor which are in conflict with, different from, or in addition to this Agreement, shall be binding upon CONTRACTOR unless expressly agreed to in writing by a duly authorized officer of CONTRACTOR. This Agreement does not create any obligation for CONTRACTOR to issue any Work Orders to Subcontractor or grant to Subcontractor any exclusivity in its relationship with CONTRACTOR.

2. **SCOPE OF WORK.** Except as otherwise specified by CONTRACTOR in this Agreement or a Work Order, Subcontractor shall procure and furnish all materials, labor, supervision, equipment, facilities, supplies, licenses, and permits necessary to perform all work set forth in the Work Order ("**Work**").

3. **TERM OF AGREEMENT.** This Agreement shall remain in full force and effect until terminated by either party by giving the other party thirty (30) days written notice (the "**Termination Period**") at the respective address of the other party ("**Termination Notice**"). If, upon receipt of the Termination Notice by a party, Subcontractor is then performing Work and such Work extends beyond the Termination Period, then (i) CONTRACTOR may deem the Agreement terminated upon expiration of the Termination Period and Subcontractor shall immediately cease all Work; or (ii) CONTRACTOR may instruct Subcontractor to and Subcontractor shall be obligated to complete the Work and termination shall be effective upon completion of the Work by Subcontractor.

4. **EXECUTION AND PROGRESS OF THE WORK.** Time is of the essence of this Agreement. When a Work Order is issued, Subcontractor shall commence furnishing the Work at the agreed upon time and location and continue such Work diligently and without delay in strict conformity with the specifications and requirements of this Agreement and the Work Order. Subcontractor shall make all necessary arrangements and coordinate its Work with CONTRACTOR, other contractors and the owner so as not to delay or impair the progress of the Work or efforts of other contractors, suppliers, or any other person or entity on the project. Subcontractor agrees to pay liquidated damages in the amount assessed by Owner against CONTRACTOR for delays arising from or related to Subcontractor's prosecution of the work. Subcontractor shall promptly submit for approval to CONTRACTOR copies of all requested shop drawings, samples, product data and other submittals. Subcontractor's representative on the project shall always have the authority to act in all respects on behalf of Subcontractor.

5. **PAYMENT.** As full compensation for the satisfactory performance of the Work, CONTRACTOR agrees to pay Subcontractor, within 30 days after receipt of Subcontractor's pay application and any required supporting documentation, the agreed-upon amount set forth in the Work Order, subject to additions and deductions as provided for in this Agreement or the Work Order. Subcontractor shall submit with any such pay application whatever affidavits, releases, waivers, receipts, vouchers and other documents relating to the Work covered by such pay application as may be required by CONTRACTOR. Subcontractor shall promptly pay for all labor and materials, including equipment rental, supplied in the prosecution of the Work, and shall indemnify and hold CONTRACTOR and the Owner harmless from any claim for payment of labor or materials, including equipment rental, allegedly furnished in the prosecution of the Work. CONTRACTOR is

entitled and authorized to (i) withhold from any amount otherwise owed Subcontractor the amount of any claim for payment of labor or materials allegedly furnished in the prosecution of the Work, (ii) make payment to Subcontractor and any such claimant by joint check, (iii) after notice to Subcontractor, pay any such claimant directly from funds otherwise owed Subcontractor, and/or (iv) withhold from any amount otherwise owed Subcontractor an amount sufficient to compensate for any breach by Subcontractor of any provision of this Agreement. Payment by Owner to CONTRACTOR is an absolute condition precedent to CONTRACTOR'S obligation to pay Subcontractor. Payment by CONTRACTOR shall not operate as an acceptance of the Work performed or materials furnished. Subcontractor agrees that retainage may be withheld from its payment if the owner is withholding retainage from CONTRACTOR. Subcontractor is responsible for all its own taxes of any type, and should be included in all bids unless specified otherwise in the Work Order.

6. INSURANCE. Subcontractor shall purchase and maintain insurance covering worker's compensation and employer's liability, automobile liability, general liability and, if required by Work Order, rigger's liability. The minimum limits of liability shall be as follow:

COMMERCIAL GENERAL LIABILITY:

General Aggregate	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal & Advertising Injury Liability	\$1,000,000
Each Occurrence	\$1,000,000

The policy shall utilize ISO occurrence form CG001 (or substitute providing equivalent coverage) and shall provide CONTRACTOR with a Certificate of Insurance and Additional Insured Endorsement under the combination of ISO Endorsement, GC 2010 07/04 and CG 2037 07/04 (for Operations in Process and Completed Operations) (or substitute forms providing equivalent coverage) naming CONTRACTOR as an Additional Insured and CG 2026 07/04 naming Owner as Additional Insured. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded to CONTRACTOR. The coverage available to CONTRACTOR, as an additional insured, shall not be less than the limits noted above, and shall include all work premises, products and completed operations, and personal and advertising injury. Such coverage shall also include a "per project" aggregate endorsement.

Notwithstanding any termination of the Agreement, Subcontractor agrees to maintain the products and completed operations coverage, as required above, in effect for such period of time as may be necessary to provide insurance coverage for Subcontractor and CONTRACTOR for the entire period of the applicable statute of limitations and/or repose which pertain to all possible claims relating to Subcontractor's work for each project and CONTRACTOR's obligations with respect thereto (but in all events for at least two years after completion of the Work. Pollution Liability, if applicable, must also be included on a separate policy reflecting same limits and terms as above.

WORKER'S COMPENSATION:

Statutory requirements for the state in which the project is located.

EMPLOYER'S LIABILITY:

Bodily Injury Accident	\$ 1,000,000 each accident
Bodily Injury-Policy Limit-Disease	\$ 1,000,000 policy limit
Bodily Injury-Employee-Disease	\$ 1,000,000 each employee

Coverage shall apply to all personnel who may visit or work at project site, including sole proprietors, partners, members of an LLC, and officers of a corporation, regardless of whether or not such persons come under the statutory requirements to carry this coverage.

BUSINESS AUTO LIABILITY:

\$1,000,000 combined single limit

Coverage shall apply to all owned, hired, and/or non-owned vehicles that enter a project site at the direction of or for Subcontractor related to Subcontractor's Work. It shall also name CONTRACTOR and Owner as additional insureds.

UMBRELLA LIABILITY:

Each Occurrence and Aggregate

\$1,000,000

A combined single limit of excess liability to apply over and above General Liability, Auto Liability and Employers Liability, with terms and conditions consistent with those of the underlying coverage, not any more restrictive. It shall also name CONTRACTOR and Owner as additional insureds. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded to CONTRACTOR.

RIGGER'S LIABILITY: (if required by Work Order)

\$1,000,000 each occurrence limit

Coverage shall include the "personal property of others in your care, custody or control" for all material and equipment being incorporated into the project.

MISCELLANEOUS:

All insurance policies shall be with an insurer(s) rated "A"- or better by A.M. Best Rating Service and shall state that they may not be cancelled without at least thirty (30) days prior written notice (10 days for non-payment of premium) to CONTRACTOR. Subcontractor shall provide CONTRACTOR from time to time, prior to starting work and thereafter annually and when reasonably requested by CONTRACTOR (and in all events information regarding replacement coverage not less than 10 days prior to any expiration, cancellation or termination of the existing coverage), a current certificate(s) of insurance issued by the insurer or its agent evidencing that Subcontractor has such insurance in effect, **with the actual form of the additional insured endorsements required above attached to the certificate.** To the fullest extent permitted by law, Subcontractor shall indemnify and hold CONTRACTOR and Owner harmless against any loss, damage or expense incurred by CONTRACTOR or Owner arising from the willful acts or negligence of Subcontractor or its employees, laborers, agents, or sub-subcontractors of Subcontractor.

Acceptance of any certificate that does not comply with the above requirements shall not operate as a waiver of Subcontractor's obligations hereunder. And the fact that insurance is obtained by Subcontractor shall not be deemed to release or diminish the liability of Subcontractor including, without limitation, liability under the indemnity provisions of the Agreement. Damages recoverable by CONTRACTOR shall not be limited by the amount of the required insurance coverage. Subcontractor shall notify CONTRACTOR in writing as soon as possible after any bodily injury or property damage occurrence that could potentially lead to any lawsuit or after it receives notice or knowledge of any demand, claim, cause of action, lawsuit, or action arising out of the work performed under this Subcontract.

Subcontractor hereby waives and agrees to waive any and all tort, contribution and/or other subrogation rights against CONTRACTOR and Owner arising directly or indirectly out of, relating to, or in connection with Subcontractor's Work.

7. INDEMNITY. To the fullest extent permitted by law, Subcontractor shall indemnify CONTRACTOR and the owner and their respective officers, directors, owners, shareholders, members, managers, employees, agents, insurers, sureties, and parent and affiliated entities, from all losses, damages, judgments, costs and expenses of every kind and description (including, without limitation, attorneys, consultants and experts' fees) and hold them harmless from all claims, demands, suits, and actions

including without limitation claims, demands, suits, or actions alleging negligence, intentional tort, or violation of law, arising out of or in any way related to (i) the performance of the Work by Subcontractor, Subcontractor's sub-subcontractors or suppliers, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (ii) any breach of this Agreement by Subcontractor, or (iii) arising wholly or in part out of any act, omission or commission of Subcontractor, Subcontractor's sub-subcontractors or suppliers, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or those for whom Subcontractor is responsible. The provisions of this paragraph are binding on Subcontractor where Subcontractor is, or is alleged to be, the cause, directly or indirectly, in whole or in part, of any injury, damage or loss, regardless of whether any or all the persons and entities indemnified hereunder are responsible in part for the claims, damages, losses or expenses for which the Subcontractor is obligated to provide indemnification. Subcontractor's obligation to indemnify hereunder shall not apply to any claim resulting solely from the acts or omissions of CONTRACTOR or the owner. Subcontractor's obligations under this Paragraph 7 shall survive termination of this Agreement.

8. **CHANGES; EXTRA WORK.** Changes in the scope of Work and its scheduling may only be made upon written order from CONTRACTOR's authorized representative to Subcontractor. CONTRACTOR's authorized representatives are Kara or Karson Quinn unless otherwise indicated in the Work Order. When CONTRACTOR orders in writing, Subcontractor shall make all changes in the Work. Adjustments in the price or time, if any, resulting from such changes shall be set forth in a written change order. No such adjustment shall be made for any changes performed by Subcontractor that have not been ordered in writing by CONTRACTOR.

9. **WARRANTY.** Subcontractor warrants that all materials and equipment furnished under this Agreement will be new and of good quality, that the Work will be free from defects, and that the Work will conform to the requirements of this Agreement and CONTRACTOR's contract with the owner ("**Contract**"). Subcontractor shall replace or repair to the satisfaction of the owner and CONTRACTOR, any material or workmanship in the Work deemed defective by the owner or CONTRACTOR.

10. **COMPLIANCE WITH LAW.** Subcontractor, at its own expense, shall comply with all applicable local, state and federal laws, rules, regulations and ordinances, including, but not limited to, those governing licensing, permitting, immigration, wage and hour, prevailing wage, employment, drug-free workplace, occupational safety and health, and matters affecting the environment. Subcontractor warrants and represents it is properly licensed to perform the Work within the jurisdiction where the project is located. Subcontractor shall indemnify and hold CONTRACTOR and the owner harmless from all claims, including, but not limited to, citations, assessments, fines, penalties, attorneys' fees, costs and expenses which may be assessed against CONTRACTOR and/or the Owner, resulting from or arising out of Subcontractor's failure to so comply.

11. **TERMINATION FOR CAUSE AND SUSPENSION.**

A. Termination by CONTRACTOR. CONTRACTOR may terminate this Agreement if Subcontractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to sub-subcontractors or suppliers in accordance with the respective agreements between the Subcontractor and the sub-subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of a material breach of a provision of the Contract Documents.

When any of the reasons described in this paragraph 11.A. exist CONTRACTOR may, without prejudice to any other rights or remedies of CONTRACTOR, and after giving the Subcontractor seven days' notice, terminate this Agreement and may:

- .1 exclude the Subcontractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Subcontractor; and
- .2 finish the Work by whatever reasonable method CONTRACTOR may deem expedient; and
- .3 recover from Subcontractor all costs incurred by CONTRACTOR to complete the Work plus a 10% mark-up for overhead and profit, and further recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential, and all reasonable attorneys' fees and litigation expenses suffered or incurred by CONTRACTOR by reason of or as a result of Subcontractor's default.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy at law or in equity.

After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work and payment therefore by the owner, CONTRACTOR shall promptly pay Subcontractor the balance of the Work Order price, if any.

B. Termination and Suspension by Owner. A Work Order will terminate, or the Work will be suspended, to the extent that the Contract between the owner and CONTRACTOR is terminated or the owner suspends the work of the Contract, in whole or in part. Such termination or suspension shall be effective twenty-four (24) hours after Subcontractor receives written notification of the termination or suspension from CONTRACTOR.

C. Termination or Suspension for CONTRACTOR's Convenience. A Work Order may be terminated or the Work may be suspended at any time for CONTRACTOR's convenience upon CONTRACTOR giving twenty-four (24) hours prior written notice to Subcontractor that the Work Order is terminated or the Work is suspended, in whole or in part.

In the event a Work Order is terminated or suspended in accordance with paragraphs 11.B. or 11.C. Subcontractor shall immediately suspend or terminate the Work as directed by CONTRACTOR and Subcontractor shall be paid for work performed through the date of termination in accordance with Paragraph 6. Subcontractor shall have no right to payment for any Work not performed nor any claim for overhead or profit on unperformed Work.

12. **DISPUTES.**

A. Claims. Subcontractor shall give CONTRACTOR written notice of all claims, disputes or other controversies arising out of or relating to this Agreement ("Claims"), within seven (7) days of Subcontractor's knowledge of facts giving rise to the event for which Claim is made; otherwise, such Claims shall be waived. Subcontractor shall continue the Work during the pendency of any Claim or any dispute resolution proceeding.

B. Mediation. Claims, disputes, or other matters in controversy arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. The parties shall share the mediator's fees and expenses equally. The mediation shall be held in Shawnee, Kansas.

C. Binding Dispute Resolution. The cost of any binding dispute resolution procedure, including attorneys' fees, filing fees, hearing fees, witness fees (including expert and consultant fees) and all other related costs and expenses, shall be borne by the non-prevailing party, as determined by the adjudicator of the dispute.

D. Jurisdiction; Venue; Governing Law. To the fullest extent permitted by law, the parties stipulate that the Tenth Judicial District, District Court, Johnson County, Kansas is the court of exclusive jurisdiction and venue to determine any dispute between CONTRACTOR and Subcontractor arising out of or relating to

this Agreement. CONTRACTOR and Subcontractor further agree that this Agreement shall be construed, interpreted and governed in accordance with the laws of the State of Kansas without regard to its conflict of laws principles.

13. **SUB-SUBCONTRACTS.** Subcontractor shall not assign or sublet any Work or Work Order without the advance written consent of CONTRACTOR.

14. **SAFETY.** Subcontractor shall comply with all safety policies and rules of CONTRACTOR and Owner and shall take all actions and precautions necessary to ensure the safety of its employees, the general public, and all other persons on, around, or affected by the Work.

15. **INDEPENDENT CONTRACTOR.** Subcontractor agrees that it is, and will remain throughout the life of this Agreement, an independent contractor solely responsible for means and methods used in performing the Work. Subcontractor is not an employee, agent, joint-venturer, or partner of CONTRACTOR. Subcontractor has no authority to bind CONTRACTOR in any obligation to a third party.

16. **PRIVITY.** The Subcontractor agrees not to deal directly with the owner's representatives in connection with any Work performed under this Agreement, and further agrees not to perform any work directly for the owner or any tenants thereof, for a period of two years after the expiration or termination of this Agreement.

16. **NOTICES.** Subcontractor's authorized representative for all notices related to this Agreement:

Contact Name: _____
Address: _____
Telephone No: _____
Email Address: _____

Contractor's authorized representative for all notices related to this Agreement:

Contact Name: Derrick M Rieke
Address: 15400 Midland Drive, Shawnee, KS 66217
Telephone No: 913-631-7111
Email Address: finance@maxrieke.com

17. MISCELLANEOUS PROVISIONS.

- A. This Agreement may be executed in counterparts by the parties hereto, each said counterpart, when so executed and delivered, shall be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument. As so executed, this Agreement shall be as valid and binding on each party as if all parties had signed the same document.
- B. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, either written or oral.
- C. This Agreement is a product of negotiation by and among each party hereto. The parties therefore acknowledge and agree that this Agreement shall not be deemed to have been prepared or drafted by one party or another, and that it shall be construed accordingly.
- D. Each of the undersigned has fully read and understands every term of this Agreement and fully understands the binding legal effect thereof. Each of the parties also acknowledges that they have had an opportunity to consult with legal counsel prior to executing this Agreement.

This Agreement is effective upon the later of the two dates shown below ("Effective Date").

MAX RIEKE & BROS., Inc.

SUBCONTRACTOR

By: *Derrick Rieke*

By: _____

Name: Derrick M Rieke

Title: Vice President

Name:

Title:

Date: _____

Date: _____