

VERNON MACHINE CORP dba BENDER US (Contractor's License Number _____)
MASTER SUBCONTRACT AGREEMENT
SUBCONTRACT NUMBER _____

This Master Subcontract Agreement ("Subcontract") is entered into effective _____ by and between VERNON MACHINE CORP dba BENDER US. ("BENDER US") and

("SUBCONTRACTOR") (collectively, the "parties"). This Subcontract is intended to facilitate the performance of work ("Work") by Subcontractor, on an as needed basis, for various BENDER US clients, ("CLIENT" or "CLIENTS") under various Prime Contracts between BENDER US and CLIENTS. Work may be performed at, or for, numerous projects or properties at various locations, each of which will be described in the Scope(s) of Work applicable to the Work, as set forth in the Paragraph herein entitled "Scope of Work." This Subcontract establishes the terms and conditions under which subcontracted Work is to be carried out.

1.0 Scope of Work: SUBCONTRACTOR shall perform Work as needed by BENDER US in accordance with this Agreement and a Scope, or various Scopes, of Work applicable to each separate assignment. Each separate assignment shall refer to this Agreement and to the relevant Prime Contract. Upon execution by the parties, each Scope of Work, together with this Agreement, shall constitute a separate contract.

2.0 Time is of the Essence: SUBCONTRACTOR acknowledges that the schedules in the applicable Scope of Work are essential to BENDER US's and BENDER US's CLIENT's marketing, financing, development, leasing, occupancy and/or business and management plans and, therefore, time is of the essence in meeting such schedules. SUBCONTRACTOR shall commence WORK on the date specified in the applicable Scope of Work, and shall carry out the WORK expeditiously so that the Guaranteed Completion Date specified on the applicable Scope of Work shall be achieved. SUBCONTRACTOR shall notify BENDER US immediately of any necessary change to the schedule in the Scope of Work. **SUBCONTRACTOR** shall not be responsible for delays in the completion of the Work created by any unforeseen cause or causes beyond SUBCONTRACTOR'S control, and within the scope of the Force Majeure clause of the Prime Contract. In the event of delay due to any such cause, SUBCONTRACTOR shall be paid only for actual out of pocket costs occasioned by such delay, including standby costs which BENDER US recovers from its CLIENT.

3.0 Compensation: SUBCONTRACTOR agrees to promptly submit all invoices for payment. Invoices for

Work performed more than 45 days before receipt of the invoice will not be honored. Compensation for Work shall be based upon the rates specified in the applicable Scope of Work, which shall be valid for the term of this Subcontract, and the number of hours of work performed as indicated by daily work tickets verifying the Work and hours, and signed by BENDER US's representative. If SUBCONTRACTOR is in compliance with this Subcontract, BENDER US agrees to pay SUBCONTRACTOR within ten working days of receipt of payment from CLIENT. BENDER US shall have the right to withhold payment if SUBCONTRACTOR is in default or has not honored its obligations to BENDER US or CLIENT.

4.0 Work Authorizations: Authorizations for work may be ordered only by the BENDER US project manager. Such authorizations may only be ordered in writing, by letter, email, or fax referencing this Subcontract and the applicable Scope of Work.

5.0 Performance of Work Standards: SUBCONTRACTOR shall perform Work in accordance with the standards of care customary in the industry and in strict accordance with the Scope(s) of Work and BENDER US's instructions. In the event that SUBCONTRACTOR's Work fails to meet the above standard, and BENDER US notifies SUBCONTRACTOR of such failure, SUBCONTRACTOR shall reperform its Work and correct any damage that may have resulted from SUBCONTRACTOR's defective Work.

6.0 Indemnity: SUBCONTRACTOR agrees to release, defend, indemnify and hold BENDER US and BENDER US'S CLIENT(S) harmless from any claims, demands, suits, subrogation, liens, claims of liens, claims for taxes payable by SUBCONTRACTOR, causes of action, loss, expense, or liability of any nature whatsoever, including, without limit, bodily injury, disease, personal injury, or death of any person and damage to or loss of property of any person or entity (including, without limitation, reasonable attorneys', experts' and BENDER US's fees, laboratory and litigation costs) ("Claims") arising directly or indirectly out of the acts or omissions of SUBCONTRACTOR, his agents, employees, subcontractors, suppliers, and representatives for which BENDER US is alleged to be liable to the CLIENT, or others, under the Prime Contract or otherwise (even if such Claims are frivolous, but subject to any limitation provided by law), and for all Claims of BENDER US arising out of SUBCONTRACTOR's negligence. If

SUBCONTRACTOR requires a copy of the Prime Contract, SUBCONTACTOR shall so inform BENDER US and a copy of relevant portions of same will be provided.

Anything herein to the contrary notwithstanding, and regardless of the generality of the foregoing, SUBCONTRACTOR shall release, defend, indemnify and hold BENDER US harmless from and against any and all liability which may arise as a result of bodily or personal injury or death of SUBCONTRACTOR's employees, regardless of BENDER US's fault, negligence, strict liability or any other theory of law, subject to any limitations imposed by law. This indemnity shall not be limited by worker's compensation benefits.

7.0 Insurance: SUBCONTRACTOR shall provide BENDER US and CLIENT Certificates of insurance evidencing coverage in amounts as follows:

- a. Worker's Compensation: As required by the laws of the jurisdiction in which Work is to be performed.
- b. General Liability: Comprehensive public liability on an occurrence basis covering bodily injury and property damage including the hazards of: (1) premises and operations, (2) Owner's and Contractor's protective, (3) blanket contractual, (4) personal injury (employee and contractual exclusions deleted), (5) broad form property damage, (6) products - completed operations, with a limit of not less than \$1,000,000 per occurrence, \$2,000,000 annual aggregate.
- c. Vehicle Liability: Owned, hired, and non-owned vehicles with limits not less than \$1,000,000 combined single limit.

Unless the applicable Scope of Work provides otherwise, SUBCONTRACTOR shall also supply:

Professional Errors and Omissions Insurance with a limit of at least \$1,000,000 per claim (or greater amount if required by the Prime Contract).

In the event that the Prime Contract requires any additional insurance, SUBCONTRACTOR will procure same and will provide evidence of the additional insurance to BENDER US.

8.0 Acceptability and Evidence of Insurance: SUBCONTRACTOR shall have its liability insurance carriers name BENDER US and BENDER US's CLIENT(S) as Additional Insureds on its liability policies. SUBCONTRACTOR waives, and shall require its insurers to waive, subrogation against BENDER US and CLIENT

with respect to all policies of insurance. The insurance afforded to the Additional Insureds shall be primary insurance. If an Additional Insured has other insurance which is applicable to the loss on an excess or contingent basis, the amount of the SUBCONTRACTOR's insurers' liability shall not be reduced by the existence of such other insurance.

9.0 Independent Contractor: SUBCONTRACTOR is an independent contractor and, as such, shall be subject to, and shall operate under, all applicable federal and state laws regarding employer's liability, Worker's Compensation, federal Social Security, federal immigration law, and unemployment compensation insurance. SUBCONTRACTOR expressly agrees that employees of SUBCONTRACTOR engaged in the performance of Work hereunder are not, nor shall they be, treated or considered employees of BENDER US.

10.0 Publications: SUBCONTRACTOR shall neither publish, nor publicly disseminate, any information or data derived from, obtained from, or obtained in connection with, any Work hereunder, except with the prior written consent of BENDER US.

11.0 Prime Contract: Certain terms and conditions of BENDER US's Prime Contracts with the CLIENTS are applicable to SUBCONTRACTOR. If SUBCONTRACTOR requires a copy of the Prime Contract for any Scope of Work, SUBCONTRACTOR shall request, and BENDER US shall provide a copy of relevant portions of same.

12.0 Safety and Underground Obstructions: SUBCONTRACTOR will be solely responsible for the safety of its employees, agents, and invitees. SUBCONTRACTOR shall be solely responsible for confirming the presence, or assuring the absence, of underground obstructions and structures, which could be affected by SUBCONTRACTOR's Work.

13.0 Termination: This Subcontract, as well as any Scope of Work, may be terminated by BENDER US, with or without cause, at any time and without prior notice. In the event of termination without cause, in full discharge of any obligations to SUBCONTRACTOR with respect to this Subcontract, BENDER US shall pay for costs and noncancellable commitments incurred prior to the effective date of the termination. It is agreed that in the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against SUBCONTRACTOR, including any reorganization or arrangement proceeding, or in the event of the appointment, with or without SUBCONTRACTOR's consent of an assignment for the benefit of creditors or of a receiver; or if SUBCONTRACTOR is unable to supply sufficient capable workers, or appropriate materials or

equipment to execute WORK; or if SUBCONTRACTOR defaults in performance of any obligation under this Subcontract and fails to correct such default within five (5) working days following written notice thereof from BENDER US, BENDER US may, without regard to any other rights or remedies of BENDER US, withhold payments to SUBCONTRACTOR or terminate SUBCONTRACTOR's rights to continue performance of WORK for default by written notice specifying the date of termination. At the time BENDER US provides such notice to SUBCONTRACTOR, BENDER US may take possession of all WORK and any or all of SUBCONTRACTOR's materials (whether delivered or on order), tools and equipment at the jobsite and finish WORK by whatever means BENDER US elects.

The Parties specifically agree, however, that SUBCONTRACTOR's violation of any Environmental Requirement, or any requirement relating to health or safety shall not be subject to SUBCONTRACTOR's five (5) working day cure right. In the event of any such violation, BENDER US may terminate this Subcontract in whole or in part for default immediately upon notice to SUBCONTRACTOR.

In the event of termination for default, SUBCONTRACTOR shall be and remain liable to BENDER US for any and all damages, fees, fines, costs, and/or expenses of any nature that are occasioned by the default.

14.0 Assignment of Subcontracts: In the event of termination for any reason, SUBCONTRACTOR agrees to assign all of its subcontracts to BENDER US at BENDER US's request.

15.0 Entire Subcontract: This Subcontract, and any applicable Scope(s) of Work, constitute the entire agreement between the Parties respecting the subject matter of this Subcontract and supersede all prior representations, understandings and agreements, whether oral or in writing, between the Parties respecting the subject matter of this Subcontract. This Subcontract and any applicable Scope(s) of Work may be modified only by subsequent written modifications mutually agreeable to both parties. If SUBCONTRACTOR elects to utilize an order form, confirmation or other form as a convenience for billing purposes, or in accordance with its customary practice, BENDER US will refer to the same in invoices or correspondence, with the understanding that this Subcontract supersedes all inconsistent terms.

16.0 Term: This Subcontract shall terminate one year from the effective date; however, this Subcontract shall automatically be renewed for consecutive one-year terms, unless terminated earlier under the provisions hereof.

Termination for whatever cause shall not affect the terms hereof which shall continue in full force and effect.

17.0 Dispute Resolution: Dispute Resolution. Any controversy or claim arising out of, or relating to this Agreement must be sought to be settled by consultation between CLIENT'S executives and the executives of BENDER US. Failing resolution by such consultation, settlement shall be attempted through mediation by a neutral person acceptable to both parties. If no resolution is reached by mediation, matters in controversy or claims shall be settled in accordance with the dispute resolution provisions of the Prime Contract, or if no such provision exists, by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, or another alternate dispute resolution organization agreed to by the parties. Judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

18.0 Subcontracting and Assignment: This Subcontract shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties; provided, however, that SUBCONTRACTOR shall not retain sub-subcontractors to provide WORK or materials, nor assign this Subcontract or any portion hereof, or any monies to become due hereunder, without the prior written consent of BENDER US. Such consent may be withheld in BENDER US's sole discretion. Any attempted assignment of this Subcontract or portion thereof without BENDER US's prior written consent shall be void. SUBCONTRACTOR is fully responsible for the work or materials of any sub-subcontractor.

19.0 Severability: If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, such provision will be renegotiated so as to give effect to the intent of the parties to the maximum possible extent. Such determination and renegotiation shall not affect or invalidate the remaining provisions of this Agreement except as modifications may be required for consistency with renegotiated terms.

20.0 Governing Law: This Subcontract shall be governed by the laws of the State of California. Any arbitration or litigation arising from this Subcontract shall take place in Orange County, California.

21.0 Attorneys' Fees: In the event of any action, including, without limit, arbitration or litigation, to enforce any provision of this Subcontract, the prevailing party shall be entitled to recover from the other such attorneys' fees and costs as may be reasonably incurred, including the costs of reasonable investigation, preparation and

professional or expert consultation incurred by reason of such action.

22.0 Waiver of Covenants, Conditions or Remedies:

The waiver by one Party of the performance of any covenant or condition under this Subcontract shall not invalidate this Subcontract. Nor shall any individual waiver be considered a waiver of any other covenant or condition under this Subcontract.

23.0 Notices.

Any and all notices and other communications hereunder shall be in writing and be deemed received when delivered on a business day via messenger, hand delivery or facsimile to the number provided by the other party, or five (5) working days after being mailed, via certified or registered mail, return receipt requested, postage prepaid, to the respective addresses set forth in the applicable Scope of Work, or to such other addresses as either of the parties hereto may, from time to time, designate in writing to the other party (whichever is earlier). Email is not sufficient to provide notice, except as set forth in 4.0, above.

IN WITNESS WHEREOF, the Parties have caused this Subcontract to be executed as of the day and year first above written.

BENDER US, INC.

By (Signature) _____

(Print Name) _____

Title: _____

Date: _____

SUBCONTRACTOR

By (Signature) _____

(Print Name) _____

Title: _____

Date: _____

In the event that any special license or permit is required for the Work to be provided hereunder, SUBCONTRACTOR provides the following currently effective license and permit information necessary for the Work:

