

**AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR TOLLING THE  
STATUTE OF LIMITATIONS**

This Agreement is effective February 1, 2010 and is made by and between CONTRACTOR, SUBCONTRACTOR and SURETY. CONTRACTOR, SUBCONTRACTOR and SURETY are collectively referred to as the "Parties." Unless extended or terminated in writing pursuant to paragraph 7, this Agreement shall terminate no later than December 31, 2010.

Recitals

I. On or about \_\_\_\_\_, 2008, the Project Owner ("Owner"), entered into a written contract with CONTRACTOR, as prime contractor, for the construction of xxxxxxxxxxxx Project (hereinafter the "Project"), located at \_\_\_\_\_, City of Encino, County of Los Angeles, State of California. SURETY issued a payment and performance bonds on behalf of CONTRACTOR for the Project.

2. In furtherance of the prime contract, CONTRACTOR entered into a written subcontract, dated \_\_\_\_\_, 2008, with SUBCONTRACTOR, as subcontractor, whereby SUBCONTRACTOR agreed to provide certain labor, material, equipment, and services for the Project. While the Project work has been completed, the Owner has failed to issue final payment. If CONTRACTOR is unable to negotiate project closeout of all claims issues arising from the Project, it may be required to file an action for declaratory relief to secure the Owner's issuance of the Final Estimate Worksheet, which is a condition precedent to the accrual of CONTRACTOR's right to pursue claims (inclusive of pass through claims on behalf of CONTRACTOR's subcontractors) pursuant to the State Contract Act against the Owner.

3. SUBCONTRACTOR contends that it is entitled to be paid in excess of at least \$100,000.00 consisting of its subcontract balance and other Project costs. CONTRACTOR, in turn, asserts that it possesses claims (including offset and/or affirmative claims) against SUBCONTRACTOR arising from its work at the Project. The Parties dispute responsibility for these claims.

4. On \_\_\_\_\_ 2009, SUBCONTRACTOR filed a stop notice on the Project in the amount of \$100,000.00.

5. While the Parties acknowledge that the claims they possess are not presently the subject of any legal nor equitable proceeding, the Parties wish to preserve the right of CONTRACTOR to pursue from the Owner payment for some or all of SUBCONTRACTOR's claims (as appropriate) prior to SUBCONTRACTOR commencing a legal proceeding to preserve its rights against CONTRACTOR or SURETY. Therefore, the Parties wish to toll all statutes of limitations, if any are applicable, to forego the need to initiate any legal proceedings to enforce any of their respective rights until after the termination of this Tolling Agreement.

Agreement

Accordingly, the Parties agree as follows:

6, Effective February 1, 2010, in accordance with the terms of this Agreement, the Parties hereby agree to toll any applicable legal or equitable statutes of limitations, statutes of repose, or periods of limitations which have not expired relating to any claims between the Parties arising from the Project. The Parties, however, do not waive their rights as to any periods of time that have previously elapsed as against any applicable legal or equitable statutes of limitations, statute of repose or period of limitations which a Party may choose to assert with respect to any claim arising from the Project. Any statute of limitations, statute of repose, or period of limitation is tolled only until this Agreement terminates, or if any Party terminates the Agreement pursuant to paragraph 9, To the extent any legal or equitable statutes of limitations, statutes of repose, or periods of limitations have already expired before February 1, 2010, and which apply to any alleged claim arising from the Project that any party might assert, this Agreement does not waive or otherwise affect any Parties' ability to assert such statutes or periods.

7, The Parties express that their respective forbearance from filing litigation or demanding arbitration on their claims, including their mutual interest in attempting to explore resolution of any claims which may arise or be asserted during the pendency of this Agreement, shall be understood to be adequate consideration for this Agreement.

8, Any legal or equitable statute of limitations, statute of repose, or period of limitation applicable to the matters described in paragraph 6 of this Agreement, and which has not expired as of February 1, 2010, shall recommence running upon the termination of this Agreement.

9. Either Party may terminate this Agreement by giving the other Party written notice of termination at least twenty one (21) days prior to the effective date of termination, provided, however, that this Tolling Agreement shall terminate on December 31, 2010. If any party triggers termination rights, the Parties agree that the provisions of paragraph 15 hereof may be invoked. All other rights and duties of the Parties shall continue during the notice period. Any written notice of termination shall be sent via facsimile, email and U. S. Mail as follows:

For CONTRACTOR and SURETY:  
ATTORNEY AT LAW  
ATTORNEY OFFICE  
A professional Corporation  
1234 Street  
Any City, CA.

For SUBCONTRACTOR:  
Rafik Ayavazi, Esq.  
LAW OFFICES OF RAFIK AYVAZI  
15915 Ventura Blvd., Penthouse 2  
Encino, CA 91436

Tel: (818) 783-5225  
Facsimile: (818) 981-3651  
rafikayvazi@ayvazi.com

10. The Parties to this Agreement may agree, in a signed writing, to extend the provisions of this Agreement. In that event, the terms of this Agreement will receive legal effect beyond December 31, 2010, as agreed upon by the Parties.

11. Unless terminated pursuant to paragraph 7 above, the Parties agree, pursuant to California Code of Civil Procedure Section 360.5, that this Agreement shall be in full force and effect in accordance with its stated terms.

12. The Parties agree that they will cooperate with each other with respect to the claims asserted by the Parties, and will investigate the allegations of such claims and share with each other information relating to their mutual interests.

13. All communications, discussions and information sharing between the Parties in connection with joint efforts and joint meetings regarding their claims shall be subject to the applicable privilege under the attorney-client; attorney work-product, joint defense or any other applicable privileges or protections from disclosure, to the extent allowed by the laws of the State of California, and will be subject to the protections of the Evidence Code in regard to settlement negotiations.

14. All parties, through their counsel, have participated fully in the negotiations, preparation and drafting of this Agreement and the language used is a product of that participation. The rule that the ambiguity and language is to be construed against the author of this Agreement shall have no effect as to this Agreement.

15. No provision hereof may be waived unless in writing and signed by the party benefitted thereby. This Agreement may be modified or amended only by written agreement executed by all Parties hereto.

16. This Agreement shall be governed and construed according to the laws of the State of California.

17. The Parties to this Agreement mutually warrant and represent to all Parties that each individual signing below in a representative capacity has the authority to sign this Agreement and to commit the entity on whose behalf he is signing to the terms of this Agreement.

18. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective assignors, predecessors-in-interest, successors, assigns, heirs, and personal representatives. Each of the persons executing this Agreement on behalf of the Parties to this Agreement warrants and represents that he or she has read and understood all of its terms.

19. Except as provided herein, this Agreement shall not operate to waive, limit, modify or



**APPROVED AS TO FORM AND CONTENT**

Dated: \_\_\_\_\_

ATTORNEY OFFICE

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yyyyyyyyyyyyyyyy, Esq.  
Attorney for CONTRACOR

Dated: \_\_\_\_\_

LAW OFFICES OF RAFIK AYVAZI

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Rafik Ayvazi, Esq.  
Attorney for SUBCONTRACTOR