



State License #CGC048773

# STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

(Where Contractor and Subcontractor Share Risk of Owner Payment)

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the

**CONTRACTOR:** Close Construction, Inc., 301 N.W. 4<sup>th</sup> Avenue, Okeechobee, Florida 34972 and

**SUBCONTRACTOR:** \_\_\_\_\_

**SUBCONTRACTOR LICENSE NUMBER:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

**OWNER:** \_\_\_\_\_

**ARCHITECT/ENGINEER:** \_\_\_\_\_

**1. SUBCONTRACT WORK:** To the extent terms of the agreement between Owner and Contractor (prime agreement) apply to the work of Subcontractor, Contractor assumes toward Subcontractor all obligations, rights, duties, and redress that Owner assumes toward Contractor. In an identical way, Subcontractor assumes toward Contractor all obligations, rights, duties, and redress that Contractor assumes toward Owner and others under the prime agreement (copy of prime contract available upon request). In the event of conflicts or inconsistencies between provisions of this Agreement and the prime agreement, this Agreement shall govern. Subcontractor shall perform Subcontract Work under the general direction of Contractor and shall cooperate with Contractor so Contractor may fulfill obligations to Owner shall be responsible for all permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete Subcontract Work. Subcontractor agrees not to charge Contractor any additional cost on account of incidental discrepancies that might appear in the plans and specifications. Subcontractor represents to the best of its knowledge after careful review that the plans are currently complete and sufficient to provide project with substantially complete and functional systems. Subcontractor represents and affirms that it is fully licensed in accordance with all local, state and federal requirements to do the work set forth in the Agreement. Subcontractor to provide:

\_\_\_\_\_ as more fully described in Exhibit A.

**2. SUBCONTRACT AMOUNT:** Contractor agrees to pay Subcontractor for satisfactory and timely performance and completion of Subcontract Work: \_\_\_\_\_; (\$\_\_\_\_\_.00). Retainage shall be ten percent (10%), which may be equal to the percentage retained from Contractor's payment by Owner for Subcontract Work.

**3. INSURANCE:** Subcontractor shall purchase and maintain insurance that will protect Subcontractor from claims arising out of Subcontractor operations under this Agreement, whether the operations are by Subcontractor, or any of the Subcontractor's consultants or subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor shall maintain coverage and limits of liability as set forth in Exhibit "D."

**4. BONDS:** Subcontractor  shall  shall not furnish to Contractor, as Oblige, surety bonds in a form as set forth in Exhibit G to this Agreement, and through a surety mutually agreeable to Contractor and Subcontractor, to secure faithful performance of Subcontract Work and to satisfy Subcontractor payment obligations related to Subcontract Work.

**5. EXHIBITS:** The following Exhibits are incorporated by reference and made part of this Agreement:

- EXHIBIT "A": Scope of Work, including Clarifications, Allowances, Exclusions, Alternates and Unit Prices, \_\_\_ pages.  
EXHIBIT "B": Project Drawings, Specifications, General, Special, Supplementary, and other conditions, and addenda. (Attach a complete listing by Title, date and number of pages.)  
EXHIBIT "C": Progress Schedule, \_\_\_ pages.  
EXHIBIT "D": Insurance Provisions, 2 pages.  
EXHIBIT "E": Warranty Forms (Subcontractor and Lower Tier Subcontractors)  
EXHIBIT "F": Schedule of Values and Application for Payment Forms, 2 pages.  
EXHIBIT "G": Bonds, \_\_\_ pages.  
EXHIBIT "H": Listing of all Subcontractor's sub-subcontractors, equipment, labor or material suppliers.

**6. SAFETY:** To protect persons and property, Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to (1) those required or recommended by governmental or quasi-governmental authorities having jurisdiction, and (2) requirements of this Agreement and Close Construction, Inc.'s Safety Policy. A copy of said safety program can be obtained on our website ([www.closeconstructioninc.com](http://www.closeconstructioninc.com)) or upon written request.

**7. ASSIGNMENT:** Subcontractor shall not assign the whole or any part of Subcontract Work or this Agreement without prior written approval of Contractor.

## **8. TIME**

**8.1 TIME IS OF THE ESSENCE:** Time is of the essence for both parties. The parties agree to perform their respective obligations so that the Project may be completed in accordance with this Agreement.

**8.2 SCHEDULE:** The Contractor shall prepare the schedule for performance of Contractor's work (Progress Schedule) and shall revise and update such schedule, as necessary, as Contractor's work progresses. Subcontractor shall provide Contractor with any scheduling information proposed by Subcontractor for Subcontract Work and shall revise and update as Project progresses. Contractor and Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to Subcontractor reasonably in advance of required performance. Contractor shall have the right to determine and if necessary, change the time, order, and priority in which various portions of Subcontractor Work shall be performed and all other matters relative to Subcontract Work.

**9. CHANGE ORDERS:** When Contractor orders in writing, Subcontractor, without nullifying this Agreement, shall make any and all changes in Subcontract Work, which are within the general scope of this Agreement. Any adjustment in the Subcontractor Amount or time of performance shall be authorized by Change Order. No Adjustments shall be made for any changes performed by Subcontractor that have not been ordered by Contractor. A Change Order is a written instrument prepared by Contractor and signed by Subcontractor stating their agreement upon the change in Subcontract Work. If Commencement and/or progress of Subcontract Work is delayed without the fault or responsibility of Subcontractor, the time for Subcontract Work shall be extended by Change Order to the extent obtained by Contractor, and the Progress Schedule shall be revised accordingly.

In the event Contractor and Subcontractor cannot reach an agreement as to the value of the additional work, Contractor may direct Subcontractor to perform such work, compensating Subcontractor for all its direct labor, materials, equipment plus 15% for overhead and profit as full compensation for additional work.

## **10. PAYMENT**

**10.1 SCHEDULE OF VALUES:** As a condition of payment, Subcontractor shall provide a schedule of values satisfactory to Contractor not more than fifteen (15) days from the date of this Agreement, and it shall include the name of all sub-subcontractors, rental companies and materialmen along with their associated cost (see Exhibit "H").

**10.2 PROGRESS AND FINAL PAYMENTS:** Receipt of payment by Contractor from Owner for Subcontract Work is a condition precedent to payment by Contractor to Subcontractor. Subcontractor acknowledges that it relies on credit of Owner, not Contractor, for payment of Subcontract Work. Progress payments, less retainage, shall be made to Subcontractor, for Subcontract Work satisfactorily performed, no later than seven (7) days after receipt by Contractor of payment from Owner for Subcontract Work. Final payment of the balance due shall be made to Subcontractor no

later than seven (7) days after receipt by Contractor of final payment from Owner for Subcontractor Work. These payments are subject to receipt of such lien waivers, affidavits, warranties, guarantees or other documentation required by this Agreement or Contractor.

**10.3 PAYMENTS WITHHELD:** Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage caused by Subcontractor's failure to (1) timely perform Subcontract Work, (2) properly pay subcontractors and/or suppliers, or (3) promptly correct rejected, defective or nonconforming Subcontract Work.

**10.4 PAYMENTS WITHHELD:** Contractor has received payment from Owner and, if for any reason not the fault of Subcontractor. Subcontractor does not receive a progress payment from Contractor within seven (7) days after the date such payment is due, Subcontractor, upon giving seven (7) days' written notice to Contractor, and without Prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to Subcontractor has been received. Subcontract Amount and time of performance shall be adjusted by the amount of Subcontractor's reasonable and verified cost of shutdown, delay and startup, and shall be affected by an appropriate Change Order.

**10.5 WAIVER OF CLAIMS:** Final Payment shall Constitute a waiver of all claims by Subcontractor relating to Subcontract Work, but shall in no way relieved Subcontractor of liability for warranties, or for nonconforming or defective work discovered after final payment.

**10.6 OWNER'S ABILITY TO PAY:**

**10.6.1** Subcontractor shall have the right upon request to receive from Contractor such information as Contractor has obtained relative to Owner's financial ability to pay for Contractor's work, including any subsequent material variation in such information, Contractor, however, does not warrant the accuracy or completeness of information provided by Owner.

**10.6.2** If Subcontractor does not receive the information referenced in Subparagraph 10.6.1, Subcontractor may request the information from Owner and/or Owner's lender.

**11. INDEMNITY:** To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Contractor's other subcontractors, Architect/Engineer, Owner and their agents, consultants, employees and others as required by this Agreement from all claims for bodily injury and property damage that may arise from performance of Subcontract Work to the extent of the negligence attributed to such acts or omissions by Subcontractor, Subcontractors or anyone employed directly or indirectly by any of the or by anyone for whose acts any of them may be liable.

**12. CONTRACTOR'S RIGHT TO PROFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT**

**12.1 FAILURE OF PERFORMANCE:** Should Subcontractor fail to satisfy contractual deficiencies or to commence and continue satisfactory correction of the default with diligence or promptness within three (3) working days from receipt of Contractor's written notice, then Contractor, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct deficiencies and change the cost thereof to Subcontractor, who shall be liable for such payment, including reasonable overhead, profit and attorneys' fees. In the event of an emergency affecting safety of persons or property, Contractor may proceed as above without notice, but Contractor shall give Subcontractor notice promptly after the fact as a precondition of cost recovery.

**12.2 TERMINATION BY CONTRACTOR:** If Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) days after written notification issued under Paragraph 12.1, then Contractor may, in lieu of or in addition to Paragraph 12.1, issue a second written notification, to Subcontractor and its surety, if any. Such notice shall state that if Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by Contractor to Subcontractor at the time Subcontractor is terminated. Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as Contract deems necessary to maintain the orderly progress of Contractor's Work. All costs incurred by Contractor in performing Subcontractor Work, including reasonable overhead, profit and attorney's fees, cost and expenses, shall be deducted from any monies due or to be

come due Subcontractor. Subcontractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the Subcontractor Amount. At Subcontractor's request, Contractor shall provide a detailed accounting of the costs to finish Subcontract work.

**12.3 TERMINATION BY OWNER:** Should Owner terminate the prime agreement or any part which includes Subcontract Work, Contractor shall notify Subcontractor in writing within three (3) days of termination and, upon written notification, this agreement shall be terminated and Subcontractor shall immediately stop Subcontract Work, follow all of Contractor's instructions, and mitigate all costs. In the event of Owner termination, Contractor liability to Subcontractor shall be limited to the extent of Contractor recovery on Subcontractor's behalf under the prime agreement. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of Owner termination and to permit Subcontractor to prosecute the claim, in the name of Contractor, for the use and benefit of Subcontractor, or assign the claim to Subcontractor.

**12.4 TERMINATION BY SUBCONTRACTOR:** If Subcontractor Work has been stopped for thirty (30) days because Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of Subcontractor, then Subcontractor may terminate this Agreement upon giving Contractor seven (7) day's written notice. Upon such termination, Subcontractor shall be entitled to recover from Contractor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit and attorneys' fees, costs and expenses, subject to the terms of Paragraphs 10.2 and 10.3 Contractor's liability for any other damages claimed by Subcontractor under such circumstances shall be extinguished by Contractor pursuing said damages and claims against Owner, on Subcontractor's behalf, in the manner provided for in Paragraph 12.3 of this Agreement.

### **13 CLAIMS AND DISPUTES**

**13.1 CLAIMS RELATING TO CONTRACTOR:** Subcontractor shall give Contractor written notice of all 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 deemed waived. All unresolved claims, disputes and other matters in question between Contractor and Subcontractor shall be resolved in the manner provided in this Agreement.

**13.2 DAMAGES:** If the prime agreement provides for liquidated or other damages for delay beyond the completion date set forth in this Agreement, and such damages are assessed, Contractor may assess a share of the damages against Subcontractor in proportion to Subcontractor's share of responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against Contractor. Nothing in this Agreement shall be construed to limit Subcontractor's liability to Contractor for Contractor's actual delay damages caused by Subcontractor's delay.

**13.2.1 CONTRACTOR CAUSED DELAY:** Nothing in this Agreement shall preclude Subcontractor's recovery of delay damages caused by Contractor.

**13.3 WORK CONTINUATION AND PAYMENT:** Unless otherwise agreed in writing. Subcontractor shall continue Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If Subcontractor continues to perform, Contractor shall continue to make payments in accordance with this Agreement.

**13.4 MULTIPARTY PROCEEDING:** The parties agree, to the extent permitted by the prime agreement, that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between Contractor and Subcontractor involve in whole or in part disputes between Contractor and Owner, disputes between Subcontractor and Contractor shall be decided by the same tribunal and in the same forum as disputes between Contractor and Owner.

**13.5 NO LIMITATION OF RIGHTS OR REMEDIES:** Nothing in Article 13 shall limit any rights or remedies not expressly waived by Subcontractor which Subcontractor may have under lien laws or payment bonds.

**13.6 STAY OF PROCEEDINGS:** In the event that provisions for resolution of disputes between Contractor and Owner contained in the prime agreement do not permit consolidation or joinder with disputes of third parties, such as Subcontractor, resolution of disputes between Subcontractor and Contractor involving in whole or in part disputes between Contractor and Owner shall be stayed pending conclusion of any dispute resolution proceeding between Contractor and Owner.

**13.7 DIRECT DISCUSSION:** If a dispute arises out of or relates to this Agreement, the parties shall endeavor to settle the dispute through direct discussion.

**13.8 MEDIATION:** Disputes between Subcontractor and Contractor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

**13.9 ARBITRATION:** Any controversy arising out of the performance or non-performance of the work required by any Subcontract or any sub-subcontract, or the interpretation thereof, is subject to arbitration, and judgment may be entered on the award. All sub-subcontractors and material suppliers to Subcontractor are bound by this arbitration provision. Arbitration shall be in accordance with the arbitration provision contained in the contract between the Contractor and the Owner, when there is such an arbitration provision. Upon the demand of any party, any other party subject to this arbitration agreement shall join in and become a party to and be bound by such arbitration proceedings. If, because of the objections of other parties, or because of the structure of the arbitration clause in the agreement between Contractor and Owner, it is not possible for Subcontractor, or its subcontractors or suppliers, to become parties to the arbitration proceedings, and if Subcontractor's work or performance becomes an issue in arbitration proceedings between Contractor and Owner, then Subcontractor will, at its own expense, supply counsel, evidence, and witnesses to establish Subcontractor's performance of its obligations to Contractor under this Subcontract. Subcontractor will be bound to Contractor by award. If there is no arbitration clause in the contract between Contractor and Owner, then arbitration shall be in accordance with the Construction Industry Rules of the American Arbitration Association. Should any party refuse or neglect to appear at, or participate in, arbitration proceedings after due notice, the arbitrator will decide the controversy in accordance with evidence introduced the party or parties who did appear. The arbitrator will award reasonable attorney's fees to the prevailing party. Rescission of the Subcontract shall not impair this arbitration agreement.

**13.10 COST OF DISPUTE RESOLUTION:** The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute that goes beyond mediation arising out of or relating to this Agreement or its breach shall be entitled to recover from the other party reasonable attorneys' fees, cost and expenses incurred by the prevailing party in connection with such dispute.

**13.11 BACKCHARGES:** Subcontractor will promptly pay Contractor for any damage or loss that Contractor may sustain as a result of Subcontractor's performance or failure of performance.

**14 WARRANTY:** The Subcontractor warrants its work and material against defects. All work and materials will be as called for in the Contract Documents. If the Contract between Contractor and Owner contains warranty provisions, Subcontractor shall comply with those provisions at no expense to Owner or Contractor. If no warranty is provided in the Contract between Contractor and Owner, or in the Contract between Contractor and Subcontractor, then the Subcontractor shall guarantee its work for one year after completion of the project, and promptly upon notice from Owner or Contractor, shall repair defective work.

**15 CONCEALED CONDITIONS:** By executing this Subcontract, Subcontractor represents that it has made a thorough examination of the job site and has located and allowed for all conditions, including concealed underground conditions such as rock and utilities, that are to be encountered in the performance of the work. Subcontractor has taken such conditions into account in arriving at the Subcontract price. No additional compensation or extension of time shall be allowed because of concealed or unforeseen conditions about the job site.

**16 INVESTIGATION BY SUBCONTRACT:** Subcontractor has carefully examined and understands this Subcontract and the other contract documents, and has investigated the nature, locality and site of the work and the conditions and difficulties under which it is to be performed. Subcontractor enters into this agreement on the basis of its own examination, investigation and evaluation of all such matters, and not in reliance on the opinions or representations of Contractor and/or Owner. If there are any inconsistencies between the contract documents, or ambiguities in any contract document, Subcontractor shall bring such inconsistencies or ambiguities to the attention of Contractor before the execution of the Subcontract; otherwise, Subcontractor shall be bound by Contractor's resolution of such inconsistencies or ambiguities.

**17 SUPERVISION:** Subcontractor shall maintain a competent, experienced English-speaking superintendent or foreman on the project at all times, with authority to carry out directives of the Contractor relating to the Subcontractor's work and responsibilities.

**18 PUNCH LIST:** At the conclusion of construction, a "punch list" which requires correction or completion may be given to Subcontractor. Subcontractor agrees to complete such "punch list" within seven (7) days of receipt. Subcontractor's failure to correct said items within said seven (7) day period shall give the Contractor the right, but not the obligation, to complete or correct said items without further notice to Subcontractor, and to charge the cost thereof to Subcontractor.

**19 CLEANUP:** Subcontractor will continuously clean the job site, and Subcontractor's work areas will be maintained in an orderly and broom-clean condition at all times. Subcontractor will locate its materials and equipment so as to avoid interference with other trades. If Subcontractor fails to perform as required by this paragraph, Contractor may do so at Subcontractor's expense.

**20 DESTRUCTION OR DAMAGE OF THE WORK:** Subcontractor will carry its own insurance to protect it against destruction of, or damage to, the Subcontractor's work, including stored materials not yet incorporated in the work. Subcontractor will be responsible for its work until completion of the entire project and its acceptance by the Owner. Until that time, Subcontractor has the risk of damage or loss. In the event of damage to or destruction of the work, Subcontractor will rebuild its portion of the work without additional compensation, and will look to its own resources or insurance coverage to pay for such rebuilding. Subcontractor will promptly perform rebuilding without additional compensation regardless of the pendency of any claim by Subcontractor against any other party, including Contractor, that such party is liable for damage to or destruction of Subcontractor's work.

**21 QUALITY OF THE WORK:** All materials and equipment shall be as specified and all work shall be performed by Subcontractor in a first-class and workmanlike manner.

**CONTRACTOR:** Close Construction, Inc.

**SUBCONTRACTOR:**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

(Signature must be by company owner or officer authorized to sign contracts and change orders.)

PRINT NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_