AMENDMENT NO. 3

This Amendment No. 3 ("Amendment") to a job order contract for rehabilitation work on dwellings in Build it Back **Region No. 10 (Registration No. 20141404086; EPIN 82613B0049001)** as amended ("Job Order Contract") made and entered into this 12th day of Aug, 2015, by and between the City of New York ("City"), acting by and through the Department of Environmental Protection ("DEP"), whose address is 59-17 Junction Boulevard, 17th Floor, Flushing, New York 11373, and **E. Fitzgerald Co., Inc. d/b/a E. Fitzgerald Contracting** ("Contractor"), **located at 98-16 Rockaway Beach Blvd., Rockaway Park, New York 11694** (hereafter, the "Parties").

WHEREAS, the Parties agree to further amend the Job Order Contract, originally executed on August 20, 2013 and previously amended on April 14, 2014 and July 3, 2014;

WHEREAS, an amendment to the Unit Price Book, Article 3, Article 15, and Article 41 is necessary to provide the Contractor with reasonable time, financial resources, and incentive to continue the Work;

NOW, THEREFORE, the Parties agree as follows:

1. The Unit Price Book is amended to add the list of Unit Price Items and prices annexed to this Amendment as Exhibit 1. The added Unit Price Items and prices will be effective for all Job Orders where the Tri-Party Agreement was executed by the Contractor on or after March 23, 2015.

2. Article 3.2 is amended to add the words in bold and to delete the bracketed words as follows:

Term. The Contract term shall begin upon registration pursuant to Charter section 328 and end on May 31, 2015, or when Work in an amount equal to the Maximum Contract Value, set forth in Article 74, has been completed, whichever occurs first (the "Term"). The City may renew the Contract for one two-year term. The Contractor must notify the City, in writing, at least six (6) months prior to the expiration of the first Term or when the Job Orders issued total greater then seventy-five (75) percent of the Maximum Contract Value, whichever occurs first, if it will not agree to renew the Contract. If the Contractor fails to provide such notification, the Contractor shall be deemed to consent to the renewal and the City may renew the Contract. **The Contractor may terminate the Contract prior to the end of the two-year renewal term by notifying the City, in writing, at least six (6) months prior to the specified termination date. If the Contractor elects to terminate the Contract, the City may continue to assign Job Orders to the Contractor up to the termination date.** If a Job Order or Job Orders are not complete prior

to the expiration of the Term, the Contractor shall complete such Job Order Work and all of the terms of this Contract shall apply to such Work.

3. Article 3.3 is amended to add the words in bold and to delete the bracketed words as follows:

Location and Assignment of the Work. (a) Dwellings in the HRP are located in twelve regions delineated by the City; consistent with the Invitation for Bids, the lowest responsible and responsive bidder in each region shall be awarded a contract. The Director of HRP shall assign Work to the Contractor on Dwellings located in the region(s) indicated in Schedule A and delineated in the attached map(s). The City shall not be required to assign all Dwellings located in such region(s) to the Contractor.

(b) It is the City's intent to rehabilitate and reconstruct the most Dwellings in the shortest time possible. The City anticipates assigning a minimum of 30 Job Orders per month to the Contractor within 60 days after the Notice to Proceed, but reserves the right to change the anticipated minimum. The Contractor shall complete Work according to the performance standards in Article 3C(1). On a **regular** [weekly] basis, the Director of HRP shall analyze and compare Contractor's progress to the progress of Other Contractors, focusing on the number of Dwellings for which Job Orders have been completed. Based on the **regular** [weekly] analysis and comparison and the availability of Work, the City shall assign Work to Contractor and Other Contractors so that**, when possible,** higher-performing contractors receive more Work than lower-performing contractors. If the Director of HRP determines that there is a need and Contractor has the ability to perform Work in an additional region and the Contractor submits proof that it has obtained performance and payment bonds in compliance with Article 20, the Director of HRP may assign Work to the Contractor on Dwellings located in the additional region indicated in Schedule A. The Director of HRP may assign Dwellings to Other Contractors that are in the region assigned to the Contractor. **In assigning or re-assigning Work under this Article, the Director of HRP shall endeavor to assign Job Orders to Contractor and Other Contractors that are geographical clustered and in proximity to existing Job Orders assigned to the same Contractor or Other Contractor.**

(c) The Contractor may not be awarded more than 30 Job Orders per month or Work outside of its region if:

(i) the Contractor's completed Job Order Work fails more than 10% of inspections by the City Department of Buildings or its authorized representative;

(ii) the Contractor's completed Job Order Work fails more than 10% of inspections by the Inspector pursuant to Article 3D;

(iii) the Director of HRP determines that the Contractor is not in compliance with the Environmental Health and Safety Requirements;

(iv) the Contractor fails to submit adequate proof that it has obtained performance and payment bonds in compliance with Article 20; or

(v) the Contractor repeatedly fails to comply with submission requirements of this Contract.

4. Article 3B.7 is amended to add the words in bold as follows:

Job Order Completion Time. The Engineer shall establish the Job Order Completion Time at the Joint Scope Meeting based on the amount and complexity of the Work. The Job Order Completion Time shall be one of the following periods:

[a. 14 Days
b. 28 Days
c. 42 Days
d. 56 Days
e. 94 Days]

a. 7 Days
b. 14 Days
c. 28 Days
d. 42 Days
e. 56 Days
f. 94 Days
g. 120 Days
h. 150 Days
i. 180 Days

The Job Order Completion Time periods of 120 Days, 150 Days, and 180 Days shall be used only for Job Orders requiring the Dwelling to be raised. Pursuant to Article 15, the Contractor shall be liable for liquidated damages for failure to timely complete a Job Order and eligible for a bonus for early completion.

5. Article 3.D.3 is amended to add the words in bold and to delete the bracketed words as follows:

If a Job Order requires that a Dwelling be raised, the Work on such Dwelling shall be subject to a minimum of [two] **three** additional inspections, as follows:

(a) Pre-Lift Inspection. At least three days prior to the date that a Dwelling is scheduled to be raised, the Contractor shall notify the Project Manager of the date and time that the Dwelling is scheduled to be raised. The Inspector shall conduct a pre-lift inspection. The Contractor shall not raise the Dwelling unless and until it has obtained approval from the Inspector after the prelift inspection. The Contractor shall raise the Dwelling **only** [on] if the Inspector is on site during the raising.

(b) **Lift Inspection. On the date that the Dwelling is raised, the Inspector shall conduct a lift inspection. The Inspector will inspect the lifting process to ensure that it conforms with the lifting plan and that the supporting documentation for the lift is in order.**

(c) Foundation Completion Inspection. The Contractor shall notify the Project Manager on the date that the foundation is complete. The Inspector will inspect the structural work for conformance with the Job Order and the home interior for damage caused during the raising. The Contractor shall not commence Work on the rehabilitation of the Dwelling interior until the Inspector approves such raising Work and authorizes the commencement of Work on the interior.

6. Article 5.1 is amended to add the words in bold and to delete the bracketed words as follows:

The Contractor shall comply with all Laws applicable to this Contract and to the Work to be done hereunder. The Contractor's attention is directed to federal requirements set forth in Appendix B and the Hurricane Sandy CDBG-DR Appendix. **On December 26, 2014, the U.S. Department of Housing and Urban Development (HUD) implemented the new Uniform Administrative Requirements at 2 CFR Part 200, pursuant to 2 CFR section 200.110, as amended. Pursuant to 2 CFR section 200.104, the new Uniform Administrative Requirements shall supersede OMB Circulars A-87, A-102, A-110, A-122, and A-133. In addition, the Uniform Administrative Requirements for Grants and Cooperative Agreements in the HUD regulations have been superseded by 2 CFR Part 200. Where this Contract refers to such an OMB Circular, a Uniform Administrative Requirement for Grants and Cooperative Agreements in the HUD regulations, or 2 CFR Part 200, the requirement in effect at the time of the activity shall apply.**

7. Article 15.4 is amended to add the words in bold as follows:

The City shall make a bonus payment to the Contractor if the Contractor satisfactorily completes the Detailed Scope of Work for a Job Order earlier than the Job Order Completion Time **plus any authorized time extensions**. The bonus shall be $500 per day for each day the Work is completed before the Job Order Completion Time **plus any authorized time extensions,** up to 21 days early. The maximum bonus payment allowed per Job Order is $10,500.

8. Article 41.1 is amended to add the words in bold and to delete the bracketed words as follows:

Job Order Payment Requests shall be submitted as follows:

a. **For Job Orders not requiring the Dwelling to be raised:**

i. Upon completion of a Job Order, including return of any of the Homeowner's or Occupant's furniture stored by the Contractor, the Contractor shall submit a Job Order Payment Request to the Project Manager for the work completed. The Contractor shall submit a maximum of one Job Order Payment Request per Job Order but a Job Order Payment Request can include multiple Job Orders. If a Job Order Payment Request includes multiple Job Orders, Contractor shall clearly separate and label documents submitted in connection with each individual Job Order. The Contractor shall submit a maximum of one Job Order Payment Request per two week period (14 Day period), and shall consist of the individual Job Order Payment Requests that have been accepted pursuant to the Contract and not previously submitted.

ii. Contractor shall include with each Job Order Payment Request the following:

a. An invoice that includes a document summarizing of the total cost of each Job Order listed by Dwelling address

b. Final Acceptance of Job Order Work

c. Final Signed Inspection Form Copy of all Required Permits

d. Daily Sign-In Sheets for Contractor and any Sub-Contractors

e. [Payment Approval and Tracking Sheet]**Not Used.**

f. The information required pursuant to Article 17.11 of this Contract.

g. Verified statement of claims of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 27 and 28) setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item.

h. as security for faithful performance of its obligations under Article 24, a deposit of a sum equal to one (1%) of the price of the Job Order in cash or certified check upon a state or national bank and trust company or a check of such bank and trust company signed by a duly authorized officer thereof and drawn to the order of the Comptroller, or obligations of the City, which the Comptroller may approve as of equal value with the sum so required. In lieu of such deposit, the Contractor may make such security payment to the City by authorizing the Commissioner in writing to deduct one (1%) percent of the payment, which shall be deemed the deposit required.

b. For Job Orders requiring the Dwelling to be raised:

i. Upon completion of each Payment Milestone, the Contractor shall submit a Job Order Payment Request to the Project Manager for the Work completed per each Payment Milestone. The Contractor shall submit a maximum of three Job Order Payment Requests per Job Order but a Job Order Payment Request can include multiple Job Orders. If a Job Order Payment Request includes multiple Job Orders, Contractor shall clearly separate and label documents submitted in connection with each individual Job Order. The Contractor shall submit a maximum of one Job Order Payment Request per two week period (14 Day period), and shall consist of the individual Job Order Payment Requests that have been accepted pursuant to the Contract and not previously submitted.

a. Payment Milestone #1: The Contractor shall complete all Work required to successfully pass a Pre-Lift Inspection and the Lift Inspection. The Work includes the categories described below including any related Unit Price Items and approved Non-Prepriced Items. The Contractor shall submit Payment Milestone #1 upon successfully passing a Pre-Lift Inspection and Lift Inspection:

1. Site preparation including, but not limited to the following:

a. install temporary fence

b. install scaffolding

c. install portable toilets

d. disconnect utilities

2. perform environmental remediation

3. perform required structural bracing

4. prepare lifting plan

5. perform elevation lifting

6. **Complete all approved Supplemental Job Orders necessary to pass the Pre-Lift Inspection and Lift Inspection.**

b. **Payment Milestone #2: The Contractor shall complete all Work required to successfully pass a Foundation Completion Inspection. The Work includes the categories described below including any related Unit Price Items and approved Non-Prepriced Item. The Contractor shall submit Payment Milestone #2 upon passing a Foundation Completion Inspection:**
   1. **perform foundation removal and/or slab demolition**
   2. **place reinforced concrete including, but not limited to:**
      a. **grade beams**
      b. **pile caps**
      c. **concrete support columns**
      d. **footings**
      e. **foundation walls**
   3. **develop and file Technical Report (TR3) with the Department of Buildings**
   4. **install steel support columns**
   5. **install helical piles**
      a. **provide engineer's pile log**
   6. **install support girders**
   7. **complete all approved Supplemental Job Orders necessary to pass a Foundation Completion Inspection**

c. **Payment Milestone #3: The Contractor shall complete all Work required to successfully pass a Final Inspection. The Work includes the categories described below including any related Unit Price Items and approved Non-Prepriced Item. The Contractor shall submit Payment Milestone #3 upon successfully passing a Final Inspection:**
   1. **install fireproof sheathing/underbelly (5/8 denz glass)**
   1. **reconnect or relocate utilities**
   2. **install permanent access stairs and/or platforms**
   3. **complete rehabilitation Unit Price Items**
   4. **perform landscaping (including select plants, back fill, labor, and equipment)**
   5. **complete all remaining approved Supplemental Job Orders necessary to pass the Final Inspection**

ii. **Contractor shall include with each Job Order Payment Request the following:**

a. **An invoice that includes a document summarizing of the total cost of the Job Order within each milestone listed by Dwelling address**

b. **Final Acceptance of Job Order Work (Payment Milestone #3 only)**

c. **Final Signed Inspection Form Copy of all Required Permits for all Payment Milestones**

d. **Daily Sign-In Sheets for Contractor and any Sub-Contractors**

e. **The information required pursuant to Article 17.11 of this Contract.**

f. **Verified statement of claims of any and all alleged claims against the City, and any pending dispute resolution procedures in accord with the PPB Rules and this Contract, in any way connected with or arising out of this Contract (including those as to which details may have been furnished pursuant to Articles 27 and 28) setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item.**

g. **as security for faithful performance of its obligations under Article 24, a deposit of a sum equal to one (1%) of the price of the Job Order in cash or certified check upon a state or national bank and trust company or a check of such bank and trust company signed by a duly authorized officer thereof and drawn to the order of the Comptroller, or obligations of the City, which the Comptroller may approve as of equal value with the sum so required. In lieu of such deposit, the Contractor may make such security payment to the City by authorizing the Commissioner in writing to deduct one (1%) percent of the payment, which shall be deemed the deposit required.**

9. Article 41.1.1 is added as follows:

If a Supplemental Job Order adds Work to an existing, related Job Order that now requires the Dwelling to be raised, the Contractor may submit the first Job Order Payment Request to the Project Manager for the Work completed up until the Supplemental Job Order is approved, subject to inspection. The Contractor shall then submit Job Order Payment Requests consistent with Article 41.1(b).

10. Article 41.1.2 is added as follows:

For Job Orders requiring the Dwelling to be raised, where the total Job Order price is in excess of $500,000, the Contractor may submit a partial Job Order Payment Request after passing an In-Progress Inspection for all completed Unit Price Items and Non-Prepriced Items that otherwise would be paid in accordance with Article 41.1(a).

11. Article 41.1.3 is added as follows:

For Job Orders requiring the Dwelling to be raised (i) that are assigned prior to March 23, 2015, (ii) with an executed Tri-Party Agreement with the Homeowner, Contractor, and Engineer; and (iii) where physical Work has commenced on the Dwelling, the Contractor may submit a partial Job Order Payment Request for approved elevation and foundation Non-Prepriced Items upon successfully passing a Foundation Completion Inspection. The partial Job Order Payment Request will be paid in accordance with Article 41.1(a), except that Contractor shall include the following documents with each partial Job Order Payment Request instead of the documents listed in Article 41.1(a)(ii)(a-c):

a. an invoice that includes a document summarizing of the total cost of the partial Job Order Payment Request listed by Dwelling address;
b. Final Acceptance of the Non-Prepriced Items of the Job Order Work;
c. final signed Foundation Completion Inspection form copy of all required permits.

Except as set forth in Article 41.1.2, the remaining Unit Priced Items and Non-Prepriced Items will be paid in accordance with Article 41.1(a).

12. Article 41.2 is amended to add the words in bold and to delete the bracketed words as follows:

Upon review and approval of the Job Order Payment Request, the City shall pay to the Contractor the approved amount applicable to each such Job Order. The City may at all times reserve and retain out of said payments, all such sum or sums which by the terms hereof or by any act of the Legislature of the State of New York, or of any ordinance of the City passed prior to the date hereof, it is, or may be, authorized to reserve and retain. No payments shall be made for a Job

Order that has not been issued a written determination of Final Acceptance **for Job Orders not requiring the Dwelling to be raised. No payments shall be made for each Milestone Payment for a Job Order requiring the Dwelling to be raised that has not been issued a written determination of an approved Pre-Lift Inspection and Lift Inspection (Milestone Payment #1), Foundation Complete Inspection (Milestone Payment #2), and Final Acceptance (Milestone Payment #3).**

13. Except as set forth herein, all terms of the Job Order Contract shall remain in full force and effect.

14. Upon registration pursuant to Charter section 328, the paragraphs of this Amendment shall be effective as follows:

    a. Paragraphs 2, 3 and 5 shall be retroactive to the commencement of the Term;
    b. Paragraphs 8, 9, 10 and 11 shall be retroactive to the commencement of the Term and shall apply to all Job Orders for which the Contractor had not yet submitted a Job Order Payment Request to the Project Manager as of the date of execution of this Amendment.
    c. Paragraph 6 shall be effective on December 26, 2014; and
    d. Paragraphs 1, 4, 7 and 12 shall be effective on March 23, 2015.

SIGNATURES

IN WITNESS WHEREOF, the Commissioner, on behalf of the City of New York, and the Contractor, have executed FIVE COPIES of this contract, three copies of which are to remain with the Commissioner, one other to be filed with the Comptroller of the City, and the fifth to be delivered to the Contractor.

THE CITY OF NEW YORK

By:_____
Commissioner

CONTRACTOR:

By:_____
AUTHORIZED OFFICER OF THE FIRM OR CORPORATION

(Where Contractor is a Corporation, add):
Attest:

_____ (seal)
SECRETARY

ACKNOWLEDGMENT BY CORPORATION

State of New York County of Kings ss:

On this 17 day of July, 2015

before me personally came Eugene Fitzgerald

who affirms or being by me duly sworn, did depose and say that he/she resides in

the City of New York: that he/she is the President

of the E. Fitzgerald Electric the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

Mark Blinderman
Notary Public, State of New York
No.01BL6093514, Richmond County
Commission Exp: June 2, 2019

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of New York, County of Queens ss:

On this 18th day of August

before me personally came Debra E. Butlien

to me known, and known to be the Acting ACCO ~~Commissioner~~ of the City of Environmental Protection of The City of New York, the person described as such in and who as such executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as Commissioner for the purposes therein mentioned.

Naomi Burrus
Notary Public or Commissioner of Deeds

NAOMI BURRUS
Notary Public, State of New York
No. 01BU6304146
Qualified in Queens County
Commission Expires May 27, 2018