

AMENDMENT NO.2 TO CONSULTANT SERVICES CONTRACT

This Amendment of a Consultant Services Contract ("Amendment"), entered into this 21st day of August, 2024 ("Effective Date"), by and between MABUHAY AND LAKEHURST LP, a California limited partnership and HKIT ARCHITECTS, a California corporation whose address is 538 Ninth Street, Suite 240, Oakland, CA 94607, (hereinafter referred to as "Consultant"), is made with reference to the following:

RECITALS:

A. On January 4, 2024, an Amended and Superseded Consultant Services Contract ("Contract") was entered into between MABUHAY AND LAKEHURST LP and Consultant.

B. The effective date of this amendment shall be August 21, 2024.

C. The initial Contract limited the Compensation to Consultant to a not exceed amount of seven hundred seventy five thousand nine hundred eleven dollars and zero cents (\$775,911.00) for the term of the contract which ends on December 31, 2026 unless extended or terminated.

D. Contract Amendment No.1 increased the total compensation from seven hundred seventy five thousand nine hundred eleven dollars and zero cents (\$775,911.00) to seven hundred ninety thousand eight hundred seventy-three dollars and zero cents (\$790,873.00).

E. All conditions of the Contract will remain the same except as amended below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

The not to exceed amount for the entire Contract shall be amended seven hundred ninety thousand eight hundred seventy-three dollars and zero cents (\$790,873.00) to eight hundred five thousand, seven hundred twenty-three dollars and zero cents (\$805,723).

The scope of services is expanded to include water penetration window testing. Please see Exhibit A for additional detail.

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[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused the Amendment to be executed on the day and year first above written.

“CONSULTANT”

HKIT Architects, a California corporation

By: _____

Name: Paul McElwee

Its: Principal

OWNER

Mabuhay and Lakehurst LP, a California limited partnership

By: ICD Mabuhay LLC, a California limited liability company, its managing general partner

By: Island City Development, a California nonprofit public benefit corporation, its sole manager

By: _____
Vanessa Cooper,
President

EXHIBIT A
SCOPE OF SERVICES & FEE BREAKDOWN

Please see attached ASR for the additional scope of \$14,850.

**Owner - Architect
Authorization to Perform Additional Services
Number 7B**

HKIT Architect is authorized to perform the following additional services on the terms outlined below.

Contract Reference:	Amended and Superseded Consultant Services Contract
Owner:	Mabuhay and Lakehurst LP
Architect:	HKIT Architect A California Corporation
HKIT Project Number:	19009.04
Project:	ICD – Linnet Court, Seniors, PSH I
Scope of Work:	Additional costs for Fenestration Water Testing.
Additional Compensation:	Axis Building Envelope services: Lump sum \$13,500 x 1.1 HKIT admin = \$14,850 Lump Sum: Fourteen Thousand Eight Hundred Fifty and 00/100 Dollars.

Other Conditions:

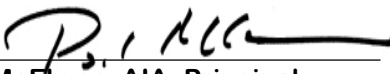
This Agreement entered as of August 19, 2024.

ARCHITECT
HKIT Architects
A California Corporation

OWNER
Mabuhay and Lakehurst LP

By: 
Christophe Laverne, AIA, Principal

By: _____

By: 
Paul McElwee, AIA, Principal

By: _____

August 6, 2024

To: Alameda Housing Authority
c/o Sam McGeehan
Senior Project Manager
HKIT Architects
538 Ninth Street, Suite 240
Oakland, California 94607

Project: ICD Supportive Housing Seniors
North Housing Site
Alameda, CA 94501

Subject: Request for Proposal – AAMA/FGIA Accredited Testing Services
Newly Factory Installed Fenestration Products Testing

Dear Mr. White,

Thank you for requesting a proposal for our AAMA/FGIA Accredited Fenestration Testing Services. Per your request, we are submitting a proposal to perform water penetration testing.

SCOPE OF WORK

FENESTRATION WATER PENETRATION TESTING

- A. Production Fenestration Water Penetration Field Testing Activities.
 1. Perform production field testing utilizing the applicable test methods within the most current published version of ASTM E1105, *Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Skylights, Doors, and Curtain Walls, by Uniform or Cyclic Static Air Pressure Difference* in accordance with the provisions set forth within the most current published version of AAMA 502, *Voluntary Specification for Field Testing of Newly Installed Fenestration Products*.
- B. Production Fenestration Water Penetration Field Testing Reporting.
 1. ABED will provide detailed field test reports in accordance with AAMA 502, identifying fenestrations test specimens that passed and test specimens that failed to meet the minimum requirements set forth by the project construction documents, in accordance with ASTM E1105, *Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Skylights, Doors, and Curtain Walls, by Uniform or Cyclic Static Air Pressure Difference*.

PERFORMANCE CRITERIA AND PROVISION

- D. Performance criteria to be established prior to mobilization.
1. Performance criteria to be obtained from the client, design team, or project specification prior to testing.
 - a. ABED will perform testing of the fenestrations per performance criteria established by AAMA 502 and AAMA 503 in the absence of project specific guidance.
- E. Test specimen selection to be established prior to mobilization.
1. Product specimens to be tested as selected in accordance with the project specifications and AAMA 502 and AAMA 503.
 - a. Field conditions may necessitate testing alternative specimens from those planned, ABED is not responsible for delays in this event.

ONSITE ITEMS PROVIDED UNDER RESPONSIBILITY OF OTHERS

- F. The following items are excluded from fenestration testing and must be provided by others:
1. Notification of other interested parties, such as the window manufacturer, installer, or design team, is the responsibility of others. It is the industry standard to provide the window manufacturer with two (2) weeks' notice when scheduling fenestration water penetration testing. The manufacturer may dispute test results if not given notice and an opportunity witness testing.
 2. Interior finishes (sheet rock and insulation) removed by others prior to commencement of test to allow for visual access into wall cavity.
 3. Water source within 150 feet of the test area capable of delivering 205 to 240 kPa (30-35 psi) to the spray rack assembly. If larger water sources are necessary to achieve the identified water supply, it will be the responsibility of the client to provide the adaptors compatible with ABED's standard 3/4" diameter hoses.
 4. Provide a consistent source of power within 150 feet of the test area. It shall be the responsibility of others to ensure the reliability of the power source. ABED recommends providing the testing crew a dedicated power source, restricting use by other trades due to the power draw that occurs from heavy tools and microwaves during lunchtime. These power draws directly affect the testing apparatus utilized by ABED onsite.
 5. Access to the interior and exterior of the test area including any lifts and/or scaffolding as may be necessary.
 6. Comply with local building codes, permitting, and street security for necessary protection at street level, including the provision of traffic control measures as needed.
 7. Protection of adjacent work and repair of any damage which may result from testing. ABED shall not be responsible for repairs.
- G. ABED requests that items supplied by others (water, electric, and extended lifts/scaffolding) are verified to be in place prior to ABED's arrival on site. ABED recommends providing only an exterior water source. ABED will not be responsible for damage caused by water leakage and an interior water source greatly increases this probability.

SCHEDULE & DELIVERABLES

- I. Regarding schedule and deliverable requirements please base your proposal on the following assumptions:
1. Testing report delivered to the client within one (1) week of completing the scheduled water test.

FEES

Scope of Services		
Phase	Fee Basis	Fee
<u>Product Fenestration Field Testing services:</u> Three (3) days of Field Water Penetration Window Testing per ASTM E1105 in accordance with AAMA 502. Includes Field Test Report. <ul style="list-style-type: none"> • One (1) day typically includes testing four (4) individual window/door specimens for water penetration in accordance AAMA 502, utilizing the above identified testing methods. 	Per Attached Fee Schedule, (\$4,500 Per Day)	\$13,500
TOTAL		\$13,500
Note: <u>Retesting of Failed Specimens:</u> Retesting of failed window specimens that does not occur on the original day of failure may be subject to additional charges.		

ABED appreciates you considering us for our testing services and look forward to working with you on this project or future endeavors. Feel free to reach out to us by email josugi@axisdesigns.com with any questions, clarifications, or requests for additional information.

Sincerely,

Jeff Osugi, FTA Program Manager
Axis Building Envelope Design, Inc.

FEE SCHEDULE

SENIOR PRINCIPAL CONSULTANT	\$310/HR.
PRINCIPAL CONSULTANT	\$275/HR.
CHIEF ARCHITECT	\$275/HR.
SENIOR WATERPROOFING CONSULTANT	\$250/HR.
SENIOR ARCHITECT	\$245/HR.
ARCHITECT	\$235/HR.
FIELD TESTING MANAGER	\$235/HR.
WATERPROOFING DESIGN CONSULTANT	\$235/HR.
WATERPROOFING CONSULTANT #1	\$225/HR.
WATERPROOFING CONSULTANT #2	\$205/HR.
WATERPROOFING CONSULTANT #3	\$195/HR.
ASSOCIATE WATERPROOFING CONSULTANT	\$175/HR.
FIELD TECHNICAL STAFF (Water Tests; Investigation)	\$175/HR.
SENIOR DESIGN CONSULTANT	\$175/HR.
DESIGN CONSULTANT	\$165/HR.
TECHNICAL ASSISTANT	\$85/HR.
SUPPORT STAFF	\$65/HR.

REIMBURSABLES and EXPENSES

Color copies & digital Color Photos	\$2.00/page print-out
Copies in house up to 11" X 17 (20 pages or more)	\$0.25/page
Oversized Printing	\$0.33 per SF
Fiber Scope to observe wall cavity	\$165.00/day
Daily AAMA/FGIA FTA Accredited Fenestration Testing Base Fee**	\$4,500/day
(Note: \$4,500 includes a typical 8-hour day; does not include overtime/double-time.)***	
Charges for insurance increases:	
As mandated by project, owner	Cost + 15%
Outside Consultants and Contractors	Cost + 15%
Equipment costs, lab charges and vendor billings	Cost + 15% markup*
Fees for chemical analysis, physical tests, special photography, slides, reproduction, blueprints, binding, poster-board, other items	Cost + 15% markup*
Auto Expenses: Personal Vehicles	IRS Rate

Out of area per diem \$110.00 per day

Out-of-pocket expenses/reimbursable include,

but are not limited to airfare, car rental,

lodging, tips, shipping, storage,

reproduction, copies and faxes.

Cost + 15%

**Markup will apply unless Client contracts and prepays vendor directly.*

***Chargeable time and mileage includes “portal to portal” travel, site time and related time.*

****Overtime rates (time and a half or double time) apply per California Labor Code requirements.*

Payment terms are net 10 days upon receipt of Invoice. Invoices, which are not paid in accordance with terms, may accrue interest at the rate of 1-1/2% per month.

STANDARD SERVICE AGREEMENT

Client Name and Address: Sam McGeehan
Senior Project Manager
HKIT Architects
538 Ninth Street, Suite 240
Oakland, California 94607

FIELD TESTING ENGAGEMENT

This Service Agreement (“Agreement”) is entered into as of _____ and confirms the agreement between **HKIT Architects**, (“Client”) and **Axis Building Envelope Design, Inc.** (“ABED”) and its employees and agents pursuant to which ABED will perform, and ABED has agreed to perform certain services in connection with the property known as **ICD Supportive Housing Phase 1** located at **North Housing Site, Alameda, CA 94501** (“Project”) under the terms and conditions set forth in this service agreement (the "Agreement").

SCOPE OF AXIS BUILDING ENVELOPE DESIGN, INC. SERVICES

- 1.0 The scope of services is described in the ABED Proposal dated **August 6, 2024** and attached hereto as Attachment 1 to this Agreement.
- 1.1 ABED will perform services as expeditiously as is consistent with the reasonable skill and orderly progress of the work.
- 1.2 In carrying out its duties, ABED shall be entitled to rely on representations made by the Client and product manufacturers, lawful or not, as fact.
- 1.3 ABED will not be responsible for construction means, methods, techniques, sequences, schedules or procedures, or for safety precautions and programs in connection with the work of any Contractor. ABED, as part of its contracted scope of services, will provide AAMA/FGIA accredited field testing in accordance with the allowances set forth by AAMA/FGIA within ABED’s accreditation.
- 1.4 ABED will not be responsible for any failure of the Contractor to perform work in accordance with the Contractor's Contract Documents.
- 1.5 ABED will not be responsible for acts or omissions of the Client, Owner, Contractor, Subcontractor, or their agents, employees, or assigns.
- 1.6 If ABED is requested to offer its opinion or interpretation of matters concerning performance of the Contractor's work practices or performance of manufactured product during construction, ABED will defer to the appropriate party as to maintain ABED’s impartiality in testing related matters.
- 1.7 If additional service beyond those anticipated or proposed is required or deemed necessary, ABED shall be promptly compensated at a rate in accordance with ABED's Fee Schedule at that time. However, any services beyond the scope of services set forth in Section 1.1 above shall not move forward until the additional work is approved in writing, and fully executed, by either a written change order or written directive to do so.
- 1.8 ABED shall not knowingly engage in any activity, undertaking or project that is unlawful or illegal under the laws of the place in which the activity occurs.
- 1.9 Additional fees will be charged for unanticipated assembly or preparation of samples.
- 1.10 Additional testing or retesting for any reason is subject to additional charges.

- 1.11 Test services will not be initiated until satisfactory credit has been established with ABED's accounting department.
- 1.12 Unless specifically identified in the proposal, ABED's proposal does not include items such as drug/substance abuse screening or special project-specific site training. If a project requires anything in addition to the items specified in ABED's proposal, Customer must notify ABED, and ABED will review the requested items for acceptance/amendment to the proposal. Customer agrees that ABED shall have the right to collect from the Customer its reasonable expenses incurred in enforcing these terms and conditions.

2.0 CLIENT'S RESPONSIBILITIES

- 2.1 The Client shall provide ABED with reasonable access to all information in the Client's possession which may be relevant to the work.
- 2.2 The Client shall furnish information and render decisions and approvals as expeditiously as necessary for the orderly progress of ABED's Services under this Agreement.

3.0 CONSTRUCTION BUDGETS

- 3.1 ABED has no control over the cost of any Contractor's labor, materials or equipment, over any Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, ABED will not warrant or represent that bids or negotiated prices will not vary from any budget for construction or evaluation prepared by or agreed to by ABED.
- 3.2 No fixed limit of construction cost shall be established as a condition of this Agreement by the furnishing, proposal, or establishment of a Project budget.

4.0 ABED DOCUMENTS

- 4.1 The Customer agrees to waive any claim against ABED and defend, indemnify, and hold ABED harmless from any and all causes of action, lawsuit, proceedings or claims, including legal fees and expenses incurred by ABED, allegedly arising as a result of unauthorized use of ABED's Reports. The term Reports includes all reports, laboratory test data, calculations, estimates, notes and other documents prepared by ABED in the course of providing services to the Customer. All technical determinations of compliance arising from product, material or system evaluation shall not be considered final until issuance of a written report, reviewed and signed by an ABED qualified Reviewer. All final decisions on product certification are made by the Certification Manager. ABED retains any and all rights of ownership of ABED's concepts, ideas, inventions, patents or copyrights used by ABED in preparing ABED's Reports and the provision of services to the Customer. Only the Customer is authorized to copy or distribute ABED's Reports and then only in their entirety, and the Customer shall not use the Reports in a misleading manner. Customer further agrees and understands that reliance upon the Reports is limited to the representations made therein. Any use of the ABED name or one of its marks for the sale or advertisement of the tested material, product or service must first be approved in writing by ABED. If ABED becomes directly or indirectly involved in litigation as a result of misuse of its Reports, the Customer agrees to compensate ABED for its fees and expenses, including legal costs, in accordance with ABED's prevailing fee schedule and expense reimbursement policy. When the Customer requests a statement of conformity to a specification or standard for the test or calibration (e.g. pass/fail, in-tolerance/out-of-tolerance), the specification or standard and the decision rule shall be clearly defined. Unless inherent in the requested specification or standard, the decision rule selected shall be communicated to, and agreed with, the customer.

5.0 INSURANCE AND INDEMNITY

- 5.1 ABED shall maintain insurance for protection from claims as set forth below which arise out of or result from ABED's performance of services under this Agreement:
- a. Workers Compensation Insurance - \$1,000,000
 - b. General Liability Insurance - \$1,000,000 per occurrence
 - c. Automobile Insurance - \$1,000,000
 - d. Professional Liability/Errors & Omission Insurance - \$5,000,000.
- 5.2 To the fullest extent permitted by law, Client shall defend, indemnify and hold harmless ABED, its officers, directors, members, employees, agents and assigns (collectively "Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including death, arising out of or incident to the negligence, recklessness or willful misconduct of Client, its clients, officers, directors, shareholders, members, employees, contractors, subcontractors, agents and/or assigns, including without limitation the payment of all consequential damages and attorney fees and other related costs and expenses, except when such loss or damage was caused by the sole negligence or willful misconduct of the Indemnified Party.

6.0 TERMINATION, SUSPENSION OR ABANDONMENT

- 6.1 TERMINATION BY EITHER PARTY FOR OTHER'S FAILURE TO PERFORM: If either party fails substantially to perform in accordance with the terms of this Agreement through no fault of the other party, the other party may give notice of such default to the defaulting party specifying the nature of the default. If the defaulting party fails to rectify the default within seven (7) days of such notice, the other party may, without prejudice to any of its rights or remedies, terminate this Agreement immediately upon notice to the defaulting party.
- 6.2 TERMINATION BY CLIENT UPON ABANDONMENT OF PROJECT: This Agreement may be terminated by the Client upon at least seven (7) days written notice to ABED if the Project is abandoned.
- 6.3 COMPENSATION AND PAYMENTS UPON TERMINATION: In the event of termination, the Client shall compensate ABED for all services performed and, subject to previous commitments that ABED has made on the Client's behalf prior to the date of termination, reimbursable expenses incurred after termination which are not the fault of ABED. The Client shall also compensate ABED for expenses directly attributable to termination for which ABED is not otherwise compensated.

7.0 MISCELLANEOUS PROVISIONS

- 7.1 Unless otherwise provided, this Agreement shall be governed by the law of the State of California.
- 7.2 ABED shall have no responsibility for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials in any form at the Project Site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), mold, or other toxic substances.
- 7.3 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or ABED.
- 7.4 In any dispute between the parties, the prevailing party shall be entitled to recover from the other party all reasonable expenses, including, without limitation, costs and reasonable attorney's fees. "Prevailing party" shall include, without limitation, a party who dismisses an action for recovery in exchange for sums allegedly due, performance or covenants allegedly breached or considerations

- substantially equal to the relief sought in the action, or which receives, in connection with any dispute, performance from the other party substantially equivalent to any of these.
- 7.5 This Agreement represents the entire and integrated Agreement between the Client and ABED, and supersedes all prior negotiations, representations, or agreements, either written or verbal. Should this Agreement conflict with other agreements, these Terms and Conditions shall be interpreted as primary and take precedence. This Agreement may be amended only by written instrument signed by both the Client and ABED.
- 7.6 SEVERABILITY: If any provision of this Agreement, or the application of such provision to any person or circumstances, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.
- 7.7 PROVISIONS SURVIVE TERMINATION: The terms, conditions, and provisions of this Agreement shall survive the completion of ABED's services or the termination of this Agreement for any reason.
- 8.0 **PAYMENT AND COMPENSATION**
- 8.1 ABED shall be entitled to compensation in accordance with this Agreement for all services performed, whether or not a Construction Phase is commenced.
- 8.2 The Client agrees to pay ABED compensation for Services as follows:
- 8.3 FEES: Fees shall be determined in accordance with the terms stated herein, or in accordance with the most current ABED Fee Schedule.
- 8.4 REIMBURSABLE EXPENSES: Reimbursable expenses include the cost plus a percentage as stated on the most current ABED Fee Schedule.
- 8.5 PAYMENT SCHEDULE: The Client agrees to promptly pay ABED on a percentage of completion basis. Invoices will be issued at least once a month, or as indicated in this Agreement.
- 8.6 LATE PAYMENT: Payment for services made in excess of the time limitation specified in this Agreement shall be subject to a late charge of 1.5% of the outstanding account balance per month.
- 8.7 The Client (past or present) is responsible, after notification, for payment of time charges and expenses resulting from ABED's required response to subpoenas and litigation issued by any party in connection with the work. Charges shall be based on the fee schedule in effect at the time the service is provided.
- 8.8 Deductions shall not be made from ABED's compensation on account of sums withheld from payments to Contractors.

9.0 **EXECUTION**

9.1 This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same Agreement and each of which shall be an original. Your signature below on the indicated enclosed copy of this letter is your representation that you are authorized to enter into the Engagement and to agree to the terms of this Agreement. This Agreement shall be binding on all parties and their respective heirs, successors and assigns.

Dated: _____, 2024 Axis Building Envelope Design, Inc.

By: _____

John Harris, General Manager

The above sets forth the terms of the Engagement and is agreed to.

Dated: _____, 2024 Client Name: Eden Housing

By: _____

Name: _____

Title: _____