

RESOLUTION NO. 2021-105

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AUTHORIZING A “PIGGY BACK AGREEMENT” PURSUANT TO HIALEAH CODE OF ORDINANCES §2-818 AND AUTHORIZING THE CITY TO ENTER INTO THE AGREEMENT WITH M.T. CAUSLEY, LLC., FORMERLY M.T. CAUSLEY, LLC, A WHOLLY OWNED SUBSIDIARY OF SAFEBUILT, LLC FOR PLAN REVIEW, INSPECTION SERVICES, AND PLANNING/ZONING DEVELOPMENT REVIEWS, ATTACHED AS EXHIBIT “1”; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS; pursuant to Hialeah Code of Ordinances § 2-818 the City is authorized to piggyback and enter into contracts without competitive bidding by utilizing existing local, state or other governmental authorities that followed a competitive bidding procedure leading to the award of a contract; and

WHEREAS, the City of Marathon, Florida issued a Request for Proposal RFP-PS-2020-003 for Continuing Engineering Services dated March 10, 2020, entitled: “Continuing Engineering Services Agreement” for professional engineering for multiple engineering disciplines substantially similar to the RFP process used by the City in its procurement of goods and services; and

WHEREAS, M.T. Causley, LLC., was awarded the contract to provide such services on March 10, 2020 for a three (3) year term through March 9, 2023, with two (2) additional one (1) year extensions exercisable at the sole option of the City (“City of Marathon contract”).

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The above recitals are true and correct and incorporated herein.

Section 2: The Mayor and City Council hereby approve and authorize the City to enter into an agreement in substantial conformity as the form agreement attached as Exhibit “1” with M.T. Causley, LLC., based on the competitively procured City of Marathon contract. M.T.

Causley shall treat the City of Hialeah no worse than the City of Marathon with respect to the obligations assured in the contract and its performance of the contract.

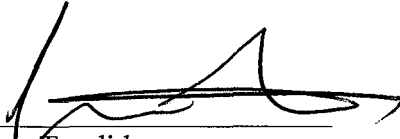
Section 3: Authorization of City Officials.

The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to take all steps necessary to implement the terms and conditions of this resolution and to execute a contract with M. T. Causley, LLC., on substantial material terms, including scope and prices, as that of the City of Marathon agreement.

Section 4: Effective Date.

This resolution shall become effective upon signature of the Mayor of the City of Hialeah, Florida or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

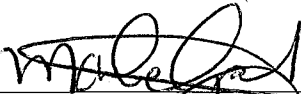
PASSED AND ADOPTED this 24 day of August, 2021.



Jesus Tundidor
Council President

Attest:

Approved on this 3 day of September, 2021.

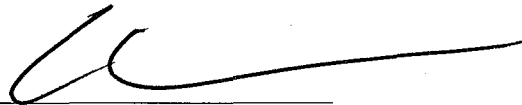


Marbelys Fatjo, City Clerk

Approved as to form and legal sufficiency:



Lorena E. Bravo, City Attorney



Mayor Carlos Hernandez

Resolution was adopted by 6-0-1 vote with Councilmembers, Cue-Fuente, De la Rosa, Garcia-Roves, Perez, Tundidor, and Zogby voting "Yes" and with Council Member Hernandez absent.

EXHIBIT "1"

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF HIALEAH, FLORIDA
AND M.T. CAUSLEY, LLC**

This Professional Services Agreement ("Agreement") is entered into by and between the City of Hialeah, Florida, ("Municipality") and M.T. Causley, LLC, a wholly owned subsidiary of SAFEbuilt, LLC ("Consultant"). The Municipality and the Consultant shall be jointly referred to as the "Parties".

RECITALS

WHEREAS, the Municipality's procurement ordinance and procedures permit the purchase of goods and/or services by "piggyback" on agreements awarded by other government entities; and

WHEREAS, Consultant is ready, willing, and able to perform the services previously contracted with the City of Marathon, Florida in accordance with the Agreement entered into March 10, 2020 pursuant to RFQ for Continuing Engineering Services RFP-PS-2020-003; and

WHEREAS, Municipality and the Consultant have determined that the City of Marathon's Agreement is an acceptable agreement upon which the Municipality and the Consultant shall establish a cooperative agreement; and

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Municipality and Consultant agree as follows:

1. TERM AND CONDITIONS

Except as otherwise stated herein; the terms and conditions of the City of Marathon's Agreement shall form the bases of this Agreement with the Municipality. A true and correct copy of the City of Marathon's Agreement is attached as Exhibit A. The City of Marathon Agreement is hereby incorporated into the Agreement and shall be the controlling document.

2. COMMENCEMENT AND COMPLETION

This Agreement shall be effective on the latest date on which this Agreement is fully executed by both Parties and remain in effect through March 9, 2023. Agreement may be extended for two (2) additional one (1) year extensions based on the same terms and conditions as set forth in the City of Marathon Agreement, both Parties agree to the extension, and such extension is approved by the City.

3. CHANGES TO SCOPE OF SERVICES

Any changes to Services between the Municipality and Consultant shall be made in writing that shall specifically designate any changes in Service levels and compensation for the Services. Both Parties shall determine a mutually agreed upon solution to alter services levels and a transitional timeframe that is mutually beneficial to both Parties. No changes shall be binding absent a written Agreement or Agreement Amendment executed by both Parties.

4. SCOPE OF SERVICE

Consultant shall provide code compliant inspection and plan review services on an as-requested basis during normal business hours. Consultant will perform Services in accordance with codes, amendments and ordinances adopted by the elected body of Municipality. The qualified professionals employed by Consultant will maintain current certifications, certificates, licenses as required for Services that they provide to Municipality in accordance with State of Florida, Chapter 468, Florida Statutes.

5. FEE SCHEDULE (SELECT ALL THAT APPLY)

✓ Consultant fees for Services provided pursuant to this Agreement will be as follows:

Service Fee Schedule	Standard Hourly Rate
Building Official Services: -Including Plan Review & Inspection Services	\$120.00 per hour
Inspectors: -Building, Electrical, Plumbing & Mechanical trades	\$85.00 per hour
Plan Examiners: -Building, Electrical, Plumbing & Mechanical trades	\$90.00 per hour
Engineers conducting plan review and/or inspection services	\$175.00 per hour
Fire Plan Review	\$110.00 per hour
Fire Inspections	\$110.00 per hour
Customer Service/Permit Technician	\$48.00 per hour
Code Enforcement Services	\$80.00 per hour
Zoning/Planning Plans Examiner	\$145.00 per hour
Emergency Services - Inspection - Plan Review	\$100.00 per hour – two (2) hour minimum \$105.00 per hour – two (2) hour minimum
Time tracked will start when Consultant checks in at Municipality or first inspection site.	

6. INVOICE & PAYMENT STRUCTURE

Consultant will invoice the Municipality on a monthly basis and provide all necessary supporting documentation. All payments are due to Consultant within 30 days of Consultant's invoice date. Payments owed to Consultant but not made within sixty (60) days of invoice date shall bear simple interest at the rate of one and one-half percent (1.5%) per month. If payment is not received within ninety (90) days of invoice date, Services will be discontinued until all invoices and interest are paid in full. The Municipality may request, and the Consultant shall provide, additional information before approving the invoice. When additional information is requested the Municipality will identify specific disputed item(s) and give specific reasons for any request. Undisputed portions of any invoice shall be due within 30 days of Consultants invoice date, if additional information is requested, Municipality will submit payment within thirty (30) days of resolution of the dispute.

7. TERMINATION

Either party may terminate this Agreement, or any part of this Agreement upon ninety (90) days written notice, with or without cause and with no penalty or additional cost beyond the rates stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) days of the termination.

8. NOTICES

Any notice under this Agreement shall be in writing and shall be deemed sufficient when presented in person, or sent, pre-paid, first class United States Mail, or delivered by electronic mail to the following addresses:

If to the Municipality:	If to the Consultant:
City of Hialeah 501 Palm Avenue Hialeah, FL 33010 Alexis Riveron Email: ariveron@hialeahfl.gov Lorena E. Bravo, City Attorney Email: lbravo@hialeahfl.gov	Michael T. Causley, President M.T. Causley, LLC 866 Ponce de Leon Blvd, 2nd Floor Coral Gables, FL 33134 Email: mtc@mtcinspectors.com

9. FORCE MAJEURE

Any delay or nonperformance of any provision of this Agreement by either Party (with the exception of payment obligations) which is caused by events beyond the reasonable control of such party, shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing such performance.

10. WAIVER

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

11. INDEPENDENT CONTRACTOR

Consultant is an independent contractor, and, except as provided otherwise in this section, neither Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of Municipality. Municipality shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for Municipality under this Agreement. Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with Consultant.

Consultant and Municipality agree that Consultant will provide similar service to other clients while under contract with Municipality and Municipality acknowledges that Consultant employees may provide similar services to multiple clients. Consultant shall at its sole discretion assign and reassign qualified employees, as determined by Consultant, to perform services for Municipality. Municipality may request that a specific employee be assigned to or reassigned from work under this Agreement and Consultant shall consider that request when determining staffing. Consultant shall determine all conditions of employment for its employees, including hours, wages, working conditions, promotion, discipline, hiring and discharge. Consultant exclusively controls the manner, means and methods by which services are provided to Municipality, including attendance at meetings, and Consultant's employees are not subject to the direction and control of Municipality. Except where required by Municipality to use Municipality information technology equipment or when requested to perform the services from office space provided by the Municipality, Consultant employees shall perform the services using Consultant information technology equipment and from such locations as Consultant shall specify. No Consultant employee shall be assigned a Municipal email address as their exclusive email address and any business cards or other IDs shall state that the person is an employee of Consultant or providing Services pursuant to a contractual agreement between Municipality and Consultant.

It is the intention of the Parties that Consultant shall be deemed to be an agent of the Municipality for purposes of Section 768.28 Florida Statute.

12. INDEMNIFICATION

Consultant shall indemnify and hold harmless the City, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance or non-performance of this Agreement and/or any Project Specific Agreement.

Such obligation shall not be constructed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

Nothing herein shall be deemed to waive the city's sovereign immunity.

13. LIMITS OF LIABILITY

EXCEPT ONLY AS MAY BE EXPRESSLY SET FORTH HEREIN, CONSULTANT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OPERATION, PERFORMANCE, ACCURACY, OR NON-INFRINGEMENT. EXCEPT TO THE EXTENT ARISING FROM MUNICIPALITY'S PAYMENT OBLIGATIONS FOR SERVICES, IN NO EVENT SHALL CONSULTANT OR MUNICIPALITY BE LIABLE TO ONE ANOTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY, OR SPECIAL DAMAGES INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST DATA OR OTHER INFORMATION, OR LOST BUSINESS OPPORTUNITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, INDEMNITY, NEGLIGENCE, WARRANTY, STRICT LIABILITY, OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMAINING REMEDY. EXCEPT WITH RESPECT TO PAYMENT OBLIGATIONS FOR SERVICES, IN NO EVENT SHALL THE LIABILITY OF MUNICIPALITY OR CONSULTANT UNDER THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING BY NEGLIGENCE, INTENTIONAL CONDUCT, OR OTHERWISE) EXCEED THE GREATER OF THE AMOUNT OF FEES PAID TO CONSULTANT PURSUANT TO THIS AGREEMENT OR THE AVAILABLE LIMITS OF CONSULTANT'S INSURANCE (SUCH LIMITS DEFINE MUNICIPAL MAXIMUM LIABILITY TO THE SAME EXTENT AS IF MUNICIPALITY HAD BEEN OBLIGATED TO PURCHASE THE POLICIES).

14. SOLICITATION/HIRING OF CONSULTANT'S EMPLOYEES

During the term of this Agreement and for one year thereafter, Municipality shall not solicit, recruit or hire, or attempt to solicit, recruit or hire, any employee or former employee of Consultant who provided services to Municipality pursuant to this Agreement ("Service Providers"), or who interacted with Municipality in connection with the provision of such services (including but not limited to supervisors or managers of Service Providers, customer relations personnel, accounting personnel, and other support personnel of Consultant). The Parties agree that this provision is reasonable and necessary in order to preserve and protect Consultant's trade secrets and other confidential information, its investment in the training of its employees, the stability of its workforce, and its ability to provide competitive building department programs in this market. If any provision of this section is found by a court or arbitrator to be overly broad, unreasonable in scope or otherwise unenforceable, the Parties agree that such court or arbitrator shall modify such provision to the minimum extent necessary to render this section enforceable. In the event that Municipality hires any such employee during the specified period, Municipality shall pay to Consultant a placement fee equal to 25% of the employee's annual salary including bonus.

15. OWNERSHIP OF DOCUMENTS

Except as expressly provided in this Agreement, Municipality shall retain ownership of all Materials and of all work product and deliverables created by Consultant pursuant to this Agreement. The Materials, work product and deliverables shall be used by Consultant solely as provided in this Agreement and for no other purposes without the express prior written consent of Municipality. As between Municipality and Consultant, all work product and deliverables shall become the exclusive property of Municipality when Consultant has been compensated for the same as set forth herein, and Municipality shall thereafter retain sole and exclusive rights to receive and use such materials in such manner and for such purposes as determined by it. Notwithstanding the preceding, Consultant may use the Materials, work product, deliverables, applications, records, documents and other materials provided to perform the Services or resulting from the Services, for purposes of (i) benchmarking of Municipality's and other client's performance relative to that of other groups of customers served by Consultant; (ii) improvement, development marketing and sales of existing and future Consultant services, tools and products; (iii) monitoring Service performance and making improvements to the Services. For the avoidance of doubt, Municipality Data will be provided to third parties, other than hosting providers, development consultants and other third parties providing services for Consultant, only on an anonymized basis and only as part of a larger body of anonymized data. If this Agreement expires or is terminated for any reason, all records, documents, notes, data and other materials maintained or stored in Consultant's secure proprietary software pertaining to Municipality will be exported into a CSV file and become property of Municipality. Notwithstanding the preceding, Consultant shall own all rights and title to any Consultant provided software and any improvements or derivative works thereof.

Upon reasonable prior written notice, Municipality and its duly authorized representatives shall have access to any books, documents, papers and records of Consultant that are related to this Agreement for the purposes of audit or examination, other than Consultant's financial records, and may make excerpts and transcriptions of the same at the cost and expense of Municipality.

16. MUNICIPALITY OBLIGATIONS

Municipality shall timely provide all data information, plans, specifications and other documentation reasonably required by Consultant to perform Services (Materials). Municipality has the right to grant and hereby grants Consultant a fully paid up, non-exclusive, non-transferable license to use the Materials in accordance with the terms of this Agreement.

17. ASSIGNMENT

Neither party shall assign all or part of its rights or obligations under this Agreement to another entity without the written approval of both Parties; consent shall not be unreasonably withheld. Notwithstanding the preceding, Consultant may assign this Agreement to its parent, subsidiaries or sister companies (Affiliates) without notice to Municipality. Consultant may subcontract any or all of the services to its Affiliates without notice to Municipality. Consultant may subcontract any or all of the services to other third parties provided that Consultant gives Municipality prior written notice of the persons or entities with which Consultant has subcontracted. Consultant remains responsible for any Affiliate's or subcontractor's performance or failure to perform. Affiliates and subcontractors will be subject to the same performance criteria expected of Consultant. Performance clauses will be included in agreements with all subcontractors to assure quality levels and agreed upon schedules are met.

18. CONFLICT OF INTEREST

Consultant shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for Consultant with regard to providing the Services pursuant to this Agreement. Consultant shall not offer or provide anything of benefit to any Municipal official or employee that would place the official or employee in a position of violating the public trust as provided under Municipality's charter and code of ordinances, state or federal statute, case law or ethical principles.

19. CONSULTANT ACCESS TO RECORDS

Parties acknowledge that Consultant requires access to Records in order for Consultant to perform its obligations under this Agreement. Accordingly, Municipality will either provide to Consultant on a daily basis such data from the Records as Consultant may reasonably request (in an agreed electronic format) or grant Consultant access to its Records and Record management systems so that Consultant may download such data. Data provided to or downloaded by Consultant pursuant to this Section shall be used by Consultant solely in accordance with the terms of this Agreement.

20. E-VERIFY/VERIFICATION OF EMPLOYMENT STATUS

Pursuant to FS 448.095, Consultant certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Consultant during the term of the Agreement. Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement and will verify immigration status to confirm employment eligibility. If Consultant enters into a contract with a subcontractor to perform work or provide services pursuant to the Agreement, Consultant shall likewise require the subcontractor to comply with the requirements of FS 448.095, and the subcontractor shall provide to Consultant an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Consultant will maintain a copy of such affidavit for the duration of its contract with owner. Consultant is prohibited from using the E-Verify program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

21. SCRUTINIZED COMPANIES

Consultant verifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, Consultant agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the Municipality may immediately terminate this Agreement if the Consultant, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Consultant, its affiliates, or subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(3), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

22. PUBLIC RECORDS

Pursuant to section 119.071, Florida Statutes, Consultant shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and agrees to:

- A. Keep and maintain all public records that ordinarily and necessarily would be required by Municipality to keep and maintain in order to perform Services under this Agreement.
- B. Upon request from Municipality's custodian of public records, provide copies to Municipality within a reasonable time and public access to said public records on the same terms and conditions that Municipality would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- D. Meet all requirements for retaining said public records and transfer, at no cost, to Municipality all said public records in possession of Consultant upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from Chapter 119, Florida Statutes, disclosure

requirements. All records stored electronically must be provided to Municipality in a format that is compatible with the information technology systems of Municipality.

E. IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Clerk Office: Marbelys Fatjo, Esq. CMC Address: 501 Palm Avenue, 3rd Floor Hialeah, FL 33010	Phone: 305.883.5820 Email: cityclerk@hialeahfl.gov
--	---

23. GOVERNING LAW AND VENUE

The negotiation and interpretation of this Agreement shall be construed under and governed by the laws of the State of Florida, without regards to its choice of laws provisions. Exclusive venue for any action under this Agreement, other than an action solely for equitable relief, shall be in the state and federal courts serving the City of Hialeah and each party waives any and all jurisdictional and other objections to such exclusive venue.

24. COUNTERPARTS

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of executing this Agreement, scanned signatures shall be as valid as the original.

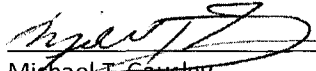
25. ELECTRONIC REPRESENTATIONS AND RECORDS

Parties hereby agree to regard electronic representations of original signatures as legally sufficient for executing this Agreement and scanned signatures emailed by PDF or otherwise shall be as valid as the original. Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

26. ENTIRE AGREEMENT

This Agreement, along with attached exhibits, constitutes the complete, entire and final agreement of the Parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.



Michael T. Causley
M.T. Causley, LLC

August 4, 2021
Date

Signature

Date

Name and Title
City of Hialeah

ATTEST:

Exhibit A: Insurance