

ORDINANCE NO. 2011-13

INTRODUCED BY: Mayor Rinker and Council as a Whole

**AN EMERGENCY ORDINANCE  
AUTHORIZING AND DIRECTING THE MAYOR  
TO ENTER INTO AN AGREEMENT FOR PROFESSIONAL SERVICES  
RELATED TO AN ENERGY AUDIT WITH URS CORPORATION - OHIO**

WHEREAS, Mayfield Village advertised a Request For Proposal for the performance of a Comprehensive Energy Audit that substantially meets the requirements of the American Society of Heating, Refrigerating and Air Conditioning Engineers Level II energy efficient audit (“ASHRAE LEVEL II”) on approximately 92,142 square feet or six of its municipally owned buildings; and

WHEREAS, such Request For Proposal was made in coordination with the Village’s Master Municipal Grant Agreement with Cuyahoga County; and

WHEREAS, at this time it is deemed in the best interest of the Village and its residents to enter into a professional services agreement with URS Corporation, Ohio for URS to provide the desired services in connection with the ASHRAE LEVEL II energy efficient audit.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. That the Mayor and President of Council are hereby and herein authorized and directed to enter into a letter agreement for professional services with URS Corporation – Ohio in a form substantially similar to that attached hereto and incorporated herein by reference as Exhibit “A” in and for an amount not to exceed Twenty-one thousand seven hundred and eighty dollars and zero cents (\$21,780.00).

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio. It shall, therefore, take effect immediately upon the passage by the

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affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.



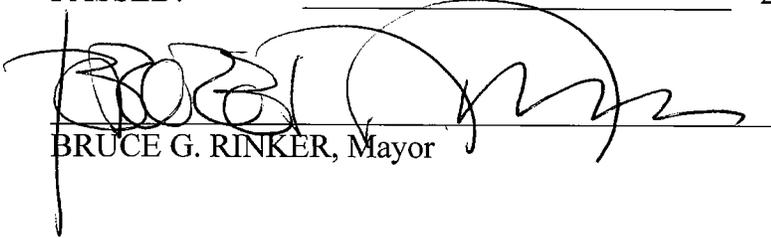
WILLIAM BUCKHOLTZ  
Council President

First Reading: April 25, 2011

Second Reading: Suspended 2011

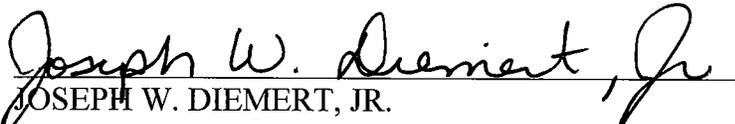
Third Reading: Suspended 2011

PASSED: April 25, 2011



BRUCE G. RINKER, Mayor

APPROVED AS TO FORM:



JOSEPH W. DIEMERT, JR.  
DIRECTOR OF LAW

ATTEST:   
MARY E. BETSA,  
Clerk of Council



DRAFT

April 1, 2011

Mayor Bruce Rinker  
~~City of Mayfield Village~~  
~~915 Worton Park Drive~~  
Mayfield Village, OH 44143

*Mayfield Village, Ohio  
622 Wilson Mills Rd.*

SUBJECT: Letter Agreement for Professional Services - *Energy Audit*

Dear Mayor Rinker:

URS Corporation - Ohio ("URS") desires to provide services to ~~City of~~ *Ohio* Mayfield Village ("Client") in connection with ASHRAE Level II Energy Audits ("Project"), under the terms described below.

The services URS will perform for Client and the estimated time for performance are described in URS' scope description attached hereto as Exhibit "A" of this letter. Payment shall be made to URS as follows:

- 1. Method of Compensation: Services will be billed on a monthly basis based on actual percentage of work completed against total services.
- 2. Amount of Compensation: *not to exceed* Twenty-one thousand seven hundred eighty dollars and zero cents. (\$21,780.00)

All services will be performed in accordance with the Terms and Conditions for Professional Services, attached hereto as Exhibit "B" of this letter.

URS looks forward to working with you on this Project. If the terms of this agreement are acceptable, please sign this letter in the space provided below and return it to Danette Hauck, our Project Manager, by April 13, 2011.

Very truly yours,

URS Corporation-Ohio

By: Gary Hribar  
Title: Vice President

This Agreement is accepted by the ~~City of~~ *Ohio* \_\_\_\_\_ of Mayfield Village this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

URS Corporation  
1375 Euclid Avenue, Suite 600  
Cleveland, OH 44115-1808  
Tel: 216.622.2400  
Fax: 216.622-2428  
www.urscorp.com

Ex. A

Assessment Information Request:

*Can this  
be provided?  
Is it  
readily available  
at this time?*

**1 Essential Building Information:**

- 1.01 Building address; facility/maintenance contact; year built; years and descriptions of any major renovations (e.g. all windows were replaced with double pane in 1999, all T12 lights were retrofitted to T8, replaced chiller, etc.)
- 1.02 The most recent 13 months of summary utility data for each account / building.
- 1.03 The most recent 3 months of actual utility bills for each account / building
- 1.04 Existing drawings, in particular mechanical/HVAC and if possible architectural elevations, floor plans, wall/roof sections, window schedules and electrical lighting plans and single line diagrams.
- 1.05 Your capital plan or a wish list of projects that you plan or would like to implement in the next 1-5 years.
- 1.06 Overall building floor area and number of floors and typical overall hours of operation

**2 Additional Useful Information:**

- 2.01 A list of any chronic existing maintenance issues or tenant complaints.
- 2.02 Breakdown of building floor area by tenant, major use (e.g. underground/enclosed parking garage, common, retail, conference center, etc.)
- 2.03 Typical hours of operation, number of PC's and workers on shift by tenant or major usage (not absolutely essential unless we want to benchmark in Energy Star Portfolio Manager)
- 2.04 Any past condition assessments, master plans, energy studies and if applicable asbestos surveys
- 2.05 Breakdown of annual maintenance budget / expenditures.
- 2.06 General description of mechanical systems (e.g. constant volume multizone, district steam, central building chilled water)
- 2.07 General description of plumbing fixtures (e.g. low flow)
- 2.08 General description on lighting (e.g. Mostly 2'x2', 2 lamp U-tube parabolic with T8 lamps and electronic ballasts)
- 2.09 The most recent three (3) years of monthly utility consumption data (e.g. electric, natural gas, water, sewer)
- 2.10 AutoCad floor plans.

*I would recommend identifying these buildings by name and address.*

**SCOPE OF WORK**

1. The items being audited include:
  - a. 6 buildings
2. Review and tabulate available utility & general building data provided by ~~the City~~ of Mayfield Village.
  - a. Create a comprehensive list of buildings and structures that consume energy or resources.
  - b. Identify who has management responsibility for facility.
  - c. Identify energy or resources consumed. Quantify amount and cost for energy and resources over a 12 month period for each building. The 12 month period shall consist of a recent contiguous 12 month period.
  - d. Rank facilities by energy use. 's
3. Review ~~the City~~ of Mayfield Village capital plan, past energy studies and building assessments (where applicable).
4. Review existing building drawings (where available).
5. Perform site visit & interview maintenance staff.
6. Coordinate potential energy conservation measures (ECM's) with ~~the City~~ of Mayfield Village capital budget plan (current and planned renovation projects). 's
7. Participate in meetings with ~~City~~ to develop, refine and prioritize ECM's.
8. For each building provide the following:
  - a. General building overview.
  - b. Evaluation of the existing building and its existing mechanical and electrical systems.
  - c. Create baseline energy model for each building as currently utilized; calibrate against actual utility bills.
  - d. Evaluate various energy conservation measures (ECM's) against baseline energy model.
  - e. Calculate construction, total project cost and simple payback for each ECM.
  - f. Recommend energy conservation measures that should be implemented, as well as additional mechanical, electrical, building envelope upgrades that should be implemented due to age or condition. *the Village*
9. Conduct discussion with ~~City~~ to develop, refine and prioritize recommendations. *the Village*
10. Identify and aid ~~the City~~ of Mayfield Village with utility incentives and grant opportunities.
11. Identify opportunities for Energy Star label.
12. Present report to ~~City~~ of Mayfield Village.

**DELIVERABLES**

Energy Assessment Report containing the following:

- Executive Summary
- Existing Conditions Narrative containing the following for each building:
  - (i). Building overview
  - (ii). Description of existing mechanical and electrical systems
  - (iii). Building usage
  - (iv). Energy consumption
- Evaluation of general building condition as well as mechanical and electrical systems for each.
- Analysis of energy conservation opportunities in each building.
  - (i). Description of conservation measure or renewable energy opportunity.
  - (ii). Identification of potential regulatory issues.
  - (iii). Evaluation including advantages and disadvantages.
  - (iv). Estimate of total project cost to implement.
  - (v). Estimate of savings in mmbtus (one thousand thousand British Thermal Units) and dollars.
  - (vi). Estimate of reduction in greenhouse gases.
  - (vii). Simple payback, funding and implementation options.
- Recommendations.
- Economic analysis including life cycle cost and cash flow analysis for overall program.

*Ex. A*

- Detailed construction cost estimates for recommended energy conservation measures.

#### CLARIFICATIONS

- Buildings to be audited have a total floor area of approximately 92,200 gsf.
- Completing utility incentive and grant applications is not included.

#### SCHEDULE

- Project to start at Kick-off Meeting, where the *City* will provide the following data for all buildings to the best of their abilities:
  - Building address; facility/maintenance contact; year built; years and descriptions of any major renovations (e.g. all windows were replaced with double pane in 1999, all T12 lights were retrofitted to T8, replaced chiller, etc.)
  - The most recent 13 months of summary utility data for each account / building.
  - The most recent 3 months of actual utility bills for each account / building
  - Existing drawings, in particular mechanical/HVAC and if possible architectural elevations, floor plans, wall/roof sections, window schedules and electrical lighting plans and single line diagrams.
  - Your capital plan or a wish list of projects that you plan or would like to implement in the next 1-5 years.
  - Overall building floor area and number of floors and typical overall hours of operation
- 1 weeks from Kick-off Meeting to complete field survey
- Prior to the end of June 2011 final Energy Audit will be submitted to the *City Village*

#### ADDITIONAL SERVICES

URS Corporation shall provide services for the project, when authorized in writing in addition to those services set forth in the Basic Services including any services not otherwise listed in this proposal or not customarily furnished in accordance with generally accepted architectural or engineering practice.



DRAFT

URS Corporation
Terms and Conditions for Professional Services (Non-Environmental)
When Contract Value is \$25,000 or less

and required and necessary

1. DEFINITIONS

"Client" shall mean the person, firm, or corporation identified in the URS Proposal for whom Services are to be performed.
"URS" shall mean URS Corporation Design, an Ohio corporation.
"Client Order" shall mean the purchase order, request, authorization, or other notification, and any addition or modification thereto, whereby Client indicates its desire that URS furnish Services.
"URS Proposal" shall mean the letter, proposal, quotation, or other notification, including any response to the Client Order, wherein URS offers to furnish Services.
"Services" shall mean the Services of URS personnel described in the URS Proposal or Client Order and any other Services as may be added to or performed in connection with this Agreement.
"Agreement" shall mean these Terms and Conditions and the URS Proposal, and shall include, only to the extent consistent with the URS Proposal and these Terms and Conditions, the provisions of the Client Order. In the event of a conflict between any terms and conditions deemed to be part of the Agreement and these Terms and Conditions, these Terms and Conditions shall govern.

2. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting, and related Services performed or furnished by URS and its employees under this Agreement will be the care and skill ordinarily used by members of URS's profession practicing under the same or similar circumstances at the same time and in the same locality. URS makes no warranties, express or implied, in connection with the Services, including any warranties of merchantability or fitness for a particular purpose.

3. INSURANCE

URS agrees to procure and maintain, at its expense, Workers' Compensation Insurance as required by statute; Employer's Liability of \$1,000,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability Insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of Services under this Agreement caused by negligent acts, errors, or omissions for which URS is legally liable. Upon request, Client shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the Client.

4. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable material or equipment cost, or probable construction cost, provided by URS, are made on the basis of information available to URS, and represents its judgment as an experienced and qualified professional engineer. However, since URS has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, URS does not guarantee that proposals, bids or actual equipment, materials, or construction cost will not vary from opinions of probable cost URS prepares.

5. CONSTRUCTION PROCEDURES

URS' observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. URS shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work, and shall not manage, supervise, control or have charge of construction. URS shall not be responsible for the acts or omissions of the contractor or other parties on the project.

6. CONTROLLING LAW

This Agreement is to be governed by the law of the state where URS' Services are performed.

7. OWNER RESPONSIBILITIES

Without limiting any express or implied obligations of Client under applicable law, Client shall: (1) provide URS, in writing, all information relating to Client's requirements for the project; (2) correctly identify to URS the location of subsurface structures, such as pipes, tanks, cables, and utilities; (3) notify URS of any potential hazardous substances or other health and safety hazard or condition known to Client existing on or near the project site; (4) give URS prompt written notice of any suspected deficiency in the Services; (5) with reasonable promptness, provide required approvals and decisions; and (6) furnish or cause to be furnished to URS full, unrestricted and legal access to, and use of, the site and all necessary rights of way and easements, in order to perform the Services. Client agrees to bear full responsibility for the accuracy and completeness of all documents, information, or services supplied by Client. Client acknowledges that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care.

8. SUCCESSORS AND ASSIGNS

Client and URS, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither Client nor URS will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

9. DOCUMENTS AND INTELLECTUAL PROPERTY

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by URS pursuant to this Agreement, are instruments of service with respect to the project. URS retains ownership of all such documents. Client may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by Client or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by URS for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to URS, and Client will defend, indemnify and hold harmless URS from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle URS to further compensation at rates to be agreed upon by Client and URS, only so long as approved by Client in writing.

10. TERMINATION OF AGREEMENT

Client or URS, after having afforded the other party a reasonable opportunity to cure, may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all Services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for cancellation charges and other termination settlement costs URS incurs as a result of commitments that had become firm before termination, and for a reasonable profit for Services performed.

11. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not

EX B.

be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

## 12. INVOICES

URS will submit monthly invoices for Services rendered and Client will make prompt payments in response to URS' invoices.

URS will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by Client's auditors upon request.

If Client disputes any items in URS' invoice for any reason, including the lack of supporting documentation, Client may temporarily delete the disputed item but shall pay all undisputed items appearing in the invoice. Client will promptly notify URS of the dispute and request clarification and/or correction. After any dispute has been settled, URS will include the disputed item on a subsequent, regularly-scheduled invoice or on a special invoice for the disputed item only.

Client recognizes that late payment of invoices results in extra expenses for URS. URS retains the right to assess Client interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of URS' invoices are not paid when due, URS also reserves the right to suspend the performance of its Services under this Agreement until all past due amounts have been paid in full.

## 13. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of Services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. As the project progresses, the facts developed may dictate a change in the Services to be performed, which may alter the scope. URS will inform Client of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional Services, or suspension of Services results in an increase or decrease in the cost of or time required for performance of the Services, an equitable adjustment shall be made, and the Agreement modified accordingly.

## 14. HAZARDOUS MATERIALS

It is acknowledged by both parties that the Services do not include services related to regulated substances, pollutants, or hazardous or toxic wastes ("Hazardous Material"). In the event URS or any other party encounters undisclosed Hazardous Materials, URS shall notify Client and, to the extent required by law or regulation, the appropriate governmental officials, and URS may, at its option and without liability for delay, consequential or any other damages to Client, suspend performance of Services on that portion of the project affected by Hazardous Material until Client: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous material; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. If Services hereunder cannot be performed because of the existence of hazardous materials, URS shall be entitled to terminate this Agreement for cause on 30 days written notice.

## 15. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between URS and Client, and supersedes all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

## 16. NO CONSEQUENTIAL DAMAGES

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CLIENT NOR URS SHALL BE LIABLE, WHETHER LIABILITY ARISES FROM NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, OR ANY OTHER THEORY OF RECOVERY, FOR ANY

CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, OR DAMAGES ARISING FROM OR IN CONNECTION WITH LOSS OF USE, LOSS OF REVENUE OR PROFIT (ACTUAL OR ANTICIPATED), LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED COST OF CONSTRUCTION, COST OF CAPITAL, COST OF REPLACEMENT POWER OR CUSTOMER CLAIMS, AND URS HEREBY RELEASES CLIENT AND CLIENT HEREBY RELEASES URS FROM ANY SUCH LIABILITY.

## 17. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF URS, ITS SUBCONSULTANTS, AND ITS EMPLOYEES TO CLIENT FOR ANY LOSS OR DAMAGE ARISING OUT OF THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE ARISING FROM NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, OR ANY OTHER THEORY OF RECOVERY, SHALL NOT EXCEED THE AMOUNT OF THE TOTAL CHARGES FOR SERVICES PERFORMED UNDER THIS AGREEMENT, AND CLIENT HEREBY RELEASES URS, ITS SUBCONSULTANTS, AND ITS EMPLOYEES FROM ANY LIABILITY ABOVE SUCH AMOUNT.

## 18. LITIGATION SUPPORT

In the event URS is required to respond to a subpoena, government inquiry or other legal process related to the Services in connection with a legal or dispute resolution proceeding to which URS is not a party, Client shall reimburse URS for reasonable costs in responding and compensate URS at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

## 19. NO THIRD PARTY BENEFICIARIES

This Agreement shall not create any rights or benefits to parties other than Client and URS. No third party shall have the right to rely on URS opinions rendered in connection with the Services without URS' written consent and the third party's agreement to be bound to such terms and conditions as URS, in its sole discretion, agrees to offer.

## 20. FORCE MAJEURE

Any delay or failure of URS in performing its required obligations hereunder shall be excused if and to the extent such delay or failure is caused by a Force Majeure Event. A "Force Majeure Event" means an event due to any cause beyond the reasonable control of URS and shall include, but not be limited to, acts of God, strike, labor dispute, fire, storm, flood, windstorm, unusually severe weather, sabotage, embargo, terrorism, energy shortage, accidents or delay in transportation, accidents in the handling and rigging of heavy equipment, explosion, riot, war, court injunction or order, delays by acts or orders of any governmental body or changes in laws or government regulations or the interpretations or application thereof or the acts or omissions of the Client or its other contractors, vendors or suppliers. In the event of a Force Majeure Event, URS shall receive an equitable adjustment extending URS' time for performance sufficient to overcome the effects of any delay, and an increase(s) to URS' compensation sufficient to account for any increased cost in performance or loss or damage suffered by URS. If Services are suspended for thirty (30) days or more, URS may, in its sole discretion, upon 5 days prior written notice, terminate this Agreement. In the case of such termination, in addition to the compensation and time extension set forth above, URS shall be compensated for all reasonable termination expenses.

## 21. SURVIVAL

The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion, or expiration of the Agreement, including, but not limited to, any expressed limitations of, or releases from, liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion, or expiration.