

Agenda Item # 36

Distribution  
County Board  
County Administrator  
Central Services  
OMB  
Controller

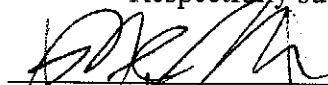
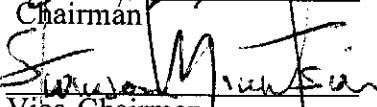
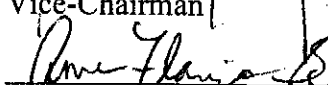

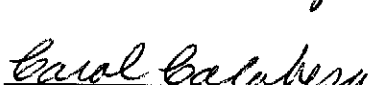
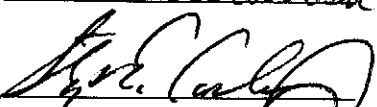
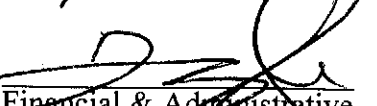
STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF LAKE )

COUNTY BOARD, LAKE COUNTY, ILLINOIS  
REGULAR SEPTEMBER A.D., 2005 SESSION  
SEPTEMBER 13, A.D., 2005

CHAIR AND MEMBERS OF THE COUNTY BOARD;

Your Financial and Administrative Committee present herewith a Resolution authorizing the Director of Central Services to award a contract to M.A. Mortenson in the amount of \$530,943 to provide Agency Construction Management Services for the construction of a Central Permit Facility for Lake County and, authorize a line item transfer in the Corporate Capital Improvement Program from 101-1103065-82010-000-000-000000 to 101-1103065-71500-000-000-000-00000 in order to process the contract for services.

Respectfully submitted,

	Aye	Nay
 Chairman	X	—
 Vice-Chairman	X	—
	✓	—
	—	0
	✓	—
	✓	—
 Financial & Administrative Committee	X	—

— RESOLUTION

WHEREAS, in accordance with Section 5-102 of the Lake County Purchasing Ordinance, Request for Proposal #25077 were called for by publication for Agency Construction Management Services for the construction of a Central Permit Facility for Lake County; and

WHEREAS, sealed proposals were received and opened from fourteen (14) vendors and opened in the County Building, Waukegan, Illinois, on Tuesday, August 2, 2005, at 2:00 p.m.; and

WHEREAS, the selection review Committee held interviews with the top five (5) ranked firms; and

WHEREAS, in accordance with the Evaluation Criteria as established in the Request for Proposal and the interview, the Selection Review Committee has determined that the proposal submitted by M.A. Mortenson, Elk Grove Village, IL, is the most favorable proposal for Lake County;

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Director of Central Services is hereby directed to enter into a contract with M.A. Mortenson, Elk Grove Village, IL, in the amount of \$530,943.00 to provide Agency Construction Management Services for the construction of a Central Permit Facility for Lake County, plus renewals, and authorize a line item transfer in the Corporate Capital Improvement Program from 101-1103065-82010-000-000-000-00000 to 101-1103065-71500-000-000-000-00000 in order to process the contract for services.

DATED, at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 13th day of September, A.D., 2005.

**AGREEMENT FOR #25077 AGENCY CONSTRUCTION MANAGEMENT SERVICES  
for LAKE COUNTY**

This AGREEMENT is entered into by and between Lake County (hereafter "County") and M. A. Mortenson Company, 25 Northwest Point Blvd., Elk Grove Village, IL 60007 (hereafter "CM").

**RECITALS**

WHEREAS, Lake County is seeking a Construction Manager to perform Agency Construction Management Services; and

WHEREAS, the CM is a professional provider of professional Agency Construction Management Services; and

WHEREAS, Central Services issued Request for Proposal Number 25077 in connection with this procurement; and

WHEREAS, Central Services and the selection committee have determined that the Proposal submitted by the CM on August 2, 2005 best serves the interests of the County; and

WHEREAS, the Lake County Board passed a resolution at its regular meeting on September 13, 2005, authorizing the Director of Central Services to execute this Agreement;

**NOW, THEREFORE, Lake County and the CM AGREE AS FOLLOWS:**

**SECTION 1. AGREEMENT DOCUMENTS**

The Agreement Documents that constitute the entire agreement between the County and the CM are:

- A. This Agreement
- B. Request for Proposal (RFP) Number 25077
- C. CM Response to Request for Proposals #25077 dated August 2, 2005

In the event of conflict between or among the above Documents, the Documents listed above are in order of precedence.

**SECTION 2. SCOPE OF WORK**

The CM shall provide Construction Management services for the Central Permit Facility, in accordance with the Request for Proposals #25077, Detailed Specifications, paragraph 5 Scope of Work.

**SECTION 3. RESPONSIBILITIES OF THE CONSTRUCTION MANAGER**

Within ten (10) days after the execution hereof, the CM shall submit for approval by the County a Management Schedule for the performance of the CM services which shall include allowances for reasonable periods of time required for the review and approval of items by the County and for approvals of governmental authorities having jurisdiction over the project. Unless the County

notifies the CM of objections to the Management Schedule within ten (10) days of receipt thereof, the County shall be deemed to have approved the Management Schedule. The Management Schedule, when approved by the County, shall not be exceeded by the CM without notice and adjustment of the Management Schedule approved by the County. The CM shall incorporate the Management Schedule into the Project Schedule, and, upon receipt of the Design Schedule from the Architect/Engineer (hereafter "A/E"), the CM shall incorporate the Design Schedule into the Project Schedule with the cooperation of the A/E. Once the Management Schedule has been incorporated into the Project Schedule, the Management Schedule shall not be exceeded unless the Project Schedule is exceeded through no fault of the CM or with the approval of the County after notice.

The CM shall be a representative of and shall advise and consult with the County during construction until final payment to the Contractor is made. The CM shall have authority to act on behalf of the County only to the extent provided in this Agreement unless otherwise modified by written instrument.

The CM shall provide administration of the Project, monitor the schedule of Work and coordinate the Contractors and any other persons on the site of the Project. The CM shall maintain a competent Project Manager and a Project Engineer assigned to the Project through the construction period and a Superintendent assigned to the Project on-site full time throughout the construction period, especially, at critical times that Work is in preparation or progress on the Project. The CM shall establish and implement on-site organization and authority to ensure that the Work on the Project is accomplished timely and efficiently. The CM shall monitor and inspect the progress and quality of the Work and determine if the Work is being performed in a manner indicating that the Work will be in accordance with the Contract Documents. The CM shall carefully, frequently and thoroughly review the quality and quantity of work performed by the Construction Contractor and shall issue written reports.

Based on the CM's observations and evaluations of the Contractor's Applications for Payment, the CM shall review and certify the amounts due the Contractor.

The CM shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CM considers it necessary or advisable for implementation of the intent of the Contract Documents, the CM will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the CM nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the CM to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

The CM shall work with the Contractor to avoid, whenever possible, the need for Change Orders that involve increases in the Contract Sum and shall work with the Contractor and the A/E to identify areas where costs can be reduced to offset the Change Order increase requested. If a Change Order increasing the project cost is necessary, the CM shall certify in writing that the CM, the Contractor, and the A/E have reviewed the work to be performed and cannot identify areas where costs can be reduced that do not diminish the general quality of the Project, as described in the Contract Documents. The CM shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the CM for the County's approval and

execution in accordance with the Contract Documents. The CM may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

The CM shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the County for the County's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

The CM shall interpret and decide matters concerning performance of the Contractor under the requirements of the Contract Documents, subject to applicable dispute resolution provisions.

Interpretations and decisions of the CM shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

#### **SECTION 4. DURATION**

This Agreement shall be in effect through the completion of the construction period for the Central Permit Facility. This Agreement may be renewed by mutual agreement for four (4) additional one-year periods for future projects.

#### **SECTION 5. INDEMNIFICATION**

The CM agrees to indemnify, save harmless and defend the County, its agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorney's fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have arisen out of CM's negligent acts in connection with the services covered by this Agreement. The foregoing indemnity shall apply except if such injury, death or damage is caused directly by the willful and wanton conduct of the County, its agents, servants, or employees or any other person indemnified hereunder.

#### **SECTION 6. INSURANCE**

The CM must obtain, for the Agreement term and any extension of it, insurance issued by a company or companies qualified to do business in the State of Illinois and provide the County with evidence of insurance. Insurance in the following types and amounts is necessary:

- Worker's Compensation Insurance covering all liability of the CM arising under the Worker's Compensation Act and Worker's Occupational Disease Act at statutory limits.
- General Liability
  - General Aggregate Limit \$ 2,000,000
  - Each Occurrence Limit \$ 2,000,000
- Professional Liability to include, but not be limited to, coverage for Errors and Omissions to respond to claims for loss therefrom.
  - General Aggregate Limit \$ 2,000,000
  - Per Claim Limit \$ 1,000,000
- Automobile Liability: Bodily Injury, Property Damage
  - General Aggregate Limit \$ 2,000,000
  - Each Occurrence Limit \$ 1,000,000

The CM agrees that with respect to the above-required insurance (not including Worker's Compensation Insurance and Professional Liability Insurance), Lake County shall:

be named as additional insured by endorsement as their interest may appear, be provided with thirty (30) days notice, in writing, of cancellation or material change; Be provided with Certificates of Insurance evidencing the above required insurance, prior to commencement of this Agreement and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration of cancellation of any such policies. Forward Notices and Certificates of Insurance to: Lake County Central Services Purchasing Division, 18 N. County St, Waukegan, IL 60085-4350.

#### **SECTION 7. AGREEMENT PRICE AND PROJECT BUDGET**

CM shall be paid a lump sum amount not to exceed \$530,943.00 for Agency Construction Management services.

In the event that this Agreement is renewed for future projects, the County and the CM shall mutually agree to the amount to be paid for services.

#### **SECTION 8. COMPENSATION**

Compensation shall be made as follows: the CM shall be eligible for monthly progress payments up to the amount due per Phase. Payments per Phase shall not exceed the percentage of the work performed in each Phase by the responsible party for that Phase, in accordance with the following:

Phase	Amount Due	Responsible Party
A/E Selection Phase	\$ 53,094	CM
Design Phase	\$ 53,094	A/E
Bidding Phase	\$ 53,094	A/E
Construction Phase	\$318,567	Contractors
Project Closeout	\$ 53,094	Contractors

In the event that the project progress falls behind schedule, the CM payments will be adjusted accordingly to pro-rate the remaining amount due over the projected Agreement period.

#### **SECTION 9. PAYMENT**

The CM shall submit invoices for payment in accordance with the Local Government Prompt Payment Act. Invoices may be submitted for work performed on a monthly basis up to the amount due per Phase not to exceed the percentage of work performed in each Phase by the responsible party identified above.

#### **SECTION 10. SCHEDULE:**

The CM shall maintain and track the project schedule on Primavera P3 software and shall maintain and provide current information and project status for the County's review and access.

#### **SECTION 11. OWNER'S REPRESENTATIVE:**

The County shall designate a representative authorized to act on the County's behalf with respect to the Project. The County or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the CM in order to avoid unreasonable delay in the orderly and sequential progress of the CM's services.

**SECTION 12. TERMINATION:**

The County reserves the right to terminate this contract, or any part of this contract, upon thirty (30) days written notice. In case of such termination, the CM shall be entitled to receive payment from the County for work completed to the termination date in accordance with terms and conditions of this contract. In the event that this Contract is terminated due to CM's default, the County shall be entitled to purchase substitute items and/or services elsewhere and charge the CM with any or all losses incurred, including reasonable attorney's fees and expenses. The nonperformance of any obligation by the CM shall not be deemed a default unless the CM fails to cure the default within thirty (30) days after written notice to the CM of such nonperformance. CM reserves the right to terminate this contract, or any part of this contract, upon thirty (30) days written notice to the County in the event of the default by the County.

**SECTION 13. JURISDICTION, VENUE, CHOICE OF LAW:**

This Agreement shall be governed by and construed according to the laws of the State of Illinois. Jurisdiction and venue shall be exclusively found in the 19<sup>th</sup> Judicial Circuit Court, State of Illinois.

**SECTION 14. INDEPENDENT CONTRACTOR**

The CM is an independent contractor and no employee or agent of the CM shall be deemed for any reason to be an employee or agent of Lake County.

**SECTION 15. WARRANTS**

The CM represents and warrants to the County that none of the work included in this Agreement will in any way infringe upon the property rights of others. The CM shall defend all suits or claims for infringement of any patent, copyright or trademark rights and shall hold the County harmless from loss on account thereof.

**SECTION 16. ASSIGNMENT**

Neither the CM nor Lake County shall assign any duties of performance under this Agreement without the express prior written consent of the other.

**SECTION 17. MODIFICATION**

This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

**SECTION 18. DISPUTE RESOLUTION**

All issues, claims, or disputes arising out of this Agreement shall be resolved in accordance with the Appeals and Remedies Provisions in Article 9 of the Lake County Purchasing Ordinance.

**SECTION 19. NO IMPLIED WAIVERS**

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

**SECTION 20. SEVERABILITY**

If any part of this Agreement shall be held to be invalid for any reason, the remainder of this Agreement shall be valid to the fullest extent permitted by law.

**SECTION 21. TAXES**

Lake County is not subject to Federal Excise Tax. Per Illinois Compiled Statutes, 35 ILCS 120/2-5, Lake County is exempt from state and local taxes.

**SECTION 22. MAXIMUM PRICE & PROJECT SCHEDULE**

Upon completion of the Design Development Documents, the CM shall advise the County of the Maximum Price and Project Schedule. The Maximum Price shall be the total project costs including, but not limited to construction, professional fees, permits, contingency and miscellaneous costs. The Maximum Price and Project Schedule shall not be exceeded unless the County authorizes an increase in the scope of work.

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

Lake County:

M. A. Mortenson Company:

\_\_\_\_\_  
JONI F. YOUNG, C.P.M.  
Director of Central Services  
Lake County  
Date \_\_\_\_\_

\_\_\_\_\_  
GREGORY G. WERNER  
Vice President  
M. A. Mortenson Company  
Date \_\_\_\_\_