



Cortland County  
60 Central Avenue  
Cortland, New York 13045

REQUEST FOR PROPOSALS

FOR:

A NEW CORRECTIONAL FACILITY  
AND PUBLIC SAFETY COMPLEX

July 18, 2014

REQUEST FOR PROPOSALS  
FOR PROFESSIONAL CONSULTING, ARCHITECTURAL,  
AND ENGINEERING SERVICES

I. INTRODUCTION:

- A. This request for proposal (RFP) is for professional consulting services necessary for the design, bidding, award and construction phase services associated with the development of a new Correctional Facility and Public Safety Complex. Cortland County requests proposals from consulting firms with demonstrated experience in similar projects. Proposals must be comprehensive and complete in scope including all tasks and fees required to design and construct a complete and functional correctional facility and public safety complex.

It is important to note that within this project, Cortland County is very interested in the delivery of a brand new and complete public safety complex that will take into account the following:

1. Facility for the Cortland County Correctional Facility with a minimum expandable 150 cell capacity with expandable wing(s) Ability to add more housing units without disruption to the facility's daily function.
  2. Facilities for the City of Cortland Police Department
  3. Facilities for the Cortland County Department of Emergency Response and Communications Division which includes the 911 Communications Center
  4. Provisions for Court appearances with a room equipped with SMART technology to occur on site
  5. Facilities for the Cortland County Sheriff's Department
- B. Responses to this request for proposal must be submitted in a sealed envelope addressed to:
- Mr. Jeremy Boylan  
Cortland County Legislative Clerk  
60 Central Avenue  
Cortland, New York 13045
- C. Packages containing proposals must be marked "RFP for new Correctional Facility and Public Safety Complex"

D. Proposals are due at the above address no later than 2:00 p.m. on August 22, 2014.

E. Questions relating to this RFP shall be directed to:

JailRFP-L@cortland-co.org

All questions shall be submitted in writing by August 6, 2014 citing the particular proposal section and paragraph number. Prospective Proposers shall note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a proposal. Answers to all questions will be given to all Prospective Offerors, in the form of a formal addendum which will be annexed to and become part of the resultant contract and will be posted on the following website :

<http://www.cortland-co.org/legislature/bidsandrfps.htm>

under the heading entitled "Jail consultant RFP". It is the responsibility of the Bidder to check the website for addenda. The final posting addenda will be three (3) working days prior to the bid opening date.

F. **MANDATORY PRE-PROPOSAL CONFERENCE ON JULY 29, 2014 at 8:30 a.m.:**

Any and all consultants or firms that intend to provide a RFP **MUST** attend this conference to address any questions and concerns unilaterally so there is no confusion or misconceptions. Failure to attend this meeting **AUTOMATICALLY** disqualifies you from being allowed to submit a RFP.

This conference will consist of the following:

1. A tour of the current Jail, Sheriff's Office, 911 Center and City Police Department.

2. Current demographics of Cortland County
3. Address any questions

Answers may be deferred if need be in order for Cortland County to accurately research and answer questions. Answers to questions will be included in official minutes of the pre-bid conference and will be sent to each Offerors' official representative attending in which a written reply will be supplied to all vendors attending the MANDATORY conference. Only written responses will be binding upon the County.

- G. Proposals must contain an original signature of an authorized representative of the firm
- H. One original and twenty (20) copies of the response to this solicitation are required.
- I. Interview - Firms chosen for an interview shall be notified by 4:00 PM on Friday, August 29, 2014. Interviews shall be held on Friday, September 12, 2014, by a subcommittee of the Correctional Facility / Public Safety Complex team. It is strongly recommended that the consultant's proposed project manager, as the person with whom the County Project Manager will be dealing with most on the project, be the primary participant at the interview. Interviews will be strictly limited to 45 minutes, and shall include a brief presentation by the consultant on their proposed approach to the project lasting no more than 20 minutes, followed by questions & answers.
- J. Form of Contract - A copy of the County's standard form contract is attached as Appendix A hereto.
- K. Insurance - A copy of the County's standard insurance requirements for consultants is attached as Article 4 of the County's standard form of contract in Appendix A hereto.
- L. The County of Cortland reserves the right to reject any and all proposals and waive informalities or inconsequential requirements in the submissions or the Request for Proposals.

Submissions will not be returned to the respondents to the Request for Proposals. The County may dispose of or retain the submissions at its discretion.

All expenses incurred in the preparation of the responses to the Request for Proposals shall be borne solely by the respondent without the right of reimbursement by the County.

## II. BACKGROUND

The present Cortland County Jail was built in the late 1980's and opened in 1990. Originally the structure was built as a 50 bed facility. All program rooms were used for additional housing bringing capacity to 59 beds. By 1996 the county applied for two variances that provided for an additional 15 beds. In 2008 one of the booking holding cells was approved for housing, bringing the total capacity to 75. In 2014, the county increased capacity to 90 with the addition of a dorm. The County proposes to replace the existing facility at a location yet to be determined.

## III. EXPERIENCE AND QUALIFICATIONS

All firms responding to this request for proposal shall demonstrate extensive experience and expertise in the planning and design of a correctional facility, one or more of which shall have been in New York State. The firm shall possess the personnel, facilities and resources required to provide full professional services in every aspect of the project from the design development phase thru construction close-out including post close-out occupancy transition. The services shall include, but are not necessarily limited to project programming and presentation, site analysis and design, architectural design, civil mechanical, electrical, and systems engineering, project administration, budgeting, agency approvals, scheduling, periodic on site visitation for contract conformance, transitional planning and project close out. The successful firm will be required to interact extensively with the County Jail Transitional Team, County Legislative Committees and such other designees as may be required by the County.

Firms responding to this project shall possess proven record of completing similar jail / public safety complex projects within budget, on time, without claims, error or defect. It is the intention of the County to assign responsibility for the successful completion of this project with the firm selected by working with the County Jail Transition Team and such other parties as may be assigned to the project.

The County intends to retain a firm capable of assuming the responsibility for the planning, design, administration and management of the project. Firms wishing to

submit proposals to provide such services are encouraged to do so. The undertaking of the project is envisioned as being a seamless process with regard to its design and administration. Therefore, all responding firms, in addition to offering a professional service, shall be capable of offering qualified construction management services.

IV. SCOPE OF WORK

1. The consulting firm selected for this project shall be required to provide a comprehensive scope of services that is all inclusive of the tasks necessary to design and construct a complete facility. The consultant shall comply with all existing laws, rules and regulations in effect as of the final completion of the project and the County's acceptance of the project, including the New York State Environmental Quality Review Act, the New York State Building Code, New York State Energy Code, the New York State Commission of Corrections, NFPA Life Safety Code, and the Americans with Disabilities Act. Services shall be performed in accordance with AIA and EJCDC contract forms. Services shall include, but not limited to, the following:

- a. Assist Cortland County in identifying and securing property to meet the scope and needs of this project. When assisting the County with site selection the following criterion needs to be adhered to by the Consultant in guiding the County through this process:
  - i. acreage is available for the minimum program design
  - ii. designated use of the site is compatible with neighboring land uses and general neighborhood development
  - iii. site has access to major public transportation routes
  - iv. land is available for immediate development
  - v. land is to be owned by the County
  - vi. site is easily accessible to existing county and local court facilities
  - vii. site allows for minimal disruption to neighboring uses

- viii. site allows for surveillance and security procedures with minimal disruption to neighboring uses
- ix. audio and visual contact between people within the facility and people in neighboring areas should be controllable
- x. controlled access to the site by the general public
- xi. security perimeter can be set at an appropriate distance from nearest neighboring structure
- xii. surrounding the security perimeter open, unobstructed land for effective surveillance in case of escapes
- xiii. access for required police, fire and medical services can be provided with minimal disruption to adjacent areas
- xiv. the “self-contained” design of the facility can be accommodated (e.g. transference of residents into and out of the facility can take place in a secure location).
- xv. maximize compatibility with existing and future neighboring land uses
- xvi. avoid location near property which has “prime development potential”
- xvii. minimize disruption of adjacent areas during and after construction process
- xviii. site should give an economic advantage to the city, village or town (e.g. low tax rate on existing property or a high purchase price)
- xix. use of site corresponds to the general planning objectives of the community

- xx. use of the site does not dislocate or thwart pre-existing community projects
- xxi. site has been considered by the responsible community and county representatives
- xxii. site presents no immediate controversy due to current and / or historical factors
- xxiii. prohibit development on fragile landscapes
- xxiv. minimize disruptions or excessive burden to existing water supply
- xxv. avoid development on poor geological formations, poor soil, and poor drainage areas
- xxvi. prohibit development in or near wet lands and flood plains
- xxvii. minimize disruptions to existing open space and recreational activities
- xxviii. prohibit infringement on historic / archeological sites
- xxix. minimize disruption to adjacent public and private uses (e.g. roads, businesses, residences)
- xxx. minimize construction time
- xxxi. minimize the use of explosives / blasting of the site
- xxxii. minimize relocation of existing services, buildings, residents
- xxxiii. minimize disruptions of existing criminal justice operations
- xxxiv. minimize conditions leading to run-off, poor drainage and / or potential flooding

- xxxv. optimize use of existing solid waste disposal system with the municipality
- xxxvi. optimize the use of liquid waste disposal system with the municipality (i.e. sewage connection)
- xxxvii. minimize problem of traffic flow generated by facility
- xxxviii. minimize disruptions to adjacent areas caused by the provision of services to the facility (e.g. sanitation services, delivery of supplies, etc.)
- xxxix. minimize effects on ambient noise level
- xl. maximize energy conservation
- xli. optimize use of existing water supply
- xlii. optimize use of green technology and construction
- xlviii. maximize the utilization of all available grant funding

- b. Obtain the necessary approvals from the NYS Commission of Corrections to site the jail / public safety complex as agreed upon by the County and Respondent.
- c. Conduct site topographic survey to include wetland delineation, a boundary survey of the parcel and complete the process to meet all zoning requirements including but not limited to variances and permits.
- d. Prepare plans and bid specifications for all related work, including building and site design including fencing, landscape architecture and off-site utilities.
- e. Coordinate with and secure approval as necessary from all Federal, State and Municipal Governments and Agencies, as well as from utility companies and any other public or private agency affected by the proposed construction. Prepare and secure all permits necessary for the construction of this project.

- f. Prepare storm water pollution prevention plan, SWPPP administration and inspection, obtain all permits and complete all necessary studies as needed
- g. Prepare for and attend all meetings as directed by the County. Meetings may be held to:
  - Present, discuss and receive direction on the design, progress and scheduling.
  - Present, discuss and receive direction on project specifics.
  - Discuss and resolve comments resulting from review of project documents, county committees and coordination with other agencies.
  - Present information at public meetings and hearings.
- h. Plan for and perform all necessary traffic studies, environmental quality review assessments and reports (State Environmental Quality Review Act), and other special studies, including entering into subcontracts for geotechnical design services, soil and foundation investigations, soil tests and analyses of test results and other third party specialty services.
- i. Include in the design the ability to develop and let early bid packages for site work, foundations, etc.
- j. Design and / or specify all furniture, fixtures, security and control systems, telephone systems, computer and data systems, radio equipment and systems, emergency generator, signage, bed and bedding supplies and all other items for a complete and functioning facility. Prepare and review with the County a list of items that can be pre-purchased by the County and installed by the contractor.
- k. Consultant shall be responsible for overseeing and coordinating all construction contracts and for the scheduling of these contracts thru-out construction.
- l. Consultant shall provide the County with recommendations of use for existing space that will be vacated as a result of this project.

- m. Respondent must submit development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design, financing, commencement and completion of construction; and operational stabilization for each component of the development program. Any contingencies that may affect this timeline should be identified.
  - n. Proposals should identify any flood zone and note how Respondent will meet Federal Emergency Management Agency guidelines as necessary.
2. Consultant services shall be divided into the following sequential phases:
- a. Implementation and Preliminary Evaluations
    - i. Confer with the County and review requirements of the project to arrive at a mutual understanding of the scope of the project
    - ii. Inspect proposed sites
    - iii. Evaluate preliminary sizing and adjacencies for cost savings and operational efficiencies. Consultant shall develop a minimum of two alternative schematic layouts to determine most feasible design of the proposed facility
    - iv. Analyze various design alternatives including types of building construction with regards to cost and schedule. As part of the analysis, perform life-cycle evaluation on HVAC systems to determine the most feasible design. The evaluation will compare initial costs to the longevity of components to determine the best value. Submit results including cost estimates for each alternative analyzed to County for review and selection.
    - v. Attend meetings to discuss design alternatives
    - vi. Prepare preliminary construction cost estimates for selected building design and layout
  - b. Design Development
    - i. Verify design alternative selected by County. Consultant shall discuss the design and constraints of the proposed design.

- ii. Submit design development drawings to the NYS Commission of Corrections for review and approval.
- iii. Prepare preliminary drawings and specifications for building(s) and site work and off-site utilities sufficient to permit review and approval by the County. Once comments are incorporated into the drawings, the consultant shall coordinate with all agencies.
- iv. Review and incorporate comments and revisions into design.
- v. Provide a detailed estimate of probable construction costs.
- vi. Attend meetings as required to discuss preliminary design.
- vii. Consult with NYSERDA to determine the most appropriate program for the County. The consultant shall prepare all applications and paperwork. The program in which the County participates in shall guide fixture and system selections.
- viii. As deemed necessary, the documents shall be tailored to provide bid alternatives to ensure bid phase success.

3. Comments, Revisions and Final Review

- a. Revise plans if required to incorporate design changes based on budget constraints, reviews and comments
- b. Submit drawings and specifications for approval to all agencies concerned. Including, but not limited to Cortland County, New York State Commission of Corrections and governing New York State permitting agencies.
- c. Review and incorporate comments and revisions into the design.
- d. Provide a detailed estimate of probable construction costs.

4. Bid Documents

- a. Prepare final design drawings, specifications and bid documents stamped and signed by a Professional Engineer or licensed architect registered with the State of New York. Format for the drawings and specifications shall be approved by the County. The cost of preparing 20 complete bid packages for each construction contract shall be included in this proposal.

5. Public Bidding

- a. The consultant shall reproduce and distribute all construction documents.
- b. Attend pre-bid meeting and bid opening.
- c. Assist in the bidding process by answering questions and provide addendums when necessary.
- d. Review bids submitted by contractors, tabulate and forward recommendations for award to each prime contract to the County.
- e. Assist in preparing contracts for selected bidders.
- f. Prepare “Notice of Award” and “Notices to Proceed” letters.

6. Construction Phase

- a. Consultant will prepare for and attend all meetings
- b. Prepare and submit a monthly progress report
- c. Provide design response to unanticipated or changed conditions, analyze and participate in proposed changes and interpret design plans
- d. Conduct on-site visits
- e. Interpret and clarify design concepts, plans and specifications
- f. Coordinate construction activities between contractors

7. Construction Administration and Inspection – consultant shall provide contract administration, management, coordination and scheduling between contracts and full time construction inspection services including maintaining project records, processing payments and performing detailed inspection work.

- a. The consultant shall take measurements and collect other pertinent information necessary to prepare daily inspection reports, monthly and final estimates, survey notes, record plans showing changes from contract plans, photographs of various phases of construction, and other pertinent data, records and reports for proper completion of records of the contract.
  - b. Review all shop drawings provided by the contractor for conformance with the plans and specifications for the project.
  - c. Receive and respond to Requests for Information (RFI's) and coordinate with code enforcement agencies
  - d. Upon nearing completion of the project, the consultant shall be responsible for coordination and documentation of substantial completion (punch lists), final completion, certificates of occupancies and testing of systems whenever required
  - e. Provide project close-out for all construction contracts
  - f. Procure, assemble and present all O & M Manuals, warranties and other pertinent material and equipment information
8. Record Drawings
- a. Upon completion of project, assemble all job notes, directives, change orders and other pertinent data to fully describe all changes to the original plans and specifications
  - b. Receive original drawings and specifications to accurately depict the as-built condition of the project
  - c. Provide two sets of as-built drawings and digital version in Auto Cad format.

V. CONTENT OF PROPOSALS:

1. Proposals shall include sufficient information to evaluate the firms understanding of the project scope, experience and qualifications of project personnel and sub consultants, credentials of the firm and basis of compensation. A proposal that does not provide all of the information requested may be subject to rejection.
2. Qualifications – The following information is requested to evaluate firm's qualifications and experience with providing similar services for design and construction administration of a Correctional Facility and Public Safety Complex:
  - a. Standard form 330 – Architect – Engineer Qualifications

- b. Description of the firms and sub consultants experience providing similar services on design, construction administration and inspection of jails and Public Safety Complexes in New York State. Identify recent similar projects. Give the names and addresses of the clients, dates of completion and construction costs. Include photographs for projects. Identify individuals within the firm that worked on those projects; indicate the role that each individual played in the project.
    - c. Design Team – Provide the names, experience and credentials of key staff for the firm and sub consultants to be assigned to the project including information regarding work on similar projects.
- 3. Proposals shall include the following –
  - a. Understanding of the scope of the project
  - b. Consultants qualifications and experience with relevant projects
  - c. Team members, their roles and applicable work experience
  - d. Proposed project schedule, including major tasks and completion dates
  - e. Technical approaches in accomplishing the work
  - f. Lump sum fee broken down by individual project tasks showing hours required and billing rates for each individual assigned the work.

## VI. BASIS OF COMPENSATION

- 1. All design services shall be performed for a not to exceed lump sum fee
- 2. Compensation for reimbursable expenses shall be based on a not to exceed lump sum fee
- 3. Construction administration / management and inspection shall be used on a not to exceed lump sum fee
- 4. Compensation for reimbursable expenses not associated with the original scope of work shall be based upon actual expenses incurred
- 5. Attach Schedule to this Request for Proposal. Schedule shall contain job titles, salary rates and billing rates for all personnel associated with this project.

Schedule shall be used in conjunction with AIA Document B141-1997 to calculate compensation for services performed that are not included in the original Scope of Work. Schedule shall also be used to calculate credits to the County for services not performed that are included in the original Scope of Work.

#### VII. CONSULTANT LIABILITY

1. A statement of insurance limits including professional liability and errors and omissions coverage must be attached. This statement must indicate coverage of at least \$1,000,000.00.

#### VIII. DOCUMENT PRINTING / OWNERSHIP OF ORIGINAL DRAWINGS AND MANUSCRIPTS

1. Original and generated computer diskettes, drawings and specification manuscripts are to remain the property of Cortland County whether or not the project is completed. The Consultant may retain copies for reference. These documents shall not be used by the Consultant for other projects without prior written approval from Cortland County. The County's use of this data for purposes other than originally intended without written verification or adaptation by Consultant shall be at the County's sole risk.

#### IX. SELECTION PROCESS

1. The County shall review all proposals received and reserve the right to select Consultants for further presentation and interview.
2. The following criteria shall be used in the selection process –
  - a. Approach to Project –
    - i. Understanding of project scope
    - ii. Understanding of implied or required tasks
    - iii. Reasonableness of proposed approach

- iv. Completeness of scope
- v. Proposed work schedule
- b. Experience / Qualifications of Project Personnel and Sub-Consultants –
  - i. Previous experience with governmental agencies
  - ii. Previous experience with similar projects
  - iii. Project staff experience with similar projects
  - iv. Project management expertise
- c. Credentials of Consultant –
  - i. Reference / client assessment of previous performances
  - ii. General project experience
  - iii. Demonstrated ability to keep projects on schedule
  - iv. Consultant's most significant relevant project
- d. Level of Effort –
  - i. Commitment of assigned personnel to the project
  - ii. Consultant's current workload and availability
- e. Proposal Fee

## **AGREEMENT**

**THIS AGREEMENT**, entered into this            day of            , 20\_\_\_\_, by and between the **COUNTY OF CORTLAND**, New York, (the “COUNTY”), a municipal corporation organized and existing under the laws of the State of New York with offices at 60 Central Avenue, Cortland, New York 13045, and            , (the “CONTRACTOR”), with offices located at            .

**WITNESSETH**, that the COUNTY and the CONTRACTOR, for the consideration hereafter named, agree as follows:

### **ARTICLE 1. WORK TO BE DONE AND CONSIDERATION THEREFORE**

The CONTRACTOR shall furnish

(Describe the work to be done; if a proposal for the work exists, attach same as an exhibit and cite said exhibit herein.)

### **ARTICLE 2. TERM**

The CONTRACTOR agrees to perform the services and/or supply goods beginning            , 20    and ending            , 20    .

### **ARTICLE 3. ACCEPTANCE AND FINAL PAYMENT**

Upon receipt of written notice that the Contract has been fully performed and the COUNTY agrees that the Contract has been fully performed, the CONTRACTOR shall file with the COUNTY an itemized voucher and the COUNTY shall pay the CONTRACTOR \$            within its normal payment period.

#### **ARTICLE 4. CONTRACTOR'S INSURANCE**

The CONTRACTOR shall not commence work under this Contract until he/she/it has obtained all insurance required under this paragraph and the COUNTY has approved such insurance. The COUNTY requires the following insurance coverage and amounts:

- (A) Comprehensive General Liability, including personal injury coverage of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and property damage coverage in the amount of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
- (B) Automobile coverage with a combined single limit of \$1,000,000.00.
- (C) Statutory Worker's Compensation Disability Coverage, and Unemployment Insurance.
- (D) Professional Liability Insurance in the amount of \$1,000,000.00 where applicable.

The CONTRACTOR shall submit at the time of the execution of this agreement, certificates of insurance properly executed by an authorized representative of its insurance underwriter, evidencing such insurance policies to be in full force and effect, naming the COUNTY which shall assume to include its officers, employees, agents and representatives as additional insured. The certificates of insurance shall name specifically "Cortland County, 60 Central Avenue, Cortland, New York 13045" as an additional insured.

Notice of termination of any such policies must be provided to the COUNTY at least ten (10) days in advance. CONTRACTOR shall, on or before this 10-day period, provide the COUNTY with a prospective Certificate of Insurance with the above coverage and limits for the balance of the term of this agreement.

All insurance coverage required to be purchased and maintained by the CONTRACTOR under this agreement shall be primary for the defense and indemnification on any action or claim asserted against the COUNTY and/or the CONTRACTOR for work performed under this agreement, regardless of any other collectible insurance or any language in the insurance policies which may be to the contrary.

Any accident shall be reported to the COUNTY as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the COUNTY as soon thereafter as possible and not later than three (3) days after the date of such accident.

**ARTICLE 5. REPRESENTATIONS OF CONTRACTOR**

The CONTRACTOR represents and warrants:

- (A) That he/she/it is financially solvent and that he/she/it is experienced in and competent to perform the services as described in Article 1 above,
- (B) That he/she/it is familiar with all Federal, State, municipal and departmental laws, ordinances and regulation which may in any way affect the work or those employed therein.

**ARTICLE 6. PERMITS AND REGULATIONS**

The CONTRACTOR shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

**ARTICLE 7. COUNTY’S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

The COUNTY shall have the right to stop work or terminate the Contract if:

- (A) The CONTRACTOR is adjudged bankrupt or makes an assignment for the benefit of creditors; or
- (B) A receiver or liquidator is appointed for the CONTRACTOR or for any of his/her/it’s property and is not dismissed within twenty (20) days after such appointment or the proceedings in connection therewith are not stayed on appeal within said twenty (20) days; or
- (C) The CONTRACTOR refuses or fails to prosecute the work or any part thereof with due diligence; or
- (D) The CONTRACTOR fails to make prompt payment to persons supplying labor for the work; or
- (E) The CONTRACTOR fails or refuses to comply with all applicable laws or ordinances; or
- (F) The CONTRACTOR violates any provision of the Contract;
- (G) In any event, the COUNTY, without prejudice to any other rights or remedy it may have, may by seven (7) days notice to the CONTRACTOR, terminate this contract pursuant to the grounds stated herein. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work is complete. If the unpaid balance of the compensation to be paid to the CONTRACTOR hereunder exceeds the expense of completing the work, such excess shall be paid to the CONTRACTOR. If such expense exceeds such unpaid balance, the CONTRACTOR shall be liable to the COUNTY for such excess.
- (H) COUNTY may terminate this contract upon thirty (30) days written notice to the CONTRACTOR if deemed in the best interest of the COUNTY.
- (I) COUNTY may terminate if the contract is not funded.

**ARTICLE 8. INDEMNIFICATION / HOLD HARMLESS**

The CONTRACTOR shall indemnify, defend and hold the COUNTY, its Departments, and its officers, employees, contractors, representatives and agents harmless from and against any and all claims, fines, demands, losses, damages and expenses, including attorney’s fees, relating to or arising out of any negligent or intentional acts and/or omissions of the CONTRACTOR or any of its directors, officers, employees, contractors, representatives, or agents.

**ARTICLE 9. INDEPENDENT CONTRACTOR**

The CONTRACTOR, including all its officers, employees and agents agrees that their relationship to the COUNTY and any of its Departments or units, is that of an independent contractor, and said CONTRACTOR covenants and agrees that they will not conduct themselves as, nor hold themselves out as, nor claim to be an officer or employee of the COUNTY by reason hereof and that they will not claim, demand or make an application to or for any right or privilege applicable to an officer or employee of the COUNTY, including, but not limited to, Worker’s Compensation coverage, Unemployment Insurance benefits, Social Security coverage, medical and/or dental benefits, or retirement membership or credit.

**ARTICLE 10. ASSIGNMENT**

Neither party may assign or sub-contract this contract or any portion thereof, without prior written consent of the other party hereto.

**ARTICLE 11. REQUIRED PROVISIONS OF LAW**

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to have been inserted herein. If any such provision is not inserted, through mistake or otherwise, then upon the application of either party, this Contract shall be physically amended to make such insertion.

**ARTICLE 12. VENUES AND DISPUTES**

The exclusive means of disposing of any dispute arising under this Agreement shall be decided in a New York State Court of competent jurisdiction located within Cortland County, New York. There shall be no right to binding arbitration. Pending final resolution of a dispute, the CONTRACTOR shall proceed diligently with performing the terms of this Agreement. The CONTRACTOR waives any dispute or claim not made in writing and received by the COUNTY within thirty (30) days of the occurrence giving rise to the dispute or claim. The claim must be in writing for a sum certain and any money requested must be fully supported by all cost and pricing information.

**ARTICLE 13. REMEDIES**

The remedies specified herein shall be cumulative and in addition to any other remedies available of law or in equity. Waiver of a breach of any provision of this Agreement shall not constitute a waiver of any other or future breach of the same provision or any other provision of the Agreement.

**ARTICLE 14. NOTICES**

All notices of any nature referred to in this agreement shall be in writing and sent by registered or certified mail, postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective parties may designate in writing.

To the CONTRACTOR:

To the COUNTY:                      Chairman of the Legislature  
   County of Cortland  
   60 Central Avenue  
   Cortland, New York 13045

**ARTICLE 15. SEVERABILITY**

In the event any provision hereof shall be held for any reason to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this agreement, which shall continue in full force and effect.

**ARTICLE 16. WAIVER**

No waiver of any breach of any condition of this Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

**ARTICLE 17. MODIFICATION**

This Agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.

**ARTICLE 18. EXECUTORY CLAUSE**

The COUNTY shall have no liability under this Agreement to the CONTRACTOR or to anyone else beyond funds appropriated and available for this Agreement.

**ARTICLE 19. RECORDS RETENTION AND AUDIT**

The CONTRACTOR agrees to retain all books, records and/or other documents relevant to this Agreement for six (6) years after the expiration or termination of this agreement or six (6) years after final payment, whichever is later, unless otherwise agreed to by the parties in writing. New York State auditors and/or any other persons duly authorized by the COUNTY shall have full access to and the right to examine any of the above-mentioned documents during the above-stated time period.

**ARTICLE 20. APPLICABLE LAW**

This Agreement is governed by the laws of the State of New York.

**ARTICLE 21. PRIVACY AND SECURITY (HIPAA)**

**(APPLICABLE TO ALL CONTRACTS FOR GOODS AND SERVICES WHICH RELATE TO MEDICAL RECORD-KEEPING)**

The purpose of this clause is to set forth the requirements for privacy and security of protected health information (“PHI”) mandated by 45 CFR Part 164 as they apply to the services provided by CONTRACTOR on behalf of COUNTY. Terms and conditions required relative to this agreement are incorporated and attached to this agreement as “Exhibit \_\_\_\_\_”.

**IN WITNESS WHEREOF**, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate (2 copies) each of which shall be deemed an original on the date written.

**COUNTY OF CORTLAND**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Susan Briggs, Chairman,  
Cortland County Legislature

Acknowledgement

STATE OF NEW YORK )  
COUNTY OF CORTLAND ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared **Susan Briggs**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**CONTRACTOR**  
(name of company)

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
(NAME OF SIGNATORY)

\_\_\_\_\_  
(CORP. OFFICER/POSITION)

Acknowledgement

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT \_\_\_\_\_**

**PRIVACY AND SECURITY (HIPAA)**

The purpose of this clause is to set forth the requirements for privacy and security of protected health information (“PHI”) mandated by 45 CFR Part 164 as they apply to the services provided by CONTRACTOR on behalf of COUNTY.

- (A) CONTRACTOR understands the importance of the privacy of a patient’s PHI, and agrees to protect that right to the extent necessary under this Agreement and under current federal, state, and local regulations and laws. All PHI will be handled in a private and/or confidential manner. For purposes of this Agreement, PHI is any data or other information as defined by the Department of Health and Human Services in the Code of Federal Regulations, 45 CFR §164.501.
- (B) Further, CONTRACTOR understands that County’s patients are intended third-party beneficiaries of this Agreement, and have all the rights and privileges of any third-party beneficiary under current law.
- (C) Uses and disclosures of PHI that are permitted are those necessary in order for CONTRACTOR to:
  - 1. Properly manage and administer its functions.
  - 2. Meet its legal responsibilities.
  - 3. Provide data aggregation services relating to the health care operations of the COUNTY.
  - 4. Make those disclosures required by law such as in situations of abuse, neglect, or domestic violence. The uses and disclosures permitted are limited to the PHI necessary to meet the requirements of the law that compels the use or disclosure.
  - 5. Make disclosures in response to a judicial or administrative proceeding through a lawful process such as a subpoena or discovery request.
- (D) The uses and disclosures of PHI that are required are those disclosures necessary:
  - 1. For patients to review their PHI.
  - 2. To provide an accounting of disclosures in accordance with 45 CFR §164.528.
  - 3. To allow the Secretary of Health and Human Services to determine County’s compliance with 45 CFR §164.504.
- (E) CONTRACTOR shall make the following assurances to COUNTY:
  - 1. CONTRACTOR agrees that it shall not use or disclose any patient’s PHI for any purpose not expressly stated in this Agreement. Further, CONTRACTOR shall not use or disclose PHI in any manner or context prohibited by the Health Insurance Portability and

Accountability Act of 1996 (“HIPAA”) and subsequent federal, state, and local regulations. If CONTRACTOR does use or disclose PHI for a purpose not expressly stated in this Agreement, it shall immediately cease the unauthorized use or disclosure, and shall notify COUNTY in writing of such use or disclosure. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect known to it of a use or disclosure of PHI not allowed under this Agreement.

2. CONTRACTOR further agrees that any sub-contractors or other persons or entities not directly employed by CONTRACTOR who use or disclose PHI obtained from COUNTY, shall abide by terms of this clause of this Agreement. Any sub-contractor or other person or entity not directly employed by CONTRACTOR that has used or disclosed PHI without proper authorization (as defined in HIPAA and subsequent federal, state, and local regulations) shall be considered to have acted as an agent of CONTRACTOR, and have violated the terms of this Agreement. COUNTY may consider this use or disclosure a material breach of this Agreement.
3. By signing this Agreement, CONTRACTOR is assuring COUNTY it has met the minimum safeguards necessary to protect unauthorized use or disclosure of PHI to any person or entity not party to this Agreement. Such safeguards shall include the security safeguards outlined by the 1996 Health Insurance Portability and Accountability Act and subsequent federal regulation, including: physical access to PHI, technical access to PHI, and administrative policies and procedures addressing security of PHI.
4. Provider shall report to COUNTY any instance or circumstance in which PHI has been used or disclosed by an unauthorized person or entity, including accidental disclosure by CONTRACTOR. CONTRACTOR shall notify COUNTY in writing of any steps or procedural changes made to address the unauthorized use or disclosure.
5. Should COUNTY find PHI used or disclosed to CONTRACTOR to be inaccurate or incomplete, CONTRACTOR shall incorporate any amendments or corrections to the PHI at COUNTY’s request.
6. CONTRACTOR will make PHI available to the individual who is the subject of the PHI for amendment. Such requests by the individual for their PHI from CONTRACTOR will be made through County. CONTRACTOR will incorporate any amendments to PHI that have been made by COUNTY by virtue of the individual’s request for amendment.
7. CONTRACTOR will provide a timely accounting to the individual or to COUNTY, if requested by either, of the disclosures of an individual’s PHI.

8. Should CONTRACTOR make any material alterations to the PHI while the PHI is in its possession, CONTRACTOR shall notify COUNTY of such alterations so that COUNTY may inform the patient who is the subject of the PHI.
  9. At the termination of this Agreement, CONTRACTOR shall return or destroy to the satisfaction of COUNTY any PHI held or maintained by CONTRACTOR and retain no copies of such information. If COUNTY and CONTRACTOR mutually agree that returning or destroying the PHI is not feasible or permitted under law, the PHI will remain protected after this agreement ends for as long as CONTRACTOR maintains the information. Further uses or disclosures of the PHI will be limited to those purposes that make the return or destruction infeasible.
- (F) If COUNTY determines CONTRACTOR has violated any of the above assurances, covenants or terms, the CONTRACTOR has committed a material breach of this Agreement. COUNTY may then provide CONTRACTOR with an opportunity to cure the breach or may terminate this Agreement and may report the violations to the Department of Health and Human Services (“HHS”) or other federal or state entity for possible prosecution or sanctions.
- (G) Both parties to this agreement agree that they will protect the integrity and confidentiality of any PHI being shared electronically.
- (H) CONTRACTOR hereby gives COUNTY and the Department of Health and Human Services (or an agent acting on behalf of HHS) the express right to inspect any and all internal practices, books, and records relating to the use or disclosure of PHI by CONTRACTOR. If HHS suspects an unauthorized use or disclosure of PHI by CONTRACTOR, HHS is authorized to pursue an investigation into CONTRACTOR’s activities for the purposes of determining whether an unauthorized use or disclosure of PHI has taken place.
- (I) CONTRACTOR may have policies and procedures relating to privacy and security in place prior to the commencement of this Agreement. If, after reasonable investigation, COUNTY concludes CONTRACTOR’s policies and procedures to be “adequate” protection of a patient’s privacy rights relating to PHI, CONTRACTOR may elect to continue to use its own policies and procedures. The term “adequate” in this clause means CONTRACTOR’s policies and procedures meet the minimum privacy and security standards as set forth in COUNTY’s privacy and security policies and procedures.
- (J) COUNTY, through the appropriate Department will:
1. provide CONTRACTOR with its Privacy Notice;

2. provide CONTRACTOR with any changes in, or revocation of, permission by a patient to use or disclose PHI, if such changes affect CONTRACTOR's permitted or required uses or disclosures; and
  3. notify CONTRACTOR of any restriction to the use or disclosure of PHI to which the COUNTY has agreed.
- (K.) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information (ePHI) that it creates, receives, maintains, or transmits on behalf of Cortland County.
- (L.) Ensure that any agent, including a subcontractor, to whom Contractor provides ePHI agrees to implement reasonable and appropriate safeguards to protect this information.
- (M.) Report to Security Officer of Cortland County any security incidents of which it becomes aware. (A security incident is defined as the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.)