

Order 180-07/08

Given first reading: 3/17/08

Public Hearing & Passage: 4/7/08 9-0

EDWARD J. SUSLOVIC (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

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CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

ORDER APPROVING INTERLOCAL AGREEMENT RE: FORENSIC LABORATORY AT THE PORTLAND PUBLIC SAFETY BUILDING

ORDERED, that the City Manager is authorized to execute the attached Interlocal Agreement for the construction, equipping and management of the shared Forensic Laboratory in the Portland Public Safety Building; and

BE IT FURTHER ORDERED, such authorization is contingent upon final approval of the financing of such construction and equipment by the Portland City Council.

**INTERLOCAL AGREEMENT BETWEEN
MUNICIPALITIES OF PORTLAND, SOUTH PORTLAND, SCARBOROUGH,
WESTBROOK, FALMOUTH, CAPE ELIZABETH,
YARMOUTH, WINDHAM AND THE COUNTY OF CUMBERLAND**

AGREEMENT made this ____ day of _____, 2008, by and between the City of Portland (Portland), a municipality under the laws of the State of Maine with a principal location at 389 Congress Street, Portland, Maine 04101 (“Portland”); the City of South Portland, a municipality under the laws of the State of Maine with a principal location at 25 Cottage Road, South Portland, Maine 04106 (“South Portland”); the City of Westbrook, a municipality under the laws of the State of Maine with a principal location at 2 York Street, Westbrook, Maine 04092 (“Westbrook”), the Town of Falmouth, a municipality under the laws of the State of Maine with a principal location at 271 Falmouth Road, Falmouth, Maine 04105 (“Falmouth”); the Town of Scarborough, a municipality under the laws of the State of Maine with a principal location at 259 Route One, Scarborough, Maine 04070 (“Scarborough”); the Town of Cape Elizabeth, a municipality under the laws of the State of Maine with a principal location at 320 Ocean House Road, Cape Elizabeth, Maine 04107 (“Cape Elizabeth”); the Town of Yarmouth, a municipality under the laws of the State of Maine with a principal location at 200 Main Street, Yarmouth, Maine 04096, the Town of Windham, a municipality under the laws of the State of Maine with a principal location at 8 School Road, Windham, Maine 04062, and the County of Cumberland, a county government under the laws of the State of Maine with a principal location at 142 Federal Street, Portland, Maine 04101 (“County”). The foregoing are also referred to

herein collectively as the “Parties” or singly as “Party”, or where appropriate, as the “Initial Party” or “Initial Parties”.

WHEREAS, both state law and the municipalities encourage the development of regional coalitions of local governments in order to establish efficient and effective delivery of municipal services; and

WHEREAS, the City of Portland currently has a forensic crime laboratory which processes evidence from crime scenes to aid in the detection and prosecution of criminals; and

WHEREAS, recent years have seen a sharp increase in the need for forensic analysis of evidence; and

WHEREAS, the Chief of the Maine State Police and the State Crime Laboratory supports such a regional crime laboratory which will result in a more effective use of the State Police Crime Laboratory’s resources; and

WHEREAS, it will be to the advantage of all parties and to the State of Maine to provide a regional crime laboratory in the City of Portland, enabling each Party to improve its law enforcement services for the public, and to relieve and supplement the State Police Crime Laboratory;

WHEREAS, all Parties are willing to share in a regional forensic crime laboratory on a cost-sharing basis through this interlocal agreement, with Portland being the designated location for such laboratory;

NOW THEREFORE, in consideration of the covenants herein, the parties do agree as follows:

1. Interlocal Agreement:

This Agreement shall be considered an interlocal cooperation agreement pursuant to 30-A M.R.S.A., Sec. 2201 et. seq. for the purpose of providing a regional forensic crime laboratory (the “Lab”) available for the use of each Party on a cost-sharing basis on the terms and conditions in this Agreement. The Lab shall be known as the Metro Regional Crime Lab.

2. Location of Lab.

The regional Lab shall be located at 109 Middle Street on the third floor of the Portland Public Safety Building.

3. Establishment of Board.

a. There is hereby established a governing Board for the Lab consisting of the following:

The Police Chief of each Party, or his/her authorized designee and the Cumberland County Sheriff or his/her authorized designee. The Portland Police Chief shall serve as the chair of the Board through occupancy of the Lab; within 60 days after issuance of a final certificate of occupancy, the Board shall elect its Chair pursuant to the Board’s policies and procedures.

b. The Board shall be an administrative board, with the following duties:

i). Establish policies and procedures for the operation of the Lab, including without limitation final approval of the initial outfitting and equipping of such Lab and for the scope of forensic services to be provided through said Lab;

ii). Recommend a budget of itemized expenditures and revenues to each town, city or county manager or administrator no later than

January 31st of each year, including expenditures in addition to those required in Section 5, paragraphs a (i) – (iii) and b (i) – (ii) for the next immediate fiscal year, such recommendations taking into account the County’s calendar year fiscal year;

- iii). Produce an annual report with its budget recommendations, with any other recommendations for modification, revision or repeal of this Agreement;
- iv). Make recommendations to the town, city or county manager or administrator of each Party as to the terms for any additional agreements or amendments needed to this Agreement.

c. The Board’s year shall be from July 1 – June 30, and it shall select a Chair from its members to serve during each Board year. All Board recommendations shall require a favorable vote of Three-Fourths ($\frac{3}{4}$) of the Board members. Any recommendation which requires physical or operating modifications to the Lab shall require the approval of Portland.

d. Upon receipt of written notice of Board recommendations as to the budget, or additional agreements or amendments, each Town or City Council and the County Commissioners shall review those recommendations, with budget recommendations to be considered in time to be included in the next immediate fiscal year budget. If the legislative bodies of Three-Fourths ($\frac{3}{4}$) of the total number of the Parties approve such recommendations, then all Parties to this Agreement are bound thereby so long as they remain a Party to this Agreement.

Any costs approved in addition to those in Section 5 and any revenues shall be allocated among the Parties as provided in Exhibit B, as it may be updated from time to time.

4. Functional Organization:

The Lab shall be located on the third floor of the Portland Public Safety Building at 109 Middle Street, and to the extent reasonable and within Portland's budgetary constraints, shall be accessible to the parties on a 24 hour/7 days per week basis, subject to required security precautions by Portland. Each Party's employees using the Lab shall be and remain the employees of their respective employers for all purposes, regardless of where they may be working or their presence in the Lab. All employees shall be required to follow the rules for the use of the Lab which shall be promulgated by the Board. Such rules for use shall require the approval of Portland's Police Chief.

5. Costs:

Costs shall be allocated between the parties on the following basis:

a. Capital costs.

- i) After approval of all participating Parties and subject to final approval of the authorization of bonds for the Lab in the City of Portland's CIP program, Portland shall finance the initial cost of design, construction and renovation attributable to the Lab, not to exceed One Million Four Hundred Ninety One Thousand and One Hundred Dollars (\$1,491,100).

Effective with the due date of Portland's first bond payment, estimated to be in the spring of 2009 (an interest-only payment), the Parties shall be assessed a proportionate share of such financing, design, construction and renovation costs based upon a 20 year amortization schedule for those costs at a 4.25% interest rate. Each Party's share shall be determined upon a per capita basis, based upon the Population Estimates of the U.S. Census Bureau for Maine Cities and Towns, dated July 1, 2006, for Cities and Towns as shown in Exhibit A and on Exhibit B, each of which is attached hereto and incorporated herein. Each Party's share shall be finally determined based upon the actual total construction costs, not to exceed the \$1,491,100, within thirty (30) days of final payment for such costs, and a revised Exhibit B shall be attached to this Agreement and incorporated herein. The initial interest only payment to Portland shall be due prior to June 1 of the year of the first interest only payment by Portland.

- ii) Payment shall be made annually over 20 years to the City of Portland for such shared capital costs no later than December 31 following the initial interest only payment. "Per capita" as used in this Agreement in regard to the County shall mean the population of those towns whose law enforcement services are provided by the County in its coverage area, currently the towns and populations listed in Exhibit A.

iii) A schedule for the annual cost-sharing for the initial capital costs (and the initial equipment costs in paragraph b immediately below) is included in Exhibit B, attached hereto and incorporated herein.

b. Equipment.

(i) After approval of all participating Parties and subject to final approval of the bonds for the Lab in the City of Portland's CIP program, Portland shall finance the initial cost of equipping and furnishing the Lab, not to exceed \$150,000. Effective with the due date of Portland's first payment, estimated to be in the spring of 2009 (an interest-only payment), the Parties shall be assessed a proportionate share of such equipment and furnishing costs based upon a 10 year amortization schedule for those costs at 4.25% interest rate and on the same per capita basis as provided in paragraph (a) immediately above and on Exhibit B. Each Party's share shall be finally determined based upon the actual total costs of such equipment and furnishings, not to exceed \$150,000, within thirty (30) days of final payment for such costs, and a revised Exhibit B shall be attached to this Agreement and incorporated herein. The initial interest only payment to Portland shall be due prior to June 1 of the year of the first interest only payment by Portland.

- ii. Payment shall be made annually over 10 years to the City of Portland for such shared costs no later than December 31 following the initial payment, as shown in Exhibit B.
- c. Recalculation of the proportionate cost shares of each Party hereunder shall be done within six (6) months after final population figures are available from the 2010 decennial U.S. census and each decennial census thereafter, or upon addition of a community as a Party to this Agreement as provided in Section 11 below.
- d. Disposables. The Board shall provide in its rules for the provision and budgeting for disposables for use in the Lab.
- e. Unshared costs. After occupancy of the Lab, Portland shall be responsible for
100% of the cost of the following:
 - i) capital costs related to repair and maintenance of the building;
 - ii) operating costs for the building, including but not limited to electricity, heat, water, sewer, cleaning, ordinary repair and maintenance for the building itself, and other similar costs as defined by the Board, other than Disposables the costs for which shall be shared as determined by the Board; and
 - iii) cost for all risk casualty insurance, or self-insurance, for the equipment in the Lab, including the equipment transferred to the City under paragraph b immediately above.

f. Revenues. In the event of receipt of any state or federal grants or other revenue for the Lab, credit for such revenue shall be credited to each of the Parties on the same basis as provided for the sharing of costs in Exhibit B, such credit to be allocated over the period for which the grant or revenue was received. If any local cost is required for the grant, such costs shall be allocated to the Parties on the same basis as provided for the sharing of costs in Exhibit B.

g. All payments due to Portland hereunder shall be paid to the City of Portland, Att: Finance Director, 389 Congress Street, Portland, Maine 04101, as established herein for the initial Capital and Equipment costs and as provided by the Parties or such other schedule as established by the Parties for other costs.

6. Property:

All capital equipment and personal property located in the Lab shall be and remain the property of Portland regardless of the source of financing. The Board shall make a recommendation for the disposal of all such property, but the final disposition of any such property determined to be surplus to the Lab shall be within the discretion of, and subject to, the procedures of Portland.

7. Indemnification:

Each Party shall defend, indemnify and hold each and every other Party hereto harmless from any claim, cause of action, liability or expense, including without limitation, costs and reasonable attorneys fees, arising out of or resulting from the error, act or omission of the indemnifying Party's officers, agents or employees.

This section shall not be interpreted to waive the monetary limits or substantive

areas of immunity under the Maine Tort Claims Act (14 M.R.S.A. Sec. 8101 et. seq.) or any other immunities or defenses under the Act or other applicable law.

8. Insurance:

Each Party shall maintain insurance, or provide through self-insurance, comprehensive general liability and automobile insurance coverage in the minimum amount of Four Hundred Thousand Dollars (\$400,000) or such other amount as may be required under the Maine Tort Claims Act, and shall insure or self-insure its employees for workers compensation claims. Each Party specifically waives any right of subrogation against Portland under its workers compensation coverage. In the event such waiver of subrogation cannot be obtained by a Party from its insurer, that Party shall defend and indemnify and hold Portland harmless from any claims brought by that Party's insurer for such claims.

9. Term:

a. This Agreement shall remain in effect until 11:59 p.m. December 31, 2028, unless earlier terminated by mutual agreement of all Parties.

b. This Agreement shall not take effect unless it is approved by the legislative bodies of each of the Parties, other than Portland, no later than April 1, 2008, and both the Agreement and the authorization of bonds is thereafter approved by the Portland City Council in its CIP program. In the event the Parties, other than Portland, have not all approved this Agreement by April 1, 2008, Portland shall have no obligation hereunder to proceed with consideration

of this Agreement or the financing, design, renovation, construction, equipping or furnishing of the Lab.

10. Termination of Agreement:

Any Party may terminate its participation under this Agreement in its discretion and for its convenience upon no less than eighteen (18) months prior written notice to each of the members of the Board, with a copy to the City, Town or County Manager or Administrator of each Party. Said notice of termination shall be provided to the Board and the Managers and Administrators no later than December 31 of any year which is at least 18 months prior to the termination date. The termination shall be effective starting on the July 1 date that is at least eighteen (18) months from the date of the notice of termination. Notwithstanding a Party's termination, the terminating Party shall continue to be liable for its share of all costs incurred hereunder prior to receipt of notice of termination until such liabilities are paid in full as provided in Section 13 below.

11. Additional municipalities:

The parties understand and agree that additional towns, municipalities or counties (an "entity") may wish to join this Interlocal Agreement. If the legislative body of an additional entity approves its participation as a Party to this Agreement, prior to becoming a Party entitled to use the Lab, the entering entity must pay a lump sum to the City of Portland which is equal to the amount it would have paid as if it had been an Initial Party, through the date of its joining this Interlocal Agreement. Said lump sum amount will be credited to the Initial Parties based upon the cost sharing in Exhibit B. Thereafter, all cost sharing will be

recalculated prospectively to include the additional entity (including without limitation the addition of a community from those served by Cumberland County), said recalculation to be based upon the most recent Population Estimates of the U.S. Census Bureau for Maine Cities and Towns.

12. Entire Agreement:

This Agreement constitutes the entire agreement between the parties. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the entire agreement and the parties agree to meet and negotiate a new clause, section or provision. Amendments shall be in writing and executed by all parties. Each Party represents that it has the authority to enter into this Agreement and that it is being executed by its duly authorized representatives. This Agreement shall be governed solely by the laws of the State of Maine.

13. Binding Agreement; Survival of Terms:

a. Notwithstanding termination of any Party's participation hereunder, the terminating Party shall continue to be liable to Portland for its share of the capital costs of the Lab as provided in Section 5, paragraph a (i) – (iii), and for any outstanding, unpaid liability for equipment purchased for the Lab under Section 5, paragraph b or any other liabilities incurred prior to receipt of notice of termination of that Party's participation. These liabilities shall survive termination or expiration of this Agreement in whole or in part and shall remain a binding obligation of each Party until paid in full. In addition to the foregoing, the obligation of each Party under Sections 7 and 8 (Indemnification and

Insurance) shall survive termination or expiration of this Agreement, or that Party's participation hereunder.

b. No Party, other than Portland, shall have any ownership in the Lab or its Equipment. Upon termination of a Party's participation, that Party may either pay a lump sum for its unamortized share of its liability for Capital and Equipment costs or may continue to make its annual payments under Exhibit B. All other costs owed by that Party under this Agreement shall be immediately due and payable within thirty (30) days of the last day of that Party's participation in this Agreement.

c. Without limiting the provisions of Section 14, the Parties understand and agree that this document constitutes a legally enforceable contract and that in the event any Party defaults on its financial obligations hereunder, any one of or all of the Parties not in default may enforce the terms of this Agreement in the Cumberland County Superior Court of the State of Maine. Portland shall provide written notice to any Party, with a copy to all Board members, of any default in payment required hereunder and the defaulting Party shall have (30) days to cure such default. If such default is not cured within the 30 days, then the defaulting Party shall be prohibited from any further use of the Lab and may be deemed by the Board to have terminated its participation under this Agreement.

14. Authority:

By executing this Agreement, each Party warrants that the representative signing below has been duly authorized by all appropriate actions of that Party's governing body to enter into and execute this Agreement, and that this Agreement

represents a legal, valid and binding obligation of each Party, enforceable upon it in accordance with its terms and by application of equitable principles if equitable remedies are sought, except as enforceability may be limited by applicable bankruptcy or similar laws.

SIGNATURE PAGES

EXHIBIT A

POPULATION ESTIMATES OF THE U.S. CENSUS BUREAU, JULY 1, 2006 (Metro Coalition + Cumberland County + Yarmouth + Windham)

<u>Name</u>	<u>Est. Pop</u>	<u>% of Total</u>
Portland	63,011	29.17
South Portland	23,784	11.01
Scarborough	18,880	8.74
Westbrook	16,201	7.50
Falmouth	10,557	4.89
Cape Elizabeth	8,826	4.09
Cumberland County	50,073*	23.18
Yarmouth	8,132	3.76
Windham	16,546	7.66
TOTAL:	216,010	100.0%**

*Populations of Towns served by Cumberland County Coverage Area For Law Enforcement Services (see Exhibit A1)

**May vary slightly due to rounding.

EXHIBIT A1

**POPULATION OF TOWNS SERVED BY
CUMBERLAND COUNTY LAW ENFORCEMENT**

Baldwin	1,398
Casco	3,686
Gray	7,420
Harpswell	5,204
Harrison	2,369
Naples	3,589
New Gloucester	5,367
North Yarmouth	3,506
Pownal	1,596
Raymond	4,601
Sebago	1,505
Standish	<u>9,932</u>
TOTAL:	50,073

EXHIBIT B
(See Cost Sharing Table for Metro Coalition
+ Cumberland County + Yarmouth + Windham)

Proposed Forensic Crime Laboratory
Interlocal Agreement Between Named Communities
Proposed Allocation of Costs, based on population
 12-Mar-08
 With 9 Communities Participating
 dgk

EXHIBIT B

Estimated Initial Facility %	Estimated Initial Equipment Commitment Population	Estimated Initial Equipment Of Total	Estimated Annual Payment Commitment	Estimated Annual Payment Facility*	Estimated Annual Payment Equipment*	Estimated Total Annual Payment	Estimated FY 2009 Initial Payment	Estimated FY 2009 Initial Payment
Municipality	63,011	29.17%	1,491,100	150,000	20 years	10 years	**	***
Portland	63,011	29.17%	434,960	43,756	32,671	5,542	38,213	10,173
South								3,840
Portland	23,784	11.01%	164,179	16,516	12,332	2,092	14,424	
Scarboroug h	18,880	8.74%	130,327	13,111	9,789	1,661	11,450	3,048
Westbrook	16,201	7.50%	111,834	11,250	8,400	1,425	9,825	2,616
Falmouth	10,557	4.89%	72,874	7,331	5,474	929	6,402	1,704
Cape								1,425
Elizabeth	8,826	4.09%	60,925	6,129	4,576	776	5,353	
Cumberland County*	50,073	23.18%	345,650	34,771	25,963	4,404	30,367	8,084
Windham	16,546	7.66%	114,216	11,490	8,579	1,455	10,034	2,671
Yarmouth	8,132	3.76%	56,135	5,647	4,216	715	4,932	1,313
Total	216,010	100%	1,491,100	150,000	112,000	19,000	131,000	34,873

Notes:

*Populations of Towns served by Cumberland County Coverage Area For Law Enforcement Services
 SELECTED POPULATION ESTIMATES OF THE U.S. CENSUS BUREAU, JULY 1, 2006

** May vary due to rounding & estimates made

*** Fy 2009 payment is expected to be one interest payment only, with the first full payment due no later than December 31, 2009

Payment calculations

Initial payment	1,491,100	150,000
Interest rate - estimated	4.25%	4.25%
Term, in years	20	10
Annual payment	112,160	18,725
Annual payment, rounded	112,000	19,000