

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

AGREEMENT made this ____ day of _____, 2007, 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 295 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 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”) and (add all additional participants). The foregoing are also referred to herein collectively as the “Parties” or singly as “Party”.

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 Maine State Police Crime Laboratory's resources are being stretched, resulting in delay or inability to obtain such analysis; 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. 2203 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.

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.

- 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 recommendations for the outfitting and equipping of such Lab and for the scope of forensic services to be provided through said Lab;
- ii). Recommend a budget to each town or city manager or administrator no later than January 31st of each year for expenditures in addition to those required in Section 5, paragraphs a (i) – (iii) and b (i);
- 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 City Councils or Board of Selectmen of each Party as to the terms for any additional agreements or amendments needed under Section 11 below.

- 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 unanimous vote of the Board members. Any recommendation which requires physical or operating modifications to the Lab shall require the approval of Portland.

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, 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.

5. Costs:

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

- a. Capital costs.
 - i) Portland shall finance the initial cost of design, construction and renovation attributable to the Lab, estimated to be One Million Four Hundred Ninety One Thousand and One Hundred Dollars (\$1,491,100). Effective with the July 1 which is at least 6 months after the issuance of a Certificate of Occupancy for the Lab, the Parties shall be assessed a proportionate share of such 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, attached hereto and incorporated herein. Each Party's share shall be finally determined based

upon the actual total construction costs determined within thirty (30) days of final payment for such costs, and a revised Exhibit B shall be attached to this Agreement and incorporated herein.

ii) Payment shall be made over 20 years to the City of Portland for such shared capital costs no later than December 31 of each year following the initial July 1 assessment. "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. To the extent permitted by law, the County shall not pass the costs incurred hereunder on to the municipal Parties participating in this Agreement.

iii) A schedule for the annual payments 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. The schedule of payments shall be recalculated prospectively upon the addition of a participating community as a Party (including without limitation the addition of a community from those served by Cumberland County) and recalculation of the relative populations based upon the most recent Population Estimates of the U.S. Census Bureau for Maine Cities and Towns.

b. Equipment.

(i) Portland shall finance the initial cost of equipping and furnishing the Lab, estimated to be \$150,000. Effective with the July 1 which is at least 6 months after the issuance of a Certificate of Occupancy for the Lab, 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 % 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, determined 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 schedule of payments shall be recalculated prospectively upon the addition of a participating community as a Party (including without limitation the addition of a community from those served by Cumberland County) and recalculation of the relative populations based upon the most recent Population Estimates of the U.S. Census Bureau for Maine Cities and Towns.

(ii) Thereafter, the cost of replacement, upgrading or provision of additional equipment shall also be shared 100% by the parties on a per capita basis. Upon occupancy of the Lab, each Party shall, to the extent legally possible, and subject to review by the Board as to the utility of such equipment, provide its existing crime lab equipment to Portland for use in the Lab, with title to such equipment transferring to Portland upon delivery.

c. Disposables. The Board shall provide in its rules for the provision and budgeting for disposables for use in the Lab.

- d. 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.
- e. Revenues. In the event of receipt of any state or federal grants for the Lab or the imposition of any user fees for those not a party to this Agreement, credit for such revenue shall be credited to each of the Parties on a per capita basis over the period for which the grant or fee was received.

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. Each Party's share for the purchase of equipment shall be paid to the Finance Director of Portland within 30 days of presentation of an invoice for such equipment to the Board. Portland shall establish an identified account number for the deposit of such funds. 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 for Twenty (20) years from the date of execution, unless earlier terminated by mutual agreement of all Parties.

b. This Agreement shall not take effect unless approved by all of the Parties no later than _____, 2007. In the event the Parties have not all approved it by that date, Portland shall have no obligation hereunder to proceed with the 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 the Board. Said notice of termination shall be provided to the Board no less than six (6) months prior to July 1st so that such termination shall take effect no earlier than the next following July 1. The termination shall be effective beginning for the fiscal year starting on July 1 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 such 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 or municipalities may wish to use the Lab and the services hereunder, and in such event, this Agreement will be amended to add such town or municipality, such amendment to address, at a minimum, the terms of participation in costs hereunder and participation, if any, on the Board.

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

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.

NOTARIZED SIGNATURES

EXHIBIT A

POPULATION ESTIMATES OF THE U.S. CENSUS BUREAU, JULY 1, 2006

<u>Name</u>	<u>Est. Pop</u>	<u>% of Total</u>
Portland	63,011	22.6
South Portland	23,784	8.5
Scarborough	18,880	6.8
Westbrook	16,201	5.8
Falmouth	10,557	3.8
Cape Elizabeth	8,826	3.2
Cumberland County	50,073*	17.9
Windham	16,546	5.9
Gorham	15,402	5.5
Saco	18,289	6.5
Biddeford	21,898	7.8
Cumberland	7,653	2.7
Yarmouth	8,132	2.9
Total:	279,252	100.0%**

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

**May vary slightly due to rounding.

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 Excel Cost Sharing Table)