

Order 153-13/14

Passage: 9-0 on 3/3/14

Effective 3/13/14

MICHAEL F. BRENNAN. (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

JOHN R. COYNE (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L).

**ORDER APPROVING INTERLOCAL AGREEMENT BETWEEN  
MUNICIPALITIES OF PORTLAND, WESTBROOK, BRUNSWICK, COUNTY OF  
CUMBERLAND AND STATE OF MAINE DEPARTMENT OF PUBLIC SAFETY,  
AND APPROVING THE MEMORDANDUM OF UNDERSTANDING BETWEEN  
THE CITY AND CUMBERLAND COUNTY**

**ORDERED,** that pursuant to 30-A M.R.S.A. §2203, the City hereby approves and accepts the Interlocal Agreement between the municipalities of Portland, Westbrook, Brunswick, the County of Cumberland and the State of Maine Department of Public Safety and the Memorandum of Understanding between the City and Cumberland County substantially in the form attached hereto as Exhibits A and B;

**BE IT FURTHER ORDERED,** that the City Council hereby authorizes the City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said documents.

## Exhibit A

### **INTERLOCAL AGREEMENT BETWEEN MUNICIPALITIES OF PORTLAND, WESTBROOK, BRUNSWICK, COUNTY OF CUMBERLAND AND STATE OF MAINE DEPARTMENT OF PUBLIC SAFETY**

**THIS AGREEMENT** is made as of this 1st day of January, 2014, by and between the City of Portland, a municipality under the laws of the State of Maine with a principal location at 389 Congress Street, Portland, Maine 04101, using as its contact its Portland Regional Communications Center (“PRCC”); 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, using as its contact its public safety department; the Town of Brunswick, a municipality under the laws of the State of Maine with a principal location at 28 Federal Street, Brunswick, Maine 04011, using as its contact its Police Department; 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, using as its contact its Regional Communications Center; and the State of Maine Department of Public Safety, with a principal location of 45 Commerce Drive, Suite 1, Augusta, Maine 04333, using as its contact its State Police Regional Communications Center in Gray, Maine. The foregoing are also referred to herein collectively as the “Participants” or singly as “Participant”, or where appropriate, as the “Initial Participant” or “Initial Participants”.

**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 PRCC has entered or will enter into a software license agreement and professional services agreement with FATPOT Technologies, LLC substantially in the form attached hereto as Exhibit A, for the purchase and implementation of CADFusion Solution software, a part of which is a Statement of Work (“SOW”) attached hereto as Exhibit B. The PRCC’s implementation of the FATPOT CADFusion Solution software will require the cooperation of the Participants for access to their CAD systems. The Participants require assurances that the implementation will not have any negative impact on the Participants’ CAD systems and that all Participants will be involved in the implementation process; and

**WHEREAS**, Participants will simultaneously execute a “CAD Interoperability System User Agreement” attached hereto as Exhibit C, in which the Participants agree to adopt certain guidelines,

agency responsibilities and operating principles for the purpose of creating a Computer Aided Dispatch Interoperability System (CADIS). Portland uses Sungard CAD while Westbrook and Brunswick use TriTech IMC CAD. Cumberland County uses Spillman CAD, and the Maine State Police uses XWave CAD. CADIS is being developed, in part, to allow these four systems to effectively communicate and share CAD information.

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

**1. Interlocal Agreement:**

This Agreement shall be considered an interlocal cooperation agreement pursuant to 30-A M.R.S.A. § 2201 et seq. and the purpose of this Agreement is to document the cooperation and responsibilities of the Participants in the development and installation of a CAD Interoperability System.

**2. Obligation of Participants:**

- a. Participants agree to review, and may provide comments regarding, the SOW, Exhibit B.
- b. The CADIS Project Manager (“Project Manager”) will consult with the Participants regarding project scheduling and management throughout the implementation; will coordinate with the Participants and other personnel regarding aspects of project management; and will obtain Participants input and consent to the schedule for completion of SOW deliverables.
- c. User acceptance testing under the SOW shall include the Participants’ review, comments and suggestions regarding the use and implementation of CADIS.
- d. Each of the Participants will make best efforts to complete the tasks and activities described herein.

**3. Tasks and Activities:**

- a. The Participants will each provide a single point of contact for coordination with the Project Manager, and will provide necessary technical staff prior to and during the remote install, testing and live cut for all Participants. A list of the contacts with contact information is attached as Exhibit D.
- b. The Participants will be responsible for providing FATPOT Technologies access to their network in a manner accepted by the Participants.

- c. The Participants will be responsible for providing FATPOT with current printed documentation of any/all network design; data transfer protocols; file locations; and data access considerations that will be impacted by this interface.
- d. The Participants will participate in user acceptance testing and help report any issues to FATPOT in a timely manner as outlined in the project plan.

**4. Costs:**

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

- a. The City of Portland will use the grant funds awarded in an amount not to exceed \$103,350.00 cover the costs of the 'view only' FATPOT CADFusion Solution software detailed in Exhibits A and B. The grant funding does not cover any hardware, with the understanding that no additional hardware is required now. The grant will connect the following sites and CAD systems: Portland Regional Communications Center (Sungard); Cumberland County Regional Communications Center (Spillman); Westbrook public safety (IMC); Brunswick Police Department (IMC); and State Police Regional Communications Center in Gray, Maine (XWave).
- b. Maintenance of the software for year two of the project will be split between the City of Portland and Cumberland County, and maintenance costs in year two are contracted to be \$13,860. Maintenance for the software for years three, four and five of the project will be split between all Participants, and maintenance costs in years three through five are contracted to be \$15,200. Payments shall be made annually during the term of this Agreement to the City of Portland for such shared costs no later than December 31 each year, for that year, and the City of Portland shall in turn make payments to the software maintenance vendor, serving as fiscal agent for the grant program.
- d. The cost-sharing formula between all Participants for years three, four and five will be based on a Participant's number of user licenses/stations, and the total number of user licenses/stations, in this system; this formula may be amended at a future date.
- e. If alternative funding sources to pay for maintenance in any of years two through five are located, the financial benefit will be shared by all Participants, on the same basis as maintenance is funded as described above.

**5. Indemnification:**

Each Participant shall defend, indemnify and hold each and every other Participant hereto harmless from any claim, cause of action, liability or expense, including without limitation, costs and reasonable attorney's fees, arising out of or resulting from the error, act or omission of the indemnifying Participant's officers, agents or employees. This section, however, shall not be interpreted to waive the monetary limits or substantive rights 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.

**6. Term:**

This Agreement shall remain in effect for five years, unless earlier terminated as provided herein.

**7. Termination of Agreement:**

Any Participant may terminate its participation under this Agreement in its discretion and for its convenience upon no less than six months' prior written notice to each of the Participants. Said notice of termination shall be provided to the Participants no later than six months prior to the proposed termination date. Notwithstanding a Participant's termination, the terminating Participant 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 10 below.

**8. Additional municipalities:**

The Participants understand and agree that additional towns, municipalities or counties (an "entity") or state agencies may wish to join this Interlocal Agreement. If the proper authority of an additional entity approves its participation as a Participant to this Agreement, prior to becoming a Participant, 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 Participant through the date of its joining this Interlocal Agreement. Said lump sum will be credited to the Initial Participants based upon the cost sharing in Section 4 above. Thereafter, all cost sharing will be recalculated prospectively to include the additional entity, in accord with Section 4 above.

**9. Entire Agreement and Governing Law:**

This Agreement constitutes the entire agreement between the Participants, with respect to this subject matter, except for the related CAD Interoperability System User Agreement and a

Memorandum of Understanding between the City of Portland and Cumberland County, of even or near date, regarding maintenance cost sharing. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the entire agreement; and in such a case the Participants agree to meet and negotiate a substitute clause, section or provision. Amendments shall be in writing and executed by all Participants. This Agreement shall be governed solely by the laws of the State of Maine.

**10. Binding Agreement; Survival of Terms:**

- a. Notwithstanding termination of any Participant's participation hereunder, the terminating Participant shall continue to be liable to Portland for its share of costs as provided in Section 4 above or any other liabilities incurred prior to the effective date of termination of that Participant'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 Participant until paid in full. In addition to the foregoing, the obligation of each Participant under Section 5 shall survive termination or expiration of this Agreement or that Participant's participation hereunder. All costs owed by that Participant shall be immediately due and payable within thirty (30) days of the last day of that Participant's participation in this Agreement.
- b. Without limiting the provisions of Section 11, the Participants understand and agree that this document constitutes a legally enforceable contract and that in the event any Participant defaults on its financial obligations hereunder, any one of or all of the Participants 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 Participant, with a copy to all other Participants, of any default in payment required hereunder and the defaulting Participant shall have thirty (30) days to cure such default. If such default is not cured with the thirty days, then the defaulting Participant may be deemed by the other participating Participants to have terminated its participation under this Agreement.

**11. Authority:**

By executing this Agreement, each Participant warrants that the representative signing below has been duly authorized by any necessary action of that Participant's legislative body to enter into

and execute this Agreement, and that this Agreement represents a legal, valid and binding obligation of each Participant, enforceable upon each Participant 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.

**WITNESS**

\_\_\_\_\_

**CITY OF PORTLAND**

By: \_\_\_\_\_  
Mark H. Rees, City Manager

**WITNESS**

\_\_\_\_\_

**CUMBERLAND COUNTY**

By: \_\_\_\_\_  
Name:

**WITNESS**

\_\_\_\_\_

**MAINE DEPT. OF PUBLIC SAFETY**

By: \_\_\_\_\_  
Name:

**WITNESS**

\_\_\_\_\_

**CITY OF WESTBROOK**

By: \_\_\_\_\_  
Name:

**WITNESS**

\_\_\_\_\_

**TOWN OF BRUNSWICK**

By: \_\_\_\_\_  
Name:

**WITNESS**

\_\_\_\_\_

**STATE OF MAINE -  
DEPARTMENT OF PUBLIC SAFETY**

By: \_\_\_\_\_  
Name:

## Exhibit B

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into as of the 1st day of January 2014, between the City of Portland and the County of Cumberland, Maine (County).

WHEREAS, public safety agencies located in the County have a need to share real-time data through linkage of disparate Computer Aided Dispatch (CAD) systems; and

WHEREAS, the City applied and has been awarded a Homeland Security Grant to improve preparedness and response capabilities in the State of Maine, including the linkage of CAD systems; and

WHEREAS, the City and the County wish to establish guidelines and agreements for the administration of said grant fund expenditures, and other related expenditures;

NOW THEREFORE, the City and the County agree as follows:

#### **I. CAD Software**

The City shall purchase software known as FATPOT CADFusion Solution software. Said software shall be purchased as “view only”. This software shall be used to link disparate CAD systems throughout the County to aid in sharing authorized information, interoperability and situational awareness.

#### **II. Fiscal Agent**

The City and/or Portland Fire Department (PFD) will serve as the applicant and fiscal agent for the grant program. The PFD’s Principal Financial Officer (PFO) shall administer the grant and submit all required reports to U.S. Department of Homeland Security and Maine Emergency Management Agency. The PFO shall have the authority to promulgate any rules, regulation or procedures necessary to the operation of the grant program and this agreement.

#### **III. Expenditures**

The City and /or Portland Fire Department (PFD) will use the grant funds awarded to cover the costs of the view only FATPOT CADFusion Solution in the attached software proposal. No hardware will be purchased with grant funds. The project will connect at least the following five sites and CAD systems: Portland Regional Communications Center (Sungard); Cumberland County Regional Communications Center (Spillman); Westbrook public safety department (TriTech IMC); Brunswick Police Department (TriTech IMC); and State of Maine Department of Public Safety (xWave).

#### **IV. Term**

The term of the project under this MOU will be 5 years.

#### **V. Maintenance of Software**

Maintenance of the software for Year 1 of the project will be paid for with grant funds and the parties shall seek additional funding for the cost of the maintenance of the software for Years 2-5 of the project. If additional funding has not been secured

for the cost of maintenance of the software after Year 1 of the project, then in Year 2 of the project, the costs of maintenance of the software will be divided between the City of Portland and Cumberland County (County). Maintenance costs for Year 2 are projected to be \$13,860. If additional funding has not been secured for the cost of maintenance of the software in years 3-5, the costs will be divided among all of the agencies served by the project. The maintenance costs in Year 3 are projected to be \$15,200 and will not increase more than 3% each year after Year 3.

A cost-sharing formula agreed upon between all agencies may be added to this agreement at any time.

The benefit of any additional funding for maintenance in any of Years 2 through 5 will be shared equally by all agencies involved in the project.

**VI. Records and Reports**

Records regarding performance of the grant obligations will be maintained by the PFO, at the Portland Fire Department.

**VII. Release of Liability**

Each governmental entity shall be responsible for the acts or omissions of its employees, whether or not those acts or omissions are the result of intentional, knowing, reckless or negligent conduct. Each part agrees to indemnify and hold harmless the other party for the acts and omissions of its own employees. Participating agencies or their employees shall not be considered as agents of the other participating agency. Nothing herein waives or limits sovereign immunity under federal, state or constitutional law, including, but not limited to immunity pursuant to the Maine Tort Claims Act.

**VIII. Duration**

This agreement shall become effective upon proper execution and, unless amended by agreement of the parties, will remain in effect for the duration of the project described herein.

In witness whereof, the parties hereto cause this agreement to be executed by proper officers and officials.

**City of Portland**

**County of Cumberland**

**By:** \_\_\_\_\_  
Mark H. Rees, City Manager

**By:** \_\_\_\_\_  
Print Name:  
Print Title: