

South Portland City Council  
***Position Paper of the City Manager***

***Subject:***

**ORDER #152-15/16 – Authorizing the City Manager to sign a Use Agreement between the City of South Portland and the Town of Scarborough for placement of a bus shelter on Gallery Boulevard in the Town of Scarborough. Passage requires majority vote.**

***Position:***

The City would like to place a 5' x 10' bus shelter on Gallery Boulevard in Scarborough for riders utilizing the Bus Service traveling to and from the Walmart area. Staff has been working with Scarborough staff and created a Use Agreement for this purpose.

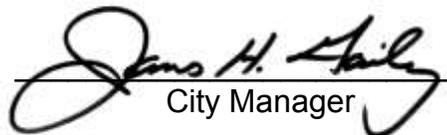
The agreement grants the City permission to place the shelter on the property for this purpose only. The City will obtain all necessary licenses, permits and approvals for placement as well as maintain the shelter. The Town of Scarborough will install a new 5" thick, 6' x 16' cement pad, level with and connecting to the existing sidewalk.

There is no fee and the arrangement may be terminated if the City defaults on any of the terms of the agreement or upon a ninety (90) day advance written notice. In the event the agreement is terminated, the shelter must be removed within 30 days.

The Scarborough Town Council approved this agreement at its May 4, 2016 meeting.

***Requested Action:***

Council passage of ORDER #152-15/16.

  
City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

JAMES H. GAILEY  
City Manager

EMILY F. CARRINGTON  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

**IN CITY COUNCIL**

**ORDER #152-15/16**

District One  
CLAUDE V. Z. MORGAN

\_\_\_\_\_

District Two  
PATRICIA A. SMITH

\_\_\_\_\_

District Three  
EBEN C. ROSE

\_\_\_\_\_

District Four  
LINDA C. COHEN

\_\_\_\_\_

District Five  
BRAD FOX

\_\_\_\_\_

At Large  
MAXINE R. BEECHER

\_\_\_\_\_

At Large  
THOMAS E. BLAKE

**ORDERED**, that the City Manager be and hereby is authorized to sign a Use Agreement in substantially the same form as shown on the attached between the Town of Scarborough and the City of South Portland for placement of a bus shelter by the City of South Portland on Gallery Boulevard located in the Town of Scarborough and shown on Town of Scarborough's Assessor's Tax Map R37.

Fiscal Note: Less than \$1,000

Dated: May 16, 2016

## USE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF SOUTH PORTLAND, a municipal corporation organized and existing under the laws of the State of Maine and located in South Portland, County of Cumberland, State of Maine (the “City”), and the TOWN OF SCARBOROUGH, a municipal corporation organized and existing under the laws of the State of Maine and located in Scarborough, County of Cumberland, State of Maine (the “Town”).

WHEREAS, a Town right-of-way known as Gallery Boulevard is located in Scarborough, Maine and is further shown as “Gallery Blvd” on Assessor’s Tax Map R37 as of the April 1, 2015 assessment date, a copy of which is attached hereto and incorporated herein as *Exhibit A*;

WHEREAS, the City has requested permission from the Town to install a bus shelter and use those portions of Gallery Boulevard shown on Exhibit A as “Shelter” (the “Property”) for the installation and maintenance of a new Bus Shelter provided that such use shall not interfere with the use of Gallery Boulevard by vehicular or pedestrian traffic (“Permitted Use”).

NOW, THEREFORE, in consideration of the mutual promises and obligations undertaken herein, the parties hereby agree as follows:

1. Permission to Use the Property. The Town hereby permits the City to use the Property for the Permitted Use, subject to the terms and conditions set forth in this Agreement. No other use of the Property is hereby permitted under this Agreement. This is a limited license and not a lease.
2. Term and Termination. The City’s use of the Property shall be permitted for so long as the City continues to have a bus stop on the Property; provided, however, that the Town may terminate this Agreement immediately if default shall be made by the City in the performance or compliance with any of the terms of this Agreement and not cured by the City within a reasonable time after notice of default, or upon ninety (90) days advance written notice.
3. Fee. There shall be no fee for use of the Property during the term of this Agreement.
4. Condition and Use of Property.
  - (a) The City shall inspect the Property and accept it “as is” prior to placing the Bus Shelter on the Property. The City agrees that the Town shall have no duty to

maintain or care for the Bus Shelter, report any unsafe conditions or provide any security or services.

(b) The City shall obtain all necessary licenses, permits and approvals for the Bus Shelter, and shall comply with all applicable laws, ordinances and regulations.

(c) The Bus Shelter shall be kept and maintained by the City in a clean and safe condition, all at the City's sole risk and expense.

(d) The City agrees upon termination of this Agreement to remove the Bus Shelter from the Property and return the Property to the reasonably same condition it was on the date hereof. If not removed within 30 days after termination, the Bus Shelter shall, at the Town's option, become the property of the Town or be removed by the Town at the City's expense.

5. Work. The City shall be responsible for the installation of a new 5' x 10' bus shelter at its sole cost and expense. Prior to the City conducting such work, the Town is responsible for the installation of a new 5" thick, 6' x 16' cement pad level with, and connecting to, the existing sidewalk at its sole cost and expense. All such shall be performed in a safe, diligent and workmanlike manner and in compliance with all applicable laws.
6. Indemnity. The City shall defend, indemnify and hold harmless the Town, its officers, agents and employees, from and against all losses, claims, damages or liabilities arising out of or resulting from any injury (including death) to any person or persons or any damage to property anywhere occasioned by any negligence or intentional misconduct of the City, its officers, agents and employees, arising directly or indirectly from the possession, use or control of the Property (unless such injury or damage is caused by any willful act or negligence of the Town). This indemnity shall survive the term hereof for any negligence or intentional misconduct occurring during the term hereof. Nothing in this Agreement is intended, or shall be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to the City, its officers, agents and employees, pursuant to the Maine Tort Claims Act or as otherwise provided by law.
7. Insurance. The City shall maintain with respect to its activities a policy of commercial general liability insurance in the amount of Four Hundred Thousand Dollars (\$400,000) per occurrence for causes of action pursuant to the Maine Tort Claims Act and in the amount of One Million Dollars (\$1,000,000) per occurrence for causes of action pursuant to federal law or state law for which immunity is not provided under the Maine Torts Claims Act, insuring the Town as well as the City against injury to persons or damage to the Property. Such policy shall be issued

by a company qualified to do business in the State of Maine and may not be changed or canceled without prior written notice to the Town and shall otherwise be in a form acceptable to the Town. The City shall furnish the Town a certificate of such insurance at least seven (7) days prior to the start of the term.

8. Assignment. The City may not assign this Agreement or sublicense the Property.
9. Miscellaneous. This instrument contains the entire agreement between the parties with respect to the Property and shall be modified only by a written agreement. If any provision of this Agreement (or the application thereof to any person or circumstance) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (and the application of such provision to other persons or circumstances) shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**CITY OF SOUTH PORTLAND**

By: \_\_\_\_\_  
James H. Gailey  
Its City Manager, duly authorized

**TOWN OF SCARBOROUGH**

By: \_\_\_\_\_  
Thomas Hall  
Its Town Manager, duly authorized



Town of Scarborough  
Maine

For Assessing  
Purposes Only

Legend

- Railroad
- Easement & ROW Lines
- Parcels
- Water
- Townlines Surrounding
- Towns
- Zoning

April 1, 2015



1 inch = 200 feet

Map Number  
R037

