

Order 88-19/20

Passage: 8-0 (Cook absent) on 11/18/2019

Effective 11/28/2019

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER ACCEPTING EASEMENT DEED FOR A BUS SHELTER
AT 758 STEVENS AVENUE
FROM THE UNIVERSITY OF NEW ENGLAND

ORDERED, that the attached easement from the University of New England is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to record said documents in the Cumberland County Registry of Deeds.

BUS SHELTER EASEMENT AGREEMENT

THIS BUS SHELTER EASEMENT AGREEMENT (this "Agreement") is made this _____ day of _____ 2019, by and between University of New England, with a mailing address of 716 Stevens Avenue, Portland, Maine (the "Grantor") and the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and a mailing address of 389 Congress Street, Portland, Maine 04101 (the "City").

RECITALS

WHEREAS, pursuant to certain Deed dated and recorded in the Cumberland County Registry of Deeds in Book 2599, Page 319 the Grantor is the owner of that certain real property situated in Portland, Cumberland County, Maine, and located at or near 758 Stevens Ave (the "Property"), said real property being more particularly described in said deed; and

WHEREAS, the City desires to have a bus transit shelter, along with a concrete pad foundation and related facilities and accessories (e.g., bench, trash receptacle) ("Shelter") constructed by the Greater Portland Transit District, a regional transit district and body politic and corporate, having its principal place of business at 114 Valley Street in Portland, Maine, or its designee ("METRO") on a portion of the Property for the benefit of the public; and

WHEREAS, METRO will construct the Shelter on a certain lot or parcel of land more particularly described below;

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants and terms, conditions, and restrictions hereinafter set forth, the Grantor hereby gives, grants, bargains, and conveys unto the City, its successors and assigns, in perpetuity, an easement for the purposes of constructing and maintaining the Shelter, and an easement for members of the public to wait, board, and disembark buses at the Shelter in and over that portion of the Property generally depicted in Exhibit A, attached hereto, and more particularly described in Exhibit B, attached hereto (the "Easement Area").

The terms, conditions, and restrictions of this Easement Agreement are as follows:

1. At the City's election and upon mutual agreement of the City and Grantor, the Easement Area may be relocated to another place within the boundaries of the Property; provided, however, that the City shall prepare and record amendments to Exhibit A and Exhibit B that, respectively, generally depict and more particularly describe the relocated Easement Area.
2. The City or its designee shall have the right but not the obligation to erect and maintain a Shelter over, under, and within the Easement Area. Members of the public may wait, board, and disembark buses at the Shelter.
3. In the event that the City or its designee constructs a Shelter in the Easement Area, the City or its designee shall have the right to maintain, operate, alter, repair, rebuild, inspect, patrol, remove, and replace the Shelter and other associated fixtures, equipment, and appurtenances thereto over, under, and within the Easement Area and to use adjacent land at times of and for the purposes appurtenant to said repair or maintenance, together with the right to cut and

remove trees, obstructions, bushes, shrubs, roots, and earth, and to do any other work necessary for the purposes of installing, maintaining, operating, repairing, and replacing the Shelter and for the purposes of maintaining, as the City or its designee deems necessary, visibility and safety along the existing sidewalk that abuts the Easement Area. No building or other structure shall be erected within the Easement Area contrary to any statute, law, ordinance, or safety regulation or policy or inconsistent with the City's rights granted herein. Grantor reserves the right to enter and use the Easement Area for such purposes as are not inconsistent with and do not materially interfere with the use thereof by the City.

4. The City or its designee shall be and remain responsible for any and all expenditures of labor and materials or other costs or expenses incurred in the construction, repair, maintenance, and replacement of the Shelter within the Easement Area.
5. The City or its designee shall be responsible for any and all labor or other costs or expenses that result from any and all future repair, relocation, or dismantling of the Shelter within the Easement Area.
6. The City agrees, to the extent allowed by Maine law, to hold Grantor and Grantor's officers, agents, employees and tenants harmless from any and all liability arising out of the installation and maintenance of the Shelter on the Easement Area to the extent such liability is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use therefrom, and is caused by any negligent act or omission of the City and not caused by the negligence of Grantor or its officers, agents, employees or tenants; provided, however, that nothing herein is intended to, nor shall it be deemed to, waive, amend or otherwise modify any claim of immunity, any defense or any limitation of liability available to the City under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq., or other applicable law.
7. The Grantor shall not be responsible for the cleanliness of the Shelter or the Easement Area, including without limitation the removal of trash from trash receptacles and litter from the Easement Area.
8. This Agreement shall not divest the Grantor or its tenants of any rights or interests in their Property not herein mentioned.
9. All notices given under this Agreement must be in writing and must be given by U.S. certified mail (written receipt) addressed to the parties at the addresses first set forth above. Notices shall be deemed delivered three (3) days from the date sent if addressed as set forth herein. Either party may notify the other of a change of address, which will only be effective by written notice. As necessary, day to day communication may occur between the Grantor and METRO concerning the administration of this Agreement.
10. This Agreement shall be binding upon the Grantor and the City and their respective successors, tenants, and assigns.

TO HAVE AND HOLD the rights, privileges, and easement herein granted to the City, its successors and assigns forever. The covenants agreed to and the terms, conditions, and restrictions imposed herein shall be binding upon the Grantor, its agents, tenants, successors and assigns and shall continue as a servitude running with the land.

AND the Grantor covenants that it is vested of the premises in fee, that the same are free from encumbrances except as stated herein, and has the right to convey the easement herein granted.

IN WITNESS WHEREOF, the parties have set their hands and seals, the last party to sign being authorized to complete the day and year first written above, and which day and year shall be the effective date of this Agreement.

WITNESS:

GRANTOR: _____

By: _____

Print Name: _____

Its: _____

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2019

Then personally appeared the above-named _____, the _____ of _____ ("Grantor"), and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of the Grantor.

Notary Public/Attorney-at-Law

Print Name: _____

My Commission Expires: _____

WITNESS:

CITY OF PORTLAND

By: _____

Jon P. Jennings

Its: City Manager

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2019

Then personally appeared the above-named Jon P. Jennings, City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of Portland.

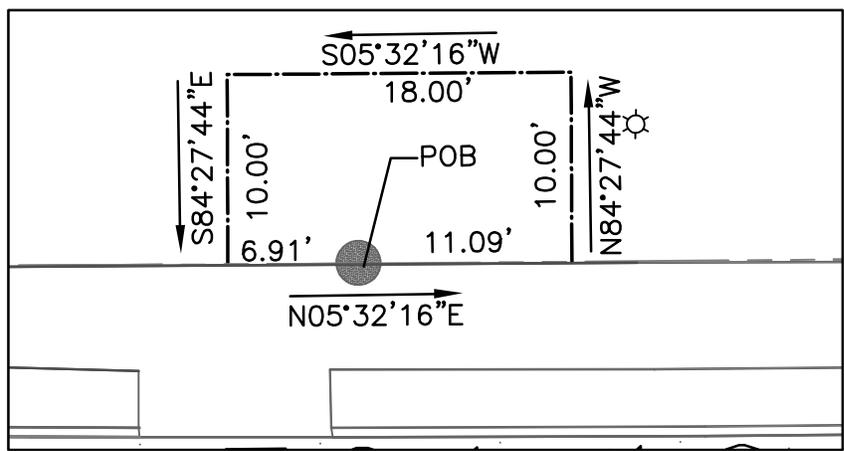
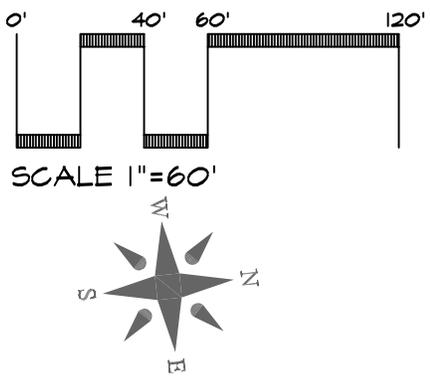
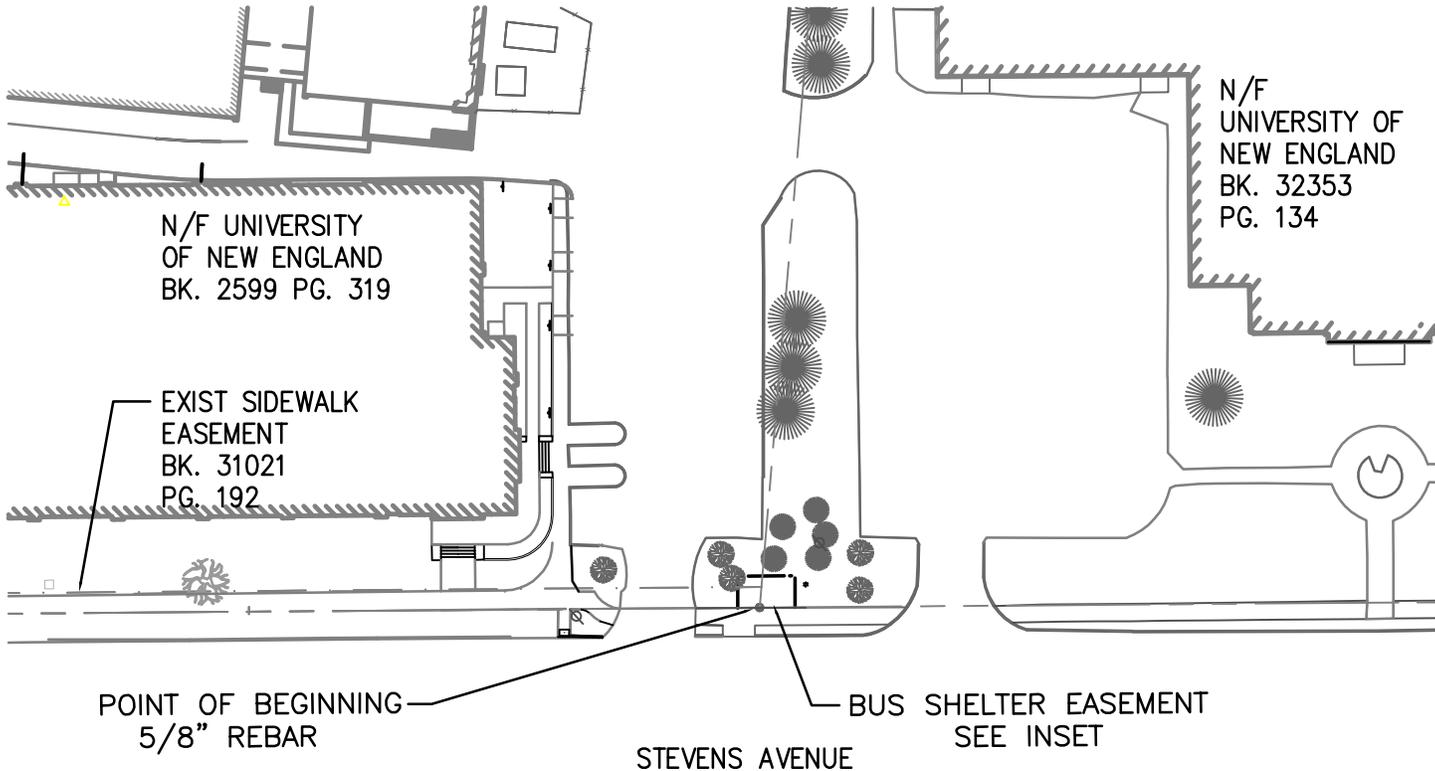
Notary Public/Attorney-at-Law

Print Name: _____

My Commission Expires: _____

EXHIBIT A

[SKETCH PLAN]



INSET

SCALE: 1" = 10 FT

PLAN REFERENCE: UNIVERSITY OF NEW ENGLAND, BOUNDARY SURVEY CAMPUS PROPER, STEVENS AVENUE AND BISHOP STREET, PORTLAND, MAINE DATED OCTOBER 2007, ON FILE AT THE UNIVERSITY OF NEW ENGLAND.

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SITE DESIGN ASSOCIATES, ANY ALTERATIONS, OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SITE DESIGN ASSOCIATES.

Site Design Associates Consulting Engineering & Land Planning 23 Whitney Way Topsham, Maine 04086 Tel: (207) 449-4275	DESIGN TWS	BUS SHELTER EASEMENT UNE Stevens Avenue, Portland, Maine EXHIBIT A	
	DRAWN Dept.		
	CHKD TWS		
UNIVERSITY OF NEW ENGLAND 11 HILLS BEACH ROAD	DATE 10/31/19	PROJ. NO. -	REV. 1
	SCALE AS NOTED	DWG. NO. SKC-1	

EXHIBIT B

BUS SHELTER EASEMENT DESCRIPTION
TO
THE CITY OF PORTLAND

EXHIBIT B
SIDEWALK EASEMENT

An easement for the installation, repair, replacement, and maintenance of a BUS SHELTER along "Stevens Avenue" so called, located in the City of Portland, County of Cumberland, State of Maine and being more particularly described as follows;

Beginning at a point located North 05° 32' 16" East, 301.19 feet along the Westerly line of Stevens Avenue from the intersection of the northerly line of College Street and the Westerly line of Stevens Avenue, said point of beginning being a 5/8" rebar marking the corner of two parcels owned by UNE, thence North 05° 32' 16" East, 11.09 feet along the Westerly line of Stevens Avenue to a point;

THENCE North 84° 27' 44" West, 10.00 feet across the land now or formerly of University of New England to a point;

THENCE South 5° 32' 16" West, 18.00 feet across the land now or formerly of University of New England to a point;

THENCE South 84° 27' 44" East 10.00 feet across the land now or formerly of University of New England to the westerly line of Stevens Avenue;

THENCE North 5° 32' 16" East, 6.91 feet along the Westerly line of Stevens Avenue, to the Point of Beginning.

Containing 180.00 square feet.

Bearings are referenced to a plan entitled "University of New England, 11 Hills Beach Road, Biddeford, Maine, Campus Boundary Survey, Boundary Survey Campus Proper Stevens Avenue & Bishop Street, Portland, Maine", dated 11/26/07 as prepared by Colonial Surveying Company, LLC and on file at the offices of University of New England.