

RESOLUTION NO. R-2015-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) AND HIWAY 80 RESCUE MISSION REGARDING ART WORK AND MAINTENANCE THEREOF ON TXDOT-OWNED RIGHT OF WAY UNDER THE BRIDGE AT GENTRY PARKWAY AND N. FANNIN AVENUE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to promote the public health, safety and welfare; and

WHEREAS, the State of Texas owns and maintains a system of highways, including the bridge located at Gentry Parkway and N. Fannin Avenue, in Tyler, Texas ; and

WHEREAS, Hiway 80 Rescue Mission has requested permission to conduct certain art work on specified columns and beams under the bridge located at Gentry Parkway and N. Fannin Avenue; and

WHEREAS, the Texas Department of Transportation (TxDOT) has agreed to allow Hiway 80 Rescue Mission the use of the described right-of-way for painting artwork, pursuant to a written Memorandum of Understanding; and

WHEREAS, the State has agreed to allow such art work upon the condition that the City of Tyler accept and maintain responsibility for such art work;


NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1. That the City Manager is hereby authorized to execute a Memorandum of Understanding with the Texas Department of Transportation and Hiway 80 Rescue Mission regarding art work and maintenance thereof on TxDOT-owned right-of-way identified in said agreement. Said Memorandum of Understanding is attached hereto and is incorporated herein.

PART 2. That the City of Tyler shall have such rights, duties and responsibilities as set forth in the written Memorandum of Understanding.

PART 3. That this Resolution shall take effect immediately upon its adoption.


PASSED AND APPROVED on this the 22nd day of September, 2015.


MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:


CASSANDRA BRAGER, CITY CLERK


DEBORAH G. PULLUM,
CITY ATTORNEY





STATE OF TEXAS

§ **MEMORANDUM OF UNDERSTANDING
BETWEEN TEXAS DEPARTMENT OF
TRANSPORTATION (TXDOT), CITY**

COUNTY OF SMITH

§ **OF TYLER, AND HIWAY 80 RESCUE
MISSION FOR ART WORK AND
MAINTENANCE THEREOF ON
RIGHT-OF-WAY UNDER THE BRIDGE**

§ **AT GENTRY PARKWAY AND N. FANNIN
AVENUE**

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is made between the STATE OF TEXAS, acting through the Texas Department of Transportation (TxDOT), hereinafter "STATE", the CITY OF TYLER, TEXAS, a political subdivision of the State of Texas (hereinafter "CITY"), and HIWAY 80 RESCUE MISSION (hereinafter "CHURCH").

WHEREAS, CHURCH has requested permission to paint art work on specified TxDOT-owned structures under the Bridge at Gentry Parkway and N. Fannin Avenue; and

WHEREAS, the STATE has agreed to allow such art work upon the condition that the CITY accept and maintain responsibility for such art work;

NOW, THEREFORE, for and in consideration of the mutual promises, responsibilities and agreements set forth herein, the parties agree as follows:

1. **TERM.** This Agreement becomes effective when finally executed by the STATE and shall continue unless or until otherwise terminated as provided by this agreement.
2. **CHURCH'S RIGHTS AND RESPONSIBILITIES.**
 - a. CHURCH is hereby authorized enter upon, and to provide for paintings on specially identified columns and beams located on TxDOT right-of-way located under the bridge at Gentry Parkway and N. Fannin Avenue, Tyler, Texas. There are 6 total columns and 2 beams that are designated and approved for painting, as shown in Attachment "A" attached hereto and incorporated herein. All materials and designs to be used by CHURCH for the painting are subject to CITY's approval.

- b. **CHURCH shall conduct regular inspections of the premises to assess the condition and appearance of the painting. If in the opinion of CITY, the deterioration of the painting creates aesthetic, safety or operational concerns, CHURCH shall, upon notification from CITY, maintain, repair, re-touch, upgrade, rehabilitate the painting.**

3. CITY'S RIGHTS AND RESPONSIBILITIES.

- a. **CITY is authorized to enter premises, and agrees to conduct periodic inspections of the premises to assess the condition and appearance of the painting. In the event that CITY representatives observe deterioration of the painting that creates aesthetic, safety or operations concerns, CITY shall notify CHURCH of such concerns.**
- b. **In the event that illegal graffiti occurs on the paintings, CITY shall, upon notice, be responsible for the cost and removal of such graffiti.**

4. STATE'S RIGHTS AND RESPONSIBILITIES.

- a. **STATE agrees to provide both CHURCH and CITY access to the premises for the purposes established in this Agreement.**
- b. **STATE shall have no responsibility for inspecting, maintaining, repairing, re-touching, upgrading, or rehabilitating the painting.**
- c. **STATE shall continue to maintain all other maintenance and other responsibilities on TxDOT-owned land under the bridge at Gentry Parkway and N. Fannin Ave., excluding the painting.**

5. INDEMNIFICATION. To the extent permitted by law, each party hereto agrees to indemnify, hold harmless and defend the other parties and their officers, agents and employees from and against all liability for claims, suits, etc., including actions for damages, injuries to persons or property damage, occasioned by the activities of the indemnifying party and its agents while performing art work or activities pursuant to this Agreement. However, such duty to indemnify shall not apply to the extent that such damages or injuries are caused by the negligent or intentional acts or omissions of any other party or such other party's officers, agents or employees. Each party agrees to exercise reasonable precautions for the safety of its members, officers, agents, employees, customers and visitors, as well as their property, while in or on the premises. CHURCH further agrees, on behalf of itself and its members and agents, that neither STATE nor CITY assumes any responsibility or liability for harm, injury or any damaging events that are directly or indirectly attributable to premises defects which may now exist or which may hereafter arise upon the premises, any and all such defects being expressly waived by CHURCH.

6. NO JOINT VENTURE. STATE, CITY and CHURCH further agree that nothing contained in this agreement will be construed to:

- a. Give any party the power to direct or control the day-to-day activities of the others;
- b. Constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking;
- c. Allow any party to create or assume an obligation on behalf of the other parties for any purpose whatsoever.

7. **TERMINATION.** In the event that any party wishes to cease maintenance/repair activities under, or otherwise terminate, this Agreement, such party shall notify the other parties in writing of such fact. Upon submission or receipt of notification hereunder, CHURCH shall take over responsibility for repairs and maintenance of the painting within ten (10) days after receiving written notice hereunder.

8. **REMOVAL.** STATE reserves the right to remove or alter any art work, structure, facilities, materials or equipment due to construction, rehabilitation, violation of the terms of this agreement, or other necessary activities affecting transportation facilities without any obligation, compensation to, or approval of CITY or CHURCH. STATE will strive to notify CHURCH and CITY of its intent to remove any art work, structure, facilities, materials or equipment to allow for timely removal, salvage, remediation, or other appropriate actions by CITY or CHURCH. STATE reserves the right to remove or alter any art work, structure, facilities, materials or equipment that presents a hazard to the public without delay or advance notification to CHURCH or CITY.

9. **NOTICES.** Whenever any notice is required by this Agreement to be made, given, or transmitted to the parties hereto, such notice shall be addressed to:

City of Tyler
Ed Broussard
City Manager
P. O. Box 2039
Tyler, Texas 75710

State of Texas
Texas Department of Transportation
District Engineer
2709 W. Front Street
Tyler, Texas 75702

Eric Burger
Executive Director
Hiway 80 Rescue Mission
P.O. Box 3223
3117 W Marshall Ave.
Longview, TX 75604

IN WITNESS HEREOF, the parties hereto have caused this instrument to be signed this
_____ day of _____, 2015.

CITY OF TYLER:

**STATE OF TEXAS; TEXAS
DEPARTMENT OF
TRANSPORTATION:**

BY: _____
ED BROUSSARD, CITY MANAGER

BY: _____

CITY COUNCIL APPROVED: _____

CHURCH:

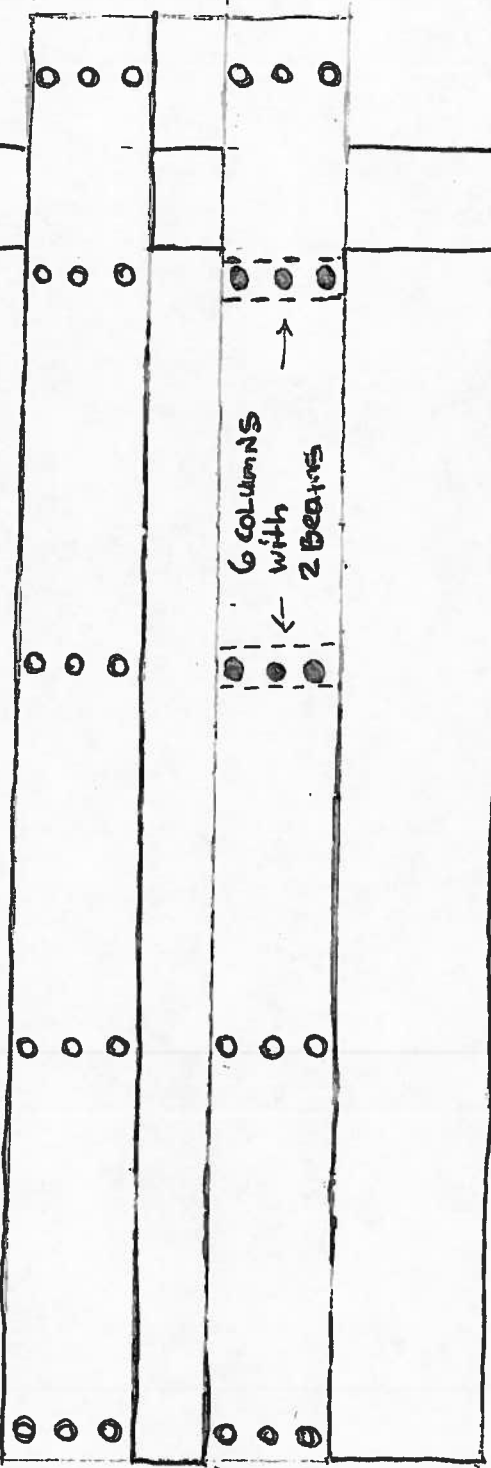
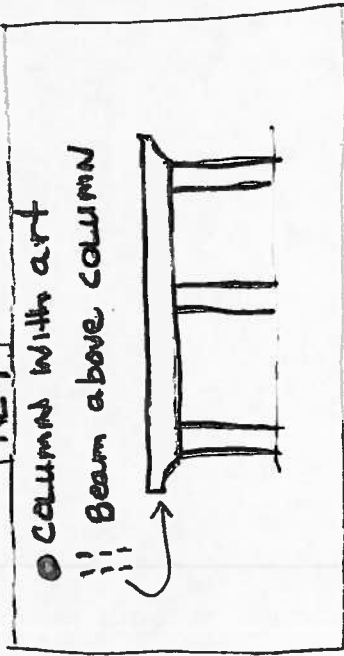
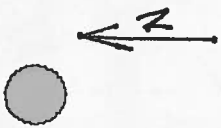
ATTEST:

BY: *[Signature]*

CASSANDRA BRAGER, CITY CLERK

APPROVED:

CITY ATTORNEY'S OFFICE



Valentine

Fanning

N SPRING AVE

Exhibit "A"

Memorandum of
 Understanding between
 TXDOT CITY OF TULSA
 AND HIGHWAY 80
 REUSE MISSION