



Memorandum

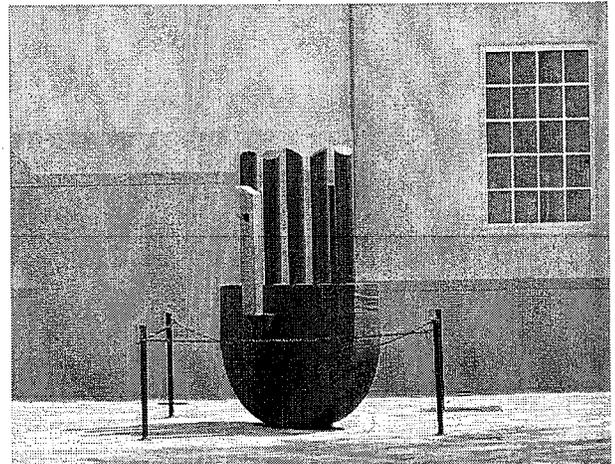
TO: JERRY A. BENTROTT, CITY MANAGER

FROM: GREGORY J. ORAVEC, ASSISTANT CITY MANAGER

DATE: SEPTEMBER 21, 2011

SUBJECT: ARTIST AGREEMENT FOR DISPLAY OF "ADAPTER"

As you are aware, several sculptures were located throughout the City as part of St. Lucie County's Art With Out Walls III Exhibition (WOW3). At the conclusion of WOW3, I was contacted by both the Exhibition Curator, John Hayes, and the City's Public Arts Advisory Board Chairwoman, Debra Magrann, on behalf of the owner of the sculpture entitled "Adapter", which was and remains located in front of the Civic Center. Mr. Hayes and Ms. Magrann relayed that the owner of Adapter, the Estate of the late artist Terry Thommes, was interested in loaning the piece to the City for another year at no cost provided that the City relocate Adapter to the display area (circular concrete slab) in front of City Hall, provide proper insurance and deliver the piece to the estate in Stuart at the conclusion of the loan. In response to this offer, I worked with Ms. Magrann, Ms. Barbara Thommes, Mrs. Booker-Hakim, Senior Assistant City Attorney, and Mrs. Major, Risk Management Director, to draft the attached "Artist Agreement" for your review and consideration.



I believe that you will find the terms of the proposed Artist Agreement straightforward. Highlights include: a term of one year; no direct lease cost; the City is responsible for loss or damage while the Artwork is within its possession; and the City is responsible for relocation of the artwork from the Civic Center to City Hall and for the return of the artwork to the estate in Stuart at the end of the Agreement.

The proposed Agreement would only result in negligible costs to the City. The insuring of the artwork would be absorbed into the City's greater portfolio of assets, and the transport of the artwork would be carried out by Parks and Recreation staff members, who were involved in coordinating the initial installation of the WOW3 exhibits within the City. The proposed Agreement would also result in utilization of the currently available display space in front of City Hall.

If you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Thank you.

Enclosure: Artist Agreement

c: John Hayes, WOW3 Exhibition Curator
Debra Magrann, Chairwoman, Public Arts Advisory Board
City Staff

RECEIVED

SEP 21 2011

City Manager's Office

Artist Agreement

This Artist Agreement is made and entered into by and between the City of Port St. Lucie, hereinafter referred to as the "City", acting through Jerry A. Bentrrott, City Manager, hereinafter referred to as "City Manager", and Thommes Sculpture Studio, Estate of Terry Thommes, Sculptor, hereinafter referred to as the "Estate", on this ____ day of _____, 2011, according to the following terms.

1. **Agency; Purposes.** The Estate appoints the City as receiver of art titled, "Adapter", hereinafter referred to as the "Artwork", on loan under this Agreement, for the purposes of outdoor exhibition. The City shall not permit the Artwork to be used for any other purposes without the written consent of the Estate. This agreement applies only to the Artwork and does not make the City a general agent for any other works of the Estate.

2. **Warranty.** The Estate hereby warrants that the Artist created and possesses unencumbered title to the Artwork, and that their descriptions are true and accurate.

3. **Duration of Loan.** The Estate and the City agree that the initial term of loan for the Artwork shall be 12 months from the date of this Agreement. The City may request a renewal of the loan prior to its termination and the Estate shall respond to such requests within 30 days.

4. **Relocation Responsibilities.** Safe transport from the PSL Civic Center to City Hall will be made by the City. Handling expenses and risk of loss or damage incurred in the delivery of Artwork are the responsibility of the City.

5. **Responsibility for Loss or Damage, Insurance Coverage.** The City shall be responsible for the safekeeping and cleaning of the Artwork while it is in its custody. The City shall bear the cost for any loss or damage (except for damage resulting from flaws inherent in the Artwork) to the Artwork up to the full value of the Artwork as that full value is established by a mutually acceptable appraisal of the Artwork. The City shall provide the Estate with all relevant information about its insurance coverage for the Artwork if the Estate requests this information.

6. **Ownership.** Title to the Artwork remains with the Estate. This Agreement shall not be construed as a contract of sale with the City. The City shall give notice, by means of a clear and conspicuous sign in full public view that the Artwork is that of Terry Thommes.

7. **Removal from Site.** The City shall not lend out, remove from the premises, or sell on approval the Artwork, without first obtaining written permission from the Estate other than to return to the Artwork to the Estate.

8. **Reproduction.** The Estate reserves all rights to the reproduction of the Artwork except as noted herein. The City may arrange to have the Artwork photographed to publicize and promote the Artwork through means to be agreed to by both parties. In every instance of such use, the Artist shall be acknowledged as the creator and the Estate as copyright owner of the Artwork.

9. **Guarantee of Return.** At the termination of this Agreement, the City shall return the Artwork to the Estate, care of: Barbara Thommes at 6185 SW Gaines Avenue, Stuart, FL, 34997.

10. **Cancellation.** This Agreement may be cancelled at any time by either party by the initiating party providing the other party with written notice 30 days prior to the effective date of the cancellation.

11. **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been given when delivered in person, by courier or certified mail. The addresses of the Parties are as follows:

The City: Jerry A. Bentrrott, City Manager
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984

The Estate: Barbara Thommes
6185 SW Gaines Avenue
Stuart, FL 34997
(772) 286-2386
Thommesart.com

12. **Modifications.** No change or modification of this Agreement shall be valid unless it is reduced to writing and signed by both parties.

13. **Miscellany.** This Agreement represents the entire agreement between the Estate and the City. If any part of this Agreement is held to be illegal, void, or unenforceable for any reason, such holding shall not affect the validity and enforceability of any other part. A waiver of any breach of any of the provisions of this Agreement shall not be construed as a continuing waiver of other breaches of the same provision or other provisions hereof. This Agreement shall not be assigned, nor shall it inure to the benefit of the successors of the City, whether by operation of law or otherwise, without the prior written consent of the Estate.

14. **Governing Law.** This Agreement shall be construed and governed by the laws of the State of Florida, and venue for any proceedings brought hereon shall be in St. Lucie County, Florida.

Jerry A. Bentrrott, City Manager

Date

Barbara Thommes for the Estate

Date