

## Gehry Partners, LLP

Frank Gehry

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Anand Devarajan  
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David Nam  
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### VIA EMAIL

May 8, 2018

Santa Monica College  
Attention: Don Girard  
1900 Pico Blvd.  
Santa Monica, CA 90405

**Re: Santa Monica College, Shakespeare Theater Project;  
Design Architect Services Letter Agreement - Concept Design Phase**

Dear Mr. Girard:

This letter agreement (“Letter Agreement”) is between Gehry Partners, LLP (“GP”) and Santa Monica College (“SMC”), pursuant to which GP will act as the Design Architect for the Concept Design phase of SMC’s Shakespeare Theater project (the “Project”). GP will provide its services in support of SMC’s vision to design and construct an outdoor amphitheater that will serve as a venue for theatrical productions of the works of William Shakespeare, among other purposes.

### **I. PROJECT DESCRIPTION**

SMC has partnered with the Shakespeare Center of Los Angeles (“SCLA”) to bring theatrical productions of Shakespeare’s works to the west side of Los Angeles. The Project, as envisioned by SCLA and SMC, is for the design and construction of a 500-seat outdoor amphitheater on the campus of SMC. Although the architectural program is under development, the preliminary programmatic needs include a stage, limited backstage areas, seating, and a box office. Because the Project will serve as a temporary summer home for SCLA, SMC would like to explore making the stage and other parts of the Project’s structure demountable.

### **II. SCOPE OF SERVICES AND SCHEDULE**

#### **A. Services**

GP will act in the capacity of Design Architect for the Project’s Concept Design phase, and for subsequent phases as agreed to in writing. GP’s Concept Design phase services (the “Services”) consist of the following:

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1. In conjunction with a theatre consultant retained by SMC, and other SMC-retained consultants as necessary, GP will collaborate with SMC and SCLA to further define and establish the architectural program for the Project. The established program will serve as the basis for the Project's conceptual design that GP will develop in this phase.
2. GP will prepare a conceptual approach to the Project design in collaboration with SMC, SCLA the theater consultant and other consultants as appropriate. These services may include producing a study model, drawings and other documents that respond to the established program and the site. At the conclusion of the Concept Design phase, GP will incorporate select design materials into a Concept Design Report.

Upon completion of the Concept Design phase, GP understands that SMC's goal is to contract with an executive architect, who will further develop the Project's conceptual design in subsequent design phases as the Project architect of record. During these subsequent design phases, GP will provide further design architect services as agreed to in writing between SMC and GP. SMC and GP contemplate that these further services will include GP's review and comment on the executive architect's design materials for consistency with the design intent established at the conclusion of the Concept Design phase, including aesthetic elements, for which GP will have final design approval rights.

## **B. Schedule**

GP will perform its Services over an eight (8) to twelve (12) week duration, commencing approximately June/July 2018, and ending approximately August/September 2018 (the "Schedule"). SMC acknowledges that completion of the Services in accordance with Schedule is dependent upon SMC making decisions and providing requested information in a reasonably prompt manner, and the theater consultant and other SMC consultants, if any, coordinating their services with those of GP in a manner that does not delay GP.

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### III. COMPENSATION

Gehry Partner's compensation is comprised of two (2) components. The first component is a Design Fee for Frank Gehry's involvement in the Project. For purposes of the Concept Design phase, GP will waive the Design Fee.

The second component of Gehry Partners' compensation is a Professional Services Fee which covers staffing costs in developing the Project design. For the Professional Services Fee, SMC shall compensate GP on a fixed-fee basis in the amount of \$290,000.00 payable as follows:

<u>Amount</u>	<u>Due</u>
\$100,000	Upon execution of Letter Agreement.
\$100,000	At 50% Concept Design.
<u>\$90,000</u>	Upon conclusion of Gehry Partners' Services on the Concept Design phase.
\$290,000.00	

Reimbursable Expenses, as defined in the attached Standard Terms and Conditions, are in addition to the Professional Services Fee.

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**IV. OTHER PROVISIONS**

GP's Services shall be governed by the Standard Terms and Conditions appended to this Letter Agreement as Attachment "1."

If the terms and conditions of this Letter Agreement are acceptable to you, please sign two copies in the space provided below and return one original copy to us.

Of course, please do not hesitate to contact us should you have any questions or comments. We look forward to working with you.

Sincerely,



Meaghan Lloyd  
Partner  
Gehry Partners, LLP

Attachment "1": Standard Terms and Conditions

Cc: FOG, JB, DO, PG, b/d file

We have read the above proposal and we agree to its terms, deemed to be effective as of the date on which Gehry Partners first provided services to us for this project.

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

Its: \_\_\_\_\_

For: \_\_\_\_\_

Date: \_\_\_\_\_

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**ATTACHMENT "1"  
STANDARD TERMS AND CONDITIONS  
[Attached]**

# **Attachment #1**

## **Gehry Partners, LLP**

### **STANDARD TERMS AND CONDITIONS**

#### **1. General**

These Standard Terms and Conditions, together with the terms of the attached proposal, will constitute the professional services agreement ("Agreement") between Gehry Partners, LLP and the person or entity to whom the Agreement is addressed ("Owner"). Gehry Partners, LLP's offer to perform services for the Owner under this Agreement, including the fee provision set forth herein, expires if the Agreement is not accepted, signed and delivered, along with the initial fee payment, to Gehry Partners, LLP, within sixty (60) days of the date of its issuance to the Owner.

#### **2. Performance of Services**

Gehry Partners, LLP's services will be performed in accordance with generally accepted practices of architects providing similar services at the same time, in the same locale, and under like project circumstances. The Agreement does not confer upon Gehry Partners, LLP any obligations of a fiduciary, or the responsibility for or the authority to control, direct or supervise construction means, methods, techniques, sequences or procedures, or safety measures and programs.

#### **3. Payment**

Invoices for professional fees and reimbursable expenses will generally be submitted monthly and payment will be due and payable within thirty (30) days of invoice date. Owner shall make payment in full without offset or withhold. Interest will be added to accounts in arrears at the rate of one and one-half (1.5) percent per month on balances more than sixty (60) days outstanding. Reimbursable Expenses and fees for approved Architect Consultants will be billed on a direct-cost basis + 10% to cover administrative costs. The Owner shall be responsible for any and all applicable non-U.S. governmental taxes and duties, including value added tax ("VAT"). Gehry Partners, LLP will commence its services upon receipt of the required initial payment(s). In the event that delivery of the required initial payment(s) is delayed, the Project Schedule shall be adjusted as appropriate to account for any such delay.

#### **4. Insurance**

Gehry Partners, LLP will maintain professional liability insurance in the amount of \$2,000,000 per claim and in the aggregate. The cost for insurance coverage above these limits, if requested by the Owner, will be invoiced and paid as a reimbursable expense. A certificate of insurance will be provided upon request.

#### **5. Indemnification**

To the fullest extent permitted by law, the Owner shall defend, indemnify, protect and hold Gehry Partners, LLP and its affiliates, partners, principals, and employees

harmless from and against any and all claims, liabilities, judgments, losses, costs, demands and causes of action (collectively "Claims"), including Claims based on economic loss, those arising from injuries to or death to persons (including without limitation the Owner's employees), and/or damages to property, arising directly from or indirectly related to the Gehry Partners, LLP's duties under this Agreement, or its related actions or inactions, except for those caused by the gross negligence or willful misconduct of Gehry Partners, LLP's and its affiliates, and will reimburse Gehry Partners, LLP for any expenditures, including reasonable attorneys' fees, it incurs as a result. Owner agrees to defend Gehry Partners, LLP against any such Claims at the Owner's sole cost and expense. The defense and indemnification obligations shall survive the termination or expiration of this Agreement.

#### **6. Ownership of Design Materials**

The Drawings, Models and Specifications and other documents, including those in electronic form, prepared by Gehry Partners, LLP for the Project (collectively "Design Materials") are Instruments of Gehry Partners, LLP's Service and shall not constitute works for hire. Gehry Partners, LLP shall be deemed the author and owner of any and all such Instruments of Service and shall retain all right, title, and interest to all rights therein, including, without limitation, all common law, statutory, copyright, and other reserved rights, and Gehry Partners, LLP shall be entitled to the broadest protection afforded under the copyright and other laws of the United States of America, the State of California. The Owner and its successors in interest, if any, shall have the limited right to retain copies of the Design Materials, excluding physical models and hand drawn sketches, for information and reference purposes only in connection with the construction, reconstruction, renovation, repair, maintenance, use and occupancy of the Project. The word "Drawings" includes, without limitation, graphic images of the Drawings contained in computer files stored on computer disks, tapes, and/or other digital storage media. Gehry Partners, LLP shall not be responsible for, or otherwise liable for any damages or claims arising from reuse of, changes made to, Design Materials by anyone other than Gehry Partners, LLP.

#### **7. No Commercial Publication**

Without the prior written consent and release of Gehry Partners, LLP, which consent it may grant or withhold in its sole discretion, the Owner may not: (a) use a portion of the Design Materials for a commercial purpose, including, without limitation, selling, offering for sale, licensing, distributing, marketing, or otherwise promoting any product or service based on, or incorporating, all or part of the Design Materials; or (b) sell, offer for sale, license, distribute, market, or otherwise promote any product or service that contains any of the following: (i) Gehry Partners, LLP's name and/or trademark (i.e. Gehry Partners, LLP, Gehry, Frank Gehry, Frank O. Gehry, Frank O. Gehry & Associates, Gehry International, Inc. Architects, Gehry Architects New York, P.C., and/or Gehry

## **Attachment #1 Gehry Partners, LLP**

Design Services, LLC); (ii) any design depicted or described in the Design Materials; and/or (iii) the likeness of Frank O. Gehry.

### **8. Suspension of Work and Termination**

Either party may terminate this Agreement, for any reason, with or without cause, and without incurring further liability, upon seven (7) days prior written notice. In the event of suspension, termination, or abandonment of the Project, Gehry Partners, LLP shall be entitled to full compensation for all services rendered and reimbursable expenses incurred. It is agreed that the failure of the Owner to make payments in accordance with this Agreement constitutes a material breach and is sufficient cause for Gehry Partners, LLP to either suspend or terminate services.

### **9. Use of Name and Completion of Design upon Termination**

In the event of termination of this Agreement for any reason by either the Owner or Gehry Partners, LLP, or if Gehry Partners, LLP is not retained for future design phases for the Project, the Owner shall not utilize the name of "Gehry Partners, LLP", "Gehry", "Frank Gehry", "Frank O. Gehry", "Frank O. Gehry & Associates, Inc.", "Gehry International Inc., Architects", "Gehry Architects New York, P.C.", or "Gehry Design Services, LLC", directly or indirectly, for any purpose relating to the Project. If the Agreement is terminated for any reason other than termination due to the default of Gehry Partners, LLP, or if Gehry Partners, LLP is not retained for future design phases for the Project, the Client may not elaborate and complete a revised design of the Project without the prior written approval of Gehry Partners, LLP, which consent it may withhold in its sole discretion, unless the revised design alters sculptural (signature) elements of the design that are associated with Frank Gehry's designs as determined by Gehry Partners, LLP in its sole discretion.

### **10. Limitation of Liability**

In recognition of the relative risks and benefits of the Project to both the Owner and Gehry Partners, LLP, the risks having been allocated such that the Owner agrees, to the fullest extent permitted by law, that with respect to any liability of Gehry Partners, LLP, including its partners, principals, and employees, together with that of the Gehry Partners, LLP's consultants, and each of them, to the Owner, all construction contractors and subcontractors on the Project, and each of them, for any and all claims, losses, costs, damages of any nature whatsoever and/or claims and expenses from any cause or causes, the Owner, on behalf of itself, its consultants, contractors and subcontractors, and each of them, agrees to limit its aggregate recoveries against Gehry Partners, LLP, including its partners, principals, and employees, together with that of its consultants, to the amounts actually recovered from Gehry Partners, LLP's contracts of insurance, and expressly waives any and all damages, whether general, special, consequential, punitive, or otherwise, in any amounts and

to any extent not covered by such insurance. If the Owner desires additional insurance, the Owner may also purchase Project Insurance for this Project.

### **11. Owner's Budget for Construction Cost**

The Owner shall provide its budget for construction cost for the project. Gehry Partners, LLP will assist the Owner in the Owner's efforts to align the construction budget, architectural program, and architectural goals, but in doing so, Gehry Partners, LLP shall have no obligation to conform the Project design to a particular construction cost budget.

### **12. Force Majeure**

Neither party to this Agreement will be liable to the other party for delays in performing the Scope of Services, or for direct or indirect costs resulting from such delays, that may result from labor strikes, riots, acts of terrorism, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

### **13. Severability**

If any of these Standard Terms and Conditions is adjudicated in a court of competent jurisdiction and are determined to be invalid or unenforceable in whole or in part, the remaining provisions shall remain in full force and effect, and remain binding upon the parties.

### **14. Survival**

These Standard Terms and Conditions shall survive the completion of Gehry Partners, LLP's services on this Project and the termination of services for any cause.

### **15. Governing Law and Jurisdiction for Dispute Resolution**

This Agreement shall be governed and construed in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Any disputes arising from the performance of the obligations of either party herein shall be submitted for resolution to a court of competent jurisdiction in the County of Los Angeles, State of California.

### **16. Entire Agreement**

The Agreement together with these Standard Terms and Conditions, constitute the entire agreement between Gehry Partners, LLP and the Owner, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the subject matter hereof. This Agreement may only be modified by a writing signed by both parties.