

**BUILDING LEASE  
For Performing Arts Center**

This Building Lease (“Lease”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Flagstaff, an Arizona municipal corporation (“City” or “Lessor”) and Theatrikos Inc., an Arizona Nonprofit Corporation (“Lessee”).

Whereas, on February 11th, 2022, the City issued a competitive solicitation for lease of a building for a performing arts center, per the Flagstaff City Charter Article VIII, Section 9; and

Whereas, Theatrikos, Inc. has been selected as the highest responsible and responsive bidder for this Lease.

Now, therefore, in consideration for mutual promises contained herein, the parties hereby agree as follows:

1. **Premises.** City hereby leases to Lessee the building and surrounding property located at 11 W. Cherry, Flagstaff, Arizona 86001 (to be known as the Flagstaff Performing Arts Center), as shown on the map attached hereto as Exhibit A (“the Premises”), subject to the terms and conditions of this Lease.

2. **Use of Premises.**

a. **Permitted Use.** The Premises shall be used as a Performing Arts Center for community theater, dance, music, classes, and/or related programs (collectively “Programs”), as further described in the Business Plan, which may be modified from time to time and shall be attached hereto as Exhibit B. Retail and concession sales, including licensed alcohol sales, are allowed as an accessory use. Programs shall be offered to the public as a community amenity. Programs may be offered for targeted groups, such as youth or seniors. Fundraising events for the Performing Arts Center may be held on the Premises. Lessee may make the Premises available to other arts organizations and charge a reasonable fee for use of the Premises. The Lessee shall occupy and use the Premises for the permitted use and no other purpose without the prior written consent of City, which consent may be withheld for any reason or for no reason.

b. **Complaints About Uses.** If Lessee or City receives a complaint about use of the Premises, including but not limited to noise, traffic, or any other concern from a neighboring property owner or occupant, Lessee shall work with the neighboring property owner or occupant(s) to address their concerns.

3. **Term and Renewal.**

a. **Term.** The Lease commences on \_\_\_\_\_, \_\_\_\_\_ and continues for 25 years through \_\_\_\_\_, \_\_\_\_\_ (“Initial Term”), unless sooner cancelled or terminated as provided for herein.

b. Renewal. The Lease may be renewed for up to two additional 25-year terms (total of 75 years) upon mutual agreement of the parties. City in its sole discretion may elect to not renew the Lease, or to require new terms and conditions in the Lease, including but not limited to rent adjustments.

4. **Cancellation for Convenience.**

a. By City. After the initial term, City may cancel this Lease for convenience upon at least 18-months' written notice to Lessee. Following receipt of such notice from City, Lessee may vacate the Premises at any time within the 18-month period, and rent will cease when the Premises is vacated.

b. By Lessee. Lessee may cancel this Lease for convenience upon at least six (6) months' written notice to City.

5. **Rent.**

a. When Payment Due. Lessee shall pay rent to the City of Flagstaff. Rent shall be delivered to the attention of the City of Flagstaff Finance Department, 211 W. Aspen Avenue, Flagstaff, Arizona 86001 and is due on or before the first of the month. Rent is not subject to abatement, deduction or offset.

b. Rent Amount. Rent shall consist of monthly rent of \$2,022 ("Rent"). Rent shall increase by 2% annually upon the anniversary of the commencement date of this Lease, as identified in Section 3(a) above.

c. Late Penalty. All amounts not paid by the Lessee when due shall accrue interest at the rate of one percent (1%) per month or fraction of a month from the time due until paid.

d. Pro-Rated Rent. If the Term begins or ends on any day other than the first or last day of the month, respectively, rent shall be pro-rated as follows: (day of month when Lease commences/number of days in the entire month) x (Rent).

e. Additional Consideration. As additional consideration, Lessee shall maintain its status as a non-profit corporation and 501(c)(3) under the Internal Revenue Code during the term of this Lease. The purpose of this requirement is to enable greater opportunities to apply for grants and other public funding for performing arts programs. Lessee shall recognize City as a sponsor of the Performing Arts Center at Lessee performances and in Lessee publications.

6. **Security Deposit.** Upon execution of this Lease, Lessee shall deposit with City the sum of one month's rent (\$2,022), as security for the full and faithful performance of each and every term, condition, covenant and provision of this Lease. In the event that Lessee fails to pay any installment of

Rent required to be paid under this Lease when due, then City shall have the right to apply the security deposit to the obligations of Lessee, and Lessee shall replenish the security deposit to the amount described herein. If, upon the expiration or termination of this Lease, Lessee returns the Premises, including all furnishings and fixtures therein, to City in the condition in which the Premises was delivered to Lessee, ordinary wear and tear excepted, the security deposit shall be returned to Lessee within fourteen (14) days after the expiration or termination of this Lease.

7. **Taxes.** Lessee shall pay all applicable taxes due arising from its operations at the Premises, including but not limited to transaction privilege tax from its business activities and tax on its personal property. The Premises (land and building) currently is exempt from property tax. If Lessor sells the Premises, any change in tax status shall not be grounds for adjustment of rent during the then-current term.

8. **Books and Records.** Lessee shall maintain records related to this Lease for at least five (5) years following cancellation, termination, and/or expiration of the Lease.

9. **Entry and Inspection.** City shall have the right to enter upon the Premises to inspect the condition of the Premises upon at least three (3) days written notice during regular business hours of City Hall. Upon reasonable notice to Lessee, City may enter upon Premises to show the property to any prospective purchaser, Lessee, lender or insurer, and to take necessary action in the event of an emergency. No such entry shall entitle Lessee to terminate this Lease, to reduce or abate Rent or other amounts due hereunder or to any claims for damages. City shall be entitled to use any reasonable means to enter the Premises in the event of emergency and shall not be liable for any damages resulting therefrom.

10. **Annual Report.** Lessee shall prepare an annual report regarding its operations on the Premises and present it to the City Council at a public meeting. The report shall, at a minimum, include the dates of all performances and programs conducted on the Premises and gross revenues collected. This report shall be submitted to City by May annually.

11. **Acceptance of Premises.** Lessee accepts the Premises in its condition “as is” upon the commencement of the Lease. City will make certain repairs or improvements to the Premises prior to commencement of the Lease.

12. **City Maintenance.** City shall keep and maintain the building on the Premises in good condition and repair. City is responsible for all structural repairs, including roofing, electrical, heating, cooling, and plumbing fixtures, windows, doors, lighting fixtures, and smoke alarms. City is responsible for any vandalism to the exterior of the building on the Premises. City shall not be responsible for repairs or maintenance needs of which it is not aware. City and Lessee will review any outstanding maintenance needs prior to lease signing and agree on a schedule for completing those maintenance items.

13. **Lessee Maintenance.**

a. **Building Maintenance.** Lessee is responsible for routine maintenance of the Premises. Routine maintenance includes, but is not limited to, replacing light bulbs, replacing HVAC air filters, patching minor cracks or holes in walls, clearing clogged toilets and sewer lines, replacing or repairing small building fixtures such as door handles and locks, and repairing or replacing any items that were damaged by Lessee.

b. **Clean and Safe Condition.** Lessee shall keep the Premises in a clean and safe condition. Fire code or building code violations caused by Lessee operations or use of the Premises are grounds for termination of the Lease if identified violations are not promptly corrected by Lessee.

c. **Snow Removal.** Lessee is responsible for snow removal at the Premises, including the parking lot and adjacent sidewalks.

d. **Janitorial Services.** Lessee at its own expense shall provide janitorial services for the building. Lessee shall comply with all state and local health laws and Center for Disease Control (CDC) guidelines for protecting public health and safety in public places.

e. **Litter.** Lessee shall keep the Premises free of litter.

f. **Sidewalks.** Lessee shall promptly remove snow and any obstructions from all sidewalks adjacent to the Premises.

g. **Landscaping Irrigation.** Lessee is responsible for maintaining all landscaping on the Premises and shall irrigate landscaping to maintain it in a healthy condition. Lessee shall pay for replacement of any landscaping that City Public Works staff determines needs to be replaced (dead or near dead) due to improper irrigation.

h. **Notice to City.** Lessee shall promptly notify City in writing of the need for any repair, maintenance and/or alteration to the Premises. Such notice shall include photographs and sufficient information for City to determine what is needed.

i. **Damages Caused by Lessee.** Lessee shall pay for any repairs or maintenance when the damage has been caused by Lessee, its officers, employees, agents, and invitees, whether due to intentional acts, vandalism (to interior of building), negligence, or the failure to act.

j. **Lessee Payment.** If Lessee fails to address any of its maintenance obligations under this Lease, the City may perform the maintenance at its discretion, in which case City will invoice Lessee upon completion of any such repairs, alterations, improvements, or maintenance. Payment is due within thirty

(30) days from the invoice date. City may offer a payment plan agreement if Lessee requires a longer period for payment. Unpaid amounts shall accrue interest of 1% per month until paid in full.

14. **Lessee Improvements.**

a. **City Consent.** Lessee shall not make or allow any alteration, addition, or improvement to the Premises including, without limitation, to the entrances and exits of the Premises, or to any fixture, wiring, plumbing, heating and air-conditioning, or other equipment therein (“Improvements”) without City’s prior written consent. City is not required to give its consent to Lessee. City may elect to make any Improvements if City in its sole discretion determines the Improvements are necessary and appropriate. If Lessee requests to make Improvements to the building above and beyond the City’s maintenance obligations under this Lease, and those Improvements are approved by the City, the City may, in its sole discretion, consider the reasonable cost of those Improvements as an offset to rent dues by Lessee.

b. **Requirements for Work.** Lessee shall obtain all necessary building permits for any approved work. All work shall be completed by licensed contractors in good standing with the Arizona Registrar of Contractors. All work shall be completed in a good and workmanlike manner, in accordance with plans, specifications and drawings approved in writing by City, and in compliance with this Lease and all applicable laws, regulations and codes and all requirements of any insurer providing coverage for the Premises. Lessee shall obtain payment and performance bonds for the work. Lessee shall pay in a timely manner all amounts owed for the work.

c. **Ownership.** All Improvements to the Premises by Lessee (except movable furniture, equipment and trade fixtures installed and/or owned by Lessee, as applicable) shall become part of the Premises and City’s property upon expiration or termination of this Lease.

d. **Liens.** Lessee shall keep the Premises free and clear of all liens incurred by or resulting from acts of Lessee.

15. **Utilities.** Utilities are not included in the Rent. Lessee at its sole expense shall contract for utilities for the Premises, including, but not limited to electricity, gas, water, solid waste, recycling, and telephone services. Lessee may contract for internet and cable services.

16. **Parking.**

a. **Parking Areas.** Parking areas on the Premises include an upper parking lot and lower parking lot, as shown in Exhibit C attached hereto and incorporated by reference (“Parking Areas”).

b. **City Use and Management.** City reserves the right to exclusive use and management of the Parking Areas. Lessee is not entitled to any reduction in rent or compensation in the event City

modifies parking arrangements. Lessor may designate ParkFlag or other entity to manage the parking areas (“ParkFlag”).

c. Parking Rules. Lessee shall comply with any rules and regulations adopted by City or ParkFlag for the Parking Areas.

d. Meters and Signs. City may install and maintain parking meters and signs in Parking Areas.

(i) Metered parking spaces will be available for public parking on a pay-to-park basis during the hours posted. Lessee may use the metered parking spaces in the same manner as any member of the public.

(ii) “F” parking spaces will be available for use only by those who hold an F permit. Lessee will receive ten (10) F permits at no cost to Lessee. An F permit is a parking pass that enables the registered holder to use the F parking spaces at any time on a first in time basis. The F parking spaces are not metered. The F parking spaces are not exclusive for use of Lessee.

17. Security. Lessee is responsible for providing security for the Premises to the extent it determines is appropriate. City is not responsible for providing security measures.

18. Assumption of Risk and Waiver. Lessee assumes all risk of, and waives all claims against City arising from damage, loss, or theft of property or injury to persons in, upon, or about the Premises from any cause. To be absolutely clear, Lessee agrees that the Lessor, its officers, officials, employees or agents, shall not be liable for any direct or consequential damages (including damage claimed for actual or constructive eviction) either to persons or property sustained by the Lessee, or its officers, directors, employees, agents, invitees, licensees or contractors due to (i) any part of the Premises not being in repair or (ii) the result of any accident or casualty on the Premises. This provision shall include, but not be limited to, damage or loss caused by water, snow, frost, sewage, gas, or malfunction of any electrical, heating, cooling, or ventilation systems or installations on the Premises.

19. Lessee Insurance. Lessee shall maintain insurance during the term of this Lease that meets the requirements set forth in Exhibit D. In addition, Lessee shall not engage in or permit any activity which will cause the cancellation of, or increase the City’s existing premiums on, any insurance relating to the Premises. Lessee shall not permit to remain in or about the Premises any article that may be prohibited by the broadest form of “All Risk” or “Special Form” property damage insurance policies.

20. Indemnification. To the fullest extent permitted by law, Lessee shall indemnify, defend, save and hold harmless City, and its officers, officials, council members, citizens, agents, employees and volunteers (hereinafter referred to as “Indemnatee”) for, from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorney’s fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as “Claims”) including but not limited to personal injury (including death) or property damage caused, in whole or in

part, by the alleged acts, errors, omissions, negligence, or alleged negligence of Lessee or any of Lessee's directors, officers, agents, employees, volunteers or subcontractors, or of any Sublessee. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Lessee to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent acts of the Indemnitee, be indemnified by Lessee for, from and against any and all Claims. Lessee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

21. **Environmental Indemnification.** Lessee shall defend, indemnify, and hold harmless City for, from and against any and all future claims, demands, complaints, and/or actions made or brought against City pertaining to the Premises and arising under any Environmental Law, Rule, Regulation or otherwise based upon any Hazardous Materials condition. This defense and indemnity includes, without limitation, any claims, demands, complaints, and/or action, asserted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Water Quality Assurance Revolving Fund (WQARF), the Resource Conservation and Recovery Act (RCRA), and federal and state common law pertaining to Hazardous Materials, including any such claim based upon City's alleged liability as an owner or operator of the Premises under CERCLA or WQARF.

22. **City Insurance.** City may maintain its own insurance related to the Premises or may be self-insured. As a condition of this Lease, Lessee agrees to waive all claims against insurance purchased by City.

23. **Fire and Casualty.**

a. **Termination or Repair.** If any part of the Premises is damaged or destroyed by fire, accident, casualty, or an Act of God, then within thirty (30) days of such occurrence, City shall deliver to the Lessee written notice stating whether City is able to restore the damaged or destroyed Premises within one hundred eighty (180) days. City shall have no obligation to restore the damaged or destroyed Premises in the event the cost of restoring the Premises exceeds 50% of the fair market value of the Premises, as restored. The City shall have no obligation to spend more in restoring Premises than the insurance proceeds available for such purposes, if such proceeds are available, less any amount required to be paid to any mortgagee of City ("Available Funds"). If, in City's opinion, the cost for restoring the Premises can be completed within such period with the Available Funds, City shall promptly restore the Premises. If, in City's opinion, the Premises cannot be restored within such period with the Available Funds, either party may terminate this Lease upon thirty (30) days' written notice to the other party.

b. **Reduction of Rent.** If any part of the Premises is damaged or destroyed by fire, accident, casualty, or an Act of God, and not due to any act or failure to act by Lessee, then City shall reduce the Rent due under this Lease by an equitable amount, commencing from the date of the damage or destruction, until the Premises is restored. In determining what is equitable, City shall consider the extent to which Lessee's use of the Premises has been impaired.

c. Lessee Improvements. City is not responsible for restoring any Lessee Improvements to the Premises that have been damaged or destroyed by fire, accident, casualty or an Act of God.

24. Compliance with Laws. Lessee shall comply with all applicable rules, regulations, ordinances, orders, codes, laws and requirements of all municipal, county, state, federal and other applicable governmental authorities related to use of the Premises.

25. Hazardous Substances.

a. Lessee shall not construct or use any improvements, fixtures or equipment, or engage in any act on or about the Premises, or permit any Sublessee to engage in any of the foregoing, that would require the procurement of any license or permit pursuant to any Environmental Law. "Environmental Law" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Hazardous Materials Transportation Act, as amended, the Federal Water Pollution Control Act, as amended, the Resource Conservation and Recovery Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, and the Arizona Environmental Quality Act, as amended.

b. Lessee shall immediately notify City of:

(i) The existence of any Hazardous Substance, as defined in 29 C.F.R. 1910.120, on or about the Premises that may be in violation of any Environmental Law (regardless of whether Lessee is responsible for the existence of such Hazardous Substance);

(ii) Any proceeding or investigation by any federal, state or local governmental authority regarding the presence of any Hazardous Substance on the Premises or the migration thereof to or from any other property;

(iii) All claims made or threatened by any third party against Lessee relating to any loss or injury resulting from any Hazardous Substance; and/or

(iv) Lessee's notification to the National Response Center of any release of a reportable quantity of a Hazardous Substance in or about the Premises.

26. Subordination. This Lease is and shall remain subordinate to any existing or subsequent mortgage or deed of trust covering the fee title to the Premises, together with any renewals, modifications or extensions of such existing or subsequent mortgages or deeds of trust. Upon the request of City, the Lessee shall execute such instruments as are reasonably required to subordinate this Lease to mortgages or deeds of trust made by City.

27. **Estoppel Certificate.** Upon written request of a requesting party, the other party will deliver to the requesting party a statement in writing certifying (i) that the Lease is unmodified and in full force and effect (or that the Lease as modified is in full force and effect, describing the modifications) , (ii) that the rents and other charges have been paid to date (or, if there are any prepayments or defaults, a description of the same) and (iii) that to the best of the other party's knowledge, without any obligation to inquire or investigate, that the requesting party is not in default under any provision of this Lease (or, if there is a known default, the nature of the default).

28. **Default.**

a. **Default by Lessee.** Lessee shall be in default under this Lease if any of the following occurs: (i) Lessee fails to pay Rent when due under this Lease; (ii) Lessee fails to perform or observe any other term or condition of this Lease and such failure is not cured within thirty (30) days after City delivery of written notice to the Lessee of such failure or other reasonable time required by City; (iii) Lessee is named as a debtor in any voluntary or involuntary bankruptcy proceeding; (iv) substantially all of the Lessee 's assets are placed in receivership or are subjected to attachment or other judiciary seizure; (v) the Lessee makes or suffers a general assignment for the benefit of creditors; (vi) Lessee vacates or abandons the Premises; (vii) Lessee engages in a pattern or practice of breaching any term or condition of this Lease; or (viii) Lessee ceases to offer Programs to the public.

b. **City Remedies.** In the event of Lessee 's default hereunder: (i) City shall have all remedies available at law or in equity; and/or (ii) City may remedy such breach, and invoice Lessor for the City's actual costs for remedying the breach ("Cure Costs") and payment is due 30 days after the invoice date.

c. **Default by City.** City shall be in default under this Lease if City fails to perform or observe any term or condition under this Lease, and such failure is not cured within thirty (30) days after delivery of written notice to City of such failure or other reasonable time required by Lessee.

d. **Lessee's Remedies.** In the event of City's default hereunder, Lessee shall have all remedies available at law or in equity; provided, however, Lessee hereby expressly waives any right to abatement or withholding of Rent or other amounts payable to City under this Lease.

29. **Effect of Termination, Expiration or Abandonment of Lease.** Upon termination, expiration, or abandonment of the Lease, Lessee shall surrender the Premises and remove all its personal property within thirty (30) days from the Premises. If Lessee has not removed all its personal property within thirty (30) days, City at its option may: (i) remove all personal property of Lessee and charge Lessee for the costs of removal and/or storage costs, and Lessee payment is due within thirty (30) days from the invoice date; and/or (ii) allow abandonment of the personal property in place and in such event title shall pass to City.

30. **Effect of Holding Over.** If Lessee fails to surrender possession of the Premises to City upon termination, expiration, or abandonment of this Lease, City shall have all remedies available at law or in equity to a lessor of commercial real property in the State of Arizona, together with the following remedies: (i) City may recover damages from the Lessee in an amount equal to (a) double the monthly rental payment applicable immediately prior to termination for each full or partial month that the Lessee fails to deliver actual possession of the Premises to City.

31. **Notices.** All notices or other communications under this Lease shall be in writing and shall be deemed to be delivered on the date of delivery if delivered in person or on the date of receipt indicated on the return receipt if delivered by U.S. Mail, certified or registered mail , return receipt requested, postage prepaid and addressed as follows:

If to Lessor :  
Real Estate Manager  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001

With a copy to:  
City Attorney  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001

If to Lessee:  
Executive Director  
Theatrikos Inc.  
11 West Cherry Ave  
Flagstaff, AZ 86001

Or to such other address as a party may provide to the other by written notice. E-mails may be used for communication but shall not serve as written notice under this Lease.

32. **Successors and Assigns.** This Lease shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties to this Lease.

33. **Assignment and Subletting.**

a. **Prior Written Consent.** Lessee shall not, without the prior written consent of City, (i) assign this Lease or any interest therein; (ii) permit or suffer any assignment of this Lease by operation of law; (iii) sublet all or any portion of the Premises; or (iv) permit the use of the Premises by any party other than the Lessee and its officers and employees.

b. **Standards for Consent to Assignment or Subletting.** The City Manager may consent to

any proposed assignment or subletting upon making a determination that the proposed assignee or sublessee is a qualified operator, based upon their submitted business experience, credit history, business plan, financial model, lease history, litigation history, and any other information determined by City to be pertinent.

c. No Release of Lessee. Lessee shall not be released from any of the obligations of the Lease as a result of assignment or subletting.

34. Civil Rights. Lessee shall not unlawfully discriminate against any person related to use of the Premises because of race, color, national origin, religion, sex, age or physical or mental disability.

35. Entire Agreement. This Lease represents the entire agreement of the parties.

36. Amendments. No alteration, amendment, change or addition to this Lease shall be binding upon City or Lessee unless reduced to writing and signed by both parties.

37. Waiver. The failure of City or Lessee to strictly enforce this Lease or any term or condition herein, shall not be construed as a waiver of such term or condition, or alter, or diminish any rights or remedies under this Lease. In the event City or Lessee expressly waives any term or condition of the Lease, such waiver shall not be construed to waive any other term or condition.

38. Rights Cumulative. Each party's rights and remedies under this Lease are cumulative, and are not alternative, unless expressly so stated.

39. Attorneys' Fees. If either party brings an action to enforce the terms of this Lease or declare rights hereunder, the prevailing party in such action, at trial or on appeal, shall be entitled to its reasonable attorneys' fees and costs as may be determined by the court.

40. Governing Law, Jurisdiction, and Venue. This Lease shall be construed and interpreted in accordance with the laws of the State of Arizona. The courts of Arizona shall have exclusive jurisdiction and Coconino County shall be the proper venue.

41. Relationship of the Parties. Nothing in this Lease shall be construed as creating the relationship of principal or agent, or of partnership or joint venture. Neither the method of computation of rent nor any other provision of this Lease, nor any act of the parties, shall be deemed to create any relationship other than that of City or Lessee.

42. Effect of Sale or Transfer. If the City sells or transfers its interest in the Premises during the term of this Lease, then from and after the effective date, City shall be released and discharged from any and all further obligations and responsibilities under this Lease (except those already accrued) upon written assumption by the buyer of City's liabilities under this Lease.

43. **Condemnation.** If all of the Premises are taken or condemned by any governmental authority for any use or purpose, this Lease shall terminate upon, and the rent shall be apportioned as of the date when actual possession of the Premises is required for such use or purpose. If less than all of the Premises is taken or condemned by any authority for a public use, then (i) City may terminate this Lease upon thirty (30) days' written notice thereof, or (ii) City may continue the Lease and a just portion of the rent will abate as of the date when actual possession of such portion of the Premises is required for such use or purpose. City reserves all rights to damages to the Premises for any taking or condemnation of all or any portion of the Premises, provided that the taking authority is an entity other than City. Lessee hereby assigns to City any right that the Lessee may have to such award or damages. The Lessee shall have the right to claim and recover from the condemning authority compensation for any loss for moving expenses and for interruption of or damage to the Lessee's business only if such award or damages are awarded separately and not as part of the award or damages recoverable by the City.

44. **Time of the Essence.** Time is of the essence with respect to obligations to be performed hereunder.

45. **Severability.** The invalidity of any portion of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other portion of this Lease.

46. **Cancellation.** City is an Arizona municipal corporation and a political subdivision of the State of Arizona, and hereby gives written notice under Arizona Revised Statutes (A.R.S.) Section 38-511 that this Lease is subject to cancellation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of the City is at any time while the Lease is in effect an employee or agent or consultant of the Lessee with respect to the subject matter of this Lease.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed.

CITY OF FLAGSTAFF/LESSOR

LESSEE

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

Attachments:

Exhibit A Legal Description of Premises  
Exhibit B Performing Arts Programs Business Plan  
Exhibit C Parking Areas Map  
Exhibit D Insurance Requirements

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Lots 13, 14, 15, 16, 17 and 18, BLOCK 34 of the TOWNSITE OF FLAGSTAFF, being in Section 16 and of the TOWN OF FLAGSTAFF as surveyed and platted by H.C. Nutt, Trustee for the Atlantic and Pacific Railroad Company, being in section 15, all in Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona

## EXHIBIT B

### **Theatrikos Strategic Business Plan**

Theatrikos' current strategic plan addresses the five-year period 2020—2025 and is reviewed and updated annually by the board. The current plan, most recently updated during the pandemic, includes seven strategic priorities.

1

#### **Quality Artistic Programming**

Goals include continued production of both broadly appealing main stage shows and studio shows that have a significant social/community impact, as well as a new 1-hour show targeted to tourists.

2

#### **Quality Education**

Goals include expanding TheatriKids offerings and programs; including expanding TheatriKids into Advanced, Intermediate and Fundamentals. We intend to establish an Education Advisory Board, as well as training for TheatriKids teachers.

3

#### **Financial Stability**

Goals include increasing the number of main stage performances, increasing both private and corporate donations, increasing grant funding, promoting the endowment fund, and mounting a capital campaign for building beautification and improvements.

4

#### **Staffing**

Goals include adding a development coordinator and production coordinator to improve the fundraising and quality of our shows respectively. We will also recruit more volunteers and providing job descriptions for key volunteer positions. We'll expand the board of directors and develop succession planning for paid staff and key volunteer positions.

5

#### **Marketing and Branding**

Goals include creating consistent brand graphics for all marketing and advertisements, expanding the marketing committee, developing a program to draw in tourists, and increasing our social media presence and impact.

6

#### **Facilities**

Goals include obtaining a longer-term lease, thus allowing us to implement beautification plans. We will finish the improvements on the new black box. With already secured grant funding, we'll add lighting and sound equipment. We'll upgrade our concession offerings and further improve our gallery displays.

### **Community Partnerships**

Goals include continuing to share our calendar with community partners, utilizing interns, increasing participation in our 1<sup>st</sup> Sunday Drama Club, developing the Dark Sky Arts and Ideas Festival (working title), in partnership with Creative Flagstaff and other local arts organizations. We'll partner with businesses and other arts organizations to strengthen the financial impact of the arts on the community.

### **Next Five Years**

#### **Quality of Shows**

We are immensely proud of the quality of our shows. As we mentioned, according to the Solop survey that was done for us, 92% of our audience loves our shows.

But we want to do better.

We want to improve the quality of our productions. To do so takes funding. This new longer-term lease plays a crucial part in allowing us to raise those funds. That permanency gives donors confidence in the theatre.

Also, adopting a traditional business model for show production will help. Being mindful that it takes producing popular shows that sell tickets and appeals to the masses to be able to afford moving, cutting edge shows that have an impact on the fabric of the community.

#### **Additional Staff**

It our plan to use increased fund to do a number of things. Crucial among them, hiring a development coordinator and a production coordinator. First, a production coordinator will help us raise money, especially from underwriting, and thus allowing us to grow still further. A production coordinator will provide support for directors and continuity from show to show that will improve the quality of our already wonderful shows.

#### **Murals**

Every theatre that has repurposed another building boards up the windows to control the light. That's par for the course. Ambitious theatres then paint murals in those boarded up windows. Our plan is to restore the original historic windows themselves. And then put beautiful murals in the windows. Murals, from one to the next, as you walk clockwise around the theatre, would be a story of theatre and Flagstaff history.

While we don't have the funding to actually paint murals, we do think we can more affordably print them and install them. The art would be commissioned and painted on a 11"x17" surface and then printed and installed.

#### ***Route 66 to the Grand Canyon***

It has long been on our agenda to produce a show that will encourage tourists to stay an extra night in Flagstaff. Unlike our normal shows which run for one month, *Route 66 to the Grand Canyon* runs for a year. Or longer. This gives folks like Discover Flagstaff an opportunity to include it in the city's

promotional materials. It allows Theatrikos to tap into an audience that we haven't yet done thoroughly. 66GC would have the ability to travel to local schools as well as Phoenix and Las Vegas. We are exploring the idea of producing in tandem with the education programs at Grand Canyon Conservancy.

### **Beautification**

While city maintenance in the new lease will take care of replacing and maintain old paint, siding and windows, we'll be able to do fundraising to make sure those items are brought back in a more beautiful way.

### **Dark Sky Arts and Ideas Festival (wt)**

Before Theatrikos executive director arrived in Flagstaff, he reached out to the incoming executive director of Creative Flagstaff. At their first meeting, he suggested that the city Flagstaff needed an arts festival. To improve the quality of life, the sense of place, and increase patronage of the arts. Three years later this festival is now a crucial part of Creative Flagstaff's strategic plan and Theatrikos' executive director chairs the steering committee.

### **Black Box**

Post sewage flood, Theatrikos built back with improvements. One of those key improvements is turning an old basement costume storage space into a black box for small scale intimate performances. The space will be made available to performing groups around Flagstaff. A crucial addition to a venue starved city. We already have a grant to install lighting and sound equipment in the new black box.

### **Expanded TheatriKids**

It is our hope to bring our TheatriKids education programs out to the East side of town. Thus, expanding our service to those who can't get downtown. Plus, we hope to expand into pre-K ages 4 and 5. Theatre skills are taught very differently to these young ages. But are still fun and offer wonderful growth for small children.

EXHIBIT C

PARKING AREAS MAP



EXHIBIT D

INSURANCE REQUIREMENTS

1. In General. Contractor shall maintain insurance against claims for injury to persons or damage to property, arising from performance of or in connection with this Contract by the Contractor, its agents, representatives, employees or contractors.
2. Requirement to Procure and Maintain. Each insurance policy required by this Contract shall be in effect at, or before, commencement of work under this Contract and shall remain in effect until all Contractor's obligations under this Contract have been met, including any warranty periods. The Contractor's failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal will be considered a material breach of this Contract.
3. Minimum Scope and Limits of Insurance. The following insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City does not represent or warrant that the minimum limits set forth in this Contract are sufficient to protect the Contractor from liabilities that might arise out of this Contract, and Contractor is free to purchase such additional insurance as Contractor may determine is necessary.

Contractor shall provide coverage at least as broad and with limits not less than those stated below.

a. Commercial General Liability - Occurrence Form

General Aggregate	\$4,000,000
Products/Completed Operations	\$1,000,000
Each Occurrence	\$1,000,000

b. Umbrella Coverage \$2,000,000

c. Automobile Liability –  
Any Automobile or Owned, Hired  
and Non-owned Vehicles  
Combined Single Limit Per Accident  
for Bodily Injury & Property Damage \$1,000,000

d. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

e. Professional Liability \$2,000,000

f. Liquor Liability Each Occurrence           \$3,000,000

4. Self-Insured Retention. Any self-insured retentions must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers. Contractor shall be solely responsible for any self-insured retention amounts. City at its option may require Contractor to secure payment of such self-insured retention by a surety bond or irrevocable and unconditional letter of credit.
5. Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:
  - a. Additional Insured. In Commercial General Liability and Automobile Liability Coverages, the City of Flagstaff, its officers, officials, agents and employees shall be named and endorsed as additional insureds with respect to liability arising out of this Contract and activities performed by or on behalf of the Contractor, including products and completed operations of the Contractor, and automobiles owned, leased, hired or borrowed by the Contractor.
  - b. Broad Form. The Contractor's insurance shall contain broad form contractual liability coverage.
  - c. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Contractor's insurance and shall not contribute to it.
  - d. Each Insured. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Not Limited. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
  - f. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Contractor for the City.
6. Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits unless prior written notice has been given to the City. Notices required by this section shall be sent directly to the Buyer listed in the original Solicitation and shall reference the Contract Number:

Attention: Patrick Brown, Purchasing Director  
Contract No. \_\_\_\_\_  
Purchasing Department  
City of Flagstaff,  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001  
[Pbrown@flagstaffaz.gov](mailto:Pbrown@flagstaffaz.gov)

7. Acceptability of Insurers. Contractor shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a “Best’s” rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
8. Certificates of Insurance. The Contractor shall furnish the City with certificates of insurance (ACORD form) as required by this Contract. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The City project/contract number and project description shall be noted on the certificates of insurance. The City must receive and approve all certificates of insurance and endorsements before the Contractor commences work.
9. Policies. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Contract at any time. The City shall not be obligated, however, to review any insurance policies or to advise Contractor of any deficiencies in such policies and endorsements. The City’s receipt of Contractor’s policies or endorsements shall not relieve Contractor from, or be deemed a waiver of, the City’s right to insist on strict fulfillment of Contractor’s obligations under this Contract.
10. Modifications. Any modification or variation from the insurance requirements in this Contract must have the prior approval of the City’s Attorney’s Office in consultation with the City’s Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by their handwritten revision and notation to the foregoing insurance requirements.