

EXHIBIT

"A"

**GRANT AGREEMENT FOR THE
ENCOURAGEMENT OF THE PERFORMING ARTS**

This Grant Agreement for the Encouragement of the Performing Arts ("Agreement") is made and entered into as of the ___ day of _____, 2024, by and between the **City of Round Rock**, a Texas home rule municipality (the "City"), and **Penfold Theatre Company**, a Texas nonprofit corporation ("Penfold").

RECITALS

WHEREAS, the City collects a municipal hotel occupancy tax ("HOT") pursuant to Chapter 351 of the Texas Tax Code (the "Code"); and

WHEREAS, Sec. 351.101 of the Code provides that revenue from the HOT may be used only to promote tourism and the convention and hotel industry, and that use is limited to (among other uses) the encouragement, promotion, and improvement of the arts, including instrumental and vocal music, drama, and other arts and related to the presentation, performance, execution, and exhibition of these major art forms, (the "Performing Arts"); and

WHEREAS, Penfold is a local organization whose stated purpose is to produce, promote, perform and exhibit Performing Arts as described in Sec. 351.101 of the Code; and

WHEREAS, Penfold is in need of a location and facility in which to fulfill its above stated purpose; and

WHEREAS, Penfold is currently negotiating a lease agreement (the "Lease Agreement") with R.C. Center Limited Partnership (the "Landlord") for the lease space located at 2120 and 2132 N. Mays and 2199 N. IH 35, Round Rock, Texas 78664, which is suitable for the Performing Arts; and

WHEREAS, Penfold has requested that the City provide it with a grant from HOT funds to assist it with its financial obligations under the Lease Agreement for the Facility;

WHEREAS, the City Council has determined that this Agreement is in the public interest and that the investment of HOT revenues through grants pursuant to and in accordance with the terms, conditions and guidelines of the Code is a public purpose and will promote the Performing Arts in the City, promote tourism and the convention and hotel industry in the City, and benefit the City and its citizens;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties agree as follows:

ARTICLE I
Incorporation of Recitals

The foregoing Recitals are incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II
Definitions

As used in this Agreement, the following terms shall have the following meanings, to-wit:

“Agreement” shall mean this Agreement together with all exhibits attached hereto.

“Arts Grant” shall have the meaning set forth in Article VII, Section 1 of this Agreement.

“Code” shall mean Chapter 351 of the Texas Tax Code.

“City” shall mean the City of Round Rock, a Texas home rule municipality.

“City Council” shall mean the City Council of the City.

“City Manager” shall mean the City Manager of the City.

“Facility” shall have the meaning set forth in the Recitals of this Agreement.

“Landlord” shall mean R.C. Center Limited Partnership, the owner of the Facility.

“Lease Agreement” shall mean the lease agreement between Penfold and Landlord for the Facility.

“Maximum Grant Amount” shall mean THREE HUNDRED TWENTY-SIX THOUSAND, THREE HUNDRED THIRTY AND NO/100 DOLLARS (\$326,330).

“Parties” shall mean both Penfold and the City.

“Party” shall mean either Penfold or the City.

“Penfold” shall mean the Penfold Theatre, Co.

“Performing Arts” includes instrumental and vocal music, dance, drama, plays, musicals, and other arts related to the presentation, performance, execution and exhibition of these and similar art forms.

ARTICLE III
Authority for Agreement

This Agreement is authorized by Chapter 351 of the Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in Sec. 351.101 of the Code and that Penfold's performance of its covenants and obligations as set forth herein will promote tourism and the convention and hotel industry and will encourage and promote Performing Arts in the City and benefit the City and its citizens.

ARTICLE IV
Term

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) 22 months after the rent commencement date as defined in the Lease Agreement; or (ii) the date this Agreement is terminated by the City or Penfold pursuant to a right to terminate as expressly provided herein (the "Term").

ARTICLE V
Penfold's Obligations

In consideration of the City entering into this Agreement, Penfold represents, covenants, and agrees as follows:

1. Penfold agrees to enter into a Lease Agreement with the Landlord to lease the Facility for a minimum of five years, for the purpose of operating a community theater for the Performing Arts. The Lease Agreement shall be subject to the approval of the City.
2. Penfold agrees that it will use its best efforts to produce and present Performing Arts at the Facility for at least 180 days in a calendar year.
3. Penfold agrees that it will use its best efforts to encourage and recruit other individuals and/or groups to produce and present Performing Arts at the Facility.
4. Penfold agrees to comply with all applicable federal, state, and local laws pertaining to the use of HOT grant funds.
5. Penfold agrees to timely keep and perform all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by Penfold under the terms of this Agreement.
6. Penfold agrees to timely keep and perform all terms, provisions, agreements, covenants, conditions, and obligations under the terms of the Lease Agreement with the Landlord for the Facility.

7. Penfold agrees the performance of any or all obligations of Penfold under the terms of this Agreement does not constitute the provision of goods or services to the City.

ARTICLE VI
Conditions to the Arts Grant

Penfold and the City hereby expressly acknowledge and agree that the City's payment of the Arts Grant shall expressly be conditioned upon the satisfaction of each and every one of the following conditions-wit:

1. Lease Agreement: Penfold shall enter into a Lease Agreement with the Landlord for the Facility, with said Lease Agreement being subject to the approval of the City.

2. Penfold shall provide the City with a proposed schedule of Performing Arts to be presented at the Facility for the upcoming twelve months and update the schedule every six months thereafter.

3. Penfold shall not owe any debts to the City that are past due including, without limitation, any past due property taxes, judgments or fines for code violations, and City supplied utilities.

4. Penfold shall have timely kept and performed all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by Penfold under the terms of this Agreement.

5. Penfold shall have timely kept and performed all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by Penfold under the terms of the Lease Agreement.

6. Landlord shall have timely kept and performed all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by Landlord under the terms of the Lease Agreement.

ARTICLE VII
Arts Grant Payments

1. Arts Grant. In consideration of and subject to Penfold's compliance with all of the terms, provisions, covenants, conditions and obligations of this Agreement, the City shall provide to Penfold an Arts Grant in the maximum amount of Three Hundred Twenty-Six Thousand, Three Hundred Thirty and No/100 Dollars (\$326,330.00), to be paid as set forth in paragraph 2 below.

2. Payment of Arts Grant. Provided all Arts Grant conditions precedent have been satisfied and are then continuing, and subject to the covenants and limitations set forth in this Agreement, the City shall pay the Arts Grant to Landlord for the benefit of Penfold as follows:

- a) Beginning with the fifth month following the rent commencement date as defined in the Lease Agreement, the City shall make eight monthly payments to the Landlord in the amount of \$17,950.00, to be applied by the Landlord to the monthly rent and other obligations owed by Penfold.
- b) Beginning with the thirteenth month of the Lease Agreement, the City shall make ten monthly payments to the Landlord in the amount of \$18,273.00, to be applied by the Landlord to the monthly rent and other obligations owed by Penfold.
- c) The total amount of the grant payments made to the Landlord on behalf of Penfold shall not exceed \$326,330.00.

3. Funds Available for Payment of the Arts Grant. The Arts Grant is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. The Arts Grant shall be payable only from available HOT revenues and shall be subject to the availability of grant funds and the approval of funds for such purpose in the fiscal year for which the Arts Grant is approved. This Article VII, Section 3 shall expressly survive the expiration or termination of this Agreement.

ARTICLE VIII

Defaults and Remedies

1. Penfold's Default. Penfold shall be in default of this Agreement: (i) upon the bankruptcy or insolvency of Penfold; (ii) upon any assignment of this Agreement by Penfold in violation of Article IX, Section 2 of this Agreement; or (iii) upon the failure of Penfold to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by Penfold under the terms of this Agreement or the Lease Agreement, and such failure continues for thirty (30) days after written notice by the City to Penfold.

2. City Default. City shall be in default of this Agreement upon the failure of the City to timely keep or perform any term, provision, agreement, covenant, condition, or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for thirty (30) days after written notice by Penfold to the City.

3. City's Additional Remedies. In addition to the remedies set forth herein, in the event of a Penfold Default, the City shall have the right to terminate this Agreement by written notice to Penfold in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement and the City shall further have the right to exercise any and/or all other rights and remedies available to the City under this Agreement and/or pursuant to the laws of the State of Texas.

4. Penfold Remedy. Upon the occurrence of a City Default, Penfold shall have the right to terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. The City and Penfold acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's

immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- (i) the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed the amount of the Arts Grant;
- (ii) the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages;
- (iii) Penfold shall not recover attorney's fees; and
- (iv) Penfold shall not be entitled to specific performance or injunctive relief against the City.

5. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights, and remedies of each Party pursuant to this Article VIII shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX **Miscellaneous Provisions**

1. Indemnity. PENFOLD HEREBY INDEMNIFIES AND AGREES TO HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, LAWSUITS AND LIABILITIES OF EVERY KIND AND CHARACTER INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF LITIGATION, FOR PERSONAL INJURY (INCLUDING DEATH) OF ANY PERSON OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY ACT OR OMISSION OF PENFOLD OR PENFOLD'S OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND THE CONTRACTORS' AND SUBCONTRACTORS' EMPLOYEES, IN CONNECTION WITH THE DESIGN, CONSTRUCTION, WORKMANSHIP AND PERFORMANCE OF THE WORK DESCRIBED IN THE GRANT APPLICATION (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATH OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE). NOTHING CONTAINED IN THIS ARTICLE IX, SECTION 1 SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW. This indemnity shall expressly survive the expiration or termination of this Agreement.

2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of Penfold hereunder may not be assigned or transferred by Penfold without the prior written consent of the City which may be withheld in the City's sole discretion.

3. Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

PENFOLD: Penfold Theatre Company
P.O. Box 81044
Austin, TX 78708

CITY: City of Round Rock
Attn: City Manager
221 E. Main Street
Round Rock, TX 78664

4. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

5. Modification. This Agreement may only be revised, modified, or amended by a written document signed by the City and Penfold. Oral revisions, modifications or amendments are not permitted.

6. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

7. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term, or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term, or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

8. Governing Law; Venue. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Williamson County, Texas.

9. Attorney's Fees. In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall not be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action.

10. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

11. No Partnership or Joint Venture. Nothing contained in the Grant Application, or this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint enterprise between the Parties. Penfold is not the agent or servant of the City. The doctrine of respondent superior shall not apply between the City and the Grant Applicant, or between the City and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of Penfold.

12. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to create any third-party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary. For the sake of clarity, the Landlord is not intended to be a third-party beneficiary of this Agreement.

13. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

14. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

15. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

16. Authority. Penfold represents that Penfold has the full power and authority to enter into and fulfill the obligations under this Agreement and that the Person signing this Agreement on behalf of Penfold has the authority to sign this Agreement on behalf of Penfold.

17. Date for Performance. If the time period by which any act required hereunder must be performed falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

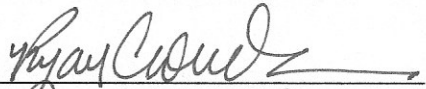
18. Form 1295 Certificate. Penfold agrees that if V.T.C.A., Government Code, §2252.908 applies to Penfold, Penfold will go online with the Texas Ethics Commission to complete a Form 1295 Certificate and will print and execute the completed certificate in such form as is required by V.T.C.A., Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed and completed Form 1295 Certificate.

19. Anti-Boycott Verification. Penfold hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other “affiliates” (as hereinafter defined), if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with V.T.C.A., Government Code, §2270.002, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Penfold understands “affiliate” for purposes of this Article IX, Section 19 means an entity that controls, is controlled by, or is under common control with Penfold and exists to make a profit.

20. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

PENFOLD THEATRE COMPANY

By: 
Ryan Crowder its Producing Artistic Director
Date: 2/9/2024

**CITY OF ROUND ROCK,
a Texas home rule municipality**

By: _____
Craig Morgan, Mayor
Date: _____

ATTEST:

By: _____
Meagan Spinks City Clerk

APPROVED AS TO FORM:

Stephanie Sandre, City Attorney