

RESOLUTION NO. R-2021-335

WHEREAS, on December 16, 2021, the Round Rock Transportation and Economic Development Corporation ("TEDCO") entered into an Economic Development Agreement ("Agreement") with Kingsisle Entertainment, Inc., and

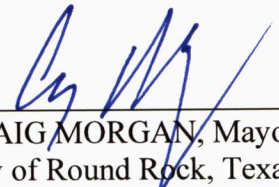
WHEREAS, the City of Round Rock desires to approve the action of TEDCO in entering into said Agreement with Kingsisle Entertainment, Inc., Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the City Council hereby approves the action of the Round Rock Transportation and Economic Development Corporation in entering into an Economic Development Agreement with Kingsisle Entertainment, Inc., a copy of said agreement being attached hereto as Exhibit "A" and incorporated herein for all purposes.

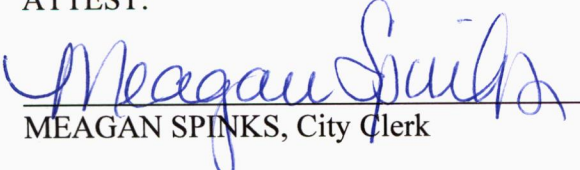
The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 16th day of December, 2021.



CRAIG MORGAN, Mayor
City of Round Rock, Texas

ATTEST:



MEAGAN SPINKS, City Clerk

EXHIBIT

"A"

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Program Agreement ("**Agreement**") is entered into this 16th day of DECEMBER, 2021, (the "Effective Date") by and between the **Round Rock Transportation and Economic Development Corporation**, a Type B corporation ("**TEDCO**") created under the authority of Chapters 501 and 505, Texas Local Government Code, (the "Code") and **Kingsisle Entertainment, Inc.** ("**KINGSISLE**"), a Texas corporation. The foregoing shall be referred to collectively as the "Parties".

WHEREAS, TEDCO has adopted a resolution approving the Project (defined below) and authorizing the President to enter into this Agreement with KINGSISLE in recognition of the creation of primary jobs and the positive economic benefits to the City of Round Rock (the "City") as set forth below; and

WHEREAS, it is KINGSISLE agreement to (i) lease a facility (the "Facility") containing approximately 33,000 square feet of office space, (ii) invest at least \$500,000 in improvements to the Facility and Business Personal Property, (as defined below), and (iii) create one hundred fifty (150) new Primary Jobs (as defined below) over three (3) years (the "Project"); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapters 501 and 505 of the Texas Local Government Code; and

WHEREAS, TEDCO agrees to provide performance-based Economic Incentive Payments ("**EIP's**") (as defined below);

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TEDCO and KINGSISLE agree as follows:

1. **Authority.** TEDCO's execution of this Agreement is authorized by §505.102 of the Texas Local Government Code. TEDCO acknowledges that KINGSISLE is acting in reliance upon TEDCO's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to lease, improve, and occupy the Facility and create primary jobs.
2. **Definitions.**
 - 2.1. "**Business Personal Property**" means fixtures, equipment, and furniture purchased for the purpose of supporting KINGSISLE's business operation at the Facility
 - 2.2. "**City**" means the City of Round Rock, Texas.
 - 2.3. "**Economic Incentive Payment(s)**" ("**EIPs**") means the amount paid by TEDCO to KINGSISLE as set forth in Sec. 5.1.
 - 2.4. "**Effective Date**" is the date set forth above in the introductory paragraph.

2.5 “Facility” means the office space containing 33,000 square feet in the building located at 2700 La Frontera, Round Rock, Texas 78681.

2.6 “Full Time Equivalent Employee” (“FTE”) means a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least forty (40) hours per week, but who, in combination, are counted as the equivalent of a full-time employee. FTE’s shall include original hires or their replacements over time.

2.7 “Recapture Liability” means the total amount of all EIP’s that are paid as a result of this Agreement that are subject to recapture by TEDCO from KINGSISLE in the event of an KINGSISLE default.

2.8 “Year 1” means the calendar year 2022.

3 **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, of Year 3.

4 **Rights and Obligations of KINGSISLE.**

4.1 Construction. KINGSISLE agrees to lease and occupy the Facility on or before January 1, 2022.

4.2 Investment. KINGSISLE agrees to invest at least \$500,000 in improvements to the Facility and in Business Personal Property, as set forth in the schedule below. KINGSISLE agrees to provide TEDCO with documentation that shows proof that this obligation has been satisfied, and TEDCO shall have the right to audit KINGSISLE records to verify same.

Year 1	Improvements to the Facility	\$ 42,000
	Business Personal Property	123,250
Year 2	Business Personal Property	118,750
Year 3	Business Personal Property	<u>216,000</u>
	TOTAL	\$500,000

4.3 Jobs. KINGSISLE agrees to create and retain Primary Jobs as set forth in the schedule below. The Primary Jobs shall earn an average salary of \$ 85,000 per year plus benefits.

<u>Year</u>	<u>Retained Jobs</u>	<u>New Jobs</u>	<u>Total Jobs</u>
Year 1	0	50	50
Year 2	50	50	100
Year 3	100	50	150

With respect to its obligation to create and retain the aforesaid Primary Jobs, KINGSISLE shall be entitled to include and receive credit for Primary Jobs created and retained by its affiliated corporation, Gamigo US, Inc.

- 4.4 Job Compliance Affidavit. On or before March 1 following each calendar year of this Agreement, KINGSISLE agrees to provide to TEDCO a Job Compliance Affidavit, a copy of such Job Compliance Affidavit being attached hereto as **Exhibit A**. TEDCO shall have the right, following reasonable advance notice to KINGSISLE, to audit KINGSISLE's records to verify that this obligation has been satisfied.
- 4.5 Maintain Business Operations. KINGSISLE agrees to maintain its business operations in the Facility during the term of this Agreement.
- 4.6 Compliance with regulations. KINGSISLE agrees that it will comply with the City's development approval processes, and shall construct and install the improvements and operate the Facility consistent with City ordinances, development regulations, and legal requirements.
- 4.7 Clawback. In the event that KINGSISLE fails to comply with any of the actions as described in Section 4.1 through 4.5 above, KINGSISLE will immediately pay to TEDCO an amount equal to, but not to exceed, the Recapture Liability.
5. **Economic Incentive Payments.** In consideration of KINGSISLE compliance with this Agreement, TEDCO agrees as follows:
- 5.1 "Primary Job" means a job that meets the definition in §501.002(12) of the Texas Local Government Code.
- 5.2 "Recapture Liability" means the total amount of all EIP's that are paid as a result of this Agreement that are subject to recapture by TEDCO from KINGSISLE in the event of an KINGSISLE default.
- 6 **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, of Year 3.
7. **Economic Incentive Payments.** In consideration of KINGSISLE compliance with this Agreement, TEDCO agrees as follows:
- 7.1 Schedule for EIPs. TEDCO shall, subject to KINGSISLE satisfaction of its obligations set forth herein, make EIPs to KINGSISLE as set forth herein. The EIP's shall be made in annual payments on or before April 1 of each year. "Year 1" shall be the calendar year following KINGSISLE receipt of its Certificate of Occupancy for the Facility. The amount of the EIP's shall be as follows:

<u>Year</u>	<u>Amount of EIP</u>
Year 1	\$33,333.33
Year 2	\$33,333.33
Year 3	\$33,333.34

7.2 EIP Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to KINGSISLE. The EIPs by TEDCO under this Agreement are subject to the TEDCO's appropriation of funds for such payments in the budget year for which they are made. The EIPs to be made to KINGSISLE, if paid, shall be made solely from annual appropriations from the general funds of TEDCO under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that TEDCO does not appropriate funds in any fiscal year for the EIP due under this Agreement, such failure shall not be considered a default under Section 6.3, and TEDCO shall not be liable to KINGSISLE for such EIP, however, TEDCO shall extend this Agreement for another year(s), until KINGSISLE has received all of the EIPs provided for herein. In addition, KINGSISLE shall have the right but not the obligation to rescind this Agreement. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

7.3 EIP Recapture. In the event TEDCO terminates this Agreement as a result of KINGSISLE default, TEDCO may recapture and collect from KINGSISLE the Recapture Liability. KINGSISLE shall pay to TEDCO the Recapture Liability within thirty (30) days after TEDCO makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which KINGSISLE may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). TEDCO shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

8. Miscellaneous.

8.1. Mutual Assistance. TEDCO and KINGSISLE will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.

8.2. Representations and Warranties. TEDCO represents and warrants to KINGSISLE that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. KINGSISLE represents and warrants to TEDCO that it has the requisite authority to enter into this Agreement.

8.3. Default. If either TEDCO or KINGSISLE should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party with notice of such default, and a reasonable opportunity to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If TEDCO remains in default after notice and opportunity to cure, KINGSISLE shall

have the right to pursue any remedy at law or in equity for TEDCO's breach. If KINGSISLE remains in default after notice and opportunity to cure, TEDCO shall have the right to pursue any remedy at law or in equity for KINGSISLE's breach.

- 8.4. Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between TEDCO and KINGSISLE to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.
- 8.5. Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by TEDCO and KINGSISLE.
- 8.6. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.
- 8.7. Assignment. KINGSISLE may not assign all or part of its rights and obligations to a third party without the express written consent of TEDCO, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.
- 8.8. Amendment. This Agreement may be amended by the mutual written agreement of the parties.
- 8.9. Termination. In the event KINGSISLE elects not to construct the Facility as contemplated by this Agreement, KINGSISLE shall notify TEDCO in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect.
- 8.10. Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to TEDCO: Round Rock Transportation and Economic Development
Corporation
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: lhadley@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrllaw.com

If to KINGSISLE Kingsisle Entertainment, Inc.
P.O. Box 941409
Plano, TX 75074
Attn: Mervin Lee Kwai
Phone: 650-556-5516
Email: Mervin.LeeKwai@gamigo.com

With a required copy to:

Kingsisle Entertainment Inc.
800 Bellevue Way NE #500
Bellvue, WA 98004
Attn: Amy Thomas
Phone: 425-497-4511
Email: amy.thomas@gamigo.com

Either party may designate a different address at any time upon written notice to the other party.

- 8.11. Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 8.12. Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 8.13. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 8.14. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.
- 8.15. Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused,

prevented, or restricted by conditions beyond that Party's reasonable control (a "force majeure event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; Pandemic Measures; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

- 8.16. "Pandemic Measures" means any quarantine, cordon sanitaire, "shelter in place," work shut down order, non-essential business designation, occupancy or spacing limitation, protective or cleaning measures, or any other valid law, ordinance or regulation issued in response to a pandemic, or an epidemic occurring in the vicinity of the Project, by a governmental entity with jurisdiction over the Project or the Work, and which hinders or delays a Party's ability to satisfy an obligation of this Agreement.
- 8.17. No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. TEDCO, its past, present, and future officers, elected officials, employees, and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.
- 8.18. Estoppel Certificate. KINGSISLE may request an estoppel certificate from TEDCO so long as the certificate is requested in connection with a bona fide business purpose and requests commercially reasonable certifications. TEDCO agrees to promptly execute and deliver any estoppel certificate reasonably requested pursuant to this Section 6.18. The certificate, which will upon request be addressed to KINGSISLE, or a lessee, purchaser or assignee of KINGSISLE, shall include, but not necessarily be limited to, statements (qualified to the best knowledge of TEDCO) that this Agreement is in full force and effect without default (or if a default exists, the nature of such default and any curative action which should be undertaken to cure same), the remaining term of this Agreement, and such other matters reasonably requested by the party(ies) to receive the certificate.

EXECUTED to be effective as of the 16th day of DECEMBER, 2021.

**ROUND ROCK TRANSPORTATION AND
ECONOMIC DEVELOPMENT CORP.**

By: _____

Craig Morgan, President

KINGSISLE ENTERTAINMENT, INC.


By: 
Jens Knauber, its Chief Executive Officer

EXHIBIT A

JOB COMPLIANCE AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared _____, (name) known to me to be the person whose name is subscribed below, and after having been duly sworn, on his/her oath stated as follows:

1. "My name is _____. I am over the age of 21 years and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. "I am the _____ (title) of KINGSISLE, and I am duly authorized to make this affidavit.
3. "As of December 31, 20__, KINGSISLE and/or Gamigo US, Inc. had the following Primary Job Positions:

EMPLOYEE ID NO.	JOB POSITION OR TITLE	ANNUAL SALARY
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

[illegible][illegible][illegible]

EMPLOYEE ID NO.

JOB POSITION OR TITLE

ANNUAL SALARY

_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

TOTAL JOBS _____ AVG. SALARY\$ _____

Dated this _____ day of _____, 20__.

_____ (signature)

_____ (printed name)

_____ (title)

Subscribed and sworn to before me on this the _____ day _____, 20__.

Notary Public, State of Texas

RESOLUTION NO. TB-2021-010

WHEREAS, Kingsisle Entertainment, Inc. (“KINGSISLE”) has expressed an interest in leasing office space (the “Facility”) containing at least 33,000 square feet in a building located at 2700 La Frontera, City of Round Rock and to create 150 primary jobs over three (3) years (the “Project”); and

WHEREAS, the purpose of the Round Rock Transportation and Economic Development Corporation (“TEDCO”) is to promote economic development as contemplated by Chapters 501 and 505 of the Texas Local Government Code (the “Code”); and

WHEREAS, pursuant to §505.159 of the Code, the Board of Directors of TEDCO held a public hearing on the proposed Project; and

WHEREAS, at said public hearing the Board heard evidence that the proposed project meets the definition of a “project” under the terms of §501.101 of the Code; and

WHEREAS, the Board of Directors has determined that the Project will encourage economic development and provide primary jobs within the City, NOW THEREFORE

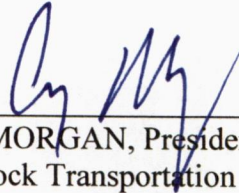
BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ROUND ROCK TRANSPORTATION AND ECONOMIC DEVELOPMENT CORPORATION,

That the President is hereby authorized and directed to execute on behalf of TEDCO the Economic Development Agreement with Kingsisle Entertainment, Inc., a copy of which is attached hereto as Exhibit A.

The Board of Directors hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

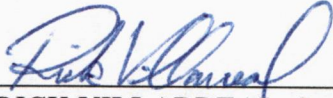
RESOLVED this 16th day of December, 2021.

By: _____



CRAIG MORGAN, President
Round Rock Transportation and Economic
Development Corporation

ATTEST:



RICK VILLARREAL, Secretary