

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (“Agreement”) is made and executed this _____ day of _____, 2021, by and between the Hastings Economic and Development and Redevelopment Authority (“HEDRA”), 101 4th Street, Hastings, Minnesota 55033, (“HEDRA”) and Rokos, LLC, 515 N Washington Ave, Suite 400, Minneapolis, MN 55401 (“Broker”).

WHEREAS, HEDRA has accepted the proposal of the Broker for certain professional Services; and

WHEREAS, Broker desires to perform the Services for HEDRA under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual consideration contained herein, it is hereby agreed as follows:

1. SERVICES.

- a. HEDRA agrees to engage Broker as an independent contractor for the purpose of performing certain professional Services (“Services”), as defined in a proposal incorporated herein as Exhibit A for the Property listed on Exhibit B;

(Hereinafter “Exhibits.”)

- b. Broker covenants and agrees to provide Services to the satisfaction of HEDRA in a timely fashion, as set forth in the Exhibits, subject to Section 7 of this Agreement.

2. PAYMENT.

- a. HEDRA agrees to pay and Broker agrees to receive and accept payment for Services as set forth in the Exhibits.

- b. Any changes in the scope of the work of the Services that may result in an increase to the compensation due the Broker shall require prior written approval by the authorized representative of HEDRA or by HEDRA Council. HEDRA will not pay additional compensation for Services that do not have prior written authorization.

3. TERM. The term of this Agreement is identified in the Exhibits. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the same terms and conditions as herein stated.

4. TERMINATION.

- a. Termination by Either Party. This Agreement may be terminated by either party upon 30 days' written notice delivered to the other party to the addresses listed in Section 13 of this Agreement. Upon termination under this provision, if there is no default by the Broker, Broker shall be paid for Services rendered and reimbursable expenses until the effective date of termination.
 - b. Termination Due to Default. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure that is acceptable to the other party.
5. SUBCONTRACTORS. Broker shall not enter into subcontracts for any of the Services provided for in this Agreement without the express written consent of HEDRA, unless specifically provided for in the Exhibits. The Broker shall pay any subcontractor involved in the performance of this Agreement within the ten (10) days of the Broker's receipt of payment by HEDRA for undisputed services provided by the subcontractor.
6. STANDARD OF CARE. In performing its Services, Broker will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the Services are provided. No warranty, express or implied, is made or intended by Broker's undertaking herein or its performance of Services.
7. DELAY IN PERFORMANCE. Neither HEDRA nor Broker shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either HEDRA or Broker under this Agreement. If such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Broker will be entitled to payment for its reasonable additional charges, if any, due to the delay.
8. HEDRA'S REPRESENTATIVE. HEDRA has designated John Hinzman to act as HEDRA's representative with respect to the Services to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define HEDRA's policy and decisions with respect to the Services covered by this Agreement.

9. PROJECT MANAGER AND STAFFING. The Broker has designated to be the primary contact for HEDRA in the performance of the Services.

10. INDEMNIFICATION.

- a. Broker and HEDRA each agree to indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Broker and HEDRA, they shall be borne by each party in proportion to its own negligence.
- b. Broker shall indemnify HEDRA against legal liability for damages arising out of claims by Broker's employees. HEDRA shall indemnify Broker against legal liability for damages arising out of claims by HEDRA's employees.

11. INSURANCE. During the performance of the Services under this Agreement, Broker shall maintain the following insurance:

- a. General Liability Insurance, with a limit of \$2,000,000 for any number of claims arising out of a single occurrence;
- b. Professional Liability Insurance, with a limit of \$2,000,000 for any number of claims arising out of a single occurrence.
- c. Workers' Compensation Insurance in accordance with statutory requirements.
- d. Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

Broker shall furnish HEDRA with certificates of insurance, which shall include a provision that such insurance shall not be canceled without written notice to HEDRA. HEDRA shall be named as an additional insured on the General Liability Insurance policy.

12. OWNERSHIP OF DOCUMENTS. Professional documents, drawings, and specifications prepared by the Broker as part of the Services shall become the property of HEDRA when Broker has been compensated for all Services rendered, provided, however, that Broker shall have the unrestricted right to their use. Broker shall retain its rights in its standard drawing details, specifications, databases, computer software, and other proprietary property. Rights to proprietary intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of the Broker.

13. NOTICES. Notices shall be communicated to the following addresses:

If to HEDRA: Hastings Economic Development and Redevelopment Authority
Attn: John Hinzman
101 4th Street
Hastings, MN 55033

Or e-mailed: jhinzman@hastingsmn.gov

If to Broker: Rokos Advisors
Attn: Ra'eesa Motala
515 N Washington Ave, Suite 400
Minneapolis, MN 55401

Or emailed:

14. INDEPENDENT CONTRACTOR STATUS. All services provided by Broker, its officers, agents and employees pursuant to this Agreement shall be provided as employees of Broker or as independent contractors of Broker and not as employees of HEDRA for any purpose.

15. GENERAL PROVISIONS.

- a. Assignment. This Agreement is not assignable without the mutual written agreement of the parties.
- b. Waiver. A waiver by either HEDRA or Broker of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.
- c. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota and any action must be venued in Dakota County District Court.
- d. Severability. If any term of this Agreement is found be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- e. Data Practices Compliance. All data collected by HEDRA pursuant to this Agreement shall be subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
- f. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

**HEDRA:
HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY**

By _____
Bruce Goblirsch
Its President

By _____
Eric Maass
Its Secretary

BROKER

By: _____

Its: _____

EXHIBIT A

1. Owner hereby employs Broker and grants to Broker the exclusive right to negotiate a sale on the real property described on Exhibit B ("Property") upon the terms and conditions hereinafter set forth. This Agreement shall apply to all portions of the Property, except such exclusions as may be agreed upon in writing by Owner and Broker and attached to this Agreement, if any.
2. The term of this Agreement ("**Term**") shall commence on the date hereof and terminate on July 31, 2023.
3. Broker hereby accepts said grant and agrees to use its continuing and best efforts to affect a sale of the Property upon such terms and conditions as may be acceptable to Owner.
4. Broker shall be paid a 3% commission if a sale occurs with any buyer during the Term of this Agreement, which shall be paid at time of closing. Broker's fee will be added to the purchase price of the real property (i.e. if the real property is sold for \$3,000,000.00, the total price a Buyer will pay is \$3,000,000.00 plus 3% = \$3,090,000.00). A sale shall not be deemed to have occurred if the sale or transfer is a conveyance between HEDRA and the City of Hastings. Such commission shall also be due if, within one hundred eighty (180) days after the termination of this Agreement ("**Override Period**"), the Property is sold to a person or entity with whom Broker has negotiated or to whom Property has been submitted by Broker prior to such expiration in an effort to sell, provided that Broker submitted to the Owner a list of such persons or entities within 3 days after the termination of this Agreement ("**Protected Parties**").
5. In the event a third party ("Third Party Broke") cooperates with Broker in obtaining a buyer or other party for which a commission is due hereunder, then Owner hereby authorizes Broker to disburse part of the Broker's commission, which may become due and payable hereunder, to a Third Party Broker, including brokers solely representing buyers of the Property, in accordance with industry practice.
6. Broker is authorized to advertise the Property in accordance with rules and regulations of the commercial association. Broker is further authorized to place signs in and about the Property if in Broker's opinion, such would facilitate the sale of the Property also in accordance with commercial association regulations.
7. Owner agrees that it shall:
 - a. Accept or reject a purchase contract presented by Broker within forty-five (45) days of receipt thereof;
 - b. Pay for legal services as required in the negotiation of the purchase contract;
 - c. Fully cooperate with Broker in effectuating purchase contracts of the Property;
 - d. Arrange for its closing services arising out of any sale of the Property.
 - e. Forward to Broker any inquiries of any sort received with regard to the purchase of the Property or any portion thereof.
8. Broker agrees that it shall:

- a. Endeavor to procure buyers by all reasonable means available, including direct solicitation, consultation and marketing presentations, mail campaigns, processing of inquiries received from any and all sources and advertising, all as Broker deems prudent;
 - b. Co-operate with any Third Party Brokers, which may be representing interested potential buyers/tenants for the Property.
 - c. Provide Owner with written monthly reports in such format and at such time as Owner shall reasonably request detailing the status of the sale program and updates on prospects activity and other interest in the real property.
 - d. Broker at sole expense shall market real property within reasonable measures, that would include:
 - Offering memorandum and marketing brochures
 - Paid online listings (Co-Star, Loopnet,)
 - National reach marketing (SIOR, CCIM, ULI, etc)
 - Individual Developer engagement
 - Signage and advertising
 - Renderings and pro form underwriting
 - End user package
9. Broker shall be responsible for its own expenses in performance of this Agreement.
10. Owner warrants that it is the record owner of the Property and has the legal authority to enter into this Agreement through the signatories hereto.
11. Broker warrants that it is a duly licensed broker under the laws of Minnesota and that all agents and salespersons and/or brokers under the laws of Minnesota. Broker further warrants that it has the legal authority to enter into this Agreement through the signatories hereto.
12. Broker represents buyers looking for property including properties which may be similar to the Property. If a buyer represented by Broker becomes interested in the Property a dual agency will be created. This means that Broker will owe the same duties to the buyer that it owes to the Owner. Broker cannot act as dual agent unless both Owner and the buyer agree to the dual agency after it is disclosed to each of Owner and buyer. By agreeing to a possible dual agency, Owner will be giving up the right to exclusive representation in the proposed transaction; however, if Owner decides not to agree to a possible dual agency, it may be giving up the opportunity to sell the Property to buyers represented by Broker. In the event of a dual agency Owner agrees Broker's commission will be as one commission pursuant to Section 4. Having read and understood the foregoing, Owner hereby agrees to dual agency representation and will consider offers made by buyers represented by Broker.

EXHIBIT B

