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- CONTRACT FOR COMMERCIAL ROOFING SERVICES -

THIS AGREEMENT IS BETWEEN:

“Contractor”:

Highland Commercial Roofing
5401-B San Leandro Street
Oakland, CA 94601
Phone – 510-489-4444
Jim Grechis -Project Manager

“Customer”:

Herb Liverett Companies Inc.
5851 Alder Avenue
Sacramento, CA 95828
Herb Liverett
Phone – (916) 869-8017

In consideration of the promises herein contained, it is mutually agreed that:

Contractor will install, or cause to be installed, the new roofing system at the Work Address and Work Area as described below. Contractor’s work will be completed in workmanlike manner, in accordance with the System Specification and with the terms and conditions attached hereto and made a part hereof as Exhibit “A”. Contractor will provide, all necessary labor, material, and equipment required for proper System installation. In return, Customer agrees to pay Contractor the Payment Amount pursuant to the Payment Terms detailed below.

Work Address: 5851 Alder Avenue
Sacramento, CA 95828

Work Area: Entire Roof – 48,320 SF

System Specification: RainShield RS-1P-3W 85 mil Seamless Single Ply Roofing System including the sealing of the new gutters (installed by others) on 5901 Alder Ave per proposal date 6/6/2013 as attached, or previously submitted, and made a part hereof as ‘Proposal’

Payment Amount: \$99,940.00 (Ninety Nine Thousand Nine Hundred Forty Dollars)

Payment Terms: 10% upon sealing of new gutters, 30% at commencement of roofing installation, 35% after polyester installation, 25% at roof completion

Warranty:

Contractor warrants that for a period of **15 Years** from the project completion date, any roof membrane leaks occurring from material and/or defective installation, will be repaired by Contractor at no additional cost to Customer, per the terms and conditions as set forth in the Highland Roofing “Leak-Free” Warranty, attached (or previously submitted with ‘Proposal’) and made a part hereof as ‘Warranty’.

In Witness Whereof, the parties have caused this Contract to be duly executed by their duly authorized representatives on the date first set forth below.

Highland Commercial Roofing -

Customer - Herb Liverett Companies Inc.

By: _____

By: _____

Print Name

Date: _____

Date: _____



EXHIBIT "A"

- Terms and Conditions -

- 1. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against Contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.**
- 2. Changes In The Work:** Should a public body or inspector require any modification or addition to the work covered by this Contract, Contractor shall notify Customer of any such modification or addition, and the Contract price shall be adjusted by approved Change Order. Permit fees are not included in this Contract and, if necessary, permits will be *procured* by Contractor for Customer at no charge; *Customer will be responsible for payment of any and all permit fees* and as such will reimburse Contractor for same. Permit fees and/or charges for modification of work as directed by Public Body, Inspector or Customer, if any, will be included in the progress billing immediately following procurement of permits, or approval of changes, and will be due and payable according to the terms of the progress billing invoice.
- 3. Change Orders:** Modification or addition to the scope of work of this Contract by the Customer or the Contractor shall be executed only by a written Change Order that has been signed by both the Customer and Contractor. Notwithstanding the preceding sentence, Contractor shall use its best efforts to accommodate requests made by Customer in connection with modification or addition to the scope of work described in this Contract.
- 4. Destruction Of Work:** If, due to no fault of the Contractor, the project is destroyed or damaged by accident, disaster or calamity, such as fire, storm, earthquake, flood, landslide, or by theft or vandalism; Contractor shall immediately notify Customer of any such damages; any work completed by Contractor at the Customers direction in rebuilding or restoring the project shall be paid by the Customer as extra work.
- 5. Workers' Compensation Insurance & Other Forms of Insurance:** Contractor shall carry Workers' Compensation Insurance to meet statutory requirements with the coverage limits as identified on the specimen provided with project Proposal, at no additional cost to Customer, for the protection of Contractor's employees during the progress of the work. Contractor shall also carry Comprehensive General Liability Insurance with the coverage limits as identified on the specimen provided with project Proposal, at no additional cost to Customer; on request, Contractor will issue additional insured certificates for all interested parties at no additional cost prior to commencement of work. Customer shall obtain and pay for insurance against injury to Customer's own employees, persons under Customer's discretion, and persons on the job site at Customer's invitation, at no cost to Contractor.

Contractor _____

Customer _____



6. Existing Conditions: Contractor shall not be obligated to perform any work to correct damages made by termites or dry rot unless expressly included in this Contract. However, if in the course of the work, any such damages made by termites or dry rot are found on the roof, or related surfaces, Contractor shall make reasonable attempt to notify Customer of any extra work necessary to complete the project and the Contractor shall perform such extra work at an additional charge to Customer.

- a. The Contractor is not responsible for:
 - i. The attachment of existing roof top items such as, but not limited to, conduit, lighting, signage, racking, mechanical equipment, solar equipment, or any other items attached to the top or underside of the roof deck.
 - ii. Attachment or replacement of foil radiant barrier under deck, if any.
- b. In addition, the Contractor shall have no obligation, unless explicitly stated in the specifications, to perform any of the following:
 - i. Correction of existing roof conditions to eliminate ponding or standing water, and if specifically included in the specifications, Contractor will only be responsible for reduction of, not elimination of, 'substantial' ponding or standing water on the roof deck or in drain box areas; the amount of reduction is to be at the sole discretion of the Contractor, however, as a general rule of thumb: 72 hours after the cessation of rain, there shall not be standing water of a quantity sufficient to cause damage to either the building structure or the roofing system.
 - ii. Correction of water intrusion through skylights, smoke or access hatches, vents, pitch pans, platform covers, mechanical or ventilation equipment, or walls, unless specifically included in the specifications.
 - iii. The Contractor will not be held responsible for repairs of roof top mechanical equipment made during or after the completion of the roofing project, unless prior to commencement of the roofing project, the roof top equipment is certified as to condition and working order.

7. Duties and Responsibilities of the Customer:

- a. The Customer shall be responsible for giving proper notification and warning to any and all tenants, lessees, sublessees, employees, or any other parties specified by the Customer, regarding proper preparation and precaution for the impending roofing project.
- b. Subject to the provisions of Section 11 of this agreement, if Work Areas for this project include areas over interior space under open-beam roof decks, into which debris or roofing materials could enter the interior of the building, the Customer shall be responsible for protection of interior building areas and all contents including, but not limited to, equipment, inventory and occupants, in order to prevent any damage or injuries during the project.
- c. The Customer shall be responsible for coordinating the work of other separate Contractors and for the Customer's own work forces or tenants, so as not to impede or conflict with the work of the Contractor, and so as to promote a safe working environment and timely completion of the project.
- d. The Customer agrees to grant and provide reasonable access to the property for Contractor's employees, Contractor's equipment & vehicles, and storage of job related materials and debris. Customer further agrees to provide and allow Contractor use of, and access to, water and electricity on site as necessary for completion of work authorized by Customer.

Contractor _____

Customer _____



- e. In the event the Customer should intentionally or negligently cause the Contractor's work to be delayed or halted once commenced, the Contractor shall be entitled to reasonable reimbursement for shutdown, standby, damage and restart-up costs.
- f. To the extent necessary for the commencement and completion of the Specifications, Customer shall be responsible for removing all objects or abandoned equipment left on the roof prior to commencement of the work, unless otherwise specifically stated in this Contract.
- g. All objects on the roof or parapet walls, including but not limited to: air conditioners, skylights, signs, walls, door ledges, windows, solar units, antennas/satellite dishes, compressors or any other objects that are not, professionally, permanently and securely sealed or mounted, shall be professionally, permanently and securely sealed or mounted, or temporarily removed by Customer prior to commencement of work, to the extent necessary to facilitate proper completion of the work.
- h. The Customer shall have the roof drainage plumbing system, including drainpipes and down spouts, checked prior to commencement of work, and if necessary, cleared or replaced. Thereafter Customer shall maintain clear roof drainage with, at minimum, annual inspection of both roof areas around drains and scuppers, and all associated plumbing, to insure clear unimpeded roof drainage.

8. Duties and Representations of the Contractor:

- a. The Contractor shall, at its sole expense, supply and install new materials free from defect, of a type approved for the work in question and shall be installed in accordance with generally acceptable trade practices. On work of re-roofing or recover, unless otherwise specified in this Contract or attachments thereto, the Contractor shall use existing flashings.
- b. The Contractor shall raise, move, or lift objects or equipment left on the roof by Customer as set forth in Section 7(g), as necessary to properly complete the Contracted work, at additional cost to Customer which shall be invoiced separately and is in addition to the Payment Amount listed on page one. Notwithstanding the preceding sentence, Contractor shall, in a timely manor, notify the Customer of any such necessary rising, moving or lifting required for the work to proceed properly. The Customer agrees to hold the Contractor harmless of responsibility for the operation of, or possible damage to, said items resulting from moving or lifting.
- c. The Contractor does not assume responsibility for concealed conditions, pre-existing illegal conditions, termites, dry rot damage, asbestos removal, deck deflection, defects in the roof drainage, or structural design of the building causing standing water on the roof or other conditions.
- d. The Contractor will perform all work in a tidy manner consistent with normal trade practices. Contractor will promptly remove all job related equipment and debris from the jobsite and will leave the work area in a general 'broom clean' condition upon completion.

9. Representations: Unless otherwise specifically provided in the provisions and specifications of this Contract, Contractor has entered into this Contract based on the following Customer stipulations. To the best of the Customer's knowledge:

- a. The building upon which the new roof is to be placed is structurally sound and able to withstand the stresses and strains incidental to the work and roofing.
- b. All wall or roof deck mounted, hung, or attached objects, inside or outside of the building, are properly secured to withstand the vibration and movement of roof and roofing material incident to application of the work contemplated by this Contract.

Contractor _____

Customer _____



- c. The areas of roof drainage discharge have sufficient, adequate, and clear drainage, so as to avoid causing the accumulation of standing water and to allow for free unimpeded proper discharge of roof conducted rainwater.
- d. The existing roof and associated roofing materials do not contain asbestos or other hazardous materials.

10. Indemnification of Contractor: In the event any of the foregoing representations of fact are not true, and either Customer, Contractor, Contractor's employees, or third party are damaged or injured as a result thereof, and if said damage or injury is not caused by the negligence or willful misconduct of Contractor, the Customer hereby agrees to indemnify and hold Contractor harmless from any such loss, and defend Contractor for any actions, claims, or damages brought by third parties. Furthermore, Customer hereby releases and discharges Contractor for any claims which the Customer may have as a direct result of damages or injuries which it sustains as a result of any material inaccuracy or failure of the above indicated representations and warranties.

11. Indemnification of Customer: Contractor shall indemnify, defend, and hold Customer harmless from any claims, damages, losses, or liability, incurred by Customer or its tenants, arising from loss of life, personal injury and/or property damage, caused by or resulting from, the sole negligent act or omission or intentional misconduct of Contractor, its agents, employees, Contractors, subtenants, assignees or invitees, in connection with Contractor's work hereunder.

12. Mold, Asbestos and Hazardous Substances: Customer hereby represents that Customer has no knowledge of the existence on or in any portion of the premises affected by the Project of any asbestos, lead paint, mold (including all types of microbial matter or microbiological contamination, mildew or fungus), or other hazardous materials. Testing for the existence of mold and other hazardous materials shall only be performed if expressly requested in writing by Customer.

Unless the Contract for work specifically call for the removal, disturbance, or transportation of asbestos, polychlorinated biphenyl (PCB), mold, lead paint, or other hazardous substances or materials, the parties acknowledge that such work requires special procedures, precautions, and licenses. Therefore, unless the Contract specifically calls for same, if Contractor encounters such substances, Contractor shall immediately stop work and allow the Customer obtain a duly qualified asbestos and/or hazardous material Contractor to perform the work or Contractor may Subcontract for the work itself at Customers request and at Contractor's option. Said work will be treated as extra work under this Contract, and the Contract term setting forth the time for completion of the project may be delayed.

In the event that mold or microbial contamination is removed, or caused to be removed, by Contractor, Customer understands and agrees that due to the unpredictable characteristics of mold and microbial contamination, Contractor shall not be responsible for any recurring incidents of mold or microbial contamination appearing in the same or any adjacent location, subsequent to the completion of the work performed by Contractor. Customer agrees to hold Contractor harmless, and shall indemnify Contractor for any recurrence of mold or microbial contamination. Customer also agrees that Contractor shall not be responsible, and agrees to hold Contractor harmless and indemnify Contractor, for the existence of mold or microbial contamination in any area that Contractor was not contracted to test and/or remediate

Customer is hereby informed, and hereby acknowledges, that most insurers expressly disclaim coverage for any actual or alleged damages arising from mold or microbial contamination; Contractor makes no representations whatsoever as to coverage for mold contamination, though at Customer's additional expense, if requested in writing, Contractor will inquire as to the availability of additional coverage for such contamination or

Contractor _____

Customer _____



remediation, and if available, will obtain such coverage if the additional premium is paid for in advance by Customer as an extra.

- 13. Time for Performance:** Although time is of the essence, allowance in approximate commencement and completion dates shall be made for any delays attributable to circumstances beyond the Contractor's reasonable control, as examples, but not limited to: inclement weather or threat thereof (including but not limited to; rain, wind, temperatures lower than acceptable for proper installation of materials, before or during construction), material shortages, acts of public or government bodies, strikes, riots, natural disasters, acts of terrorism, and acts or omissions of other persons including the Customer, his agents, or other Contractors.
- 14. Payment:** The Customer agrees to pay the Contractor pursuant to the Payment Terms, Payment Amount and conditions as contained in this CONTRACT FOR COMMERCIAL ROOFING SERVICES. Unless otherwise specified, full payment is due upon completion and final billing. In the event the Customer fails to pay the Contractor at the time of any scheduled payment for any amount due, interest shall accrue at the lesser of ten (10%) percent or the maximum rate permitted by law; In addition to any other legal remedies or processes available, the Contractor may terminate this Contract, or may stop the work until payment of the delinquent amount has been received by the Contractor, and the Contract dates have been extended to reflect such period of shutdown, and Contract price has been increased by the amount of the Contractor's costs of shutdown and re-start. The Contractor shall not be liable for any damages resulting from or associated with the period of shutdown due to nonpayment.
- 15. Correlation Between Plans Specifications and Contract:** In the event that plans and specifications are provided, it is agreed that this Contract and, any plans, and or any specifications are intended to supplement each other. In case of conflict, however, the specifications shall control the plans, and the provisions of this Contract shall control both.
- 16. Damages:** The Customer shall immediately notify the Contractor in writing of any alleged property damage(s) associated with or resulting from the work of Contractor. The Contractor shall thereupon be given reasonable opportunity to inspect the damages and make appropriate repairs. Customer will be deemed to waive any claims associated with damages that are not first presented to Contractor and Contractor given a reasonable opportunity to make repairs.
- 17. Mediation and Arbitration of Disputes:** In the event of any dispute between the parties as to the performance or interpretation of any of the provisions of this Contract, or as to matters related to but not covered by this Contract, the parties shall in good faith confer with each other to try to resolve such dispute. However, if the parties cannot reach a resolution amongst themselves, the parties shall try to resolve such dispute by mediation. Either party may give written notice of its request for mediation to the other party. Within 10 days after the giving of such notice, both parties shall jointly contact JAMS, (or if JAMS no longer exists, then EnDispute or other reputable and comparable mediation service), to submit the dispute for mediation. The mediation shall be conducted by a mediator acceptable to both parties; provided that if the parties are unable to agree on the mediator within 10 days after the submission of the dispute for mediation, the mediation service selected shall have the right to designate the mediator from its own panel of mediators, which designation shall be conclusive upon the parties.

Contractor _____

Customer _____



Each party may be represented by its own attorney at all phases of the mediation process. The mediator will have the power to award to any party or parties to the dispute any sums for costs, expenses, and attorneys' fees that the mediator deem proper. The mediation shall be held in accordance with the rules and procedures of the construction industry arbitration rules of the American Arbitration Association and the mediation service selected. The parties shall cooperate and act diligently in the scheduling of the mediation.

If mediation does not result in the settlement of all disputes between the parties, the parties agree that the unresolved dispute shall thereafter be finally resolved by an arbitration to be conducted in Los Angeles, California under the auspices of and in accordance with the rules of JAMS (or if JAMS no longer exists, then EnDispute or other reputable and comparable arbitration service) then in effect and applicable to arbitration of commercial matters and in accordance with the construction industry arbitration rules of the American Arbitration Association. Each party shall be entitled to conduct discovery to the fullest extent permitted by California Code of Civil Procedure § 1283.05 et seq. The prevailing party in such arbitration shall be entitled to reasonable costs and expenses (including attorneys' fees) which are incurred by the other party. The arbitration award shall be binding on both parties. The judgment upon the award rendered pursuant to such arbitration may be entered in or by any court having jurisdiction thereof.

18. **Entire Agreement:** This Contract supersedes any and all other agreements, either oral or in writing, between the parties hereto and contains all of the covenants and agreements between the parties in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any parties, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Contract, or associated executed change order, shall be valid or binding on either party.
19. **Independent Contractor:** This Contract creates no agency relationship between the Customer and Contractor, and nothing in this Contract will be construed to place the parties in the relationship of partners or joint ventures, and either party hereto shall have no power to obligate or bind the other party hereto in any manner whatsoever. As an independent Contractor, Contractor agrees to pay and to be solely responsible for any and all taxes, including income, social security, or any other employment related or other taxes incurred by Contractor under this Contract and for all obligations, reports and notifications relating to such matters.
20. **Severability:** If any provision of this Contract is held to be void, the remaining provisions shall remain valid and shall be construed in such a manner as to achieve their original purposes in full compliance with the applicable laws and regulations.
21. **Attorney's Fees:** If either party commences any legal action or proceeding against the other party to enforce this Contract, the prevailing party in such action or proceeding shall be entitled to recover from the other party the actual attorneys' fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding and in connection with enforcing any judgment or order thereby obtained.
22. **Compliance with Law:** Each party hereto shall comply with all applicable laws promulgated by any governmental entity in the performance and satisfaction of the actions and transactions contemplated by this Contract.
23. **Governing Law; Jurisdiction; Service of Process:** This Contract shall be governed by, construed in accordance with, and enforced under the laws of the United States, and more specifically under the laws of the

Contractor _____

Customer _____



State of California, without regard for the conflict of laws principles, and the parties hereby consent to exclusive personal jurisdiction in the state and federal courts in Los Angeles County, California. Each party hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court and further waives the right to object, with respect to such suit, action or proceeding, that such court does not have jurisdiction over such party.

- 24. Successors and Assigns:** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors. This Contract shall not be assigned by either party without the prior written consent of the other party.
- 25. Execution in Counterparts:** This Contract may be executed in counterparts, each of which when so executed and delivered shall be deemed an original; but all such counterparts together shall constitute but one and the same instrument. Facsimile signatures may be accepted as original signatures.

Contractor _____

Customer _____



Project Communication Plan

Thank you for choosing Highland Commercial Roofing for your reroofing project. We look forward to working with you and making your project as pleasant an experience as possible. Good communication is the key to a successful project, and a satisfied long-term customer. To that end, our production department will strive to keep you apprised of our progress on your building throughout the project.

Attached, you will find a Customer Contact form. Please complete this form and return it with your signed contract. The information you provide will help us know who to communicate with at your company during each stage of your project.

Preparation for Roofing – What you should expect prior to start:

Approximately three weeks prior to the start of your project, our Operations Manager will contact you to schedule a pre-job conference with one of our Production Coordinators. We would like our Production Coordinator to meet on site with you, or your designated representative, or your tenants' representative – if applicable, and any other staff that you deem appropriate. The main purpose of this meeting is to work through a plan to minimize our impact on your business, or your that of your tenants', during construction. We will discuss setup and staging areas for our equipment and materials, work hours, access to the job site and building interior – as necessary, and review work areas and existing conditions. This meeting should take a half hour or so, depending on the scope and complexity of your project.

Our Operations Manager will contact you again after the pre-job meeting to give you an anticipated start date. At this point, your job should be about a week to two weeks from starting, but your actual start date may change depending on the weather and its effect on our progress on jobs preceding yours.

Two to Three days prior to the start of your project, our Operations Manager will again contact you to confirm your job start day. In most cases, the anticipated start date will be the day that we start, but we appreciate your understanding as we make every attempt to get to your project as quickly as possible.

Roof Installation Process – What you should expect during construction:

Your roofing project will be completed in three phases; Preparation, Waterproof Membrane installation and Reflective Surfacing installation. Preparation and Waterproof Membrane installation are usually completed in the same mobilization; however, it is necessary to allow the Waterproofing Grade asphalts, used in Membrane application, to properly cure prior to installation of the Reflective Roof Surfacing. The system cure time is related to humidity and temperature; as such, it may fluctuate depending on the time of year. We will strive to complete your project as soon as possible without compromising system quality, and will keep you informed of our progress throughout the process.

Our Production Coordinators will be in contact with you from time to time during construction give you an update on our progress, schedule remobilizations and most importantly - to make sure that we are meeting your expectations. If you have any questions or concerns during your project, please contact your Production Coordinator for immediate assistance.

Please help us keep you informed during your project by completely filling out the contact information requested on the following page and returning it to us with your contract. After receiving your completed Customer Contact Information form, we can begin pre-job preparations necessary to establish a start date for your project.

***Thank you for helping us make your roofing experience as pleasant as possible
Our goal is to make sure that your experience with us exceeds your expectations***

Contractor _____

Customer _____



Customer Contact Information

Primary Contact – Contract custodian - able to make decisions regarding contract – decision maker

Name _____ Title _____
Office Phone _____ Cell Phone _____
Email address _____ Work Hours _____ to _____

On Site Contact – Designated individual at the work-site during construction that can answer questions about the building, facilitate entry to the work-site daily, resolve any parking, equipment staging, or emergency issues that may come up during construction. This may be your employee, a property manager, a tenant, or both. If there is no on site person we will direct questions to the Primary Contact listed above.

Name _____ Title _____
Company Name (if different) _____
Office Phone _____ Cell Phone _____
Email address _____ Work Hours _____ to _____

Tenant – Primary contact if building is not owner occupied or there is no property manager

Name _____ Title _____
Company Name _____ Suite # _____
Office Phone _____ Cell Phone _____
Email address _____ Work Hours _____ to _____

Billing Contact – Person to whom bills and billing questions should be directed / Billing Address

Name _____ Title _____
Company Name (if different) _____
Office Phone _____ Cell Phone _____
Street Address _____ Suite # _____
City _____ State _____ Zip Code _____
Email address _____ Work Hours _____ to _____

Building Owner – Entity to which building is titled

Recorded Entity Name _____

Agent for Service / Contact Name _____ Title _____
Street Address _____ Suite # _____
City _____ State _____ Zip Code _____
Phone _____ Email address _____

An additional insured endorsement certificate for commercial liability insurance will be issued for this project to the "Customer" as listed in the contract documents. If you have special requests or specific endorsement requirements, please return a sample copy of a certification or endorsement containing the required language.

Contractor _____

Customer _____