

**HOLLISTER SCHOOL DISTRICT
INDEPENDENT CONTRACTOR AGREEMENT**

P.O. # _____

THIS AGREEMENT is made and entered into this 1st day of December, 2021, by and between the Hollister School District and Silke Communications a

corporation, partnership, limited liability corporation, sole proprietor, whose mailing address is 538 Brunken Ave #4 Salinas, CA 93901

physical address is SAME

Hereinafter referred to as "CONTRACTOR" and Hollister School District, hereinafter referred to as "DISTRICT."

WHEREAS, DISTRICT is authorized by Section 53060 of the California Government code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, DISTRICT is in need of such special services and advice; and

WHEREAS, CONTRACTOR has the required background, experience, expertise, and is specially trained to perform the special services required by DISTRICT, and such services are needed on a limited basis; and

WHEREAS, DISTRICT maintains certain confidential information including trade secrets, student records, and all other information not clearly known to the public and/or confidential pursuant to law. The DISTRICT's trade secrets and other proprietary and confidential information includes the whole or any processes, procedures, confidential business or financial information, and all other trade secret information not clearly known to the public, hereinafter referred to as "CONFIDENTIAL INFORMATION."

NOW, THEREFORE the Parties, for the consideration stated herein, mutually agree to enter into this AGREEMENT subject to the following terms and conditions:

1. **Services.** DISTRICT hereby engages CONTRACTOR as an Independent Contractor to provide the following services, hereinafter referred collectively to as the "SERVICES":

Silke Communications will provide the District with additional operations/emergency digital two-way radio system. The terms of the contract is ten(10) months from December 1, 2021 to September 20, 2022 with an option to renew. The contract leases 89 two-way digital radios district-wide and warranty for eighty-nine (89) Portable Radios, including 10 one-time activation fee.

CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the DISTRICT. CONTRACTOR shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from DISTRICT. CONTRACTOR shall have sole discretion and control of CONTRACTOR's services and the manner in which they are performed.

2. Term. The term of this AGREEMENT shall commence on the 1st day of December, 2021 and terminate on the 1st day of September, 2022. CONTRACTOR understands and agrees the DISTRICT has no obligation to extend the terms of this AGREEMENT, or contract for the provision of any future services, and makes no warranties or representations otherwise. Neither CONTRACTOR nor DISTRICT is required to renew this AGREEMENT in subsequent contract years. However, the parties acknowledge that any subsequent AGREEMENT is to be renegotiated prior to June 30, 2022. (Title 5 California Code of Regulations sections 3062 (d)).

3. Submittal of Documents. CONTRACTOR shall not commence the SERVICES under this AGREEMENT until CONTRACTOR has submitted and the DISTRICT has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required, which shall be incorporated herein by reference, as indicated below: *(Please indicate documents that apply)*

- X Signed Agreement
- N/A Insurance Certificates and Endorsements
- X W-9 Form Attached X On file
- X Worker's Compensation Certification
- N/A Fingerprinting/Criminal Background Investigation Certificate
- N/A Tuberculosis Clearance
- N/A Copy of current license or credential required for type of service
- N/A STRS Retirement Date: N/A
- N/A PERS Retirement Date: N/A

4. Compensation. DISTRICT agrees to pay CONTRACTOR for the performance of SERVICES satisfactorily rendered pursuant to this AGREEMENT, according to the following rates, terms and conditions. DISTRICT agrees to pay CONTRACTOR on the following basis:

Not to exceed \$ 17,105.00 total fee for Services.

The basis of the fee for Services shall be as follows:

- a. \$ N/A per hour for a maximum of N/A hours,
- b. \$ N/A per day for a maximum of N/A days, or
- c. \$ N/A per engagement as may be requested by DISTRICT.

Checks will be made payable to CONTRACTOR and mailed to above address upon receipt of an invoice. Payment shall be limited to amount written in this paragraph, unless specifically indicated in Paragraph 5. DISTRICT agrees to pay CONTRACTOR within thirty (30) days of receipt of detailed invoice and/or DISTRICT form for Independent Contractor Request for Payment.

- 4.1. Incidental Expenses: N/A
- a. Lodging: Not to exceed \$ N/A per night.
 - b. Meals: Reimbursement limited to current rate for District employees.
 - c. Travel: Contractor will not be reimbursed for travel costs within 60 miles of DISTRICT. Other travel costs to reimburse at the current allowable IRS rate.
 - d. Supplies: As negotiated with school/department contracting for service. Not to exceed \$ N/A.

5. Termination of Agreement. This agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice. CONTRACTOR will be compensated only for satisfactory work performed up to the date of termination.

6. Relationship of the Parties. CONTRACTOR enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall CONTRACTOR be considered an employee of DISTRICT within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, worker's compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall CONTRACTOR look to DISTRICT as his/her employer, or as a partner, agent, or principal. CONTRACTOR shall not be entitled to any benefits accorded to DISTRICT's employees, including, without limitation, worker's compensation, disability insurance, vacation, or sick pay. CONTRACTOR shall be responsible for providing at CONTRACTOR'S expense, and in the CONTRACTORS name, disability, worker's compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

CONTRACTOR shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide DISTRICT with proof of said payments upon demand. CONTRACTOR hereby indemnifies DISTRICT for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by DISTRICT arising out of CONTRACTOR'S breach of this Section.

7. Fingerprinting and Criminal Records Check of Contractor's Employees. CONTRACTOR shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the CONTRACTOR and/or its employees. CONTRACTOR shall not permit any employee to have any contact with the DISTRICT pupils until such time as CONTRACTOR has verified in writing to the governing board of the DISTRICT that such employee has not been convicted of a felony, as defined in Education Code §45125.1.

8. Insurance. Without limiting CONTRACTORS's indemnification, it is agreed that CONTRACTOR shall secure and maintain in force during the term of this Agreement a Commercial General Liability policy(Contractual liability included) utilizing an occurrence policy form, with limits not less than one million (\$1,000,000) dollars per occurrence, two million (\$2,000,000) annual aggregate limit. Business automobile Liability insurance shall be maintained at the same rate currently for District employees.

9. Assignment. The CONTRACTOR shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent on the DISTRICT.

10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

DISTRICT

Hollister School District
2690 Cienega Road
Hollister, CA 95023
Attn: Superintendent

CONTRACTOR

Name: Silke Communications
Address: 538 Brunken Ave #4
Salinas, CA 93901

Phone: (831) 784-1900
Fax: N/A
Email: flglesias@silkecom.com
Attn: Fernando Iglesias

Any notice personally given or sent by telegram or facsimile transmissions shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

11. Equipment and Materials. CONTRACTOR at its sole cost and expense shall provide and furnish all tools, labor, material, equipment, transportation services and any other items collectively, ("Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, DISTRICT shall not be responsible for any damages to persons or property as a result of the use, misuse, or failure of any Equipment used by CONTRACTOR of the CONTRACTOR Parties by DISTRICT. Furthermore, any Equipment or workmanship that does not conform to the regulations of this Agreement may be rejected by DISTRICT and in such case must be promptly remedied or replaced by CONTRACTOR at no additional cost to DISTRICT and subject to DISTRICT's reasonable satisfaction.

12. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.

13. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of the Agreement shall be maintained in San Benito County, California.

14. Attorneys' Fees. If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorney's' fees shall be counted in calculating the amount of judgment for purposes of determining whether a party is entitled to its costs or attorney's' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their duly authorized representatives on the dates indicated below.

HOLLISTER SCHOOL DISTRICT

CONTRACTOR

BY: *Aaron Buzggette* *12/7/21*
Administrator Date

BY: *Fernando Iglesias* *12/7/21*
Date

Title: Director of Facilities

Title: _____

Authorized by: _____
Assistant Superintendent, Business Date

Approved: _____
District Superintendent Date

Date of Board Approval _____ Board Item # _____

Funding Source:

010	0000	0	5830	00	1110	1000	000000	001	0014	100 %
Fund	Resource	Yr	Object	Sub	Goal	Func.	Cost Center	Site	Mgr.	

_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____ %
Fund	Resource	Yr	Object	Sub	Goal	Func.	Cost Center	Site	Mgr.	

_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____ %
Fund	Resource	Yr	Object	Sub	Goal	Func.	Cost Center	Site	Mgr.	

_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____ %
Fund	Resource	Yr	Object	Sub	Goal	Func.	Cost Center	Site	Mgr.	

Original: Business Office- Accounts Payable
 Copy: Requesting Department
 Copy: Contractor



Please Confirm
count

Long Term Rental Order

538 Brunken Ave #4
Salinas, CA 93901

Date	WO #
10/22/2021	

Billing
Hollister School District 2690 Cienega Road Hollister, CA 95023

Ship To
Hollister School District 2690 Cienega Road Hollister, CA 95023

P.O. No.	Contract Start	Term	Contract End	Location To be Used At
	11/1/2021	10 Months	9/20/2022	Hollister

Qty	Item	Description	Repl. Cost	Monthly Unit Rate	Monthly Total
79	PD502IU	Hytera Non display Portables	\$ 362.00	\$ 15.00	\$ 1,185.00
10	PD562	Hytera Display Portables	\$ 440.00	\$ 17.00	\$ 170.00
89	Warranty	Warranty for Portables & Repeaters	\$ 0.00	\$ 2.50	\$ 222.50
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00
					\$ 0.00

Programming Notes
TO BE BILLED MONTHLY WITH CURRENT RADIOS

Monthly Total	\$ 1,577.50
Annual Total	\$ 18,930.00
Term Total	\$ 15,775.00

One Time Activation Fee

Qty	Unit Price	Total
10	\$ 133.00	\$ 1,330.00

The undersigned renter agrees that the rented item(s) herein described will at all times remain the property of the rental agency named above; that the renter examined said item(s), found to be in good condition and will return in the same condition as received, ordinary wear and tear expected; will contact, at once, the rental agent about any item not functioning normally; will pay promptly when due all charges which accrue from this rental, including damages to said item(s). In the event the renter fails to return said item(s) at the agreed time, or fails to abide by any of the other terms of this agreement, the rental agent may repossess said item(s) without notice to the renter, and the rental agency is hereby released from all claims arising therefrom. In the event the rented item(s) are lost, stolen or not returned after 48 hours of the "Due Back" date, the rented item(s) may be billed at current list price and will be due on the date of invoice. The rental agent is not responsible for accidents or injuries caused directly or indirectly during the use of the rented item(s). See back side for further terms and conditions.

Signature: Aaron Buzetta Print Name: Aaron Buzetta Date: 11-30-21

Equipment Serial Numbers

--

--

--

TERMS AND CONDITIONS

This Agreement between Silke Communications ("Silke") and Customer is subject to the following terms and conditions:

A. Terms applicable to both FleetNet™ and FleetPeak™. The terms in this Section A apply to both FleetNet and FleetPeak agreements:

1. **Definitions.** "Silke" shall mean Silke Communications, "Customer" shall mean and apply to, the User, or the Purchaser, or the FCC Licensee, of the equipment that is subject to the terms of this Agreement.
2. **Payment.** Charges for regular monthly service shall be paid in monthly installments, beginning on the fifth day of the month following execution of the Agreement, and on the fifth day of each succeeding month throughout the term hereof, at 3 Crow Canyon Ct., Suite 100, San Ramon, CA 94583, or at such other place as Silke may designate from time to time. All other charges shall be paid upon billing. Any charge not paid within ten days of its due date shall be considered overdue and in addition to other remedies, a late payment charge equal to ten percent (10%) per month on any overdue amount may be levied. A returned check charge of up to \$25 may also be levied. Credit card payments will incur a 3.5% processing charge.
3. **Renewal.** At the conclusion of the term of this Agreement, it shall continue on a month-to-month basis provided that either Silke or Customer may terminate this Agreement on the conclusion of the term or thereafter upon 30 days written notice to the other party. The total monthly charges shall increase each year on the anniversary date of this Agreement by 3% over the previous year's charges.
4. **Disclaimer.** Silke disclaims any and all warranties, express or implied, including but not limited to implied warranties of merchantability or fitness for a particular purpose. Silke does not warrant that the Equipment will work perfectly, that it will not need occasional upgrades or modifications, or that it will not be negatively affected by network-related modifications, upgrades or similar activity.
5. **Interruption of Service.** Customer shall notify Silke in the event of the failure or malfunction of the Equipment, after which Silke agrees to respond in a commercially reasonable manner. However, Silke shall have no liability for unsatisfactory communications service experienced by Customer for any reason whatsoever, including but not limited to acts of god, war, civil unrest, circumstances beyond our control, or customer negligence.
6. **Limitation of Liability.** Each party hereby agrees to limit claims against the other solely to direct damages and waives the right to claim any damages that are indirect, special, consequential, incidental, trouble or punitive. For example, disallowed damages include those arising out of a service or device failure, or unauthorized access or changes to Customer's account or device. This limitation and waiver will apply regardless of the theory of liability. It also applies to any claims against Silke's suppliers, to the extent Silke would be required to indemnify the supplier for the claim.
7. **Billing Disputes.** Customer may dispute its bill within 60 days of receiving it, but unless otherwise provided by law, Customer is required to pay all charges until the dispute is resolved. Customer may telephone Silke to dispute charges, but to preserve the right to proceed to arbitration Customer must give written notice of the dispute at least 30 days in advance of initiating arbitration. The written notice must describe the nature of the dispute and the relief being sought. Failure by Customer to provide written notice of a dispute within 60 days of Customer's receipt of the billing shall constitute a waiver of the right to dispute the bill.
8. **Notices.** Any notice required or permitted to be given under this Agreement shall be given in writing and shall be deemed given and received three (3) days after deposit in the United States mail, certified mail, postage prepaid, and return receipt requested to the Customer's address stated in this Agreement, or to Silke at 3 Crow Canyon Ct., Suite 100, San Ramon, CA 94583. Either party may notify the other party of its change of address by giving notice by regular first class mail in accordance with this provision.
9. **Remedies.** If Customer fails to pay any amount due under this Agreement within (10) days after the same is due and payable, or if Customer fails to perform any other obligation under this Agreement, Silke shall have the right in exercise any one or more of the following remedies: To declare the entire amount of overdue charges hereunder immediately due and payable; to recover all other payments, then accrued or thereafter accruing, including any early termination fee pursuant to Section 10; to terminate this Agreement; or to pursue any other remedy at law or in equity. Notwithstanding any termination or any other action which Silke may take, Customer shall be and remain liable for the full performance of all obligations on the part of the Customer to be performed under this Agreement. All of Silke's remedies are cumulative, and may be exercised concurrently or separately.
10. **Termination.** Except as set forth herein, this Agreement shall remain in effect for its entire stated length of service, and Customer has no right of early termination. In the event of a default by Customer before the end of the term of this Agreement, Customer shall pay an early termination fee equal to the remaining balance owed on the contract. For non-Silke owned equipment, Customer will be subject to a termination fee equal to the remaining period of the service agreement at the Silke's sole discretion.
11. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, including without limitation, the making, performance, or interpretation of this Agreement, shall be settled by arbitration in accordance with the laws governing

arbitration of disputes in the state whose governing law applies to this Agreement, and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. The arbitration shall be initiated by the moving party through a private arbitration service and, unless otherwise agreed, held before a single arbitrator in the county in which Customer's principal office is located. The arbitrator shall be selected by the private arbitration service's procedures, and need not be an attorney.

12. **Legal Fees.** In the event of any proceeding to enforce any of the terms of this Agreement, the prevailing party shall be awarded such sum as the arbitrator may adjudge reasonable as attorney fees and costs, including the costs of arbitration, in such arbitration and in any appeal therefrom.
13. **No Waiver.** Failure or delay on the part of Silke to exercise any right, power, or privilege hereunder shall not operate as a waiver of any other term or the waiver of the same term at any other time.
14. **Governing Law.** This Agreement shall be interpreted in accordance with the laws of the state in which this Agreement is executed.
15. **Severability.** If any portion of this agreement is declared invalid, the remainder of this Agreement shall continue to be binding upon the parties.
16. **Entire Agreement.** This Agreement (including Sections B or C, as applicable, and any documents referred to herein) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supercedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

B. Terms Applicable only to FleetNet. The terms in this Section B apply only to FleetNet agreements:

17. **FleetNet Equipment.** For FleetNet Customers, "Equipment" means radios and related apparatus that are supplied by Silke, and does not refer to Customer-owned radio equipment.
18. **Use.** Customer shall use the Equipment in a careful and proper manner and shall comply with and conform to all national, state, municipal, or other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Equipment.
19. **Surrender.** Upon the expiration or earlier termination of this Agreement, Customer shall return the Equipment to Silke in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering the Equipment at Customer's cost and expense to such place as Silke shall specify within the city or county in which the same was delivered to Customer.
20. **Liens and Encumbrances.** Customer shall keep the Equipment free and clear of all levies, liens and encumbrances. Customer shall report, pay and discharge when due all fees, assessments and taxes arising out of use or operation of the Equipment imposed by any state, federal or local government or any agency, whether or not the same shall be assessed against or in the name of Silke or customer. Customer shall reimburse Silke for any damages or expenses resulting from such failure to pay or discharge.
21. **Default.** In addition to a default in payment terms, the following actions by Customer shall constitute a default under this Agreement under which Silke may limit, suspend or terminate Customer's service: (a) Customer's resale of service; (b) use of service for any illegal purpose; (c) installing, deploying or using any regeneration equipment or similar mechanism (for example, a repeater) to originate, amplify, enhance, retransmit or regenerate an RF signal without Silke's permission; (d) modifying Equipment from its manufacturer's specifications; (e) use of service in a way that negatively affects Silke's network or other customers, or interferes with Silke's operations; (f) the filing of a bankruptcy petition; (g) threatening, harassing, or using vulgar or inappropriate language toward Silke's representatives; or (h) "spamming" or engaging in other abusive messaging or calling.
22. **Assignment.** Neither this Agreement nor any interest therein is assignable or transferable by operation of law. If any proceeding under the Bankruptcy Act is commenced by or against the Customer, the Customer is adjudged insolvent, the Customer makes any assignment for the benefit of his creditors, a writ of attachment or execution is levied on the Equipment and is not released or satisfied within ten (10) days thereafter, or if a receiver is appointed in any proceeding or action to which the Customer is a party with authority to take possession or control of the Equipment, Silke shall have and may exercise any one or more of the remedies set forth in Section 9 hereof; and this Agreement shall, at the option of the Silke, immediately terminate and shall not be treated as an asset of Customer after the exercise of said option.
23. **Ownership.** All rented Equipment shall at all times be and remain the sole and exclusive property of Silke, and the Customer shall have no right, title or interest therein or thereto except as expressly set forth in this Agreement.
24. **UCC Filing.** If Silke shall so request, Customer shall execute and deliver to Silke such documents as Silke shall deem necessary or desirable for purposes of recording or filing to protect the interest of Silke in the Equipment including, but not limited to a UCC financing statement.

Initial Here

Initial Here

Initial Here

Read and Approved:

Ann Ryzette

Date:

11-30-21