

# DARK FIBER LEASE AGREEMENT

THIS DARK FIBER LEASE AGREEMENT (“*Agreement*”) is dated as of September 8<sup>th</sup>, 2016, by and between Sauk County, a political subdivision of the State of Wisconsin, (“*County*”) and, a Merrimac Communications (“*Lessee*”).

For the fees described within this agreement, the parties hereto agree as follows:

## 1. Dark Fiber.

County owns, operates on and maintains a 146.98 mile 96 strand fiber optic cable between the County Emergency Communication Towers. One strand (92) of fiber will be leased by the Lessee, with the meeting point of the Lessee’s and Counties fibers through a fiber panel connection in a rack unit at the Sauk City site panel B which will then run to the Spring Green fiber panel. Two (2) Rack Units with 120 VAC will be needed for regeneration at the Spring Green to Hillpoint site. A fiber panel patch will then be made from Hillpoint to Happy Hill. Two (2) Rack Units with 120 VAC will be needed for regeneration from Happy Hill to Reedsburg. A Reedsburg Tower to Reedsburg Highway shop fiber patch panel connection will be made. A fiber patch will be made with Fiber (10) connecting to the Reedsburg utility Fiber. An exchange in services is also a part of this lease agreement where Sauk County will be exchanging fiber with Merrimac Communications on their fiber network from the Vault on Old Bluff and Hwy 12 to the Sauk City Highway shop. The length of this run will be 7500’ (1.42 miles). Total cost for this work will require a \$500 onetime fee and \$56.80/ month.

## 2. Effective Date.

This Agreement shall be effective on the date of full execution hereof (“*Effective Date*”). Beginning on the Effective Date and continuing until the end of the term as defined in Paragraph 3 below.

## 3. Term.

The term of Lessee’s tenancy hereunder shall commence upon the effective date, as defined in Paragraph 2 above and shall continue in effect for a five-year Term unless otherwise terminated as provided herein. Lessee shall have the right to extend the term for three (3) successive five (5) year periods on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each five (5) year period unless either party of this agreement provides written notification to other of its intention not to renew no later than one hundred and twenty (120) days prior to commencement of the succeeding term.

## 4. Facilities; Access.

As part of this agreement the County will lease dark fiber to the lessee as noted in paragraph 1 above with the following conditions:

- (a) Lessee must adhere to Attachment F – Sauk County Fiber Lease Construction Guidelines.

- (b) All splicing and testing will be done by a Contractor selected by the County. The costs of the splicing and testing will be paid for by the Lessee as part of the set up fee. Test results will be made available to the Lessee.
- (c) The Lessee is responsible for notifying Diggers Hotline and waiting for a clear ticket before proceeding with an underground installation.
- (d) The Lessee is responsible for providing and installing the cable up to the vault location. The Lessee will not be allowed to enter the County's vault.
- (e) The Lessee's cable entry into County vaults will be done by a Contractor selected by the County. Costs of the vault entry will be paid for by the Lessee as part of the set up fee.
- (f) The Lessee is responsible for providing all grounding as specified in Attachment F. If a locating pedestal is to be placed, its installation should coincide with the cable placement. The pedestal will be provided and placed by the Lessee and should not interfere with the opening and closing of the vault.
- (g) The Lessee will not be allowed into County vaults, splice closures or termination sites.
- (h) The Lessee will not be allowed to sublet any fibers under this lease.
- (i) Lessee will be responsible for insurance on all equipment and facilities installed by the Lessee at/near each vault. County will be listed as an additional insured on the Lessee's policy and a certificate of insurance will be provided to the County.
- (j) Lessee must coordinate any removal with the County on or before the expiration or earlier termination of this Agreement in accordance to the terms specified within this Agreement.
- (k) Lessee shall be responsible to repair and restore the ground around the county vaults to its original shape. If the County determines that further repair is required to the vault locations, Lessee will be advised of repair needs and such repairs shall be completed within 30 days or the County shall make repairs to such damage and Lessee shall be responsible for payment of the reasonable cost of such repairs plus 5%.
- (l) Upon termination of this Agreement, the Lessee shall remove all equipment and facilities within 60 days of the date of termination and such removal shall be coordinated with the county. A restoration fee will be imposed to return the County fiber to its pre-splice condition; such fee will be based on a time and material basis plus 5% and shall be completed by a Contractor selected by the County.
- (m) County shall be responsible for any repairs and/or maintenance to the fiber being leased unless the need for such repairs and/or maintenance is due to Lessee's use of the fiber. County further agrees that it will maintain an agreement with Vanguard or other such utility locating agency.

- (n) In the event the Lessee desires to modify its connection with the county owned fiber, Lessee must first obtain the prior written approval of the County. Such approval shall not be unreasonably withheld, conditioned or delayed, but the County may impose reasonable conditions and restrictions to ensure that any additional changes do not interfere with the County's, or other Lessee's communications activities on the fiber. All costs associated with such changes shall be at the sole expense of the Lessee. This Agreement will be reviewed at the time of any such changes.

#### 6. Fees.

For the Term of this agreement the County shall receive from the Lessee the monthly lease fee as defined within Attachment D of this Agreement. This fee will automatically increase annually on the effective date as noted within Attachment C. This lease fee may be paid either monthly or annually. There will be a one-time set-up fee and one time restoration fee as outlined within this agreement that will be billed based on a time and material basis plus 5% at the time that work is completed.

#### 7. Outages.

- (a) County shall not be held responsible or be subject to any billing for outages on the fiber caused by any cuts, breakages or other such damage to the fiber optic cable that is out of the control of the county.
- (b) If the County has a planned relocations of its fiber optic cable for any reason that will cause an outage to the lessee, the county shall provide at least Seven (7) days notice prior to the start of any such relocation. If the relocation is of an emergency nature, the county will make notification as quickly as possible or within 24 hours. County will not be subject to any billing for outages associated with this relocation.

#### 8. Taxes.

Lessee shall be responsible for any and all taxes assessed to its communication system and facilities.

#### 9. Waiver of Lessee's Lien Rights.

Lessee waives any lien rights it may have concerning the County facilities, all of which are deemed County's personal property and not fixtures Lessee shall provide to the County lien waivers when necessary if they contract for the performance of any work or the delivery of any materials related to the fiber optic cable.

#### 10. Termination.

This Agreement may be terminated without further liability with one hundred and twenty (120) days prior written notice as follows:

- (a) By either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, except that this Agreement shall not be terminated if the default cannot reasonably be cured within such sixty (60) day period and the defaulting party has commenced to cure the

default within such sixty (60) day period and diligently pursues the cure to completion; provided that the grace period for any monetary default is ten (10) days from receipt of written notice; or by County if County is unable to occupy and utilize the premises due to an action uncontrolled by the County.

- (b) If at some point in the future, it becomes unnecessary or undesirable for the County to continue to operate and maintain the fiber optic cable, the County shall provide one hundred and twenty day notice of its intent to discontinue maintenance and operation of the fiber and terminate this agreement for convenience.
- (c) By the Sauk County Board of Supervisors if the Board passes a resolution terminating this agreement based upon a determination that it is necessary to terminate the contract for convenience.

#### 11. Insurance.

- (a) Lessee, at Lessee's sole cost and expense, shall procure and maintain on the insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against all liability of Lessee, its employees and agents arising out of or in connection with county's use of the fiber optic cable, all as provided for herein.
- (b) The county shall be named as an additional insured on the Lessee policy. A certificate of insurance evidencing the coverage required by this paragraph shall be provided upon request. Lessee shall have the right to self insure any and all coverage's to the limits required.

#### 12. Waiver of Subrogation.

Lessee and County release each other and their respective principals, employees, representatives and agents, from any claims for damage to any person or to the property or the premises or to the County facilities or any other property thereon caused by, or that result from, risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. Lessee and County shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy. Neither Lessee nor County shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by Paragraph 11.

#### 13. Liability and Indemnity.

Lessee and County shall each indemnify, defend and hold the other harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "Losses") arising from the indemnifying party's breach of any term or condition of this Agreement or from the negligence or willful misconduct of the indemnifying party's agents, employees or contractors in or about the property. The duties described in this Paragraph 14 shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

#### 14. Assignment and Subletting.

Lessee may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the fiber optic cable without the prior written consent of the County; such consent shall not be unreasonably withheld. Upon assignment, Lessee shall be relieved of all future performance, liabilities, and obligations under this Agreement, provided that the assignee assumes all of Lessee's obligations herein. County may assign this Agreement, which assignment shall be evidenced by written notice to lessee within a reasonable period of time thereafter, provided that the assignee assumes all of County's obligations herein, including but not limited to, those set forth in Paragraph 9 ("Waiver of Lessee's Lien") above. This Agreement shall run with the property and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, heirs and assigns.

Lessee may not sublet the dark fibers, fibers are intended for Lessees use only.

15. Warranty of Title and Quiet Enjoyment.

County warrants that County owns the fiber optic cable in fee simple and has rights of access thereto and the fiber is free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date.

16. Repairs.

Lessee shall repair any damage to the premises or property caused by the negligence or willful misconduct of Lessee. Upon expiration or termination hereof, Lessee shall repair the premises to substantially the condition in which it existed upon start of construction.

17. Miscellaneous.

- a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.
- b) Both parties represent and warrant that their use of the fiber and their personal property attached to the fiber is in compliance with all applicable, valid and enforceable statutes, laws, ordinances and regulations of any competent government authority.
- c) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- d) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.
- e) Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

Sauk County  
510 Broadway  
Baraboo, Wisconsin 53913  
Attn: Ian Crammond  
Phone: (608) 355-3200

Merrimac Communications Ltd.  
327 Palisade Street  
Merrimac, Wisconsin 53561  
Attn: Bart Olson  
Phone: 608-493-9470

- f) Lessee or County may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.
- g) This Agreement shall be governed by the laws of the State of Wisconsin.
- h) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.
- i) Each of the parties hereto represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Agreement.
- j) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.
- k) All Riders and Exhibits annexed hereto form material parts of this Agreement.
- l) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

SAUK COUNTY

MERRIMAC COMMUNICATONS LTD.

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*(Signature)*

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*(Signature)*

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*(Print Name)*

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*(Print Name)*

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*(Title)*

*(Title)*

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*(Date)*

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*(Date)*

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(Tax ID #)

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(Tax ID #)