

GROUND LEASE AGREEMENT

Richmond County, Georgia

THIS GROUND LEASE AGREEMENT (hereinafter "Agreement" or "Lease"), made this ____ day of _____, _____, between JEFFERSON ENERGY COOPERATIVE, AN ELECTRIC MEMBERSHIP CORPORATION, a Georgia corporation (hereinafter designated as "Landlord") and AUGUSTA, GEORGIA, a political subdivision of the State of Georgia (hereinafter designated as "Tenant").

For Ten (\$10.00) Dollars paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein, Landlord and Tenant agree:

Premises. Landlord hereby leases to Tenant and Tenant leases from Landlord a site (the "Leased Property") which is a portion of that certain parcel of real property (the "Tract") known as 3120 Highway 88, Blythe, GA 30805, Tax Map and Parcel Identification: 224-0-044-01-0 together with ingress and egress for pedestrian and vehicular use. The Leased Property is further identified as only that portion of the real property where the Tenant's prefabricated building (the "Communications Building") is located and shown in Exhibit "A."

1. **Term.** The initial term of this Agreement (the "Initial Term") shall be ten years beginning on the ____ day of _____, ____ and ending on the ____ day of _____, ____.

This Agreement shall (i) terminate absolutely and without further obligation on the part of Augusta each and every December 31st, as required by O.C.G.A. § 36-60-13, as amended, unless terminated earlier in accordance with the termination provisions of this Agreement; (ii) automatically renew on each January 1st, unless terminated in accordance with the termination provisions of this Agreement; and (iii) terminate absolutely, with no further renewals no later than exactly ten (10) years from the date of execution, unless extended by written amendment. Tenant has the option to extend the term of this Lease for three additional ten-year periods (collectively, the "Extension Terms" and, individually, the "Extension Term"). Tenant will be deemed to have exercised its option as to each Extension Term unless Tenant delivers written notice to Landlord to the contrary not less than 90 days prior to the end of the then existing Initial Term or Extension Term, as the case may be. Except as provided in Paragraph 3 of this Agreement, all terms and conditions of this Agreement will remain in full force and effect during the Extension Terms.

If at the end of the last Extension Term, this Agreement has not been terminated pursuant to the terms of this Agreement, this Agreement shall be deemed further extended upon the same covenants, terms, and conditions for a term of one year, and for annual terms thereafter (collectively, the "Annual Terms" and, individually, the "Annual Term"), until terminated by either party upon written notice to the other of its intention to so terminate at least 90 days prior to the

end of such Annual Term or as otherwise provided herein. The Initial Term, the Extension Terms, and the Annual Terms are hereinafter collectively referred to as the "Term."

2. **Rent.**

In lieu of rent, the Parties hereby agree as follows.

During the Term, Landlord will provide to Tenant:

- a. All necessary power in order for Tenant to carry out its operation at the Leased Property as described in Section 1 above; and
- b. Site maintenance services for the Tract and the Leased Property.

During the Term, Tenant will:

- a. Allow Landlord to shelter its communications equipment in the building owned by the Tenant.

3. **Regulatory Compliance.** Tenant represents that it is familiar with all applicable rules and regulations of the Federal Aviation Administration ("FAA"), the Federal Communications Commission ("FCC"), and all other government and regulatory bodies having jurisdiction over the Communications Facility as contemplated herein. Tenant expressly agrees that it, the Communications Facility and the Improvements will comply fully with all such rules and regulations. Tenant understands that Landlord is not in the business of constructing and operating facilities such as those contemplated herein and is not, and will not, be as familiar with the applicable rules and regulations. Consequently, Tenant accepts full and exclusive responsibility for compliance hereunder.

4. **Liability and Indemnity.**

Landlord agrees to compensate Tenant for damages and to indemnify and hold Tenant harmless from all claims (including, but not limited to, property damages and personal injury, including death), including costs and expenses of defending against such claims, through counsel designated by Landlord and approved by Tenant, arising or alleged to arise solely from acts of gross negligence or willful misconduct of Landlord, Landlord's agents, employees, contractors, or other tenants of Landlord occurring in or about the Leased Property or the Tract or arising out of any breach of this Lease by Landlord.

The indemnities described in this Paragraph 6 shall survive termination of this Lease.

Notwithstanding any other provision of this Lease, neither Landlord nor Tenant shall be liable for lost profits of the other party, the other party's customers or sublessees, or any other person or entity in any event or under any circumstances, whether arising from damage to the

Communications Facility, the Improvements or otherwise, and each party hereto shall indemnify and hold the other harmless therefrom. There are no intended third party beneficiaries under this Paragraph or this Agreement.

THE PARTIES UNDERSTAND THAT LANDLORD WOULD NOT ENTER INTO THIS AGREEMENT EXCEPT THAT IT IS CLEARLY UNDERSTOOD THAT LANDLORD SHALL NOT BE LIABLE TO TENANT, TENANT'S SUBLESSEES, OR ANY OTHER PERSON OR ENTITY, FOR ANY CONSEQUENTIAL DAMAGES ARISING FROM ANY CAUSE WHATSOEVER. In the event that any third party, including any sublessee of Tenant, obtains a judgment against Landlord for consequential damages, then in that event, Tenant agrees to indemnify Landlord pursuant to the foregoing paragraphs.

5. Defaults and Remedies.

A. Notwithstanding anything in this Lease to the contrary, Tenant shall not be in default under this Lease until 30 days after actual receipt of written notice of any default from Landlord which default is not cured within said time; provided, however, where any such default cannot reasonably be cured within said period, Tenant shall not be deemed to be in default under this Lease if Tenant commences to cure such default within said period and thereafter diligently pursues such cure to completion.

In the event of Tenant default, Landlord may, at Landlord's option, cure Tenant's default at Tenant's expense or terminate this Lease without affecting its rights to demand, sue for, and collect all of its damages arising out of Tenant's failure to comply.

B. Notwithstanding anything in this Lease to the contrary, Landlord shall not be in default under this Lease until 30 days after actual receipt of written notice of any breach from Tenant, which breach is not cured within said time; provided, however, where any such default cannot reasonably be cured within said period, Landlord shall not be deemed to be in default under this Lease if Landlord commences to cure such default within said period and thereafter diligently pursues such cure to completion. In the event of Landlord's default, Tenant may, at Tenant's option, cure Landlord's default at Landlord's expense or terminate this Lease without affecting its rights to demand, sue for, and collect all of its damages arising out of Landlord's failure to comply.

C. The rights and remedies stated in this Lease are not exclusive. The parties, in the event of a default under this Lease, are entitled to terminate this Lease or pursue any of the remedies provided in this Lease, by law, or by equity subject to any limitations contained herein.

D. No course of dealing between the Parties or any delay on the part of a Party to exercise any right it may have under this Lease shall operate as a waiver of any of the rights hereunder or by law or equity provided, nor shall any waiver of any prior default operate as the waiver of any subsequent default; and no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

8. **Insurance.** Tenant is a self-insured entity. Such self-insurance shall attach to Property and be in full effect during the Term of this Agreement.

Landlord, at its expense, shall maintain in force during the Term a combined single limit policy of bodily injury and property damage insurance, with a limit of not less than \$1,000,000.00 insuring Landlord against all liability arising out of the use, occupancy, or maintenance of the Leased Property and appurtenant areas by Tenant. A certificate of insurance will be provided if requested.

9. **Taxes.** Tenant shall pay annually during the Term an amount equal to any increase in Landlord's real estate taxes, and such other assessments directly attributable to any Improvement to the Leased Property made by Tenant or Tenant's sublessees. If such tax is paid by Landlord, Tenant shall reimburse Landlord for the amount of any such tax payment within 60 days of receipt of sufficient documentation indicating the amount paid and calculation of Tenant's pro-rata share; such documentation shall be deemed sufficient only if it definitively evidences that portion of the tax increase arising directly out of the Improvement such as, by way of example, the relevant tax assessor's designation of the value of such Improvement. Upon written request by Tenant, Landlord shall furnish evidence of payment of all taxes and assessments on the Tract.

10. **Sale of the Tract.** Should Landlord at any time during the Term decide to sell or lease all or any part of the Tract, Landlord shall provide Tenant with written notice of the name, telephone number, and address of the proposed purchaser or tenant not less than 90 days prior to the date of the consummation of such sale or lease and such sale or lease shall be subject to this Lease and Tenant's rights hereunder.

11. **Covenant of Quiet Enjoyment.** Landlord covenants that Tenant shall, upon observing the covenants herein upon its part to be observed, and subject always to the needs of Landlord regarding its operations, peaceably and quietly hold and enjoy the Leased Property during the Term without hindrance, ejection, or molestation by Landlord or any person or entity whomsoever. Landlord covenants that Landlord is seized of good and sufficient title and interest to the Tract, including the Leased Property, and has full authority to enter into and execute and perform this Agreement.

12. **Subordination and Non-Disturbance.** At Landlord's option, this Agreement shall be subordinate to any deed to secure debt, deed of trust, mortgage, or similar instrument (collectively "Mortgage") by Landlord which from time to time may encumber all or part of the Leased Property. Tenant shall execute in a timely manner whatever instruments as may reasonably be required to evidence this subordination clause.

13. **Hazardous Substances.** In the event Hazardous Substances, as said term is hereinafter defined, are discovered on, in, or under the Leased Property as of the date of commencement of this Lease or hereafter, except as a result of any act or omission of Tenant, Landlord, at its sole

expense, may elect to institute and complete, on an emergency basis and without interference with Tenant's or Tenant's sublessees use and occupancy of the Leased Property, all proper, requisite, and thorough procedures for the removal of such Hazardous Substances in accordance with all applicable laws, rules, ordinances, and regulations (the "Removal"). Unless such Hazardous Substances are deposited in, on, or under the Leased Property by an act or omission of Tenant, Landlord shall indemnify and hold Tenant and Tenant's sublessees harmless against any claims arising out of such Hazardous Substances, including all of Tenant's attorneys' fees and costs, which indemnity shall survive termination of this Lease (the "Indemnity"). Tenant assumes full responsibility for insuring that its use of the Leased Property will not result in contamination of or other impairment of the environmental values of it or the surrounding area. Tenant agrees to fully protect, indemnify, and hold Landlord harmless from and against any and all claims for natural resource damages or environmental impairment resulting directly or indirectly from Tenant's use of the Leased Property. In the event Hazardous Substances are discovered on, in, or under the Leased Property solely as a result of any act or omission of Tenant, Tenant shall be obligated immediately to conduct the Removal with respect to and to provide the Indemnity to Landlord as to claims arising out of such Hazardous Substances. Any violation of these prohibitions shall, in addition to the provisions hereinabove, render Tenant liable to Landlord for any costs, including legal fees, incurred by Landlord in regards to any resulting citations, penalties, or claims of any and all governmental agencies having responsibilities for environmental matters, and for any natural resource damage resulting from such violation. For the purposes hereof, "Hazardous Substances" means pollutants, contaminants, toxic or hazardous substances or wastes, oil or petroleum products, flammables, or any other substances whose nature and/or quantity of existence, use, release, manufacture, or effect renders it subject to clean up under any Federal, state, or local environmental, health, community awareness, or safety laws or regulations, now or hereafter enacted or promulgated by any governmental authority or court ruling.

14. Assignment and Subletting. Tenant shall have the right to assign its interest in this Lease or in the Leased Property, or sublease all or any part of the Leased Property. Tenant shall provide written notification to Landlord within 30 days of any such assignment or subletting. Any assignee or successor of Tenant shall agree in writing to assume and perform all of the terms and conditions of this Lease on Tenant's part to be performed from and after the effective date of such assignment and shall enjoy all of the rights and privileges of Tenant under this Lease, and such assignment shall operate to release Tenant of its liabilities and obligations arising hereunder after the date of such assignment.

15. Notices. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by courier or by overnight delivery, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice):

Tenant: Augusta, Georgia
Information Technology Department
c/o Reggie Horne
535 Telfair Street, Building 2000
Augusta, Georgia 30901

w/ copy to:
Augusta Law Department
General Counsel
535 Telfair Street, Building 3000
Augusta, Georgia 30901

Landlord: Jefferson Energy
3077 Ga Highway 17 N
PO Box 457
Wrens, GA 30833

16. **Condemnation.** If the whole of the Leased Property, or such portion thereof as will in Tenant's sole judgment make the Leased Property unusable for the purposes herein leased, are condemned by any legally constituted authority for any public use or purpose, then in either of said events the Term hereby granted shall cease from the time when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Any lesser condemnation shall cause the rental payable hereunder to be reduced by such percentage as the area so condemned bears to the entire Leased Property. Nothing in this provision shall be construed to limit or affect Tenant's right to an award of compensation in any eminent domain proceeding for the Improvements or Tenant's leasehold interest hereunder.

17. **Tests.** Tenant is hereby given the right to conduct surveys, soil tests, radio coverage tests, and any other test or investigation needed in Tenant's determination to or from the Leased Property and the Tract to determine if the physical condition of the Leased Property is suitable for Tenant's uses hereunder. Tenant must coordinate with Landlord before any invasive tests, to avoid any interference with any of Landlord's electrical operations.

18. **Termination.** Tenant shall have the right to terminate this Lease at any time upon the occurrence of any of the following events:

(A) If the approval of or issuance of a license or permit by any agency, board, court, or other governmental authority necessary for the construction and/or operation of the Communications Facility or the Improvements as described herein (the "Approvals") cannot be obtained, or is revoked (unless such revocation is the result of an illegal or improper act on the part of Tenant) or Tenant, in Tenant's discretion, determines that the cost of obtaining or retaining such Approvals is unreasonable; or

(B) If Tenant determines, in its reasonable discretion exercised as soon as such conditions became apparent, based upon soil bearing tests, radio frequency propagation tests, or interference with Tenant's reception or transmission, that the Leased Property is inappropriate for the uses set forth herein.

Upon not less than 30 days written notice of termination of this Lease by Tenant pursuant to the terms of Subsections (A) or (B) above, or in the event that the Approvals described in Subsection (A) above have not been received by Tenant within 365 days (the "Cancellation Date") from the latest date of the execution of this Lease by any party (the "Execution Date"), this Lease shall automatically terminate and neither party shall have any further rights or obligations arising hereunder, except that Tenant shall have the right to remove the Communications Facility and any Improvements from the Leased Property, and except for those rights and obligations that are to survive the termination of this Lease pursuant to the express terms of this Lease. Following the Execution Date, Tenant shall make a diligent reasonable effort to obtain all of the Approvals. Landlord agrees to cooperate with Tenant in securing all of the Approvals referenced in Subsection (A) above so long as said Approvals do not interfere with Landlord's operations. Upon the request of Tenant, Landlord shall execute and deliver such forms and applications as are necessary and appropriate to obtain such Approvals. Tenant reserves the right to contest and/or appeal, to the extent determined by Tenant in Tenant's sole discretion, any adverse governmental or judicial decision or determination relative to the issuance of any such Approval. All costs arising out of the procurement of such Approvals shall be borne by Tenant.

(C) Termination for Convenience. Either Party, at its sole discretion, may terminate this Agreement for its own convenience at any time. The terminating Party shall provide no less than 30 days written notice of termination of this Agreement to the non-terminating Party.

19. **Force Majeure.** Neither Party shall be liable to the other for any loss or damage due to the failure or delay in performance hereunder resulting from any cause beyond such Party's reasonable control, including, but not limited to; acts of God; acts or omissions of civil or military authority; acts or omissions of the other Party hereto; fires; floods; epidemics; pandemics; quarantine restrictions; strikes or other labor disputes; wars or warlike circumstances; declared federal, state, or local government state of emergency; or compliance with applicable regulations or directives of national, state, or local governments, or any department thereof (except, however, that neither Party shall be relieved from liability stemming from compliance with a lawful directive of a governmental authority if the directive is in response to the failure of the affected Party to comply with its regulatory compliance obligations). The Party asserting the force majeure as an excuse from performance shall give the other Party notice verbally within 24 hours of the occurrence of a force majeure event, confirmed in writing within ten days thereafter, such notice to state the nature of the event and the anticipated length of delay. Such Party shall take all reasonable steps to mitigate the effects of any force majeure event (provided, however, that this shall not require settlement of labor disputes that are negotiated in good faith). In the case of a prolonged force majeure event (1 month), the Parties agree to, in good faith, negotiate the terms of this Agreement for the mutual benefit of the Parties for the duration of the force majeure event, up to and including termination of this Agreement. Any force majeure event

requiring negotiation shall be materially distinguishable from the current community circumstances as they exist on the date of this Agreement.

20. **Disclaimer of Warranties.** Landlord and Tenant each disclaim any and all warranties of any type, except for those specifically set forth in this Lease. EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

21. **Miscellaneous.**

A. This Agreement contains all agreements, promises and understandings between Landlord and Tenant; and no verbal or oral agreements, promises or understandings relating to the Leased Property, the Tract, the Improvements or any other matter discussed herein shall be binding upon either Landlord or Tenant in any dispute, controversy or proceeding at law.

Any addition, variation, amendment, or modification to this Agreement shall be void and ineffective unless made in writing and signed by both Parties. Headings are included for convenience of reference only and neither limit nor amplify the terms of this Lease.

B. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Georgia.

C. **Venue.** All claims, disputes and other matters in question between the Landlord and Tenant arising out of or relating to this Agreement, or the breach thereof, shall be decided in the Superior Court of the County in which the defendant party resides.

D. This Agreement shall inure to the benefit of and be binding upon successors and assigns of the Parties hereto.

E. Whenever under this Lease the consent or approval of either Party is required or a determination must be made by either Party, no such consent or approval shall be unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

F. **Open Records.** The Parties acknowledge that all records relating to this Agreement and the services to be provided under this Agreement may be a public record subject to Georgia's Open Records Act. (O.C.G.A. § 50-18-70, *et seq.*). The Parties agree to fully cooperate in responding to such request and making all records not exempt available for inspection and copying as provided by law. The Parties shall immediately notify each other of any request made under the Open Records Act and shall furnish the other party with a copy of the request and the response to such request.

G. If any paragraph, section, subsection, provision, sentence, clause, or portion of this Agreement is determined to be illegal, invalid, or unenforceable, such determination shall in no way affect the legality, validity, or enforceability of any other paragraph, section, subsection, provision, sentence, clause, or portion of this Agreement; and any such affected portion or provision shall be modified, amended, or deleted to the extent possible and permissible to give

the fullest effect to the purposes of the Parties and to this Agreement, and the Parties hereby declare that they would have agreed to the remaining parts of this Agreement if they had known that such provisions or portions hereof would be determined to be illegal, invalid, or unenforceable.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LANDLORD:

TENANT:

BY: Martin G Potter

Its: _____

By: Garnett L. Johnson

Its: Mayor

Attest: _____
Lena J. Bonner, Clerk of Commission

Attachment A

Leased Property is only that portion of real property where the Tenant's prefabricated building (the "Communications Building") is located at 3120 Highway 88, Blythe, GA 30805, parcel 224-0-044-01-0 and shown below.

