

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: December 21, 2017

Item description/summary:

Obsolete water meter MXU (Transceiver) and radio read equipment. The transceivers we have been using for the past 13 years are now obsolete. The MXU is the device that transmits the water use info from the meter to the radio read equipment. The manufacturer is now producing a new generation MXU that is not compatible with our current radio read equipment. The obsolete MXU's can still be read with current equipment and will still be covered under warranty for the remainder of that period but all new MXU's we install will be the next generation and require new radio read equipment to read them. The new equipment uses a different spectrum of frequencies that require FCC licensing. The manufacturer, Sensus, owns those spectrums and licenses from the FCC. They lease them to customers that purchase the new equipment for a defined area for which the customer will operate the new equipment. OPUD must lease this spectrum of frequencies for use in the District from Sensus. The lease cost is covered under our normal maintenance fee we already pay for the equipment so there is no extra cost. The contract seems straight forward and if there are any questions I have attached FAQ's with the contract.

Fiscal Analysis:

The equipment itself and the installation is under \$12,000 which is within our water meter line item budget. We already pay the maintenance fee which covers the lease.

Employee Feedback

We need this equipment ASAP to stay on schedule for meter installation completion.

Sample Motion:

Move to approve the Sensus spectrum lease for use in the District.

Prepared by:

John Tillotson, P.E., Director of Public Works

**FCC Notification for Spectrum Manager Lease
Ownership Disclosure Information
and
Spectrum Lease Agreement
(“Agreement”)**

This Agreement contains two parts: Part (1) is The FCC Notification for Spectrum Manager Lease, to be filed with the FCC by Sensus on behalf of the Customer, coupled with Ownership Disclosure Information required for the FCC lease and Part (2) is a Spectrum Lease Agreement between Sensus as Lessor and Customer as Lessee. Together, these two parts create the Agreement.

The number of pages in this Agreement is indicated below, and Customer represents that it has received, reviewed, and completed the entire Agreement. By their signatures below, the parties agree to the terms and conditions set forth in this Agreement. The parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year written below.

| | |
|--|--|
| Sensus USA Inc. & Sensus Spectrum, LLC (together, “Sensus”) | Customer: |
| Sensus USA Inc. Signature: _____ Name: <u>David M. Alban</u> Title: <u>Associate General Counsel</u> Date: _____ | Signature: _____ Name: _____ Title: _____ Date: _____ |
| Sensus Spectrum, LLC Signature: _____ Name: <u>David M. Alban</u> Title: <u>Associate General Counsel</u> Date: _____ | Customer contact person for FCC filings: Name: _____ Phone: _____ Email: _____ Customer FRN: _____ Customer Tax ID: _____ |

Part 1: Notification for Spectrum Manager Lease

In order for Sensus to apply to the FCC on the Customer's behalf for a spectrum manager lease, Customer must complete the information below in boxes one (1) through ten (10) and certify via authorized signature. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum Lessee, and if Customer does not already have one, ownership disclosure information on FCC Form 602.

Customer / Lessee Information

| | | | |
|----------|-----------------------|---------------------------------|--------|
| 1 | Customer/Lessee Name: | | |
| | Attention To: | Name of Real Party in Interest: | |
| | Street Address: | | City: |
| | State: | Zip: | Phone: |
| | Fax: | Email: | |

Is Customer contact information same as above? Yes No (If No, complete box 2 below)

Additional Customer/Lessee Contact Information

| | | | |
|----------|-----------------|--------|--------|
| 2 | Company Name: | | |
| | Attention To: | | |
| | Street Address: | | City: |
| | State: | Zip: | Phone: |
| | Fax: | Email: | |

| | |
|----------|---|
| 3 | Customer/Lessee is a(n) (Select one): <input type="checkbox"/> Individual <input type="checkbox"/> Unincorporated Association <input type="checkbox"/> Trust <input type="checkbox"/> Government Entity <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Consortium <input type="checkbox"/> Other _____ |
|----------|---|

| | |
|----------|--|
| 4 | FCC Form 602: FCC File Number of Customer's Form 602 Ownership Information: _____. If Customer has not filed a Form 602, Sensus will file one for Customer. Please complete questions 5, 6, and 7 below if Customer does <u>not</u> have a Form 602 on file. Customer must complete items 8, 9 and 10 irrespective of whether Customer has an ownership report on file. |
|----------|--|

| | |
|----------|------------------|
| 5 | Customer Tax ID: |
|----------|------------------|

| | |
|----------|--|
| 6 | Individual Contact For FCC Matters Please designate one individual (the Director of Public Works or similar person) who is responsible to the FCC for the operation of the FlexNet radio system. |
| | Name |
| | Title: |
| | Email: |
| | Phone: |

Ownership Disclosure Information

| | | | |
|----------|--|--|--|
| 7 | Customer/Lessee to list the names of the President and all Board Members below, as well as verify citizenship and ownership interests in any entity regulated by the FCC. Such ownership must be disclosed where a President/Board member owns 10% or more, directly or indirectly, or has operating control of any entity subject to FCC regulation. If any answer to Ownership question is Yes, or any answer to Citizenship question is No, provide an attachment with further explanation. | | |
| | | US Citizen? | Ownership Disclosure? |
| | President: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Board Member: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Board Member: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Board Member: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Board Member: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Board Member: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Board Member: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Board Member: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | Board Member: | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Alien Ownership Questions (if the answer is Yes, provide an attachment explaining the circumstances)

| | | |
|----------|---|--|
| 8 | 1) Is the Customer/Lessee a foreign government or the representative of any foreign government? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|----------|---|--|

Basic Qualification Information

| | | |
|----------|--|--|
| 9 | 1) Has the Customer or any party to this application had any FCC station authorization, license, or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license or construction permit denied by the Commission? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | 2) Has the Customer or any party to this filing, or any party directly or indirectly controlling the Customer or any party to this filing ever been convicted of a felony by any state or federal court? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | 3) Has any court finally adjudged the Customer or any party directly or indirectly controlling the Customer guilty of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Customer/Lessee Certification Statements

| | | |
|-----------|---|------------------------------|
| 10 | 1) The Customer/Lessee agrees that the Lease is not a sale or transfer of the license itself. | <input type="checkbox"/> Yes |
| | 2) The Customer/Lessee acknowledges that it is required to comply with the Commission's Rules and Regulations and other applicable law at all times, and if the Customer/Lessee fails to so comply, the Lease may be revoked, cancelled, or terminated by either the Licensee or the Commission. | <input type="checkbox"/> Yes |
| | 3) The Customer/Lessee certifies that neither it nor any other party to the Application/Notification is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance (See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.) | <input type="checkbox"/> Yes |
| | 4) The Customer/Lessee hereby accepts Commission oversight and enforcement consistent with the license and lease authorization. The Lessee acknowledges that it must cooperate fully with any investigation or inquiry conducted either by the Commission or the Licensee, allow the Commission or the Licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the Licensee and to the extent that such suspension of operation would be consistent with applicable Commission policies. | <input type="checkbox"/> Yes |

| | |
|--|------------------------------|
| 5) The Customer/Lessee acknowledges that in the event an authorization held by a Licensee that it has association with it a spectrum leasing arrangement that is the subject of this filing is revoked, cancelled, terminated, or otherwise ceases to be in effect, the Customer/Lessee will have no continuing authority to use the leased spectrum and will be required to terminate its operations no later than the date on which the Licensee ceases to have any authority to operate under the license, unless otherwise authorized by the Commission. | <input type="checkbox"/> Yes |
| 6) The Customer/Lessee agrees the Lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's Rules and Regulations. | <input type="checkbox"/> Yes |
| 7) The Customer/Lessee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by spectrum lease or otherwise. | <input type="checkbox"/> Yes |
| 8) The Customer/Lessee certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency. | <input type="checkbox"/> Yes |

The Customer/Lessee certifies that all of its statements made in this Application/Notification and in the schedules, exhibits, attachments, or documents incorporated by reference are material, are part of this Application/Notification, and are true, complete, correct, and made in good faith. The Customer/Lessee shall notify Sensus in writing in the event any information supplied on this form changes.

Type or Printed Name of Party Authorized to Sign

| | | | |
|---|-----|----------------|---------|
| First Name: | MI: | Last Name: | Suffix: |
| Title: | | Customer Name: | |
| Signature: | | | Date: |
| FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID. | | | |
| WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)) AND/OR FORFEITURE (U.S. Code Title 47, Section 503). | | | |

Part 2: SPECTRUM LEASE AGREEMENT

Background

- A. Customer has bought or will buy or use FlexNet equipment manufactured by Sensus;
- B. Sensus is leasing spectrum to Customer to operate the FlexNet equipment;
- C. The spectrum that Sensus is leasing is authorized by Sensus' FCC License(s); and
- D. Sensus is leasing spectrum to Customer in the area where FlexNet equipment will be operated (the "Service Area").

Agreement

- A. **Spectrum Lease.** Sensus hereby grants to Customer and Customer accepts a spectrum manager lease ("Lease") over the frequencies of the FCC License and solely within Customer's Service Area. (The frequencies of the FCC License within Customer's geographic Service Area are called the "Leased Spectrum"). Customer shall pay the ongoing fees to either Sensus or Sensus' authorized distributor for the use of the Leased Spectrum, as directed by Sensus.
- B. **FCC Forms.** At the Federal Communications Commission (FCC), Sensus will; (1) obtain an FCC Registration Number (FRN) for Customer; (2) submit on behalf of Customer the FCC Form 602 Ownership Disclosure Information if Customer has not already done so; and (3) file a FCC Form 608, notification/application for long-term spectrum manager lease. This Lease becomes effective when the FCC accepts the FCC Form 608.
- C. **Lease Application.** In order to complete the FCC lease application, Customer will:
 - i. Complete and sign the representations in Part 1 of this Agreement such that Customer demonstrates it qualifies for a spectrum lease under FCC rules. Customer's signature will indicate that Customer authorizes Sensus to; (1) obtain an FRN on behalf of Customer; (2) submit the FCC Form 602 Ownership Disclosure Information on behalf of Customer if Customer has not already done so; and (3) file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum lessee.
 - ii. Give Sensus the coordinates of the boundaries of Customer's Service Area or, alternatively, approve Sensus' estimation of the same.
 - iii. If Customer has not already done so; Customer hereby authorizes Sensus to apply on Customer's behalf and obtain for Customer a Federal Registration Number (FRN, the FCC's unique identifier for each licensee) and shall supply Sensus with Customer's Taxpayer Identification Number (TIN).
 - iv. Provide any other information or other cooperation reasonably necessary for the Parties to perform as set forth herein.
- D. **Permitted Use of Spectrum Lease.** Customer may transmit or receive over the Leased Spectrum only in the Service Area and only using FlexNet equipment manufactured by Sensus and used in accordance with Sensus' specifications. Customer may use the Leased Spectrum only to read and direct meters in support of Customer's primary utility business or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the Leased Spectrum or from transmitting voice communications over the Leased Spectrum.
- E. **Term of Spectrum Lease.** Unless terminated earlier (because for example Customer stopped using the FlexNet equipment), this Lease will have the same term as the FCC license. If Customer is operating in compliance with this Agreement and Customer's underlying agreement with Sensus and is current on any payments owed to Sensus, when the FCC License renews, the Parties will apply to the FCC to renew this Lease.
- F. **Termination of Spectrum Lease.** The Lease will terminate: (a) two months after Customer stops transmitting with FlexNet equipment manufactured by Sensus; (b) upon termination, revocation or expiration of the FCC License; or (c) upon Customer's breach of this Agreement.
- G. **FCC Compliance.** The following FCC requirements apply
 - i. Pursuant to 47 CFR 1.9040(a);
 - (a) Customer must comply at all times with applicable FCC rules. This Agreement may be revoked by Sensus or the FCC if Customer fails to so comply;
 - (b) If the FCC License is terminated, Customer has no continuing right to use the Leased Spectrum unless otherwise authorized by the FCC;
 - (c) This Agreement is not an assignment, sale or other transfer of the FCC License;
 - (d) This Agreement may not be assigned except upon written consent of Sensus, which consent may be withheld in its discretion; and
 - (e) In any event, Sensus will not consent to an assignment that does not satisfy FCC rules.
 - ii. Referencing 47 CFR 1.9010, Sensus retains *de jure* and *de facto* control over the applicable radio facilities, including that,

- (a) Sensus will be responsible for Customer's compliance with FCC policies and rules. Sensus represents and warrants that it has engineered the FlexNet equipment and accompanying software and other programs to comply with FCC rules. Customer will operate the FlexNet equipment subject to Sensus' supervision and control and solely in accordance with Sensus' specifications. Sensus retains the right to inspect Customer's radio operations hereunder and to terminate this Agreement or take any other necessary steps to resolve a violation of FCC rules, including to order Customer to cease transmission. Sensus will act as spectrum manager in assigning spectrum under the FCC License so as to avoid any harmful interference or other violation of FCC rules. Sensus will be responsible for resolving any interference complaints or other FCC rule violations that may arise; and
 - (b) Sensus will file any necessary FCC forms or applications and Customer agrees reasonably to assist Sensus with such filing by providing any necessary information or other cooperation. Sensus will otherwise interact with the FCC with respect to this Agreement, the FCC License or FlexNet equipment.
- H. **Interference.** Customer agrees to report to Sensus promptly, and in no event later than 72 hours afterward, any incident related to the Leased Spectrum, including where Customer experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or other government agency regarding radio transmission.
- I. **Limitation of Liability.** Each parties' liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively, "Causes of Action") shall be limited to direct damages. Neither party shall be liable for any indirect, incidental, special or consequential damages. This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. The limitations on liability set forth in this Agreement are fundamental inducements to both parties to enter into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give the maximum protection permitted under law.

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****Spectrum Lease Agreement****

Frequently Asked Questions

Is there any additional cost associated with the spectrum lease?

No. There is no additional cost to you for the spectrum lease. Any amount allocated to the spectrum lease is paid from the ongoing support already being paid by you.

Do I have to complete this spectrum lease agreement annually?

No. The spectrum lease agreement needs completion one time only. So long as the spectrum is being utilized for Sensus equipment, Sensus will renew the lease indefinitely on your behalf.

When does the lease expire?

There is no definitive expiration on your end. Your lease will last as long as Sensus' license does with the FCC, provided you are still using it for Sensus equipment

What is a Customer FRN?

A Customer FRN is an FCC Registration Number. This field can be left blank if it is unknown. An FRN will be issued by the FCC when we file on your behalf for a spectrum manager lease using your Tax ID.

Which Tax ID should I provide?

The FCC needs the nine digit FEIN (Federal Employers Identification Number) to issue an FRN. A tax exempt number cannot be used.

What does "Name of Real Party in Interest" on the form mean?

A "Real Party in Interest" means the legal entity ultimately responsible for your operations. In most cases, there is no other "Real Party in Interest," in which case the box is left blank. Some examples, however, include a parent company or principle shareholder of the leasing party.

Do I need to provide Additional Contact Information (Section 2)?

Not necessarily. Additional contact information is only applicable if it differs from Section 1. If not applicable, this section may be left blank.

What is FCC Form 602 and how do I know if there is an FCC Form 602 on file?

FCC Form 602 is ownership disclosure information for wireless telecommunications services. Unless you know you have previously filed a Form 602, you can safely assume there is not one on file. The ownership disclosure information will be collected in the body of the spectrum lease agreement and Sensus will file the Form 602 on your behalf.

Who should be designated as the Individual Contact for FCC matters?

The individual contact should be someone who can answer questions from the FCC about the use of the spectrum. The Director of Public Works or similar person is typically the most appropriate.

What is needed in the Ownership Disclosure Information Section?

The names of your governing body need to be listed (i.e. each member of your board, council, committee or other governing body). Each member needs to be marked yes or no in the “*US Citizen?*” column. It is atypical, however if any member has ownership interests or operational control exceeding 10% in any entity regulated by the FCC, the box should be marked yes and an explanation must be attached defining the percentage of ownership. If there are no ownership interests exceeding 10% needing to be disclosed, the boxes should be marked no. Individual signatures of governing members are not required.

If we are not a government entity, do we need to complete the ownership disclosure section?

Yes. **Every** entity must complete the ownership disclosure section. You may cross out the existing designation and write the appropriate administration of each member (ie: Commission, Council, Superintendent, Manager, etc.).

Do I need to mail a hard copy?

No. Scanned or faxed agreements are perfectly acceptable and preferred for efficiency. Scanned agreements should be emailed to shannon.hearns@sensus.com or faxed to Shannon Hearn at 866-670-8821.

Where do I mail a hard copy requesting full execution and return?

Please mail to the attention of Shannon Hearn at Sensus USA, 8601 Six Forks Rd., Suite 700, Raleigh, NC 27615.

Who can I contact if I need help completing the forms?

Shannon Hearn is more than happy to answer questions and assist in completing the forms. She can be reached via phone at 702 353 9220 or email shannon.hearns@sensus.com.