

WASHINGTON STATE REFERENCE NETWORK AGREEMENT BETWEEN CITY OF CHENEY AND THE CITY OF SEATTLE

This Washington State Reference Network Agreement (the "AGREEMENT") is made and entered into by and between **CITY OF CHENEY**, herein referred to as ["CHENEY"] and the City of Seattle, acting as the Central Processing Center for the Washington State Reference Network by and through Seattle Public Utilities, herein referred to as (the "SPU"). CHENEY and SPU are sometimes referred to individually as the "PARTY" and collectively as the "PARTIES."

RECITALS

- A. Using data from satellites owned by the United States of America, global positioning systems ("GPS") could provide efficient methods for surveying and mapping activities related to utility, transportation and other public capital improvement projects. The speed and accuracy of such technology can be enhanced by linking GPS continuously operating reference stations ("CORS") to a central processing center ("CPC") in a real time GPS network ("Washington State Reference Network" or "WSRN"). Each CORS will transmit live GPS satellite data to the CPC for processing, distribution of real time positioning corrections to members of the WSRN and other authorized users, archiving, and posting on a web page application.
- B. The WSRN was created by SPU as a cooperative effort with other governmental agencies that will operate CORS within the State of Washington and selected reference stations in adjacent states and provinces wherein data from such stations can provide seamless coverage to the borders of Washington State. The WSRN eliminates duplication of equipment, software and operational expenditures, while providing greater coverage and accuracy of real time positioning solutions and data from each CORS. Entities that operate CORS under this Agreement with the SPU are known as "members" of the WSRN.
- C. Each PARTY has determined that cost savings and other public benefits can be achieved if entities, such as CHENEY, become a member of the WSRN.
- D. For purposes the development of a sub-network of the WSRN in and around the various regions of Washington State, SPU, WSRN Partners, and other entities in the regions are entering into individual agreements with SPU for connection of each of their respective CORS, and/or CORS that they support.
- E. Many of the WSRN members serve solely as sites hosts, otherwise providing a suitable site on which the WSRN members may construct and operate a

suitable GPS sensor, offer a site for an installation, provide power, installation materials and/or labor, or as in this case of this agreement providing the modem and real-time communications for an installation owned/operated by other partners.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the PARTIES agree as follows:

AGREEMENT

1. CENTRAL PROCESSING CENTER (CPC)

- 1.1. The SPU shall own and be responsible, at its expense, for all aspects of the operation and maintenance of the CPC, including without limitation servers, GPSNet and other software necessary for the CPC to accomplish its tasks as set forth in this section 1.
- 1.2. Based on received data streams from a grid of CORS, the CPC will send system information and real time corrections via cellular connections to WSRN Partners and agents of Academic community via FTP, mobile devices for positioning, locating and navigating with satellites of the GPS. The CPC also shall make data files available for static GPS post processing. All digital products will be made available to CHENEY if requested. CHENEY is NOT responsible for the equipment, configuration thereof of any WSRN user equipment nor any aspect of use of any of the digital products derived with any data from the GPS sensor mounted at the CORS site referenced in section 2.1 .
- 1.3. SPU shall operate and maintain a web application to display the system status, data generated by GPSNet software for notification of system status, availability, component quality, static data files, and general information.
- 1.4. SPU will provide telephonic Help Desk services, from Monday through Friday, 9:00 a.m. to 3:00 p.m., but only to troubleshoot connections to the CPC servers. The Help Desk will not answer questions concerning individual user hardware or software, surveying or other field data collection methods, commercial cellular connections, system status or monitoring report data that is available from the web application.

- 1.5. The SPU shall provide centralized data logging and archiving, access to CORS logged data files, access to real time corrections via wireless technology, and system monitoring for the WSRN.
- 1.6. The services to be provided by the SPU and described in this section 1 are referred to as the "WSRN Services."

2. CONTINUOUSLY OPERATING REFERENCE STATIONS (CORS)

- 2.1. For the duration of this Agreement, CHENEY shall provide a wireless modem activated for data streaming via cellular wireless to provide live uninterrupted data access to the CORS station designated as "POME" and situated near Pomeroy, Washington. This data communications service will serve as the primary data link between station "POME" and SPU. Station "POME" is owned and operated jointly between the WSRN, and other WSRN Partners. Station "POME" is installed at approximately:

Latitude: 46°28'47.16"N
Longitude 117°37'54.49"W

- 2.1.1. For the duration of this Agreement, the other CORS partners specified in this Agreement shall provide unlimited 24-hour-a-day AC power for the GPS receiver, and wireless data modem for transmission of the raw data stream from the receiver (GPS Sensor) to the CPC. SPU will, where applicable work the respective CORS hosts information technology to establish and maintain connectivity for the raw data stream from the CORS to the CPC adhering to all information technology policies and security considerations of the respective parties. CHENEY is not responsible for the power, site, or operations, but only the loan of the modem and data plan for the modem. CHENEY is not responsible for the maintenance of the modem, but is responsible for the replacement of the modem should it become outdated or inoperable.
- 2.1.2. The other hardware for the CORS, to include the dual frequency GPS receiver, compatible antenna, and serial-to-IP device server (if needed), and any peripheral cables and connectors will remain the property of the respective WSRN CORS partners to be returned to said parties upon termination of this agreement, or subsequent agreements as they may be executed. Any equipment owned by CHENEY will remain the property of CHENEY and returned upon termination of this agreement, or subsequent agreements as they may be executed.

- 2.2. WSRN CORS hosts shall give the SPU 48 hours' email notice before the CORS, specified in this Agreement, is taken out of service for planned maintenance. If the CORS, specified in this Agreement, temporarily stops operating on an unplanned basis, WSRN CORS hosts shall notify the SPU via email as soon as practicable. CHENEY is not responsible for operations of the CORS for which this wireless communications service is being provided.
- 2.3. WSRN CORS hosts shall give the SPU 180 days' written notice should WSRN CORS hosts need to discontinue operations at the site of the CORS specified in this Agreement. SPU may, within 60 days of receipt of such notice or in accordance with section 3.8, notify WSRN CORS hosts that the SPU desires to find an alternative location and site-host for a non-operating or inadequately operating CORS. CHENEY is not responsible for operations of the CORS for which this wireless communications service is being provided.
- 2.4. For the duration of this Agreement, CHENEY may participate with other members of the WSRN in a technical advisory committee to be staffed and administered by the members. This committee may identify solutions, upgrades and other desired enhancements to the WSRN.

3. CPC ACCESS

- 3.1. For the duration of this Agreement, CHENEY, if requested, shall have unlimited access via [TWO] specified CHENEY accounts for full WSRN services in exchange for the loan of the modem and data plan activation of said modem for the CORS specified in this Agreement.

4. MANAGEMENT; COMPENSATION

- 4.1. For the wireless modem and monthly data service to be purchased by CHENEY to be added to the network as identified in this Agreement, and for the duration of this agreement there will be a the one – time purchase cost to CHENEY to a wireless equipment retailer from which CHENEY purchases said modem, and an ongoing monthly data fee, a cost to CHENEY payable to a wireless provider.
 - 4.1.1. In exchange for securing the wireless communications for the CORS specified in this agreement, CHENEY will have full rights to network service accounts as specified in section 3.1.

5. DURATION

The initial term of this Agreement shall be 5 years, commencing upon the date of its execution by CHENEY. The term may be extended by mutual agreement of the parties.

This agreement shall terminate in the event the property owner withdraws permission or assigns additional condition(s) with respect to situating the CHENEY modem.

Upon termination of this Agreement, CHENEY shall have no further liability or responsibility to any Party or member of WSRN.

6. NO WARRANTIES; LIMITATION OF LIABILITY

1. CHENEY is in no way responsible for the any damage or loss of the CORS equipment or any of the components of the CORS for which the wireless communications in being provided.

6.1. SPU is not responsible for any damage or loss of the CORS equipment or any of the components of the CORS, except in the case of gross negligence or deliberate acts of malfeasance.

6.2. Use of these WSRN services, if requested, is at CHENEY's sole risk. The SPU provides WSRN Services on an "as is" basis. Neither other WSRN members, nor the SPU, its officers, employees, vendors, or third-party service providers (collectively as used in this section 6, "SPU") makes any express or implied representation or warranty of any kind with respect to WSRN Services. By way of example and not of limitation, there is no representation or warranty (a) that WSRN Services will be uninterrupted or error free, (b) that the results obtained from using WSRN Services will be accurate, reliable, complete or current, or (c) of merchantability or fitness for a particular purpose. WSRN Services and information related thereto are subject to change without prior notice.

6.3. Neither the SPU nor CHENEY, any third parties CHENEY may have entered into an agreement with for the purposes of establishment, operations and maintenance of a CORS, or other WSRN members, is liable for any damages arising out of or in connection with WSRN Services, including without limitation mistakes, omissions, interruptions, deletion of files, errors, defects, viruses, delays in operation or transmission, or failures of the CORS. This is a comprehensive limitation of liability that applies to all damages of any kind, including compensatory, direct, indirect or consequential damages, loss of data, income or profit, loss of or damage to property and claims of third parties.

7. DISPUTE RESOLUTION

In the event that a dispute arises under this Agreement which can not be resolved between the Parties, the dispute shall be settled in the following manner: Each Party to this Agreement shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third member to the dispute board who is not employed by or affiliated in any manner with the two Parties to this Agreement. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board shall be final and binding on the Parties hereto.

8. NOTICES

All notices and invoices required in connection with this Agreement shall be in writing and deemed to have been duly given if personally delivered or sent by; mail, fax, United States mail or overnight delivery service, each with proof of receipt, as indicated below or as otherwise indicated in writing by one party to the other.

CITY OF SEATTLE

CITY OF CHENEY

Seattle Public Utilities
Engineering and Technical
Services Division
PO Box 34018
Seattle, WA 98124-4018
Fax: 206-684-7396
E-mail:
gavin.schrock@seattle.gov

9. OTHER PROVISIONS

- 9.1. Nothing contained herein is intended to, nor shall be construed to; create any rights in any party not a signatory to this Agreement, or to form the basis for any liability on the part of the SPU, CHENEY, or their officials, employees, agents, or representatives, to any party not a signatory to this Agreement.
- 9.2. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

- 9.3. If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the PARTIES.
- 9.4. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provision of this Agreement.
- 9.5. This Agreement, including Recitals (which by this reference are incorporated herein) contains the entire agreement of the parties and any representations or understandings, whether oral, written or not incorporated herein are excluded.
- 9.6. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions herein contained in order to achieve the objectives and purposes of this Agreement. Each PARTY and its counsel (if the PARTY so desires) has reviewed and revised this Agreement. Each PARTY agrees that the usual rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- 9.7. Only an instrument in writing, duly executed by both PARTIES, may amend this Agreement.
- 9.8. This Agreement shall be governed and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date last written below.

CITY OF SEATTLE

[Sign] Henry Chen
Henry Chen
Director
Engineering and Technical
Services Division
Seattle Public Utilities
 Date: 6/20/14

CITY OF CHENEY

[Sign] Mark Schrotter
 [Print Name] Mark Schrotter
 [Title] City Administrator
Tom Truove
Mayor
 Date: 7/16/14