

Memo

Date: April 26, 2016

To: Allouez Village Board

From: Brad Lange

Re: NEWEYE – Memorandum of Understanding

The attached is the latest Memorandum of Understanding between Allouez, Ashwaubenon, Howard, Lawrence, Brown County and Broun County Innovation for your review and action.

Last year the County Executive brought forward an initiative to have the surrounding communities that currently do not provide their own local access station to pool resources so each of these communities can provide local relevant programming.

“NEWEYE initiative takes existing localized frameworks for communication known as Public, Education, and Government (P.E.G) television and maximizes their potential in the community. By uniting together, the communities of Brown County will be able to better promote their areas, increase their economic base by recruiting businesses and creating jobs, and provide greater government transparency for their taxpayers.”

Each participating community is asked to contribute approximately 10% of the cable franchise fee money each community receives. The amount Allouez is requested to contribute is \$16,800 for 2016. The board had discussed using the Stadium Tax Refund to cover this cost vs. using the cable franchise fee.

For the last few months a draft Memorandum of Understanding (MOU) has been provided for all the participants to review. The MOU spells out the funding formula, the responsibilities that NEWEYE has to provide the services to the participating communities, and sets up a governance board called the NEWEYE Network Commission and Trustee Bob Dennis is our representative.

The Village of Howard passed the MOU on April 25th, 2016 and added a suggested change that December 1 be used as a notice date deadline so there is more advance notice to the other communities if one community decides to exit the relationship. This change of December 1 came as a recommendation of Attorney Dennis Duffy. The Village of Ashwaubenon is looking at discussing/acting on the MOU at their May 24th meeting.

I have also attached some additional comments on the MOU from Attorney Duffy for your review.

If the Board wishes to approve the MOU an appropriate motion would be:

Motion to approve the Memorandum of Understanding between Allouez, Ashwaubenon, Howard, Lawrence, Brown County and Brown County Innovation Inc. subject to a modification to require December 1st as the deadline to notice the other participants of intent to not renew participation and to ask for a payment exhibit showing the approximate contribution from all parties and to request that the Village Presidents and Clerks signatories for the agreement. The Notice provision for each municipality should include the Clerk in addition to the Commissioners. Someone at NewEye should calendar this for November of 2016 so that there is a formal amendment or new agreement that would be approved by the participating communities in December of 2016.

Should the Board wish to add any additional comments, then those comments would need to be inserted into the motion.

The Board is asked to approve or table the item for additional information.

**MEMORANDUM OF UNDERSTANDING
MULTI-JURISDICTIONAL SUPPORT AND FUNDING FOR CABLE (P.E.G.) TELEVISION
PROGRAMMING, PUBLIC MEDIA AND INFRASTRUCTURE**

BY AND BETWEEN

**THE VILLAGE OF ALLOUEZ, THE VILLAGE OF ASHWAUBENON, THE VILLAGE OF HOWARD,
THE TOWN OF LAWRENCE, THE COUNTY OF BROWN AND BROWN COUNTY INNOVATION,
INC.**

This Agreement is a Memorandum of Understanding ["MOU" or "Agreement"] entered into this _____ day of _____, 2016, by and between the Village of Allouez (hereinafter "Allouez"), the Village of Ashwaubenon (hereinafter "Ashwaubenon"), the Village of Howard (hereinafter "Howard"), the Town of Lawrence (hereinafter "Lawrence") and the County of Brown (hereinafter "County"), all the above collectively referred to as "the municipalities", and NEWEYE, through Brown County Innovation Inc. (hereinafter "NEWEYE" or "BCI"), a Wisconsin non-stock non-profit organization. Hereinafter, the municipalities and BCI may be referred to singularly as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the municipalities agree that it is vital to partner together to promote their communities, their resources, and their services to attract new businesses that expand the economy and create jobs; and,

WHEREAS, in the past, the municipalities, as local cable franchising authorities, had the ability to use Public, Education, and Government (P.E.G.) television programming and infrastructure to serve the municipalities to promote and inform their citizens regarding government actions and services, to attract new business and expand their economies; and,

WHEREAS, P.E.G. television programming was available to the municipalities, as local cable franchising authorities, as a right guaranteed to qualified local franchising authorities pursuant to the Federal Cable Communications Act of 1984; and,

WHEREAS, in 2007, pursuant to Wisconsin Act 42, replaced the municipalities as the authority authorized to be the Local Cable Franchiser to the State of Wisconsin, resulting in the removal of a funding source for the municipalities; and,

WHEREAS, the municipalities lost their ability to assess a P.E.G. Fee for community programming capital and operational expenditures, under Wisconsin Act 42 (2007); and,

WHEREAS, the municipalities with P.E.G. channels must now expend significant Cable License Fee revenues to continue to fund municipal channels used to inform the public of the governmental actions, events and services; and,

WHEREAS, the municipalities desire to enter into a MOU with regard to multi-jurisdictional support for centralized P.E.G. television programming and infrastructure in an effort to economically continue to inform their communities of the activities, events and services of their respective government entities; and,

WHEREAS, in order to support centralized P.E.G. television programming and infrastructure, the municipalities desire to annually provide a percentage of total Cable License Fees to BCI to be used as "P.E.G. Funds" for a multi-jurisdictional, centralized operation and management of all member community P.E.G. channels within the county.

NOW THEREFORE, the Parties to this MOU agree as follows:

1. **Recitals.** The above recitals are true, correct and incorporated herein.
2. **Purpose.** The purpose of this MOU is to unify local government communication throughout Brown County by providing centralize, non-profit management of municipal Public Education and Government (P.E.G.) Television channels.
3. **Services.**
 - a. NEWEYE, through BCI, a Wisconsin non-stock non-profit organization, agrees to provide leadership and management assistance towards making NEWEYE more accessible for public, education, and government access purposes, and to provide more, higher, and consistent quality local programming.
 - b. The municipalities will retain ownership of the P.E.G. stations, but will cede management to a centralized organization known as NEWEYE for as long as they are members of this agreement.
4. **Term.** This MOU shall become effective in the respective municipality on the date first written above and after the municipality executes this Agreement and shall continue in effect until the termination of the MOU on December 31, 2016. Each municipality may elect to renew this MOU for an additional 1-year term by written agreement of the respective Parties.

Due to the delay in production for the first quarter of 2016, but with the understanding that formation and infrastructure development was ongoing, an additional limited benefit to be determined by the BCI Board of Directors will be extended to the municipalities for the first quarter of 2017.

5. **Payment.** The municipalities agree to grant NEWEYE the amounts equal to an approximate value of 10% of their Cable Franchise Revenues for capital and operational support of the centrally managed television programming. These funds do not have to come from Cable Franchise Revenues if the municipality desires to use funding from another source. The County

agrees to provide administrative resources for overhead management of the funding and management of the program.

- a. The payment amount of approximately 10% identified as P.E.G. Funds is due to NEWEYE within 30 days of the beginning of each new fiscal quarter to align with the traditional payment schedule by cable providers.
- b. Since the County does not have revenues from Cable Franchise collections, the County will designate ongoing financial support for the NEWEYE organization as part of their budget process.

The 10% contribution is identified as a base amount to meet the operational needs of the program. As additional communities join the NEWEYE Network, their percentage contributions will be applied towards the operational costs as well, thus allowing for the reevaluation of partner contributions each year. Unless there is substantial cost increases in operations, partner communities could see a decrease in their contributions annually.

6. **Annual Report.** No later than August 31st of each year of this Agreement, NEWEYE, through BCI, shall provide a report to the municipalities documenting the use of the previous fiscal year's (January 1-December 31) P.E.G. Funds.

7. **NEWEYE Responsibilities'**

- a. NEWEYE agrees to rebroadcast on television and, whenever practical, broadcast "live", all regular meetings of the County and the municipalities, and upon written request and approval, the regular meetings of the respective committees and planning commissions. All meetings shall be rebroadcast at a minimum of two times per each meeting, but could be more. Rebroadcasts shall be done on different dates, and not consecutively.
- b. NEWEYE shall be responsible for and shall operate all "Public Access" and "Government" P.E.G. channels within a MOU member municipality's borders. "Education" channels previously given to a local school district or other institution of learning shall not be under the direction of NEWEYE unless they request so in writing.
- c. NEWEYE shall provide all video editing and post-production services for the County and the municipalities in regards to submitted raw video content at no additional cost.
- d. NEWEYE shall provide, upon written request and approval, on-site operation and production services for government meetings and community events at a rate to be determined between the Parties desiring said services and NEWEYE, but that amount shall not exceed pricing provided to municipalities by NEWEYE vendors.

- e. NEWEYE shall make available studio production facilities and staff for the County and the municipalities to create high-quality content video material for the P.E.G. television channels and other uses.

8. **Access to Facilities.** The municipalities' access to facilities and budgeted production hours will be determined after the MOU is in effect by the BCI's board of directors

9. **Representatives.** Each member municipality, regardless of population, shall be allowed to appoint one (1) representative to a NEWEYE Network Commission that shall advise and process any concerns or grievances brought by members or by referral of the executive director of NEWEYE.

- a. The Commission shall serve as a body designed to assist and advise the executive director of BCI on issues relating to NEWEYE policy, procedure, programming, content, and distribution.

- b. Any appointee shall be named as a "commissioner", and shall be vested with the ability to vote on Commission matters and any additional authority established by each respective municipality in regards to programming within their district.

- i. Each commissioner will be vested with the power to veto specific content from another community being shown within their district, unless specifically not granted that authority by the municipality they are representing.

- c. The Commission will jointly oversee the County's terrestrial broadcast station which will be combination of content from all partnering organizations.

- i. There must be a 2/3 majority vote of the commissioners to veto content being shown on the terrestrial station.

- ii. Programming of the terrestrial station will be handled by the Executive Director of NEWEYE.

10. **Termination.** This MOU may be terminated by agreement of the respective municipalities in writing at the conclusion of the MOU year. An annual notification deadline of December 1st shall be instituted for any terminating partner to notify the other signatories via their appointed Commissioner and a signatory's municipal clerk of their pending departure from this agreement.

11. **Governing Law.** This Agreement shall be deemed to have been made in Brown County, Wisconsin and shall be governed by, construed under and enforced in accordance with the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly, to this Agreement whether sounding in contract or tort, shall be litigated in the Courts of Brown County, Wisconsin. All Parties to this Agreement hereby subject themselves to the jurisdiction of the Courts of Brown County, Wisconsin.

12. **Assignment.** The rights and obligations of the Parties under this Agreement are personal as between them, and they may not be assigned, transferred or conveyed in any manner by any Party without the prior written consent of the other Parties.
13. **Waiver.** Waiver of a breach or a violation of any provision or term of this Agreement may not be construed to be a waiver of any subsequent breach.
14. **Headings.** The section titles have been inserted in this Agreement primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
15. **Notice.** Any and all notices and demands shall be in writing delivered in person or by first class mail, registered or certified, postage paid, return receipt requested, or delivered by a recognized overnight carrier service with proof of delivery and addressed to all the appropriate party as follows:

THE VILLAGE OF ALLOUEZ:

Name and Title: Bob Dennis, Trustee
Address: 1900 Libal Street
City: Allouez
State: Wisconsin
Phone: (920) 448-2800
Fax: (920) 448-2850
Email: bobdtrustee@villageofallouez.com

THE VILLAGE OF ASHWAUBENON:

Name and Title: Jeremy Moeller, Network Admin
Address: 2155 Holmgren Way
City: Ashwaubenon
State: Wisconsin
Phone: (920) 492-2320
Fax: (920) 492-2341
Email: jmoeller@ashwaubenon.com

THE VILLAGE OF HOWARD:

Name and Title: Adam Lemorande, Trustee
Address: 2456 Glendale Avenue
City: Howard
State: Wisconsin
Phone: (920) 434-4640
Fax:
Email: cgalemo@yahoo.com

THE TOWN OF LAWRENCE:

Name and Title: Jennifer Messerschmidt, Clerk
Address: 2400 Shady Court
City: Lawrence
State: Wisconsin
Phone: (920) 347-3712
Fax:
Email: JenniferM@townoflawrence.org

THE COUNTY OF BROWN:

Name and Title: Chad Weininger, D.O.A.
Address: 305 E. Walnut Street
City: Green Bay
State: Wisconsin
Phone: (920) 448-4035
Fax: (920) 448-4036
Email:

BROWN COUNTY INNOVATION, INC.:

Name and Title: Chad Krull, President
Address: 305 E. Walnut Street, Suite 214
City: Green Bay
State: Wisconsin
Phone: (920) 940-8224
Fax:
Email:

All other correspondence may be sent by regular mail, fax or email and addressed as noted above. At any time either Party may change the contact information by sending notice as stated above to the other Party.

16. **Severability.** The provisions of this Agreement are severable and if any provision is found to be invalid, unenforceable, or void by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated unless the effect of holding the provision invalid, unenforceable or void defeats the entire purpose of the Agreement.
17. **Drafting.** All Parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any Party by virtue of that Party having drafted the document or any portion thereof.
18. **Authorization.** The persons signing this MOU warrant that they have been authorized to enter into this Agreement by and on behalf of their respective Parties and that they have full and complete authority to bind their respective Parties by executing this Agreement.
19. **Integration.** This MOU contains the entire agreement and understanding concerning the subject matter between the Parties and supersedes and replaces any and all prior negotiations, proposed agreements, and agreements written or oral. Each acknowledges that no other party, nor any agent of any party, has made promise, representation, or warranty whatsoever, expressed or implied, not contained herein, concerning the subject matter hereof, to induce the other party to execute this Agreement; and each party acknowledges that it has not executed this Agreement in reliance on any such promise, representation, or warranty not contained herein.
20. **Entire Agreement.** This Agreement is the entire agreement between the undersigned Parties and shall only be modified, changed or amended in writing and signed by duly authorized representatives of each Party, which amendment expressly states that it is the intention of the Parties to amend this MOU.

IN WITNESS WHEREOF, the Parties, by their respective authorized agents have caused this Memorandum of Understanding to be executed, effective as of the date written above and hereto have affixed their respective signatures, as indicated below.

Signature Page

THE VILLAGE OF ALLOUEZ:

Village President: _____
Name Date
Clerk: _____
Name Date

THE VILLAGE OF ASHWAUBENON:

Village President: _____
Name Date
Clerk: _____
Name Date

THE VILLAGE OF HOWARD:

Village President: _____
Name Date
Clerk: _____
Name Date

THE TOWN OF LAWRENCE:

Town Chairman: _____
Name Date
Clerk: _____
Name Date

THE COUNTY OF BROWN:

County Executive: _____
Name Date
Clerk: _____
Name Date

BROWN COUNTY INNOVATION, INC:

President: _____
Name Date
Secretary: _____
Name Date

ADDENDUM

Exhibit #1 – BCI Projected Revenue Collection From 2016 NEWEYE Partners

Municipality	2016 Contributions & Fund Destination	Free Professional Made Videos Available
Ashwaubenon	\$20,000 – NEWEYE Annual Operations	14
Allouez	\$16,000 – NEWEYE Annual Operations	10
Howard	\$20,000 – NEWEYE Annual Operations	14
Lawrence	\$2,500 – NEWEYE Annual Operations	2
Brown County	\$10,000 – NEWEYE Annual Operations \$150,000 – NEWEYE Capital Purchases \$75,000 – 3GI Capital Purchases	6

Exhibit #2 – Additional 2016 Revenues Received¹

Organization	Type of Contribution	Amount	Purpose
Wisconsin Public Service Foundation	Grant	\$25,000	NEWEYE Capital/Operations
Green Bay Packers Foundation	Grant	\$5,000	NEWEYE Operations

Exhibit #3 – Production/Distribution Services Provided

1. TWC Cable Channel²
2. ATT U-Verse Channel³
3. WebTV Portal
4. Livestreaming⁴
5. Roku Channel
6. Content Creation
7. Scripting Services
8. Unlimited Free PSA's
9. Unlimited Free NEWEYE Productions
10. Reduced Rates for Professional Productions
11. Access to Studios for Residents and Non-Profits
12. Creative Consulting

¹ Other grant applications are pending. Any grant or sponsorship dollars received in 2016 that exceed annual operational costs will be used to offset Brown County capital contributions to NEWEYE only.

² Dependent on service area availability

³ Dependent on on-site infrastructure and service area availability

⁴ Dependent on on-site infrastructure