

Memo

Date: February 5, 2016

To: Village Board

From: Brad Lange

Re: NEWEYE Memorandum of Understanding

Attached you will find the Memorandum of Understanding for the NEWEYE Media Partnership. Please be prepared to discuss the agreement as prepared by Brown County Innovation, Inc. dba NEWEYE Media Partnership.

Items to consider are:

1. Are we comfortable with the payment provision at paragraph 5 of 10% of the Village's Cable Franchise Revenue which would equate to \$16,800 based on anticipated 2016 revenue? The revenue is subject to changing each year based on those who purchase the services. I know it was discussed to use the Stadium Tax Refund for the first year and if this is the case, we will need to pass a Resolution defining our intent.
2. How to pay for the program in the future? The agreement is for one year with the option to renew at the end of the year: Will we have a good feel as to what NEWEYE will provide to the community in less than one year? Should we ask that the agreement is one year from the date executed?
3. Do we have a good understanding of what we are getting for the fee?

There may be more items added to this list of items to consider before we enter an agreement.

Thank you,

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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.
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 sixty (60) days of receipt of invoice from BCI.

**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,

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.

THE VILLAGE OF ALLOUEZ:

By: _____
Name Title Date

THE VILLAGE OF ASHWAUBENON:

By: _____
Name Title Date

THE VILLAGE OF HOWARD:

By: _____
Name Title Date

THE TOWN OF LAWRENCE:

By: _____
Name Title Date

THE VILLAGE OF ALLOUEZ:

Name and title:
Address:
Phone:
Fax:
Email:

THE VILLAGE OF ASHWAUBENON:

Name and title:
Address:
Phone:
Fax:
Email:

THE VILLAGE OF HOWARD:

Name and title:
Address:
Phone:
Fax:
Email:

THE TOWN OF LAWRENCE:

Name and title:
Address:
Phone:
Fax:
Email:

THE COUNTY OF BROWN:

Name and title:
Address:
Phone:
Fax:
Email:

NEWEYE, BROWN COUNTY INNOVATION, INC.:

Name and title:
Address:
Phone:
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.

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 can be vested with the power to veto specific content from another community being shown within their district, if 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.
- 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:

- 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.
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 NEWEYE on issues of policy, procedure, programming, content, and

THE COUNTY OF BROWN:

By: _____
Name Title Date

BROWN COUNTY INNOVATION, INC dba NEWEYE MEDIA PARTNERSHIP.:

By: _____
Name Title Date

DRAFT

