

RESOLUTION NO. 25-03
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER James E. Singer ON THE
16th DAY OF June, 2003.

A RESOLUTION TO APPROVE THE SECOND AMENDED AGREEMENT FOR PARTICIPATION IN THE MIAMI VALLEY COMMUNICATIONS COUNCIL (REGIONAL COUNCIL OF GOVERNMENTS) AND TO AUTHORIZE THE CITY MANAGER TO SIGN SAID AGREEMENT.

WHEREAS, Recently MVCC acted to change its name from Miami Valley Cable Council to Miami Valley Communications Council, and

WHEREAS, The name change requires a change in the Council of Governments (COG) agreement that created and is the legal basis for the existence of MVCC.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the Second Amended Agreement for this City's participation in a regional council of governments (Miami Valley Communications Council) shall be and is hereby approved by the Council of the City of Centerville and the City Manager is hereby authorized and directed to sign said amended agreement on behalf of the City of Centerville, a copy of which is attached hereto as Exhibit "A".

Section 2. That this Resolution shall become effective immediately upon passage.

PASSED this 16th day of June, 2003.

Sally D. Beals
Mayor of the City of Centerville, Ohio

ATTEST:

Marie McLaughlin
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 25-03, passed by the Council of the City of Centerville, Ohio, on the 16th day of June, 2003.

Maril J. McLaughlin
Clerk of Council

Approved as to form, consistency
with existing Ordinances, the Charter
and Constitutional Provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

EXHIBIT "A"

**SECOND AMENDED AGREEMENT FOR PARTICIPATION
IN A REGIONAL COUNCIL OF GOVERNMENTS.**

This Agreement is made and entered into by and among municipal corporations in Montgomery, Greene and Warren Counties, Ohio which have become parties to this Second Amended Agreement upon an identical copy thereof to be signed by an officer duly authorized by the legislative authority or charter of such municipal corporation to execute the same on its behalf.

WITNESSETH:

The parties to this Agreement (hereinafter called "Municipal Corporations"), consisting of the Municipal Corporations of Centerville, Germantown, Kettering, Miamisburg, Moraine, Oakwood, Springboro and West Carrollton, wishing to participate in a Regional Council of Governments pursuant to the Constitution and laws of Ohio, including but not limited to Chapter 167 of the Ohio Revised Code, agree as follows:

I. Name. The name of said Council of Governments is Miami Valley Communications Council (hereinafter called "MVCC").

II. Purpose. The purpose of MVCC hereby established is to foster cooperation among the Municipal Corporations through the establishment of a central administration for the purpose of administering the cable television franchises granted by the Municipal Corporations, or their lawful successors or assigns, and for the purpose of administering cable television facilities on behalf of each Municipal Corporation; the planning, creation, execution, management and operation of such other cooperative projects directed or assigned by the member municipalities, especially those relating to communications and technology, and the doing of all things allowed by law and doing all things allowed by a law to accomplish such purposes.

III. Administration Authority. MVCC is established and is to be administered in the following manner:

A. Each Municipal Corporation party to this Agreement shall have at least one (1) delegate to the governing board of MVCC, who shall be appointed by the legislative authority of each Municipal Corporation. Each Municipal Corporation shall similarly designate an alternate for each delegate who may act in place of the delegate in their absence. Any delegate or alternate so appointed shall serve at the pleasure of the legislative authority making the appointment.

B. Each Municipal Corporation which is a party to this Agreement shall be entitled to appoint one additional governing board delegate for each 20,000 persons or a fraction

thereof, above the first 20,000 persons residing within the corporation limits of said Municipal Corporation. The population shall be determined based upon the most recent United States Census.

C. Each delegate to MVCC shall be entitled to one vote on each item under consideration. Voting shall be by delegates or alternates personally present and no proxy or in absentia voting shall be allowed.

D. By a majority vote the governing board shall adopt bylaws which shall provide for the appointment of a chairman and fiscal officer.

E. The governing board, as hereinafter provided, shall appoint an advisory committee (hereinafter "Government Technology Committee") to make recommendations to MVCC on any intergovernmental activities and issues, on telecommunications technology, and on other matters of administrative policies and functions.

F. MVCC shall conduct public hearings for renewals of franchises as required or permitted by law or by ordinances of the Municipal Corporations.

G. MVCC hereby accepts the designation of any powers which may be delegated to it pursuant to a cable franchise ordinance by a Municipal Corporation or any duly authorized officer of a Municipal Corporation.

H. MVCC, not less often than annually, shall report to the Municipal Corporations its activities and any recommendations with respect to this Agreement.

I. MVCC shall exercise such other powers as are authorized by law and directed by the Municipal Corporations not inconsistent with applicable laws or regulations of the State of Ohio or the United States of America.

J. MVCC shall employ an Executive Director for the day to day administration of cable television franchises granted by the Municipal Corporations and the affairs of the organization. With the prior approval of the governing board, the Executive Director may hire such other staff as are deemed necessary to fulfill the responsibilities of MVCC.

The Executive Director shall be the chief executive and administrative officer of MVCC. The Executive Director shall be responsible to the governing board for the administration of all MVCC affairs placed in the Executive Director's charge by or under this Agreement or by resolution of the governing board.

IV. Responsibilities of the Municipal Corporations. Each of the Municipal Corporations agrees to cooperate, in so far as it is practicable to do so, with MVCC or its employees, and with each other, in the following matters:

A. The adoption and amendment of cable television franchise ordinances and rules and regulations for subscribers.

B. The furnishing of information or assistance which may be necessary to the successful operation of MVCC and the governing board.

C. Any joint or cooperative projects undertaken by MVCC at the direction of its members or its governing board.

V. Funding. In order to fund the operations of MVCC, each Municipal Corporation, by the execution of this Agreement, hereby assigns to MVCC the cable franchise fees otherwise payable to it for so long as it is a party to this Agreement and MVCC is hereby authorized to collect said fees. The fiscal officer appointed pursuant to the bylaws of MVCC shall keep all monies collected hereunder in the manner provided by law in a segregated and separate bank account. The fiscal officer shall keep records showing the amount of all fees paid by the Franchisee together with all increments, additions and investment interest thereto or thereon. The fiscal officer shall invest, so far as practicable, all monies received by him/her and the interest received on account thereof shall be applied to reduce the total cost of operation of MVCC. The investments as made by the fiscal officer shall be subject to the approval of MVCC and as may be limited in the bylaws or in any resolution of MVCC.

VI. Audit. MVCC shall be subject to regular, annual audits by the Ohio Auditor of State. In addition, the governing board may from time to time, at its discretion, commission a special audit by a qualified private accountant. The expenses of any audit shall be considered a part of the cost of administration of MVCC. Copies of the audit results shall be furnished to all parties to this Agreement. Anything herein contained to the contrary notwithstanding, said audit shall not constitute a duplication of audits required by the State of Ohio.

VII. Cancellation of the Agreement.

A. Any Municipal Corporation may withdraw from this Agreement, provided, however, that any such withdrawal shall be effective only on December 31st of any given year, and shall be preceded by written notice of withdrawal delivered to MVCC by registered or certified mail not later than July 1 of such year. In the event that any Municipal Corporation shall withdraw from this Agreement, the provisions of this Agreement relating to auditing and funding shall continue in effect until final settlement has been made for all monies collected for the withdrawing Municipal Corporation, prior to the effective date of such withdrawal. A withdrawal shall have the effect of canceling the assignment provided for in Article V.

B. MVCC may be dissolved by two-thirds of the parties to this Agreement, and in such event, MVCC shall liquidate all of its assets, pay all outstanding debts, and distribute the remaining funds to the Municipal Corporations in the proportion that they contributed franchise fees.

VIII. Additional Members of Council. Any municipality which desires to become a member of MVCC may become a member upon the terms and conditions prescribed by the governing board. Political subdivisions other than municipalities may become members of

MVCC upon such terms and conditions as may be established by amendment of this Agreement. A favorable vote of two-thirds of the member municipalities acting by their delegates to MVCC shall be required to allow a new entity to become a member of MVCC.

IX. Additional Activities. In the event that MVCC shall determine at any time to undertake cooperative activities other than the administration of cable television franchises, no Municipal Corporation shall be required to participate in the administration of such activity without its prior consent. Neither shall any non-participating municipality be subject to payment of any additional fees or assessments levied to support such additional activities. This section may be amended only through unanimous consent of the legislative bodies of all Municipal Corporations which are parties to this Agreement.

X. Amendments. Except as provided in Article IX above, this Agreement may be amended by concurrent action by the legislative authorities of all Municipal Corporations which are parties hereto.

XI. Severability. In the event any part or portion of this Agreement shall be found to be contrary to law and thereby held to be null and void, all other provisions of this Agreement shall remain in full force and effect, and shall not be otherwise affected by any such ruling, finding or decision.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date indicated by signing this Agreement or identical copies of same and shall become effective upon the execution by the last of the nine municipal corporations executing the same.

ATTEST:

CITY OF CENTERVILLE, OHIO

By: _____
Chief Executive Officer

Date: _____

ATTEST:

VILLAGE OF GERMANTOWN, OHIO

By: _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF KETTERING, OHIO

By: _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF MIAMISBURG, OHIO

By: _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF MORAINE, OHIO

By: _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF OAKWOOD, OHIO

By: _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF SPRINGBORO, OHIO

By: _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF WEST CARROLLTON, OHIO

_____ By: _____

Chief Executive Officer

Date: _____

G:\prolaw\Miami Valley Cable Council\RN\F\111563.doc

October 10, 2002