

RESOLUTION NO. 34-03
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Douglas C. Cline ON THE
18th DAY OF August, 2003.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT, AMENDMENT NUMBER ONE, ON BEHALF OF THE CITY OF CENTERVILLE WITH OTHER MEMBER JURISDICTIONS.

WHEREAS, Member Jurisdictions participate in a county-wide economic development initiative called the "Business First! Program", and

WHEREAS, This Program is designed to support the growth and retention of local businesses by identifying their needs and providing information and resources to satisfy those needs, and

WHEREAS, The Intergovernmental Cooperation Agreement between current Montgomery County member jurisdictions has been amended to add the City of Troy to the program.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and is hereby authorized to enter into an Intergovernmental Cooperation Agreement "Business First! Program" Amendment #1, between the City of Centerville and Member Jurisdictions, a copy of which is attached hereto, incorporated herein, and marked as Exhibit "A".

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

PASSED this 18th day of August, 2003.

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

ATTEST:

Debra A. James, Assistant
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 34-03, passed by the Council of the City of Centerville, Ohio, on the 18th day of August, 2003.

Debra A. James, Assistant
Clerk of Council

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

Department of Law
Robert N. Farquhar
Municipal Attorney

BUSINESS FIRST! PROGRAM
Intergovernmental Cooperation Agreement
Amendment #1

This Intergovernmental Cooperation Agreement ("Agreement"), dated this 9th day of July, 2003, is between the City of Brookville, Ohio, Butler Township, Ohio, the City of Centerville, Ohio, the City of Clayton, Ohio, the City of Englewood, Ohio, the Village of Germantown, Ohio, Harrison Township, Ohio, the City of Huber Heights, Ohio, Jefferson Township, Ohio, the City of Kettering, Ohio, Miami Township, Ohio, the City of Miamisburg, the City of Moraine, Ohio, the Village of New Lebanon, Ohio, the City of Riverside, Ohio, the City of Troy, Ohio - county of Miami, the City of Trotwood, Ohio, the City of Vandalia, Ohio, the City of West Carrollton, Ohio, Montgomery County, Ohio and the City of Dayton, Ohio (hereinafter collectively referred to as "Member Jurisdictions").

WITNESSETH THAT:

WHEREAS, the Member Jurisdiction desires to participate in a countywide economic development initiative called the "Business First! Program" (hereinafter referred to as the "Program");

WHEREAS, the mission of the Program is to support the growth and retention of local businesses by identifying their needs and providing information and resources to satisfy those needs;

WHEREAS, the Member Jurisdiction desires to identify the roles of its participants, the composition of the Program, the relationships between it and the current Member Jurisdictions and the projected outcomes of the Program;

WHEREAS, the Program will provide benefits to all Member Jurisdictions and the Regional Resource Partners (as defined hereinafter);

WHEREAS, the current Member Jurisdictions submitted a joint application for Sixty Two Thousand Eight Hundred and Fifty Dollars in Montgomery County ED/GE funding, which was approved by Montgomery County on December 13, 2000;

WHEREAS, the current Member Jurisdictions agreed to allow the City of Troy, Ohio to participate in the Program as a Member Jurisdiction.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the Member Jurisdiction hereby agrees as follows:

I. The Business First! Program

The Business First! Program is an economic development initiative designed to retain businesses in Montgomery County, Ohio. National studies have shown that eighty percent (80%) of job growth is the result of the expansion of business already located in a jurisdiction. The Program is designed to assist the participating jurisdictions to connect with the wealth generating companies who are already present in the community and determine what they need to grow and be successful.

The Program was designed and an initial test implementation undertaken in 2001. In 2002, all current Member Jurisdictions agreed to commence full implementation the Program countywide. In 2003, the Member Jurisdictions agreed to allow the City of Troy, county of Miami, Ohio to participate in the Program as a Member Jurisdiction.

The Program design and implementation, including survey design and technology development, has been facilitated by Business Retention Technologies (BRT), a company based in Erie, Pennsylvania. The Program will continue through calendar year 2005.

II. Role of Member Jurisdictions

All Member Jurisdictions, throughout the term of its participation in the Program, shall be responsible for the following:

- A. To provide computer equipment for its own use to access the shared Program database;
- B. To develop retention and expansion teams, called "outreach specialists", to survey companies within its respective jurisdiction;
- C. To identify target industries and businesses to be surveyed;
- D. To collect the necessary Program business/industry data and upload into the Program database this data/information from such businesses/industries located in its jurisdiction,
- E. To appoint one representative to serve on the Program Advisory Committee;
- F. To require all employees and/or its representatives, who will be involved in the Program, conducting the Program business/industry surveys and/or having access to the Program database, to execute the "Member Jurisdiction Employee/representative Protocol Agreement Certification", a copy of which is attached hereto at Exhibit A. A copy of all executed Protocol Agreement Certifications should be maintained by the Member Jurisdiction, a copy provided to Montgomery County, Ohio and, upon request, a copy provided to any Member Jurisdiction;
- G. To arrange for training with Business Retention Technologies (BRT) and Montgomery County in order to bring its employees to a region-wide standard as achieved by current Member Jurisdictions and to then attend periodic Program training and refresher courses;
- H. Jurisdictions joining the program that are outside of Montgomery County, Ohio, will provide financial support for the Program, through a one-time fee of Three Thousand Dollars (\$3,000) to Montgomery County;
- I. To provide annual financial support for the Program in an amount not to exceed Two Thousand Dollars (\$2,000), per year, beginning in 2003 through 2005, with the exception of Montgomery County, Ohio, who will provide Program staffing and other services, as defined in Section IV below;
- J. To contact Regional Resource Partners within 24-48 hours to request assistance on behalf of Program business clients;
- K. To follow-up with Regional Resource Partners and Program business clients to ensure that their needs were addressed; and
- L. To refer all public records requests regarding Program data and/or information to the Montgomery County Department of Economic Development.

III. Role of the City of Dayton, Ohio

In addition to participating in the Program as a Member Jurisdiction, the City of Dayton, Ohio agrees to function as the contract manager for the Program. In this capacity, the City of Dayton, Ohio agrees to be responsible for administering the contract with BRT for the Program on behalf of the Member Jurisdictions and acting as the fiduciary agent on behalf of the Member Jurisdictions in all matters relating to BRT invoices for the services rendered for the Program, including training, technology upgrades and customer service calls.

IV. Role of Montgomery County

In addition to participating in the Program as a Member Jurisdiction, Montgomery County, Ohio agrees to function as the implementing agency for the Program. In this capacity, Montgomery County, Ohio, through its Department of Community and Economic Development, will be responsible for the following:

- A. To facilitate the development and implementation of the Program, including coordination of all ongoing training to **Business First!**
- B. To coordinate the annual Program evaluation, which will evaluate the effectiveness and success of the Program;
- C. To serve as liaison between the Member Jurisdiction, Regional Resource Partners, and BRT;
- D. To provide Program survey assistance to the Member Jurisdiction, as needed;
- E. To provide "outreach specialists" and Regional Resource Partners with password access to the Program database; and
- F. To coordinate all technology upgrades and improvements made to the Program survey tool.

V. Role of Regional Resource Partners

As the Member Jurisdiction's outreach specialists visit local businesses related to the Program, these businesses may have a need for further assistance. The Member Jurisdiction will contact "Regional Resource Partners", defined as any government department and/or economic development organization at the city, county, or state level that has formally agreed to participate in the Program, but not a Member Jurisdiction, to request additional assistance for their business clients. Regional Resource Partners will be responsible for the following:

- A. To respond (with at least a telephone call) to the referred Program business within 24-48 hours from time of contact by a Member Jurisdiction or Montgomery County, Ohio;
- B. To appoint a contact person who will be responsible for attending meetings related to issues affecting the Program and serving as a liaison with Montgomery County, Ohio;
- C. To require all employees and/or representatives, who will be involved in the Program and/or having access to the Program database, to execute the "Employee/Representative Protocol Agreement Certification", a copy of which is attached hereto at Exhibit A. A copy of all executed Protocol Agreement Certifications should be maintained by the Regional Resource Partner, a copy provided to Montgomery County, Ohio and, upon request, a copy provided to any Member Jurisdiction;
- D. To update the Program database records with the actions taken on behalf of the client by the Regional Resource Partner,
- E. To respect the confidentiality of Program information; and

- F. To assist the Member Jurisdictions on Program retention and expansion visits.

VI. Additional Participant Expectations

As a participant in the Program, the Member Jurisdiction agrees to abide by the following Program protocols:

- A. Relations with Program Clients – No employee and/or representative of the Member Jurisdiction shall release information about the business or personal matters of any Program client without permission of the particular client. For purposes of this Agreement, a “Program client” is defined as any business included in the Program database.

- B. Pursuit of Businesses-

The Business First! program was created to establish a systematic method for retaining and expanding businesses within the participating jurisdictions. The underlying philosophy of the program is that we as a region agree that it is desirable, whenever possible, to retain and expand businesses in the jurisdictions that they reside. Therefore, no employee and/or representative of any participating jurisdiction shall actively pursue businesses in another participating jurisdiction.

In the event that a participating jurisdiction is contacted by a business, or the representative of a business, residing in another participating jurisdiction regarding a relocation; and the business or their representative makes a request for available site information and/or incentive information, Business First! participants are to adhere to the following protocol:

1. Notify the business that in Montgomery County, incentives such as enterprise zones, ED/GE, Linked Deposit, and the Port Authority may require the consent of the affected jurisdiction.
 2. Articulate the Business First! philosophy to the business and inform the business that they will notify the affected jurisdiction. Participating jurisdictions that adhere to the protocol are in no way prohibited from assisting the business.
 3. Notify Montgomery County so it may note the information in the Business First! database as a point of record.
- C. Information Sharing/Database Access – No employee and/or representative of a Member organization shall view or attempt to view information about Program clients outside of its respective jurisdictional responsibility. Program database design will include password and other protections. The Member Jurisdiction shall be strictly responsible for the security of the Program database passwords, and shall take all precautions necessary to avoid disclosure to non-authorized persons.
 - D. Administration - Montgomery County, Ohio will administer and assign passwords necessary to access the Program database, to retrieve and input Program client information. To allow for analysis of business issues and trends in aggregate, the Member Jurisdiction agrees that Montgomery County, Ohio shall have full and unrestricted access to all information contained in the Program database for the limited purpose of monitoring and evaluating the data/information for the purpose heretofore specified.

E. **Public Records-** In the event the Member Jurisdiction receives a public records request relating to the Program, the Member Jurisdiction shall promptly forward such request to the Program implementing agency, Montgomery County, Ohio (specifically, its Department of Economic Development).

VII. Addition of New Member Jurisdiction(s)

Business First! Program may add new member jurisdictions upon approval by a simple majority of existing member jurisdictions. Upon approval by a simple majority, the new member jurisdiction will be added to the existing Intergovernmental Cooperation Agreement by way of a separately executed signature page.

VIII. Role of Program Advisory Committee

The Program Advisory Committee, composed of representatives from each Member Jurisdiction, shall meet monthly to discuss policies and procedures of the Program, to identify areas of the Program that require further improvements, etc. Should a jurisdiction approach Montgomery County to join the program, the advisory committee shall establish a consensus on whether the petitioning jurisdiction will be admitted. In addition, the current Participating Jurisdiction authorized person (e.g. City Manager, Township Administrator, including Montgomery County) shall sign off on the admittance.

IX. Penalties and Grievances

In general, the penalty for violation of any Program policy, protocol or any requirement by the Member Jurisdiction may include, but is not limited to, written reprimand, suspension or termination of Program database access.

If the Member Jurisdiction suspects or believes a violation of this Agreement or any of the Program policies, conditions and/or requirements occurred, it shall advise the Program Advisory Committee and the Program implementing agency, by filing a written "grievance". The determination of whether a "violation" has occurred, and any penalty to be imposed, shall be made by the majority vote of the Program Advisory Committee.

X. Annual Review of Program

The Member Jurisdiction agrees that the Program was intended to operate for a minimum of five (5) years, starting in 2001. Montgomery County, Ohio will lead an annual review and evaluation of the Program, which will be completed by February 15 of each year of the Program. A Program re-evaluation will occur in 2005 to determine the continued implementation of the Program.

XI. Term

This Agreement shall remain effective until December 31, 2005, unless terminated earlier in accordance with Section XI. In the event all Member Jurisdictions agree to renew this Agreement to continue the Program, such renewal shall be reduced to writing, executed by a duly authorized representative of all Member Jurisdictions, and if applicable or required, approved by the legislative

body of each Member Jurisdiction.

XII. General Provisions

- A. **Termination** – This Agreement may be terminated in its entirety by mutual written agreement between all then current Member Jurisdictions. In the event the Member Jurisdiction seeks to terminate its participation in the Program, it shall provide written notice of its intent to terminate its participation to Montgomery County. Such termination shall be effective at the date specified in the written notice, and such terminating Member Jurisdiction shall promptly complete those termination activities specified by Montgomery County. Further, such terminating Member Jurisdiction shall be prohibited from using any information gained as a part of its participation in the Program for its economic benefit.
- B. **Amendment or Modification** – This Agreement may be amended or modified by the parties, provided that any such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of each Member Jurisdiction and, if required or applicable, approved by the legislative or governing body of the Member Jurisdiction(s).
- C. **Capacity to Execute** – The Member Jurisdiction hereby certifies that all actions necessary to execute this Agreement with Dayton were taken, and that the person executing this Agreement is authorized to do so and has the power to bind the City to the terms and conditions contained herein.
- D. **Liability** – The Member Jurisdiction agrees to release the other parties to this Agreement from any and all liability, which may be caused by or arise by the wrongful and/or negligent conduct of the parties' respective employees, contractors and/or agents in the performance of this Agreement or during participation in the Program. Notwithstanding, none of the parties waive any available immunities under the law.
- E. **Integration** – This Agreement represents the entire and integrated Agreement between the parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.
- F. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts of choice of laws.
- G. **Relationship of Parties** – The parties hereby agree that at all times, the relationship between them shall be that of an independent contractor. At no time shall the relationship between the parties under this Agreement be construed, held out or considered as a joint venture, principal-agent or employer-employee.
- H. **Representations** – By execution hereof, the Member Jurisdiction represents that it has or will pass the necessary legislation (in accordance with federal, state and/or local law governing the encumbrance and expenditure of public funds) to meet its financial obligation to fund the Program from 2003 through 2005.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties intending to be legally bound, have each caused this Agreement to be executed by their duly authorized representative as of the date and year first above written.

City of Centerville, Ohio

WITNESSED BY:

By: _____

Its: _____

Date: _____

IN WITNESS WHEREOF, each of the parties intending to be legally bound, have each caused this Agreement to be executed by their duly authorized representative as of the date and year first above written.

Montgomery County, Ohio

WITNESSED BY:

By: *Vicki D. Pegg*
Its: Pres. B.C.C.

Juanita M. Huron

Date: July 8, 2003