



Board of Regents

Ted Strickland, Governor

University System of Ohio

Eric D. Fingerhut, Chancellor

DIRECTIVE 2008-025

November 25, 2008

Re: A JOINT USE AGREEMENT BETWEEN CINCINNATI STATE TECHNICAL AND COMMUNITY COLLEGE AND THE FREESTOREFOODBANK, INC.

H.B. 562 includes a specific capital appropriation of \$100,000 to Cincinnati State Technical and Community College for capital improvements to the Freestorefoodbank, Inc. facility. Freestorefoodbank will own and operate the facility to be renovated with state capital funds.

The Ohio Board of Regents' Rule 3333-1-03 requires that a joint use agreement between the institution for which funds are appropriated and the organization which will own or lease and operate facilities to be constructed or improved with such funds must be approved by the Chancellor. Cincinnati State Technical and Community College and the Freestorefoodbank, Inc. presented a joint use agreement for approval.

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than fifteen years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation

Agency staff reviewed the agreement and posted its recommendations to the Regents' web site for purposes of providing a period of public comment before final approval by the Chancellor. The materials posted for comment and the joint use agreement are attached to this document.

Based on my review of staff recommendations, I hereby approve the Joint Use Agreement between Cincinnati State Technical and Community College and the Freestorefoodbank, Inc.

This directive will take effect immediately.

Eric D. Fingerhut
Chancellor, Ohio Board of Regents

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Joint Use Agreement between Cincinnati State Technical and Community College and the
Freestorefoodbank, Inc.

BACKGROUND

H.B. 562 includes a specific capital appropriation of \$100,000 to Cincinnati State Technical and Community College for capital improvements to the Freestorefoodbank, Inc. facility. Freestorefoodbank owns and operates the facility to be renovated with state capital funds. As required by Ohio Administrative Code section 3333-1-03, Cincinnati State Technical and Community College submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State capital funds will support renovations to the Freestorefoodbank facility, located at 112 Liberty Street, Cincinnati, Ohio.

REVIEW

Throughout the entire term of the agreement, Freestorefoodbank will provide the following to Cincinnati State-

- 1) Co-operative education opportunities, work-study program placements, internships and externships in a manner mutually beneficial to the students and faculty at Cincinnati State and Freestorefoodbank.

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than fifteen years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation (please see HB 496 agreement between Cincinnati State and Freestorefoodbank for value of use)

RECOMMENDATION

**Staff recommends Chancellor approval of the Joint Use Agreement between
Cincinnati State Technical and Community College and the Freestorefoodbank, Inc.**

JOINT USE AGREEMENT ANALYSIS

Institutions Involved Cincinnati State Technical and Community College/Freestorefoodbank, Inc

Project Title Freestorefoodbank Renovation

Capital Bill HB 562 Item C36113 Freestore Food Bank

- Yes 1. Is the facility to be built/improved identified specifically by address or location?
- Yes 2. Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?
- Yes 3. Does the agreement provide for use of the facility for at least 15 years from the time that it is ready for occupancy?
- Yes 4. If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
- Yes 5. Will funds be used only for capital improvements and not operating costs?
- Yes 6. Will the non-profit hold the institution harmless for all operation/maintenance costs?
- Yes 7. Will the non-profit comply with federal, state and local laws and rules?
- Yes 8. Is the non-profit required to competitively bid as outlined generally in ORC Chapter 153 (published ads, sealed bids, public opening, award to lowest responsive and responsible bidder, etc.)?
- Yes 9. Does the contract provide for a 1.5% administrative fee for the institution?
- Yes 10. Does the agreement require that amendments be approved by the Board of Regents?
- Yes 11. Is a drawdown schedule or payment procedure included?
- Yes 12. Are the extent and nature of spaces and uses adequately described?
- Yes 13. Are the terms and conditions of use of the facility described?
- Yes 14. **Has the institution demonstrated that the value of the use of the facility is reasonably related to the amount of the appropriation? (See attached worksheet)**
- Yes 15. Is the facility insured?

Joint Use Agreement Worksheet

The Ohio Board of Regents

Direction: The purpose of this worksheet is to enable a campus to demonstrate how the value of the uses that will be derived from a Joint Use Agreement is reasonably related to the value of the state capital appropriation made to the partner entity. Section I is to be filled out by the staff of the Board of Regents. Sections II and III are to be filled out by the partner campus.

Example: A campus wishes to enter into a Joint Use Agreement with a 501(C)(3) entity for a state appropriation of \$5,000,000. The annual debt service paid by the state on this appropriation is about \$390,000 per year, for 20 years. To demonstrate that the value of the uses of the facility is reasonably related to the state appropriation, the sum of the campus' educational uses of the facility should roughly equal \$390,000 per year for 20 years.

***Please refer to the Joint Use Agreement Worksheet for the \$500,000 request under HB 496.**

Section I: State appropriation information.

1. Amount of state appropriation provided:
2. Estimated annual debt service on the appropriation:
3. Term of the state bond, in years:

Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. Student Education		
b. Student Training		

(* List additional uses on separate page as needed.)

Section III:

On a separate page, explain how each use listed in Section II was valued for this analysis.

**JOINT USER AGREEMENT
BETWEEN
FREESTOREFOODBANK, INC.
AND
CINCINNATI STATE TECHNICAL & COMMUNITY COLLEGE (CSTCC)**

THIS JOINT USER AGREEMENT ("Agreement") is between FREESTOREFOODBANK, INC., an Ohio non-profit corporation ("FSFB") and CINCINNATI STATE TECHNICAL & COMMUNITY COLLEGE (CSTCC), an instrumentality of the State of Ohio created and existing under Chapter 3544 of the Ohio Revised Code ("CSTCC").

RECITALS

WHEREAS, the CSTCC'S mission is to provide an education of high quality to students with diverse backgrounds, experiences, and educational needs, as well as serve as a catalyst, leader, and partner in the ongoing enhancement of the quality of life and economic viability of the region and the State of Ohio; and further, whereas FSFB's mission is to alleviate hunger by providing food and support to individuals and to agencies that feed the hungry, it is the intention of this Agreement to develop an educational relationship that will be mutually beneficial to both parties; and

WHEREAS, the Ohio General Assembly passed House Bill Number 562, which appropriated a total sum of \$100,000.00 to CSTCC to be used by FSFB for re-roofing 15,000 square feet at the Liberty Street property (the "Project"); and

WHEREAS, the State of Ohio capital appropriations released through the Chancellor of the Ohio Board of Regents require compliance with the Chancellor of the Ohio Board of Regents Rule 3333-1-03(E), which specifically calls for the execution of a joint use agreement; and

WHEREAS, the CSTCC has concluded that the value of the use of FSFB's facilities and resources by the CSTCC as provided in this Agreement is reasonably related to the amount of the appropriation, and that the terms of this Agreement are more favorable to the CSTCC than to others;

NOW, THEREFORE, in consideration of the mutual benefits hereunder, it is hereby agreed between the parties as follows:

1. Use of FSFB's Facilities and Resources by CSTCC.

The FSFB agrees to provide use of its planned facility, described more fully in Section 7 below, to the faculty and students of CSTCC'S Humanities Division for educational opportunities to human services students and as a community site for service learning activities.

Moreover, FSFB agrees to:

a. Provide CSTCC Humanities students with co-operative education opportunities, work-study program placement, internships and externships in a manner that is mutually beneficial to students, faculty, the CSTCC, and FSFB. Each student placement will be arranged in accordance with mutually agreeable individualized goals tailored to the need of each student.

CSTCC Humanities faculty and students agree to abide by all applicable FSFB policies, and to work in cooperation with FSFB employees and volunteers.

2. Joint Committee. A Joint Committee comprised of FSFB'S representatives and representatives of CSTCC'S Humanities Division will develop the details and guidelines for implementation of programs referenced in item (1) above.

The Joint Committee shall meet at least semi-annually to review and monitor implementation of the parties' commitments under this Agreement. A written report shall be prepared following each meeting, and submitted to each party and the Chancellor of the Ohio Board of Regents upon its request.

3. Annual Reports. Each annual report issued by FSFB during the term of this Agreement shall (1) include a description of the CSTCC-FSFB relationship created by this Agreement, and (2) mention that the funds were provided via a state appropriation made to the CSTCC.

4. Term: Termination Prior to Expiration of Term. The term of this Agreement shall commence as of the date of execution set forth below and shall end fifteen (15) years thereafter.

5. Reimbursement of State upon Termination. In the event that this Agreement is terminated for any reason prior to (15) years from the commencement date, FSFB shall remit to the State of Ohio a prorated portion of the Funds, which shall be calculated by dividing the funds contributed by the State of Ohio by fifteen (15) and multiplying that sum by fifteen (15) less the number of full years that FSFB'S

obligations under this Agreement were fulfilled and multiplying that sum by fifteen.

6. Compliance with Laws. FSFB shall comply in all material respects with all pertinent federal, state and local laws as well as state administrative regulations, applicable to the use of funds hereunder and to the operation of the Capital Improvement.
7. Funds Used Only for Capital Improvements. The Funds provided under this Agreement shall be used by FSFB only for capital improvements, as described in the bill appropriating such funds, including but not limited to the renovation of its current facilities located at 112 Liberty Street in Cincinnati, Ohio. Such renovations will enhance the capacity of FSFB to provide services to about 35,000 persons in Hamilton County who currently live in poverty or near poverty.
8. Ownership of FSFB Insurance. The Project will be owned by FSFB, and will be fully insured.
9. Competitive Bidding. FSFB, in connection with the expenditure of Funds for the Project, shall, to the extent required by Ohio law, follow the competitive bidding procedures for educational facilities construction, including, but not limited to, publishing advertisements to seek bids, receiving sealed bids and awarding contracts to the lowest responsive and responsible bidder.
10. Hold Harmless. FSFB shall hold the State of Ohio and CSTCC, its officers, trustees and employees harmless from any and all obligations, expenses, liabilities or claims of any kind and/or the CSTCC, its officers, trustees or employees being named as a defendant or party to any lawsuit or adjudicatory proceedings, if such lawsuit or adjudicatory proceeding arising out of (1) the construction, renovation, operation, or maintenance of the Project, (2) an alleged action or omission of FSFB, its officers, trustees or employees, including, but not limited to FSFB'S failure or alleged failure to comply with applicable public bidding requirements or any other federal, state or local law, ordinance, rule, order, directive or regulation.
11. Amendments. Any amendments to this Agreement shall be in writing, signed by FSFB and CSTCC, and shall require approval by the Chancellor of the Ohio Board of Regents.
12. Records of CSTCC Use. Upon request by the Chancellor of the Ohio Board of Regents and/or the CSTCC, FSFB shall supply the Chancellor of the Ohio Board

of Regents and/or the CSTCC with all pertinent records, including financial records, which measure the nature and extent of use of FSFB'S facilities by the CSTCC, the terms and conditions governing such use and the specific benefits derived by the CSTCC under this Agreement.

13. Distribution of Funds; Administrative Costs. Upon execution of this Agreement, CSTCC shall submit to the Chancellor of the Ohio Board of Regents a formal request for the release of the Funds. After the release of the Funds, FSFB shall submit to CSTCC requests for payment of amounts along with documentation of contractor invoices or purchase orders related to obligations incurred by FSFB for permitted uses of the Funds. A tentative disbursement schedule is attached hereto as **Exhibit A**. From the Funds, CSTCC shall receive administrative costs in the amount of **\$1,500.00** which is equal to one and one-half percent (1.5%) of the total amount of the Funds.
14. Notices. All notices to the parties shall be sent by registered or certified mail, postage prepaid and addressed to the parties at the addresses set forth below, or to such other address as either party shall have designated by prior notice.

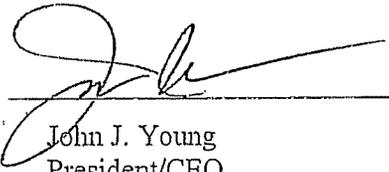
FreestoreFoodbank, Inc.
1250 Tennessee Avenue
Cincinnati, Ohio 45229
Attn: John J. Young
President/CEO

Cincinnati State Technical & Community College (CSTCC)
3520 Central Parkway
Cincinnati, Ohio 45223
Attn: Dr. John Henderson
President/CEO

15. Binding Nature. This Agreement shall be binding upon and inure to the benefit of FSFB and the CSTCC and their respective successors and assigns.
16. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto relating to the subject matter of this Agreement.
17. Heading. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.
18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

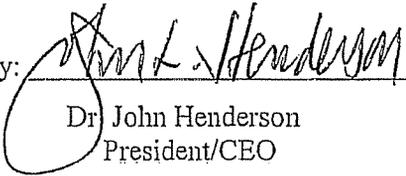
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the month, day and year signed.

FREESTOREFOODBANK, INC.

By: 
John J. Young
President/CEO

Date: 8/1/8

CINCINNATI STATE TECHNICAL &
COMMUNITY COLLEGE (CSTCC)

By: 
Dr. John Henderson
President/CEO

Date: 8/13/08

EXHIBIT "A"

PROPOSED DISBURSEMENT SCHEDULE

THE FREESTOREFOODBANK, INC. – CAPITAL IMPROVEMENT FUNDS

The FreestoreFoodbank, Inc. requests an immediate disbursement of the entire \$100,000.00 appropriation, less \$1,500.00 in administrative costs to which Cincinnati State Technical & Community College (CSTCC) is entitled.