

COMMISSIONERS JOURNAL NO. 42 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD MARCH 28, 2002

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present: Donald Wuertz, Deborah Martin, James D. Ward

9:45 AM Public Hearing # 2 For The Delaware County Community Housing Improvement Program (Chip)

PUBLIC COMMENT

RESOLUTION NO. 02-417

IN THE MATTER OF APPROVING RESOLUTIONS AND MINUTES FROM REGULAR MEETINGS HELD MARCH 7, 11, 14 AND 18, 2002:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to dispense with the reading of the minutes and resolutions of the regular meetings held March 7, 11, 14 and 18, 2002 and to approve resolutions and minutes as submitted.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Aye Mr. Ward Abstain

RESOLUTION NO. 02-418

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS AND PAYMENT OF WARRANTS NUMBERED 333356 THROUGH 333553:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve for payment warrants numbered 333356 through 333553 and Purchase Orders and Vouchers as listed below:

<u>PO Number</u>	<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
2B09366	Synergy Mechanical Contractors, Inc.	Service Maintenance	0130-2066	\$ 7,375.00
2B15083	Clerk of Courts	CSEA Contract	0120-2035	\$ 22,000.00
2B15065	Williams Insurance Agency	Boiler & Machinery Ins. Renewal	0060-2280	\$ 11,527.00
INCREASE				
2B08325	Sellers Electric	Change Order	8612-4011	\$ 5,635.00
INCREASE				
2B43254	Del Juvenile Court	Professional Services	4520-2005	\$ 30,050.00
<u>Vouchers</u>				
2P12637	Delaware County Fair	Grant/DCF	0120-3001	\$ 8,000.00
1B08264	The Ardit Co.	Ceramic Flooring/Serv Bldg	8612-4011	\$ 193,480.60
1B08779	Air Experts, LLC	HVAC/Serv Bldg	8612-4011	\$ 21,246.02
1B08299	Air Experts, LLC	Interior HVAC	8612-4011	\$ 85,331.93
2B12624	Kastra Painting, Inc.	Painting/Serv Bldg	8612-4011	\$ 53,776.94
1B08302	Superior Electric Co.	Interior Electric/Admin Bldg	8612-4011	\$ 38,216.03
2B11598	Kokosing Construction Co.	Gen Const/Alum Creek Facility		\$ 22,790.25
1B08284	Otis Elevator	Elevator/Serv Bldg	8612-4011	\$ 23,597.00
1B08343	Gleeson Const., Inc.	Interior Archit Woodwork/Serv Bldg	8612-4011	\$ 301,657.00

Vote on Motion Mr. Wuertz Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 02-419

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mrs. Martin, seconded by Mr. Ward to approve the following:

Chris E. Bean has accepted the position of Mechanical Inspector with the Code Compliance Department; effective date April 15, 2002.

Jason Watts has been promoted to the position of Engineer Tech with the Sanitary Engineer Department; Effective date April 1, 2002.

Vote on Motion Mr. Ward Aye Mr. Wuertz Aye Mrs. Martin Aye

RESOLUTION NO. 02-420

IN THE MATTER OF APPROVING THE RESOLUTION OF NECESSITY FOR PURCHASE OF

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AUTOMOBILE FOR THE USE OF THE COUNTY COMMISSIONERS; ANY COUNTY
DEPARTMENT, BOARD, COMMISSION, OFFICE OR AGENCY; OR ANY ELECTED COUNTY
OFFICIAL OR HIS OR HER EMPLOYEES:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve the resolution of necessity:

WHEREAS; the Board of County Commissioners of Delaware County, Ohio are required by Ohio Revised Code §307.41, to find, by resolution of necessity, that it is necessary to expend county monies for the purchase or lease of a new automobile to be used by the County Commissioners, by any county department, board, commission, office or agency, or by any elected county official or his or her employees, and

WHEREAS; the Board of County Commissioners of Delaware, County, Ohio has before it a request from Emergency Medical Service, to expend county monies for the purchase of one new 4-door, 4-wheel drive medium-sized Utility Vehicle; and

WHEREAS; the Board of County Commissioners have legally appropriated monies from the proper fund for the acquisition of vehicles

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DELAWARE COUNTY, OHIO:

- Section 1.

That the Board of County Commissioners of Delaware County, Ohio, does hereby declare that a necessity exists to purchase one 4-door, 4-wheel drive medium-sized Utility Vehicle for use by the Emergency Medical Service
- Section 2.

That the Board of County Commissioners of Delaware County, Ohio, does hereby declare that the number of motor vehicles required is one for replacement of a current vehicle.
- Section 3.

That the Board of County Commissioners of Delaware County, Ohio, does hereby declare that the estimated cost of said purchase or lease will be a total of \$26,297.00.
- Section 4.

That the Board of County Commissioners of Delaware County, Ohio, does hereby declare that the purchase or lease of said vehicle will be in conformity with the public bidding requirements of Ohio Revised Code 307.86 through 307.92.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Aye Mr. Ward Aye

RESOLUTION NO. 02-421

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS FOR BOARD OF
ELECTIONS:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve the following:

SUPPLEMENTAL APPROPRIATIONS

FUND NUMBER:	FUND NAME:	AMOUNT:
001-3210-015	Gen Fund/Board of Elections - Mat & Sup	\$ 28,719.00

Vote on Motion Mr. Wuertz Nay Mrs. Martin Nay Mr. Ward Aye

RESOLUTION NO. 02-422

9:45AM PUBLIC HEARING # 2 FOR THE DELAWARE COUNTY COMMUNITY HOUSING
IMPROVEMENT PROGRAM (CHIP):

It was moved by Mrs. Martin, seconded by Mr. Ward to open the Hearing at 9:50AM.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Aye Mr. Ward Aye

RESOLUTION NO. 02-423

IN THE MATTER OF CLOSING THE PUBLIC HEARING # 2 FOR THE DELAWARE COUNTY
COMMUNITY HOUSING IMPROVEMENT PROGRAM (CHIP):

It was moved by Mr. Ward, seconded by Mrs. Martin to close the Hearing at 10:10AM.

Vote on Motion Mr. Wuertz Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 02-424

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IN THE MATTER OF AUTHORIZE ENTERING INTO AN INDUCEMENT AND DEVELOPMENT AGREEMENT WITH THE CITY OF DELAWARE AND THE KROGER CO.:

It was moved by Mrs. Martin, seconded by Mr. Ward to approve the following:

WHEREAS, Delaware County (the "County") and the City of Delaware (the "City") are desirous of The Kroger Co. (the "Company") locating and constructing a distribution center in the City of Delaware, County of Delaware on certain property more particularly described in Exhibit A; and

WHEREAS, the Company has obtained options to purchase certain real property (the "Property") for the construction of said distribution center (the "Project") situated in the City, which is more particularly described in Exhibit A, attached hereto and made a part hereof, contingent upon the approval of Enterprise Zone and Community Reinvestment Area (CRA) tax abatement incentives and funding for public infrastructure improvements; and

WHEREAS, the Company has requested the County and the City to make and obtain certain development commitments and service improvements for the benefit of the Company's proposed Project; and

WHEREAS, the County and City are authorized to enter into an Inducement and Development Agreement with the Company as attested to by Ohio State Law, to establish the incentives to be pursued in order to secure the Project.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT RESOLVED that the Delaware County Board of Commissioners, does hereby authorize entering into the attached Inducement and Development Agreement with the Company.

INDUCEMENT AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is made as of the 28th day of March, 2002, by and between the City of Delaware ("City"), One South Sandusky Street, Delaware, Ohio 43015, Delaware County ("County"), 101 North Sandusky Street, Delaware, Ohio 43015, and The Kroger Co. ("Company"), 1014 Vine Street, Cincinnati, OH, 45202.

WHEREAS, the City and County are desirous of the Company locating and constructing a distribution center in the City in Delaware County, Ohio on certain property more particularly described in Exhibit A; and,

WHEREAS, the Company has obtained options to purchase certain real property (the "Property") for the construction of a distribution center ("Project") situated in the City, which is more particularly described in Exhibit A, attached hereto and made a part hereof, contingent upon certain Enterprise Zone benefits and Community Reinvestment Area benefits being approved; and,

WHEREAS, the Company has requested the City and County to make and obtain certain development commitments and service improvements for the benefit of the Company's proposed Project; and,

WHEREAS, the City has requested a \$400,000 grant ("CDBG") for the extension of water and sewer lines to the Project site and a \$500,000 grant ("Roadway 629 Account Grant") for Project site road improvements from the Ohio Department of Development; and,

WHEREAS, the City has committed \$350,000 and the County has committed \$200,000 in public funds for public infrastructure costs ("Community Fund"); and,

WHEREAS, the City and County are authorized to enter into this Agreement with the Company as attested by Ohio State Law;

NOW THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration hereinafter specified, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

UTILITY SERVICES

As an inducement to the Company to locate a distribution center in the City, the City will assist with the coordination of public utility services.

A. Water/Fire Protection: The City agrees to provide a ductile iron water line main extension constructed to City standards at a location approved by the City Utilities Director and as shown on the Final Development Plan not later than **12/31/02**. The City is not responsible for delays caused by factors beyond its control including but not limited to strikes, walkouts, accidents, acts of God, failure of governmental or other regulatory authorities to act in a timely manner, failure of the Company to furnish timely information or delays caused by the performance of others. Additional water lines are to be constructed by the City along both the N-S and E-W Roads per City specifications. Eligible expenses up to \$950,000 (\$400,000 CDBG + \$550,000 Community Fund) shall be paid from the CDBG and Community Fund. The CDBG will be administered by the City. The Community Fund will be administered by the City and County, respective of the funding source. Funds committed by the County to the Community Fund shall be provided on a reimbursement basis. The Company is responsible for preparing by 06/01/02 engineering and construction drawings to City standards, and all costs above \$950,000 are the Company's responsibility. The City will

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administer the bid and construction of the water and sewer lines; City costs for these services are included in the \$950,000, and will be the actual costs incurred, not to exceed \$40,000. The City will provide the Company with monthly reports on the cost and status of the project including the initial bid amount. Use of the Community Fund is conditioned on the Company agreeing to create a minimum of 276 new full-time permanent jobs as part of the proposed Project, with a minimum of 141 (51%) of said jobs to be filled by qualifying Low-Moderate Income (LMI) individuals, and compliance with all applicable CDBG rules and regulations during the project time period, including, but not limited to, environmental review clearance, proper procurement procedures and payment of Federal "Davis-Bacon" Prevailing Wage rates as applicable during the construction of public water infrastructure improvements. The CDBG is conditioned on the Grant Agreement between the City and the Ohio Department of Development. Use of the funds committed by the County to the Community Fund is subject to the terms and conditions of a separate Revolving Loan Fund (RLF) Infrastructure funding agreement between The Kroger Co. and the County. The Company shall repay the City a portion or the entire grant amount if any of the conditions upon which these grant funds are provided are not fulfilled.

B. Sanitary Sewer Main Extension: The City agrees to provide a sanitary sewer main extension constructed to City standards at a location to be approved by the City Utilities Director and as shown on the Final Development Plan not later than **12/31/02**. The City is not responsible for delays caused by factors beyond its control including but not limited to strikes, walkouts, accidents, acts of God, failure of governmental or other regulatory authorities to act in a timely manner, failure of the Company to furnish timely information or delays caused by the performance of others. This line will extend from its current location near the intersection of SR521 and US36/SR37 to Glenn Road, then south on Glenn Road to the intersection of Glenn Road and the proposed extension of the East West Road, then east along the proposed road to its terminus. Also, the construction will include a line in the North South Road in accordance with plans approved by the City Utilities Director. The City agrees to construct gravity mains and necessary appurtenances. Eligible expenses up to \$950,000 (\$400,000 CDBG + \$550,000 Community Fund) shall be paid from the CDBG and Community Fund. The CDBG will be administered by the City. The Community Fund will be administered by the City and County, respective of the funding source. Funds committed by the County to the Community Fund shall be provided on a reimbursement basis. The Company is responsible for preparing engineering and construction drawings to City standards, and all costs above \$950,000 are the Company's responsibility. The City will administer the bid and construction of the water and sewer lines; City costs for these services are included in the \$950,000, and will be the actual costs incurred, not to exceed \$40,000. The City will provide the Company with monthly reports on the cost and status of the project including the initial bid amount. Use of the Community Fund is conditioned on the Company agreeing to create a minimum of 276 new full-time permanent jobs as part of the proposed Project, with a minimum of 141 (51%) of said jobs to be filled by qualifying Low-Moderate Income (LMI) individuals, and compliance with all applicable CDBG rules and regulations during the project time period, including, but not limited to, environmental review clearance, proper procurement procedures and payment of Federal "Davis-Bacon" Prevailing Wage rates as applicable during the construction of public sanitary sewer infrastructure improvements. The CDBG is conditioned on the Grant Agreement between the City and the Ohio Department of Development. Use of the funds committed by the County to the Community Fund is subject to the terms and conditions of a separate Revolving Loan Fund (RLF) Infrastructure funding agreement between The Kroger Co. and the County. The Company shall repay the City a portion or the entire grant amount if any of the conditions upon which these grant funds are provided are not fulfilled.

INFRASTRUCTURE IMPROVEMENTS AND SERVICE GUARANTEES

Roads and Signals: As an inducement to the Company to locate a distribution center in the City, the City shall assist, by the dates indicated below, in the construction of the following road work not later than **02/01/03** to the following extent:

The City agrees to participate in conjunction with the State and the Company, in the construction of a new street ("N-S Road") to/from US Highway 36 to the Property, said construction to be the responsibility of the Company. This N-S Road shall be constructed as a curb/gutter design with 4 12 foot lanes in width, and left turn lanes at both US Highway 36 and the new east – west street ("East – West Street") at the Northern boundary of the Property. These improvements will also include revisions at the U.S. 36 intersection with the N-S Road. These improvements will include an acceleration lane, for east bound traffic, a deceleration lane for east bound traffic, a left turn lane and median improvements from west bound Highway 36 onto the N-S Road, and installation of a new traffic control signal. Design of this road work shall be approved by the City Engineer, must meet ODOT highway design criteria within the US36 R/W and further be designed with future intersection improvements in mind as directed by the City Engineer. Future intersection improvements will be indicated on the Final Development Plan, but the Company will have no responsibility for improvements beyond those required by the Final Development Plan. Once completed and accepted by the City, the N-S Road will be dedicated to the City by the Company by a plat of dedication.

The Company is entitled to reimbursement of eligible costs from the Roadway 629 Account Grant to accomplish the work. Use of the Roadway 629 Account Grant is conditioned on the Company agreeing to

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create a minimum of 276 new full-time permanent jobs and retain 387 full-time permanent jobs as part of the proposed Project, with a minimum of 141 (51%) of said jobs to be filled by qualifying Low-Moderate Income (LMI) individuals. For improvements to be paid for with Roadway 629 Account Grant, the proper procurement procedures will be utilized as applicable and payment of State of Ohio Prevailing Wage rates as applicable during the construction of public roadway infrastructure improvements. The Roadway 629 Account Grant is conditioned on the Grant Agreement between the City and the Ohio Department of Development. The Company understands and agrees to follow these guidelines. The Company shall repay the City a portion or the entire grant amount if any of the conditions upon which these grant funds are provided are not fulfilled.

Construction Access: During the construction of the project upon the Property, access will be permitted from U.S. 36 to a 30 foot wide temporary access road lying immediately adjacent to the west of the North South Road right-of-way and utility easement. The Company will be responsible for any exceptional damage resulting from construction traffic on U.S. 36 at the construction access entrance and Glenn Road. Construction traffic will be permitted on Glenn Road for employee traffic and limited truck traffic which meets posted weight limits on Glenn Road.

The City acknowledges that there will be additional truck and automobile traffic generated as a result of this Project, following the initial year of operation. This traffic will primarily use Highway 36/37 for access to Interstate 71 to the east and to Highway 23 to the west, with the distribution of traffic generally equal in each direction. Per Delaware City Codes, the Company is to submit a complete traffic study to the City prior to approval of the Final Development Plan. The approved traffic study will determine whether any additional road improvements will be required at the Project site.

All required roadway improvements must be constructed, approved and fully operational prior to the commencement of operations on the development site.

PLAN REVIEWS, PERMITTING, AND FEES

Reviews: The design of all improvements shall be in complete concurrence with the approved Final Development Plan, approved variances and all applicable codes. The City Chief Building Official will be the single point of contact within the City's building permit system through which the Company will submit all permitting requests, studies, drawings, etc. While it is acknowledged that this point of contact will not have review or permitting authority for many of the requirements, the point of contact will act as the focal point to channel all of the Company's submittals to the proper agencies. Further, the point of contact shall assist in tracking and statusing the various permits and reviews while they are being processed.

Additionally, the City and County each agree to designate a local contact to coordinate applications and implementation of all inducements, grants and incentives related to the Project. The City and County shall jointly coordinate in tracking and statusing submittal dates, approval dates, and implementation dates of said inducements and incentives.

In the event that the City elects to use a third party, outside consultant to review or to assist in the review of drawings and plans, the City and its designated agencies shall retain the right to overrule the decisions of the consultant. Such authority shall be invoked if, in the opinion of the City Manager, the consultant's decisions violate the nature and intent of this agreement, or the decisions exceed the intent and the requirements of the City's development regulations and laws. Should a difference of review opinion arise, the Company shall file with the City Manager a written brief explaining how the submitted plans meet all requirements, and why the review comments are inappropriate. The City Manager within two weeks of receiving the referral, will issue his decision if needed.

Building appeals must be through the Ohio Department of Commerce, Board of Building Standards, after an adjudication order has been issued by the Delaware Chief Building Official.

Landscaping: The Final Development Plan and associated landscape plans shall be submitted to the City and approved by the City Council and/or Shade Tree Commission as required by the Zoning Code. These approvals along with all granted variances will govern landscaping improvements to the Property.

Local Building Permitting Time Frames: The City shall complete all reviews and permitting within its jurisdiction within ten (10) days and issue permits or partial permits for sequential stages of construction per 4101:2-1 23, Approval of Plans, 1998 Ohio Building Code. The City shall expedite such reviews and permitting where feasible and possible. Per III.A., the Chief Building Official shall assist in tracking and statusing the various permits and reviews while they are being processed and notify the Company of projected approval dates and any delays. The City shall assist where possible in expediting any permits not under its jurisdiction, but which may require the City's input or participation.

Fees: The following fees will apply to all phases of this Agreement, to the prime contractors and the subcontractors thereof:

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- **Review and Permit Fees:** The City and the Company acknowledge that there are various plan review and construction inspection and building permit fees required by the City, including site plan review, mechanical permit, building and sign permits, and electrical permits. Plumbing permits must be obtained through the Delaware General Health District. For this project, the City agrees that the above listed local plan review and construction and building permit fees, as well as any other local fees associated with these functions, shall be capped at a maximum of \$235,000.
- **Miscellaneous Fees:** The City and the Company jointly agree that there are no known County-controlled miscellaneous fees, except for a City impact fee, which are commonly charged to development activities, but which are not directly associated with specific projects. The City agrees that the Company will not be responsible for any fees other than those described in Paragraph III.D1 above and a City impact fee which will be capped at a maximum of \$166,760 (based on 758k sqft distribution center; \$119,006 Fire (\$157/1000 sqft) + \$47754 Police (\$63/1000 sqft).

Zoning: The City acknowledges that the Property has been rezoned to the M-2 General Manufacturing District, which permits the Company's use of the Property for the operation of its distribution center. The Final Development Plan that is approved by City Council, along with all approved variances, shall govern the improvements of the property along with all pertinent requirements of the Zoning Code and related ordinances. Development issues such as on-site lighting, noise, landscaping, and traffic shall be addressed per this approval and related code requirements. The Final Development Plan, as approved by Council, shall indicate that the project is in compliance with the Codified Ordinances of the City of Delaware.

Annexation: The Company acknowledges the Property has previously been annexed into the City.

Street Lighting: The City agrees to pay for the lease of street lights in the new public streets, including the East-West Road, the North-South Entrance Road and US36 intersections, in accordance with acceptable municipal lighting standards (spun aluminum poles with cobra heads), pursuant to Exhibit E(3). The initial cost of purchase, installation and provision of power supply is the responsibility of the Company; however, following dedication of public streets to the City, the Company will have no further responsibility for electric service or maintenance.

TAX ABATEMENT/FINANCIAL INCENTIVES

The City and County agree to use their best efforts, in compliance with Ohio Revised Code Sections 5709.61 – 5709.69, and 5709.82 & 5709.83 and 3735.671 to grant a tax abatement on the Company's real and personal property as permitted by Ohio law. A School Compensation Agreement will be negotiated by the City, County, Company and the School District to create a financial payment to the Olentangy Local School District consistent with Ohio Revised Code Sections 5709.82 (C) & (D). The City and County agree to pursue a tax abatement of 10 years on real property improvements and three years on new investment in personal property, including inventory and furniture and fixtures. All parties agree the initial abatement year for real property will be the first full tax year the facility is 100% complete and for personal property, the abatement will commence the first year following the required reporting of said investment for taxation purposes.

Exhibit E to this agreement and its amendment, attached hereto and made a part hereof, is a letter of commitment from the City and County.

JOB TRAINING

The City and County agree to cooperate with and assist the Company in obtaining, for the Company and its employees, job training and job training funds through the Ohio Industrial Training Program and other federal and state programs, but it is recognized that the City and County do not control the funding or job training in connection with these programs.

JURISDICTION

This Agreement is governed by and interpreted in accordance with the laws of the State of Ohio.

NOTICES

Any notice hereafter shall be given in writing to the Party for whom it is intended, in person or by certified mail, at the following addresses or such future addresses as may be designated in writing:

For the Company:	For the City:	For the County:	For the Company:
Mr. Gil Mayfield	R. Thomas Homan	David Cannon	Mike Kurzendoerfer
Carter & Burgess, Inc.	City Manager	County Administrator	The Kroger Co.
3001 Meacham Blvd.	1 Sandusky Street	101 N. Sandusky Street	10168 Linn Station
Suite 200	Delaware, Ohio	Delaware, Ohio 43015	Road
Fort Worth, Texas	43015		

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76137	740 368 1640	Delaware, Ohio 43015	Road
817 222 8640		740 833 2100	Louisville, KY 40223-1212
			502 423 4136

Notice shall be deemed received upon actual receipt or upon refusal of receipt.

ASSIGNMENT AND SUCCESSION

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties. This Agreement is not transferrable or assignable without the express, written approval of the City of Delaware and Delaware County. Such approval shall not be unreasonably withheld.

MODIFICATION/ENTIRE AGREEMENT EXPRESSED

No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated, and signed by all Parties.

This constitutes the entire agreement between the parties. No party shall be bound by any term, conditions, statement, or representation, oral or written, not herein contained.

SEVERABILITY

If any term or provision of this Agreement is held to be illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby; and in lieu of such illegal, invalid, or unenforceable term or provision, there shall be added automatically to this Agreement, a legal, valid, or enforceable term or provision, as similar as possible to the term or provision declared illegal, invalid, or unenforceable.

PARAGRAPH HEADINGS

The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs contained herein.

IN WITNESS WHEREOF, and as authorized respectively by the City Council and County, the Parties have executed this Agreement the day and year first written above.

**Delaware Distribution Center Project
Proposed Incentive Package - AMENDMENT
Kroger Co. Project - Glenn Road Site – US 36/37**

As discussed on January 29, 2002, please find below the amended projections for the tax incentives for the Kroger Co. Project. The projections are based on the estimated improvements and investments noted in the Ohio Department of Development Financial Assistance Application (dated January 7, 2002), the Project Description (received December 18, 2001), Preliminary Project Estimate (Dated July 13, 2001), and additional correspondences between us.

Based on this information, we have re-analyzed the tax abatement analysis for the Project based on the following assumptions:

- Community Reinvestment Area (CRA) Incentives on real property improvements at 100% abatement for 10 years.
- Enterprise Zone (EZ) Incentives on investment in new machinery & equipment, furniture and fixtures, and Inventory at 50% in Years 1 – 2; 35% in Year 3; and 0% in Years 4 – 10.
- Initial abatement year for real property improvements will be the first full tax year the facility is 100% complete.
- Abatement for personal property would commence the first year following the required reporting of said investment for taxation purposes.
- For tax abatement purposes, the estimated cost of real property improvements and investment in personal property is as follows:

➤ New Construction:	\$43,800,000
➤ On-site infrastructure	\$13,400,000
➤ Machinery & Equipment	\$14,000,000
➤ Inventory	<u>\$65,000,000</u>
Total	<u>\$136,200,000</u>

Based on these numbers, the revised estimated benefits summary for the project over a 10-year period is presented

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below (estimated taxes to be paid and abated on real property improvements of \$57,200,000 and new personal property investment of \$79,000,000. (Real property improvements include estimated building construction costs and estimated on-site improvement costs – all on-site improvement costs may not ultimately be considered by the County Auditor’s Office as adding direct value to this Project. Therefore, estimated taxes abated and to be paid may be higher than actual amounts realized in the future. Actual exemption shall be based on the increase in the assessed value of real property attributed to real property improvements at the Project site.):

Estimated Property Taxes without an Exemption:	\$18,208,044
Estimated Property Taxes to be paid with an Exemption:	\$ 8,378,720
Estimated School Compensation Payment to be paid By the Company (annual payment of \$120,000):	\$ 1,200,000
Estimated Property Taxes to be paid with an Exemption plus the School Compensation Payment:	\$ 9,578,720
ESTIMATED PROPERTY TAXES ABATED	\$ 9,829,324
ESTIMATED TOTAL VALUE OF STATE & LOCAL INCENTIVES	\$16,114,324

As we are sure you are aware, all incentives noted in this package are conditioned upon and subject to review and approval by each of the duly appointed or elected oversight boards, councils, and/or commissions for each program, as well as approval of any tax exemption relocation waivers which may be required, and subject to review of legal staff.

Vote on Motion Mr. Wuertz Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 02 – 425

IN THE MATTER OF AUTHORIZING ENTERING INTO A COMMITMENT AGREEMENT FOR
USE OF DELAWARE COUNTY REVOLVING LOAN FUNDS FOR INFRASTRUCTURE
IMPROVEMENTS FOR THE KROGER DISTRIBUTION CENTER ECONOMIC DEVELOPMENT
PROJECT:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve the following:

WHEREAS, the Ohio Department of Development provides financial assistance to Delaware County under the Community Development Block Grant (CDBG) Program; and

WHEREAS, Delaware County, with its main offices located at 101 N. Sandusky Street, Delaware, Ohio, has a Revolving Loan Fund, which is capitalized with Community Development Block Grant (CDBG) funds, with use of these funds having a National Objective of assisting eligible low-moderate income households; and

WHEREAS, The Kroger Co., with its main offices currently located at 1014 Vine Street, Cincinnati, Ohio, desires to construct and own a 750,000+ square foot distribution center to be located along US 36/SR 37, on currently vacant parcels numbered 41822001014000 and 41822001007000 in the City of Delaware on land described in Exhibit A, attached hereto and made a part hereof, in order to consolidate and expand Kroger’s existing operations into one new facility, which will result in the creation of 276 new jobs, of which a minimum of 51% or 141 jobs must be provided to qualifying low-moderate income (LMI) individuals; and

WHEREAS, assistance is required for the construction of public roadway, water and sewer infrastructure improvements to support the proposed Kroger Co. Distribution Center economic development project, and without said assistance the proposed project would not be constructed; and

WHEREAS, the Delaware County Board of Commissioners, via Resolution 02-244, authorized a \$200,000 Revolving Loan Fund (RLF) Infrastructure Grant to the City of Delaware to be utilized for the construction of public roadway, water and sewer infrastructure improvements associated with the proposed Kroger Co. Distribution Center economic development project, and

WHEREAS, such assistance for public infrastructure in support of an economic development project creating significant numbers of new LMI jobs is considered a National Objective under the CDBG Program.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT RESOLVED that the Delaware County Board of Commissioners, does hereby authorize entering into the attached commitment Agreement with the Company:

Section 1. That the Delaware County Board of Commissioners authorizes the use of the Delaware County Revolving Loan Fund in an amount not to exceed \$200,000 to assist The Kroger Co.-Distribution Center Economic Development Project with the cost of constructing public roadway, water, and sewer

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infrastructure in support of said project in the City of Delaware.

Section 2. Use of these grant funds is conditioned upon the following: The Kroger Co. agrees to construct a 750,000 square foot distribution center to be located along US 36/SR37 on land described in the attached Exhibit A, in the City of Delaware, and to create a minimum of 276 new full-time permanent jobs as part of the proposed Distribution Center Project, with a minimum of 141 (51%) of these new jobs to be filled by qualifying LMI individuals, and agrees to follow all applicable CDBG rules and regulations during the project time period, including environmental review clearance, proper procurement procedures and payment of Federal Prevailing Wage Rates for the construction of public roadway, water and sewer infrastructure improvements paid for with RLF/CDBG funds. Construction of said distribution center shall be substantially complete by August 1, 2003, and all new jobs shall be filled by December 31, 2006.

Section 3. Delaware County is entitled to request and receive repayment of a portion or this entire grant from The Kroger Co. if any of the conditions upon which these grant funds are provided are not fulfilled.

AGREEMENT FOR USE OF DELAWARE COUNTY REVOLVING LOAN FUNDS FOR
INFRASTRUCTURE IMPROVEMENTS

WHEREAS, the Ohio Department of Development provides financial assistance to Delaware County under the Community Development Block Grant (CDBG) Program; and

WHEREAS, Delaware County, with its main offices located at 101 N. Sandusky Street, Delaware, Ohio, has a Revolving Loan Fund, which is capitalized with Community Development Block Grant (CDBG) funds, with use of these funds having a National Objective of assisting eligible low-moderate income households; and

WHEREAS, The Kroger Co., with its main offices currently located at 1014 Vine Street, Cincinnati, Ohio, desires to construct and own a 750,000+ square foot distribution center to be located along US 36/SR 37, on currently vacant parcels numbered 41822001014000 and 41822001007000 in the City of Delaware on land described in Exhibit A, attached hereto and made a part hereof, in order to consolidate and expand Kroger's existing operations into one new facility, which will result in the creation of 276 new jobs, of which a minimum of 51% or 141 jobs must be provided to qualifying low-moderate income (LMI) individuals; and

WHEREAS, assistance is required for the construction of public roadway, water and sewer infrastructure improvements to support the proposed Kroger Co. Distribution Center economic development project, and without said assistance the proposed project would not be constructed; and

WHEREAS, the Delaware County Board of Commissioners, via Resolution 02-244, authorized a \$200,000 Revolving Loan Fund (RLF) Infrastructure Grant to the City of Delaware to be utilized for the construction of public roadway, water and sewer infrastructure improvements associated with the proposed Kroger Co. Distribution Center economic development project, and

WHEREAS, such assistance for public infrastructure in support of an economic development project creating significant numbers of new LMI jobs is considered a National Objective under the CDBG Program.

NOW THEREFORE, the Delaware County Board of Commissioners, and The Kroger Co. hereby agree as follows:

Section 1. That the Delaware County Board of Commissioners authorizes the use of the Delaware County Revolving Loan Fund in an amount not to exceed \$200,000 to assist The Kroger Co. Distribution Center Economic Development Project with the cost of constructing public roadway, water, and sewer infrastructure in support of said project in the City of Delaware.

Section 2. Use of these grant funds is conditioned upon the following: The Kroger Co. agrees to construct a 750,000 square foot distribution center to be located along US 36/SR37 on land described in the attached Exhibit A, in the City of Delaware, and to create a minimum of 276 new full-time permanent jobs as part of the proposed Distribution Center Project, with a minimum of 141 (51%) of these new jobs to be filled by qualifying LMI individuals, and agrees to follow all applicable CDBG rules and regulations during the project time period, including environmental review clearance, proper procurement procedures and payment of Federal Prevailing Wage Rates for the construction of public roadway, water and sewer infrastructure improvements paid for with RLF/CDBG funds. Construction of said distribution center shall be substantially complete by August 1, 2003, and all new jobs shall be filled by December 31, 2006.

Section 3. Delaware County is entitled to request and receive repayment of a portion or this entire grant from The Kroger Co. if any of the conditions upon which these grant funds are provided are not fulfilled.

Vote on Motion Mr. Ward Aye Mr. Wuertz Aye Mrs. Martin Aye

RESOLUTION NO. 02-426

IN THE MATTER OF AUTHORIZING EXECUTION OF AN ENTERPRISE ZONE AGREEMENT
WITH THE KROGER CO.:

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It was moved by Mrs. Martin, seconded by Mr. Ward to approve the following:

WHEREAS, the Delaware County Board of Commissioners, via Resolution Number 91-693, designated an area in the City of Delaware as an Enterprise Zone and has encouraged the acquisition of and investment in real and personal property therein; and

WHEREAS, the Director of Development of the State of Ohio has re-certified said area in the City of Delaware, as a Delaware County Enterprise Zone, effective the 29th day of August, 2001; and

WHEREAS, The Kroger Co. has applied for incentives for a proposed consolidation and expansion project in said zone under Chapter 5709 of the Ohio Revised Code; and

WHEREAS, the duly appointed Enterprise Zone Negotiating Committee has met with representatives of The Kroger Co. to negotiate an Enterprise Zone Agreement, and has reviewed and recommends approval of a proposed Enterprise Zone Application submitted by The Kroger Co. an enterprise which desires to expand within said Enterprise Zone, and has determined that the enterprises meet the Enterprise Zone Guidelines adopted by the Delaware County Board of Commissioners by Resolution Number 91-693 on September 16, 1991, and by Enterprise Zone Guidelines adopted by the City of Delaware by Resolution Number 91-35 on September 30, 1991; and

WHEREAS, the Council of the City of Delaware has agreed to review such applications, to approve applications which meet the guidelines, and to forward all approved proposals to the Delaware County Board of Commissioners for final approval.

NOW THEREFORE, PURSUANT TO THE FOREGOING, BE IT HEREBY RESOLVED by the Delaware County Board of Commissioners, County of Delaware, State of Ohio as follows:

Section 1. The Board of Commissioners of Delaware County recognizes that the Negotiating Committee for the City of Delaware Enterprise Zone has investigated the application submitted by The Kroger Co. and has determined that The Kroger Co. is qualified to create job opportunities in said Zone.

Section 2. The Board of Commissioners of Delaware County hereby authorizes the execution of an Enterprise Zone Agreement, having determined that the Enterprise Zone application submitted by The Kroger Co. meets all of the guidelines established by the Board of Commissioners of Delaware County, and by the City of Delaware, and the same is hereby approved.

Section 3. The Delaware County Economic Development Director is directed to formally notify the Olentangy Local School District and Delaware Joint Vocational School of this action, and to submit copies of the Agreement after it is executed to the Ohio Departments of Development and Taxation.

Vote on Motion Mr. Wuertz Aye Mrs. Martin Aye Mr. Ward Aye

RESOLUTION NO. 02-427

IN THE MATTER OF AUTHORIZING EXECUTION OF A COMMUNITY REINVESTMENT AREA/ENTERPRISE ZONE SCHOOL COMPENSATION AGREEMENT WITH THE CITY OF DELAWARE, THE OLENTANGY LOCAL SCHOOLS DISTRICT, AND THE KROGER CO.:

It was moved by Mr. Ward, seconded by Mrs. Martin to approve the following:

Whereas, the Ohio Community Reinvestment Area (CRA) Program, pursuant to ORC Section 3735.67 authorizes cities and counties to grant real property tax exemptions on eligible new investments; and

Whereas, the Ohio Enterprise Zone Program, pursuant to ORC Sections 5709.61 through 5709.69 authorizes cities and counties to grant real and/or personal property tax exemptions on eligible new investments; and

Whereas, the City Council of the City of Delaware, Ohio, by Resolution Number 01-52 adopted on July 23, 2001, designated an area in the City of Delaware as a CRA; and

Whereas, the City Council of Delaware, Ohio, by Resolution Number 01-53, adopted on July 23, 2001, and Resolution Number 01-805, adopted by the Board of County Commissioners for Delaware County on July 30, 2001, expanded and re-certified the Enterprise Zone pursuant to Chapter 5709 of the ORC; and

Whereas, effective September 4, 2001, the Director of the Ohio Department of Development determined that the aforementioned area designated in said Resolution Number 01-52 contains the characteristics set forth in ORC 3735 and thereby certified the area as Delaware City CRA #141-1135-01; and

Whereas, effective August 29, 2001, the Director of Development of the State of Ohio determined that the aforementioned area designated in said Resolution Number 01-805 contains the characteristics set forth in Section 5709.61 (A) (3) and 5709.632 (A) (2) of the ORC and re-certified said area an Enterprise Zone #215 under said

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Chapter 5709; and

Whereas, the City of Delaware and Delaware County jointly provided the Boards of Education of the Olentangy Local School District and the Delaware Joint Vocational School District notice of the project prior to formal approval as required within ORC 5709.62(D) and 5709.83; and

Whereas, the City of Delaware within Resolution Number 02-23 adopted on March 25, 2002, has acted pursuant to ORC 5709.62 to grant a tax exemption to THE KROGER CO. and entered into a formal CRA Agreement on March 25, 2002; and

Whereas, the City of Delaware within Resolution Number 02-23 adopted on March 25, 2002 and Delaware County within Resolution Number 02-426 adopted on March 28, 2002 have acted pursuant to ORC Section 5709.62 to grant a tax exemption to THE KROGER CO. and entered into a formal Enterprise Zone Agreement on March 28, 2002;

Whereas, Item 5(B) of the CRA Agreement and Item 6 of the Enterprise Zone Agreement relating to the aforementioned project requires compensation to the Olentangy Local School District for the sole benefit of educational initiatives.

Now therefore, pursuant to the foregoing, be it resolved that the Delaware County Board of Commissioners, does hereby authorize entering into the attached CRA/Enterprise Zone School Compensation Agreement.

DRAFT

Community Reinvestment Area/Enterprise Zone
School Compensation Agreement

This agreement between the City of Delaware, a municipal government, with its offices located at 1 South Sandusky Street, Delaware, OH 43015, the Board of County Commissioners of Delaware County, with its offices located at 101 N. Sandusky Street, Delaware, Ohio 43015, the Olentangy Local School District, a local school district, with its district offices located at 814 Shanahan Road, Lewis Center, OH 43035, and THE KROGER CO., an Ohio corporation, with its main offices currently located at 1014 Vine Street, Cincinnati, Ohio 45202, specifies the manner in which and procedure to be used pursuant to Ohio Revised Code Chapters 3735 and 5709 authorizing general school district compensation for lost revenues due to property tax exemptions, specifically relating to the construction of a distribution facility in Delaware, Ohio, in Delaware's Community Reinvestment Area # 141-1135-01 and Enterprise Zone #215.

Whereas, the Ohio Community Reinvestment Area (CRA) Program, pursuant to ORC Section 3735.67 authorizes cities and counties to grant real property tax exemptions on eligible new investments; and

Whereas, the Ohio Enterprise Zone Program, pursuant to ORC Sections 5709.61 through 5709.69 authorizes cities and counties to grant real and/or personal property tax exemptions on eligible new investments; and

Whereas, the City Council of the City of Delaware, Ohio, by Resolution Number 01-52 adopted on July 23, 2001, designated an area in the City of Delaware as a CRA; and

Whereas, the City Council of Delaware, Ohio, by Resolution Number 01-53, adopted on July 23, 2001, and Resolution Number 01-805, adopted by the Board of County Commissioners for Delaware County on July 30, 2001, expanded and re-certified the Enterprise Zone pursuant to Chapter 5709 of the ORC; and

Whereas, effective September 4, 2001, the Director of the Ohio Department of Development determined that the aforementioned area designated in said Resolution Number 01-52 contains the characteristics set forth in ORC 3735 and thereby certified the area as Delaware City CRA #141-1135-01; and

Whereas, effective August 29, 2001, the Director of Development of the State of Ohio determined that the aforementioned area designated in said Resolution Number 01-805 contains the characteristics set forth in Section 5709.61 (A) (3) and 5709.632 (A) (2) of the ORC and re-certified said area an Enterprise Zone #215 under said Chapter 5709; and

Whereas, the City of Delaware and Delaware County jointly provided the Boards of Education of the Olentangy Local School District and the Delaware Joint Vocational School District notice of the project prior to formal approval as required within ORC 5709.62(D) and 5709.83; and

Whereas, the City of Delaware within Ordinance Number 02-23 adopted on March 25, 2002, has acted pursuant to ORC 5709.62 to grant a tax exemption to THE KROGER CO. and entered into a formal CRA Agreement on March 25, 2002; and

Whereas, the City of Delaware within Resolution Number 02-23 adopted on March 25, 2002 and Delaware County within Resolution Number 02-426 adopted on March 28, 2002 have acted pursuant to ORC Section 5709.62 to grant a tax exemption to THE KROGER CO. and entered into a formal Enterprise Zone Agreement on March 28, 2002;

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Whereas, Item 5(B) of the CRA Agreement and Item 6 of the Enterprise Zone Agreement relating to the aforementioned project requires compensation to the Olentangy Local School District for the sole benefit of educational initiatives.

Now therefore, in consideration of the foregoing and of the mutual promises, covenants, and agreements hereinafter set forth by the City of Delaware and THE KROGER CO. agree as follows:

Section 1. THE KROGER CO. shall make payments according to the following schedule to the City of Delaware in accordance with the terms and conditions set forth in Item 5(B) of the CRA Agreement and Item 6 of the EZ Agreement for the referenced project. This payment shall be made upon receipt of an invoice from the City of Delaware.

<u>School Compensation Payment #</u>	<u>Payment Due Date</u>	<u>Amount</u>
Payment #1	9/30/03	\$ 60,000
Payment #2	9/30/04	\$ 60,000
Payment #3	9/30/05	\$120,000
Payment #4	9/30/06	\$120,000
Payment #5	9/30/07	\$120,000
Payment #6	9/30/08	\$120,000
Payment #7	9/30/09	\$120,000
Payment #8	9/30/10	\$120,000
Payment #9	9/30/11	\$120,000
Payment #10	9/30/12	\$120,000
Payment #11	9/30/13	\$120,000

Section 2. The cash payment made by THE KROGER CO. to the City of Delaware shall be used for educational initiatives for the sole benefit of the Olentangy Local School District.

Section 3. The City of Delaware agrees to transfer all moneys paid by THE KROGER CO. to the Olentangy Local School District by December 31 each year following payment receipt. Only funds received will be transferred.

Section 4. This agreement is enforceable only with active Enterprise Zone or Community Reinvestment Area Agreements and may be amended or modified by the parties, only in writing, signed by all parties to the agreement or by applicable law changes.

Section 5. This agreement sets forth the entire agreement and understanding between the parties as to the subject matter contained herein and merges and supersedes all prior discussions, agreements, and undertakings of every kind between the parties with respect to the subject matter of this agreement.

Section 6. All payments, certificates, reports, and notices which are required to or may be given pursuant to the provisions of this agreement shall be sent by regular mail, postage prepaid, and shall be deemed to have been given or delivered when so mailed to the following addresses:

R. Thomas Homan
City Manager
City of Delaware
1 South Sandusky Street
Delaware, Ohio 43015

William L. Reimer, PhD, Superintendent
Olentangy Local School District
814 Shanahan Road
Lewis Center, Ohio 43035

Marnette Perry, President
The Kroger Co.
4111 Executive Parkway
Westerville, Ohio 43081

Any party may change its contact or mailing address for receiving notices and reports by giving written notice of such change to the other parties.

Section 7. The invalidity of any provision of this agreement shall not affect the other provisions of this agreement, and this agreement shall be construed in all respects as if any invalid portions were omitted.

Vote on Motion Mr. Ward Aye Mr. Wuertz Aye Mrs. Martin Aye

Presentation Lucas County –Paul H. Sowash

RESOLUTION NO. 02-428

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IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR PERSONNEL MATTERS:

It was moved by Mrs. Martin, seconded by Mr. Ward to adjourn into Executive Session at 11:35AM.

Vote on Motion Mrs. Martin Aye Mr. Wuertz Aye Mr. Ward Aye

RESOLUTION NO. 02-429

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mrs. Martin, seconded by Mr. Wuertz to adjourn out of Executive Session at 11:45AM.

Vote on Motion Mr. Wuertz Aye Mrs. Martin Aye Mr. Ward Absent

There being no further business the meeting adjourned.

Deborah B. Martin

James D. Ward

Donald E. Wuertz

Letha George, Clerk to the Commissioners