

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) between the DEVELOPMENT AUTHORITY OF THE CITY OF FOREST PARK (“Authority”) and THE URBAN REDEVELOPMENT AGENCY OF THE CITY OF FOREST PARK (“URA”) sets forth the terms and conditions related to a certain grant from the State of Georgia for the construction of a road at the Gillem Logistics Center in Forest Park, Georgia.

WHEREAS, the Kroger Company has established certain facilities at the Gillem Logistics Center;

WHEREAS, as an inducement for the Kroger Company to locate its facilities at the Gillem Logistics Center, the URA agreed to provide for the construction of an extension of Anvil Block Road to Rateree Road (the “Road”) to provide for additional ingress and egress to the Gillem Logistics Center from Forest Parkway;

WHEREAS, to provide for additional funds to construct the Road, the Authority in coordination with the Kroger Company agreed to apply for a Regional Economic Business Assistance (REBA) grant (the “Grant”) from the Georgia Department of Community Affairs; and

WHEREAS, the URA and the Authority desire to formally memorialize their mutual understanding as to the construction of the Road and the use of the Grants.

NOW, THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the parties hereto agree as follows:

ARTICLE I RATEREE ROAD GRANT PROGRAM

SECTION 1.1 The Authority agrees to:

- a. Serve as the applicant for the Grant in coordination with the Kroger Company.
- b. Reimburse the URA for the cost of constructing the Road in an amount not to exceed three hundred fifteen thousand (\$315,000.00) dollars or such amount as provided by the Grant funds.

SECTION 1.2 The URA agrees to:

- a. Construct the Road.
- b. To act as a subrecipient of such Grant funds and to provide for and insure compliance with all provisions of the Performance and Accountability Agreement

between the Authority, the Georgia Department of Community Affairs and the OneGeorgia Authority, a copy of which is attached hereto as Exhibit A..

ARTICLE II
MISCELLANEOUS

SECTION 2.1 Notices. Any notice, request, or demand given or required to be given under this Agreement shall, except as otherwise expressly provided herein, be in writing and shall be deemed to have been given when mailed by certified mail, postage prepaid, return receipt requested, to the other party at the address stated below or at the last changed address given by the party to be notified as hereinafter specified:

Notices to URA:	Urban Redevelopment Agency of the City of Forest Park Forest Park City Hall 745 Forest Parkway Forest Park, GA 30297 Attention: Chair
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Notices to Authority:	Development Authority of the City of Forest Park Forest Park City Hall 745 Forest Parkway Forest Park, GA 30297 Attention: Chair
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Either party may, however, at any time, change its address for notification purposes by mailing, as herein provided, a notice stating the change and setting forth the new address.

SECTION 2.2 Waivers. No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed as a waiver thereof, except as otherwise herein provided. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

SECTION 2.3 Article and Section Headings. The article and section headings herein are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

SECTION 2.4 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

SECTION 2.5 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the Program, and any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement or any other existing written agreement in whole or in part unless such agreement hereafter made is in writing and signed by the parties hereto.

SECTION 2.6 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 2.7 Term and Termination. This Agreement shall remain in full force and effect until the earlier of the conclusion of all matters related to the Grant or December 31, 2023.

SECTION 2.8 Independent Parties. The parties hereto are independent, contracting entities, and neither is authorized to act as an agent, employee, or legal representative of the other. Neither party nor its respective employees shall be considered employees of the other.

SECTION 2.9 Assignment/Subcontracting Clause. Each of the parties hereto shall ensure that all of its assignees or subcontractors, if any, comply with the terms of this Agreement.

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IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

Attest: URBAN REDEVELOPMENT AGENCY OF THE CITY OF FOREST PARK

Secretary

Chair

Date: _____

Attest: DEVELOPMENT AUTHORITY OF THE CITY OF FOREST PARK

Secretary

Chair

Date: _____

Exhibit A

PERFORMANCE & ACCOUNTABILITY AGREEMENT Georgia Incentive Programs

REBA FUND AWARD NO. _____

This Performance & Accountability Agreement (this "Agreement") made and entered into as of 1/28/2020 by and among the Development Authority of the City of Forest Park, Georgia, a public body corporate and politic created pursuant to the laws of the State of Georgia (the "Development Authority"), the Georgia Department of Community Affairs, an agency within the executive branch of the State of Georgia ("DCA") and the administering agency for the OneGeorgia Authority, an instrumentality of the state and a public corporation ("OneGeorgia") (hereinafter referred to as the "Administering Agency"), The Kroger Co. ("Kroger" or "Company"), and Ocado Solutions USA, Inc. ("Ocado").

RECITALS

1. The purpose of the State of Georgia's incentive programs, administered through DCA, is to provide financial assistance to eligible applicants to assist the applicant to induce and assist companies to relocate, expand or construct projects in Georgia rather than a competing state; and
2. The incentive programs include, but are not limited to, the Department of Community Affairs's Regional Economic Business Assistance ("REBA") program and the OneGeorgia Authority's EDGE Fund program ("EDGE"); and
3. The Development Authority has been awarded either REBA or EDGE funding ("Financial Assistance") and, in accordance with the Development Authority's statutory purposes, will utilize the Financial Assistance to participate in a project to assist the Company; and
4. In consideration for the benefit of such Financial Assistance the Development Authority and Company must, in addition to other requirements: i) complete a project that creates and/or maintains a defined number of jobs; and ii) invest a defined amount of new private capital into the Facility (as that term is defined below). (The defined job and private capital investment requirements shall hereinafter be collectively referred to as the "Performance Standards".); and
5. The Development Authority and Company's relocation or expansion project for which the Financial Assistance was awarded is more particularly described in the REBA Fund Award, and that description is incorporated herein by reference, (hereinafter the "Project"); and

Now, therefore, in consideration of the covenants and agreements herein contained, the parties agree as follows:

1. **Award.** The Development Authority's, Kroger's, and Ocado's obligations under this Agreement are contingent upon the Administering Agency awarding Financial Assistance in the form of a REBA Grant in the amount of \$1,315,000 ("Award Amount"). Kroger shall be the ultimate beneficiary of the Award Amount and shall be solely responsible for any repayment amount of the same in the event of a default or a failure to meet the compliance threshold. Of the Award Amount, \$1,000,000 shall be used to defray the cost of site improvements at the Facility. The remaining \$315,000 shall be used to defray the cost of making road improvements at the Forest Park Road extension.

If any of the Award is used to fund equipment (the "Grant-Funded Assets"), then during the term of this Grant, the Grant-Funded Assets shall be publicly titled, and the Company shall not be permitted to use the Grant-Funded Assets as collateral for financing or to grant a security interest in the Grant-Funded Assets to anyone other than the public entity holding title.

2. **Project Description.** Pursuant to the Award, the Development Authority shall use the Award Amount to implement the Project to assist the Company, which is more particularly described in the application and summarized as:

Kroger and Ocado have developed a partnership to construct a robotically operated fulfillment center that will source, package, and prepare grocery products for direct delivery to consumers and orders to be picked up by consumers. (the "Facility"). The Facility will be located at 2100 Anvil Block Road, Ellenwood, Forest Park, Georgia 30294. Kroger and Ocado will each be making capital investment into and creating jobs at the Facility. Kroger will be making capital investment totaling \$51,000,000 and will create 350 net-new jobs at the Facility. Ocado will be making capital investment totaling \$70,000,000 and will create 60 net-new jobs. The average wage across all jobs will be \$52,000, plus benefits. The total capital investment and net new jobs at the Facility shall be \$121,000,000 and 410, respectively.

3. **Performance Standards.** In consideration for the Development Authority's assistance, the Company shall meet the following Performance Standards:
 - A. Kroger and Ocado shall create 410 net-new full-time jobs¹ located in the City of Forest Park, Clayton County (the "Committed Jobs").
 - B. Kroger and Ocado shall make or cause to be made a private capital investment in the Project of at least \$121,000,000 in the form of expenditures as noted in the Award ("Committed New Investment");

¹ Net new full time job is defined as a new job that did not previously exist within the State of Georgia which has a minimum of 35 hours per week, with the opportunity for access to, but not necessarily paid or subsidized, medical benefits.

C. The start date for the Committed Jobs and Committed New Investment to be counted will be January 22, 2020;

D. Kroger and Ocado shall be in full compliance with the Performance Standards within sixty (60) months from the earlier of (i) the date of the issuance of the Certificate of Occupancy for the Facility, or (ii) the date in paragraph 3E of this Agreement (the "Performance Period"), and failure to do so shall be an immediate event of default under this Agreement. In the event the Performance Standards are met prior to the expiration of the Performance Period, Kroger and Ocado must maintain such jobs and investment until the expiration of the Performance Period and failure to do so shall be an immediate event of default under this Agreement. At the request of the Development Authority and for good cause shown, the expiration of the Performance Period may be extended, at the sole discretion of the Administering Agency; provided, however, that any such request shall be accompanied by supporting documentation from the Development Authority, Kroger, and Ocado deemed satisfactory to the Administering Agency;

E. The start-date for the Performance Period shall be no later than October 1, 2021, which is the date that Kroger and Ocado reasonably expect the Facility to be operational; and

F. Kroger and Ocado shall maintain documentation to evidence the number of full-time permanent jobs created and maintained and the amount of private investment in the Project until such time as the Performance Standards have been met and the Administering Agency has certified compliance pursuant to Section 5 of this Agreement.

4. Compliance Threshold and Repayment Amount. In the event that Kroger and Ocado fail to i) meet the Performance Standards; ii) maintain operations for the entirety of the Performance Period; or iii) locate in or operate the business forming a part of the Project funded with the Award, Kroger alone shall repay directly to the Administering Agency all (in the case of the happening of the event of default identified in Section 4(ii) above) or a portion of the Award Amount in all other cases (in each case, the "Repayment Amount"). For purposes of events of default under Section 4(i) - (ii) above, the Repayment Amount shall be determined as follows:

A. Compliance Threshold. Kroger and Ocado will be determined to have complied with the Performance Standards if the results of the threshold calculation conducted in accordance with the formula on Exhibit "A" ("Average Actual Performance") are equal to or greater than eighty percent (80%) ("Compliance Threshold"). The threshold calculation formula is the average of the percentage of created jobs to Committed Jobs over the Performance Period and the percentage of actual capital investment to Committed New Investment as of the expiration of the Performance Period. For purposes of this calculation, both Kroger's and Ocado's capital investment and job numbers will count. In terms of the threshold calculation, Kroger and Ocado may receive up to 110% credit of their Committed Jobs and 100% credit of their Committed New Investment at the end of the Performance Period. In no

event shall they be entitled to receive more than 100% credit of their investment commitment or 110% credit of their job commitment in the event that they exceed either of these commitments.

- B. Adjusted Award Amount. Should Kroger's and Ocado's Average Actual Performance be less than eighty percent (80%) of the Performance Standards, the Award will be adjusted proportionately by multiplying the Award Amount by the Average Actual Performance. The resulting number will then be subtracted from the Award Amount to determine what amount the Award will be adjusted to, after taking into account under performance ("Adjusted Award Amount"). Kroger alone shall repay to the Administering Agency the difference between the Award Amount and the Adjusted Award Amount. See illustrations in Exhibit "B": Repayment Calculation. The Award Amount will only be adjusted in the event that Kroger and Ocado do not meet the Compliance Threshold.
5. Reporting Requirements. Kroger, Ocado, and the Development Authority shall provide semi-annual reports to the Administering Agency concerning the progress of the creation of jobs and investments. Kroger and Ocado shall file with the Development Authority, no later than thirty (30) days upon completion of the Project as described in Section 2 of this Agreement or after the expiration of the Performance Period, documentation to evidence the actual number of full-time jobs created and total amount of private capital invested in the Project. No later than sixty (60) days after the expiration of Performance Period, the Development Authority shall file with the Administering Agency, a report documenting the Kroger's and Ocado's performance. Within a reasonable time after receipt of the report from the Development Authority, the Administering Agency will notify the Development Authority of Kroger's and Ocado's compliance or noncompliance with the Performance Standards. The Development Authority shall then provide Kroger and Ocado with such notification. Kroger, Ocado, and the Development Authority agree to keep an updated point of contact for the person(s) responsible for providing any reports owed to the Administering Agency. In the event that the person(s) responsible for providing reports changes, Kroger, Ocado, and/or the Development Authority agree to notify the Administering Agency as soon as possible.
6. Notification and Repayment. In the event Kroger and Ocado have failed to meet the Compliance Threshold, the Administering Agency will notify the Development Authority and Kroger and Ocado of the Adjusted Award Amount and the Repayment Amount. Kroger alone shall submit the Repayment Amount to the Administering Agency no later than forty-five (45) days after the date of the notification letter from the Administering Agency indicating that Kroger and Ocado have failed to meet the Compliance Threshold. Should Kroger fail to remit the Repayment Amount to the Administering Agency in a timely matter, the Administering Agency shall have the right, in its sole discretion, to impose any and all remedies available to it through its administrative processes or to seek remedies available at law or equity.
7. Adjustment in the Performance Standards. In the event a force majeure or other extraordinary circumstance, as will be determined in the sole discretion of Administering Agency, prevents Kroger and Ocado from meeting the Compliance Threshold, Kroger

and Ocado may request that Administering Agency adjust the Compliance Threshold. In the sole discretion of Administering Agency, the Compliance Threshold may be adjusted provided that the adjustment will have a direct relationship to the impact that the extraordinary circumstance had on Kroger's and Ocado's ability to meet the Performance Standards.

8. Sale or Change of Ownership of Kroger or Ocado. If, during the Performance Period, Kroger or Ocado make a change in their ownership by sale, merger, or other method of ownership transfer, then the entity making the change must notify the Development Authority and Administering Agency of such a change in ownership. Additionally, the new owner ("the Acquiring Company") must assume the obligations contained in this Agreement by executing an Assumption Agreement. The Administering Agency shall approve and be a party to the Assumption Agreement, along with Kroger, and Ocado the Development Authority and the Acquiring Company. In lieu of executing an Assumption Agreement, the Acquiring Company may elect to make the Repayment Amount to the Administering Agency.
9. Transfer and Assignment of Repayment. The Development Authority hereby transfers and assigns to Administering Agency all of the Development Authority's rights, title and interest to the Repayment Amount. The Development Authority acknowledges that, pursuant to the terms of the Agreement, Kroger shall remit all Repayment Amounts to the Administering Agency. In the event the Development Authority receives such Repayment Amounts, the Development Authority shall hold such payments in trust for the benefit of the Administering Agency provided that no later than five (5) days after receipt thereof, the Development Authority will deliver, by courier or regular U. S. Mail, such Repayment Amounts to the Administering Agency. Provided the Development Authority requires Kroger and Ocado to meet the Performance Standards, uses its best effort to assist Kroger and Ocado in meeting the Performance Standards, and assists the Administering Agency in collecting Repayment Amount when due, the Administering Agency shall have no recourse against the Development Authority for Kroger's and Ocado's failures to meet the Performance Standards unless the Development Authority explicitly accepts such recourse.
10. Acceptance and Assumption by Administering Agency. The Administering Agency hereby accepts the transfer and assignment of the Development Authority's rights, title and interest in, to the Repayment Amount; provided, however, that Administering Agency has not, and shall not have, accepted or assumed any obligations or liabilities of Development Authority that the Development Authority may have with regards to the Project or the Company.
11. Exhibits. The exhibits hereto will be construed to be a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

12. **Severability.** If any one or more of the provisions contained herein will for any reason be held by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

13. **Authorized Signatures.** Each of the individuals executing this Agreement represents that they are authorized to execute this Agreement on behalf of their respective entities.

[SIGNATURES ON FOLLOWING PAGE]

Signature Page
Performance & Accountability Agreement
The Kroger Co. and Ocado Solutions USA, Inc. Project
in the City of Forest Park, Clayton County, Georgia

IN WITNESS WHEREOF, the parties have hereunto set their signatures and affixed their seals the day and year first written above.

The Kroger Co.

By: 

Title: VP and Assistant Treasurer

Date: 1/16/2020


Ocado Solutions USA, Inc.

By: 

Title: Director of Finance Risk

Date: 1/19/2020


Georgia Department of Community Affairs

By: 

Title: Commissioner

Date: 1/28/2020

Development Authority of the City of Forest Park, Georgia

By: 

Title: Chair

Date: 1/24/2020

PERFORMANCE & ACCOUNTABILITY AGREEMENT

EXHIBIT "A" - Average Actual Performance for Projects

The Average Actual Performance for projects shall be determined by the following formula:

STEP 1

$$\frac{(\text{Total Jobs at end of Perfor. Period} - \text{Baseline}^{\wedge})}{\text{Committed Jobs}} = \text{Percentage of Committed Jobs Created}$$

$$\frac{\text{Actual Capital Investment}}{\text{Committed New Investment}} = \text{Percentage of Committed New Investment}^{\wedge\wedge}$$

STEP 2

$$\begin{aligned} & \text{Percentage of Committed Jobs Created}^* \\ + & \frac{\text{Percentage of Committed New Investment}^{\wedge\wedge}}{\phantom{\text{Percentage of Committed Jobs Created}^*}} \\ = & \text{Percentage of Commitments Met} \end{aligned}$$

STEP 3

$$\frac{\text{Percentage of Commitment Met}}{2} = \text{Average Actual Performance}$$

* This percentage shall in no event exceed 110%, even if the Company exceeds 110% of its Job Commitment.

[^]The baseline applies only to expansion projects. The baseline for new projects is zero.

^{^^} This percentage shall in no event exceed 100%, even if the Company exceeds 100% of its Committed Investment.

PERFORMANCE & ACCOUNTABILITY AGREEMENT

EXHIBIT "B" - Repayment Amount Calculation (Required only if Average Actual Performance is less than 80%)

STEP 1

Award Amount
X Average Actual Performance
Adjusted Award Amount

STEP 2

Award Amount
- Adjusted Award Amount
Repayment Amount

Example A - Repayment Required

A \$500,000 Award to assist with site development was part of Company A's consideration to locate in Georgia rather than an out-of-state location. As part of the deal, Company A committed to create 600 jobs and make a \$5,000,000 new investment to construct and operate a new production facility in Georgia. At the end of the Performance Period, Company A has actually created 400 jobs and invested \$3,500,000 into a smaller facility.

- Award Amount \$500,000
- Commitment - 600 jobs and \$5,000,000 new investment
- Actual jobs delivered - 400 (66% of Commitment)
- Actual investment delivered - \$3,500,000 (70% of Commitment)
- $66\% + 70\% = 136/2 = 68\%$ [Average Actual Performance]
- \$340,000 (68%) Adjusted Award Amount
- \$160,000 (32%) Repayment Amount

Example B - No Repayment Necessary

A \$500,000 Award to assist with the purchase of production equipment was part of Company B's consideration to locate in Georgia rather than an out-of-state location. As part of the deal, Company B committed to create 600 jobs and make a \$5,000,000 capital investment to construct and operate a new manufacturing facility in Georgia. At the end of the Performance Period, Company B has actually created 600 jobs and invested \$4,250,000 into a redesigned facility that saved \$750,000 in capital investment.

- Award Amount \$500,000
- Commitment - 600 jobs & \$5,000,000 investment
- Actual jobs delivered - 600 (100%)
- Actual investment delivered - \$4,250,000 (85%)
- $100\% + 85\% = 185/2 = 92.5\%$ Benefit
- No repayment required

Example C - No Repayment Necessary

A \$500,000 Award to assist with the purchase of production equipment was part of Company C's consideration to locate in Georgia rather than an out-of-state location. As part of the deal, Company C committed to create 600 jobs and make a \$5,000,000 capital investment to construct and operate a new manufacturing facility in Georgia. At the end of the Performance Period, Company C has actually created 700 jobs and invested \$3,500,000 into a redesigned facility that saved \$1,500,000 in capital investment.

- Award Amount \$500,000
- Commitment - 600 jobs & \$5,000,000 investment
- Actual jobs delivered - 700 (117% but limited to 110% credit)
- Actual investment delivered - \$3,500,000 (70%)
- $110\% + 70\% = 180/2 = 90.0\%$ Benefit
- No repayment required