

AUTHORIZING A SALES TAX SHARING AGREEMENT WITH BRAD MANNING FORD, INC.

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government which may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, Brad Manning Ford, Inc. (the "Company") is the owner of property located in the City that is legally described in Exhibit A attached hereto and incorporated herein (the "Property");

WHEREAS, Company owns and operates a Ford automobile sales and service dealership on the Property and desires to expand, remodel and improve the existing facility on the Property or construct a new facility on the Property or another property within the City's corporate limits (the "Development Project"); and

WHEREAS, Company represents and warrants that the Development Project will likely result in increased property and sales tax revenue for the City, and but for the economic incentive provided by the sales tax sharing agreement attached hereto and incorporated herein as Exhibit B (the "Sales Tax Agreement"), the Company would not undertake the Development Project; and

WHEREAS, the City's corporate authorities find that approving the Sales Tax Agreement is in the City's best interests for the protection of the public health, safety, and welfare; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The recitals to this Resolution are true, material, adopted and incorporated herein as Section 1 to this Resolution.

SECTION 2: The City's corporate authorities approve, authorize, and direct the Mayor to execute, and the Executive Assistant to attest, the Sales Tax Agreement in the same or substantially similar form as Exhibit B attached hereto and incorporated herein, and for the City Manager or his designee to perform all acts necessary to effectuate the Sales Tax Agreement.

SECTION 3: This resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provision of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the City of DeKalb that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.

SECTION 4: This resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 23rd day of August 2021 and approved by me as Mayor on the same day. Passed by 7-0-1 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Faivre, Barnes. Nay: None. Absent: Verbic.




COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant

EXHIBIT A
(Legal Description of the Property)

The Property is legally described as follows:

THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: LOTS 1 AND 2 OF THE FAIRVIEW CORNERS RESUBDIVISION NO. 1 AS RECORDED IN BOOK 'Z' OF PLATS, PAGE 193 ON SEPTEMBER 16, 1996 AS DOCUMENT NUMBER 1996012574, IN DEKALB COUNTY, ILLINOIS.

Common Address: 402 Manning Dr., DeKalb, IL 60115

PIN: 0835103004 and 0835103005

Resolution 2021-078

EXHIBIT B
(Sales Tax Sharing Agreement with Brad Manning Ford, Inc.)

SALES TAX SHARING INCENTIVE AGREEMENT
(BRAD MANNING FORD)

This Sales Tax Sharing Incentive Agreement (the “Sales Tax Agreement”) is dated August 23, 2021 (the “Effective Date”), by and between the City of DeKalb, an Illinois home rule municipal corporation (the “City”), and Brad Manning Ford, Inc., an Illinois corporation (the “Company”), who are collectively referred to as the “Parties”.

RECITALS:

WHEREAS, the City is a home rule unit of local government that may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the City is authorized to contract or otherwise associate with individuals in any manner not prohibited by law pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, the State of Illinois; and

WHEREAS, Company is the owner of property located in the City legally described in Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, Company owns and operates a Ford automobile sales and service dealership on the Property (the “Business”); and

WHEREAS, Company’s Business generates property and sales tax revenue for the City; and

WHEREAS, Company does not maintain additional places of business in Illinois; and

WHEREAS, Company desires to expand, remodel and improve the Company’s existing facility on the Property or construct a new facility on the Property or another property within the City’s corporate limits (the “Development Project”); and

WHEREAS, Company represents and warrants that the Development Project will likely result in increased property and sales tax revenue for the City, and but for the economic incentive provided by this Agreement, the Company would not undertake the Development Project; and

NOW, THEREFORE, in consideration of and in reliance on the above recitals and the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1: Incorporation of Recitals. The recitals to this Agreement are true, material, adopted and incorporated herein as Section 1 to this Agreement.

SECTION 2: Definitions. For purposes of this Agreement, the capitalized terms shall have the following meanings:

- A. “Department” or “IDOR” shall mean the Illinois Department of Revenue.
- B. “Maximum Payment” shall mean an amount not to exceed \$1,675,307.00.
- C. “Municipal Sales Tax Revenue” shall mean the 1% portion of the tax currently imposed on municipal retailers by the Retailers’ Occupation Tax Act, 35 ILCS 120/1, *et seq.*, that is actually received by the City from the IDOR as a result of the payment of the Retailers’ Occupation Tax from the operation of the Business on the Property. If at any time the City’s portion exceeds the aforesaid 1% portion of the taxed sale price imposed on retailers by the Retailers’ Occupation Tax Act, 35 ILCS 120/1, *et seq.*, then “Municipal Sales Tax Revenue” shall not include any amounts that exceed the 1% portion of the taxed sale price imposed on retailers within the Property by the Retailers’ Occupation Tax Act, 35 ILCS 120/1, *et seq.* If at any time the City receives less than the 1% portion of the taxed sale price imposed on retailers within the Property by the Retailers’ Occupation Tax Act, 35 ILCS 120/1, *et seq.*, then “Municipal Sales Tax Revenue”

shall mean such lesser amount received by the City from the IDOR from the Property. Notwithstanding any other provision of this Agreement, and pursuant to the provisions of 65 ILCS 5/8-11-21, "Municipal Sales Tax Revenue" shall not include any portion of retailers' occupation taxes generated by retail sales on the Property if: (1) the tax on those retail sales, absent this Agreement, would have been paid to another unit of local government; and (2) the retailer maintains, within another unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers.

D. "Sales Tax Commencement Date" shall mean the first day of the next calendar month after the City's issuance of a temporary occupancy permit for the Development Project.

E. "Sales Tax Distribution(s)" shall mean the distribution of Municipal Sales Tax Revenue pursuant to the terms of this Agreement.

F. "Sales Tax Participation Period" shall mean the period of ten (10) Sales Tax Years beginning on the Sales Tax Commencement Date. The Sales Tax Participation Period may be extended for two (2) additional periods, each consisting of five (5) Sales Tax Years, upon the mutual agreement of the Parties; provided, however, that the City's approval of each extension shall not be unreasonably withheld.

G. "Sales Tax Year(s)" shall mean the twelve (12) consecutive month period starting on the Sales Tax Commencement Date and ending twelve (12) months later, and each consecutive succeeding twelve (12) month period thereafter.

SECTION 3: Sales Tax Distributions. Subject to Company's compliance with this Agreement and the Limitations on the Sales Tax Distributions provided by Section 4 of this

Agreement, the City shall make Sales Tax Distributions as follows: (1) Fifty percent (50%) of the Municipal Sales Tax Revenue to the Company (the “Company Share”); and (2) Fifty percent (50%) of the Municipal Sales Tax Revenue to the City (the “City’s Retained Share”).

The calculation of the Municipal Sales Tax Revenue for each Sales Tax Year shall be made by the City within 30 days after the City receives information from the IDOR pertaining to the Municipal Sales Tax Revenue payments received by the City for the Property for each of the 12 months within the Sales Tax Year (the “Municipal Sales Tax Revenue Calculation”). Company understands that the payment of Municipal Sales Tax Revenue to the City for a given month is controlled by the IDOR and typically occurs approximately three (3) months after the sale is made. The City shall pay the Company Share within 30 calendar days after the Municipal Sales Tax Revenue Calculation.

SECTION 4: Limitations on Sales Tax Distributions. The Sales Tax Distributions provided by Section 3 of this Agreement shall be subject to the following additional terms, conditions and limitations:

- A. The total amount of the Company Share shall not exceed the Maximum Payment;
- B. The Company Share shall terminate upon the expiration of the Sales Tax Participation Period, even if the total amount of the Company Share has not equaled the Maximum Payment;
- C. The City shall not be obligated to pay the Company Share until the City receives payment of the Municipal Sales Tax Revenue from the IDOR, and Sales Tax Distributions shall be payable solely from Municipal Sales Tax Revenue that the City actually receives from the IDOR, and City shall not be obligated to pay any Sales Tax Distributions from any other fund or source;
- D. If at any time during the Sales Tax Participation Period, the Company (i) relocates the Business or otherwise transfers the sales and operations of the Business to a property located outside of the City’s corporate limits, (ii) closes or terminates the Business or the sales and operations of the Business for a period greater than sixty

(60) calendar days, (iii) fails to undertake and complete the Development Project or a substantially similar project on any other property located within, or annexed into, the City's corporate limits, or (iv) files or executes a petition seeking any nature of debtor relief or bankruptcy or makes an assignment for the benefit of Company's creditors, then this Agreement shall terminate and Company shall pay City the total amount of the Company Share that was paid to the Company and due and owing on the date this Agreement terminated under this Subsection.

- E. Company's compliance with this Agreement and applicable law including, but not limited to, Federal law, State law and Code requirements pertaining to the payment and reporting of Sales Tax.
- F. Company shall defend, indemnify and hold harmless City and City's officers, agents and employees from any and all actions, claims, damages, losses, costs and attorney's fees brought against City under 65 ILCS 5/8-11-21.

SECTION 5: Reporting requirements. Company understands that IDOR will not provide the City with the information that is necessary to determine the amount of Municipal Sales Tax Revenue paid to the City for the Property unless Company authorizes IDOR to provide the City with the information that is necessary to determine the amount of Municipal Sales Tax Revenue due to the Company under this Agreement. Company agrees to complete the IDOR "Authorization to Release Sales Tax Information to Local Governments" form, a copy of which is attached here to and incorporated herein as Exhibit B, and such other forms or documents that may from time to time become necessary for the City to receive the information from the IDOR that is necessary for the implementation of this Agreement. The City shall take all action as may be necessary to obtain the information from the IDOR to make the Municipal Sales Tax Revenue Calculation and to obtain payments of the Municipal Sales Tax Revenue from the IDOR. Furthermore, the Company agrees to provide the City: (1) copies of the ST-1 and ST-2 or equivalent monthly statements filed with the Department relating to the Property, certified by the Company, showing the amount of Sales Taxes paid during such month by the Company, together

with evidence of the payment of such revenues, and the City agrees to rely upon such certified monthly statements and evidence of payment in calculating the amount of Sales Tax Distributions available for disbursement to the Company hereunder; and, (2) all information requested by the City to meet the City's reporting requirements under 65 ILCS 5/8-11-21 or any other statutory or regulatory reporting requirement that may from time to time be imposed upon the Parties.

SECTION 6: Confidentiality of Information. Company hereby claims that the information received, or to be received, by the City pursuant to this Agreement is proprietary and confidential and that the disclosure of such information would cause competitive harm to the Company; therefore, to the fullest extent permitted by law, the City shall treat information received by it as confidential financial information under the Illinois Freedom of Information Act. To the extent that the City is required to disclose such information, it shall limit such disclosure, to the extent possible, to the release of general "gross" revenue and sales tax information so that proprietary information of individual businesses and purchasers is protected and kept confidential including, but not limited to, the specifics of the Company's tax returns.

SECTION 7: Amended Returns and Audits. If Company amends any sales tax return upon which Sales Tax Distributions were made to Company pursuant to this Agreement, Company shall notify the City of said amendment within ten (10) days of filing said amended return, and the City shall use its reasonable best efforts to obtain said information from the Department. If, as a result of an amended return, the City owes an additional distribution to the Company, such distribution shall be made promptly upon receipt by the City of such additional Sales Taxes. If, as a result of an amended return, the City is entitled to receive a portion of a Sales Tax Distribution

back, the Company shall repay such amount to the City within thirty (30) days of written notice from the City.

In the event that the Company is audited by the Department, the Company shall notify the City of said audit within ten (10) days of completion of said audit. If said audit results in adjustment to sales tax returns previously submitted upon which Sales Tax Distributions were made, upon final disposition of any changes made as a result of such audit, any amount due and owing to a party shall be made in the manner described in the preceding paragraph.

SECTION 8: Default. In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party or parties in default or violation, which notice shall be in writing and shall specify the particular violation or default. All parties hereto reserve the right to cure any violation of this Agreement or default by any of them hereunder within thirty (30) days after receipt of written notice of such default; provided, however, that said thirty (30) day period shall be extended (i) if the alleged violation or default is not reasonably susceptible to being cured within said thirty (30) day period, (ii) if the party in default has promptly initiated a cure of the violation or default, and (iii) if the party in default diligently and continuously pursues a cure of the violation or default until its completion. In no event shall the opportunity to cure exceed sixty (60) days.

SECTION 9: Notices. All notices and requests required pursuant to this Agreement shall be sent by certified mail as follows:

To Company: Brad Manning, Inc..
402 Manning Dr.
DeKalb, IL 60115
ATTN: Patrick Manning

To City: City Manager

City of DeKalb
164 E. Lincoln Hwy.
DeKalb, IL 60115

or at such other addresses as the parties may indicate in writing to the other either by personal delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

SECTION 10: Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. All disputes arising out of or relating to this Agreement shall be in the Circuit Court of DeKalb County, Illinois. In the event it is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to recover, in addition to all other remedies allowed by law and this Agreement, its reasonable attorney's fees and costs.

SECTION 11: Limitation of Liability. No recourse under or upon any obligation, covenant or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the City, its officers, agents and employees, in any amount in excess of any specific sum agreed by the City to be paid to the Company hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the City, its officers, agents and employees in excess of such amounts, and all and any such rights or claims of the Company against the City, its officers, agents and employees are hereby expressly waived and released as a condition of and as consideration for the City's execution of this Agreement.

SECTION 12: City Approval or Direction. Where City approval or direction is required by this Agreement, such approval or direction means the approval or direction of the City's corporate authorities, unless otherwise expressly provided or required by law, and any such

approval may be required to be given only after and if all requirements for granting such approval have been met, unless such requirements are inconsistent with this Agreement.

SECTION 13: Section Headings. All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

SECTION 14: Authorization to Execute. The officer of the Company who has executed this Agreement warrants that s/he has been lawfully authorized by the Company to execute this Agreement on behalf of the Company. The City hereby warrants that its Mayor and Executive Assistant have been lawfully authorized by the City Council to execute this Agreement. The Parties shall deliver, upon request to each other, copies of all articles of organization, operating agreements, articles of incorporation, by-laws, minutes and other evidence of the authority to so execute this Agreement on behalf of the respective parties.

SECTION 15: Entire Agreement/Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Parties relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, expressed or implied, between them, other than those that are herein set forth. This Agreement supersedes all prior written agreements, negotiations and understandings, written and oral, and shall be deemed a full integration of the entire agreement of the Parties. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

SECTION 16: Severability. If any provision of this Agreement is held invalid by a court, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect

any of the other provisions contained herein, and such judgment or decree shall relieve the City from performance under such invalid provision of this Agreement; provided, however, if the judgment or decree relieves the City of its monetary obligations under this Agreement, then the Company will be relieved of its monetary and reporting requirements hereunder. If the City is relieved only partially of its monetary obligations hereunder, Company shall remain bound by all applicable reporting requirements and an equal portion of its monetary obligations.

SECTION 17: Expiration and Termination. This Agreement shall terminate upon the Company's receipt of the Maximum Payment or the expiration of the time limits set forth in the Sales Tax Participation Period, whichever shall occur earlier.

SECTION 18: Force Majeure. For the purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the control of the Company, or of any entity controlled by Company including, but not limited to, Company's contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite Company's best efforts to fulfill the obligation, but does not include the Company's financial inability.

SECTION 19: Interpretations. This Agreement has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

SECTION 20: Independent Contractors. The Parties shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between the Parties. The Parties shall each be solely responsible for the conduct of their respective officers, employees and agents in connection with the performance of their obligations hereunder.

SECTION 21: Rights of Third Parties; Assignment. This Agreement does not create any rights on the part of any person or other entity who is not a Party, or an approved assignee of a Party, to this Agreement. Company may not assign its rights and obligations under this Agreement without the City's written consent, which shall not be unreasonably withheld.

SECTION 22: Non-waiver. The failure of a Party to insist on the other Party's strict compliance with the terms and conditions in this Agreement shall not constitute a waiver of the right to insist that the other Party in the future strictly comply with any and all of the terms and conditions contained in this Agreement, and to enforce such compliance by an appropriate remedy.

SECTION 23: Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City, the Company and the Company's permitted assigns.

SECTION 24: Mutual Cooperation. The Parties agree to cooperate and take any additional actions that are consistent with and may be necessary or appropriate to give full force and effect to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the dates set forth below.

(This Space Is Intentionally Omitted)

<p>COMPANY</p> <p>Brad Manning Ford, Inc. 402 Manning Dr. DeKalb, IL 60115</p> <p>By: <u><i>[Signature]</i></u> Patrick Manning, President</p> <p>Date: <u>8-25-2021</u></p>	<p>CITY</p> <p>City of DeKalb 164 E. Lincoln Hwy DeKalb, IL 60115</p> <p>By: <u><i>[Signature]</i></u> Cohen Barnes, Mayor</p> <p>Date: <u>8-23-2021</u></p>
<p>BUYER ATTEST</p> <p>_____</p>	<p>CITY ATTEST</p> <p><u><i>[Signature]</i></u> Ruth Scott, Executive Assistant</p>

STATE OF ILLINOIS)
) ss.
COUNTY OF DEKALB)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Patrick Manning, personally known to me to be the same person whose name is subscribed to the foregoing agreement appeared before me this day in person, and acknowledged that s/he signed, sealed and delivered the said instrument in her/his capacity as the President of Brad Manning Ford, Inc. as the free and voluntary act of Brad Manning Ford, Inc. for the uses and purposes therein set forth.

Given under my hand and official seal
and sworn to before me this 25th day
of August, 2021.

[Signature]
Notary Public



EXHIBIT A
(Legal Description of the Property)

The Property is legally described as follows:

THAT PART OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 40 NORTH, RANGE 4 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: LOTS 1 AND 2 OF THE FAIRVIEW CORNERS RESUBDIVISION NO. 1 AS RECORDED IN BOOK 'Z' OF PLATS, PAGE 193 ON SEPTEMBER 16, 1996 AS DOCUMENT NUMBER 1996012574, IN DEKALB COUNTY, ILLINOIS.

Common Address: 402 Manning Dr., DeKalb, IL 60115

PIN: 0835103004 and 0835103005

EXHIBIT B

(IDOR Authorization to Release Sales Tax Information to Local Governments)

AUTHORIZATION TO RELEASE SALES TAX INFORMATION

The undersigned Taxpayer hereby authorizes the Illinois Department of Revenue ("IDOR") to disclose to the designated city, town, village or county the amount of the local government's share of sales tax received on behalf of the taxpayer. Reporting for a period beginning with tax collected by the department during August, 2021 and
(Beginning Month/Year)

ending with tax collected by the department in TBD, _____.
(Ending Month/Year)

This information is to be released to the village, city town or county of DeKalb,
attn: Clerk, Treasurer, Finance Officer, Comptroller, etc.

BUSINESS INFORMATION:

0780-2293
(Illinois Business Tax Number)

Broad Manning Ford Inc
(Taxpayer/Business Name)

402 Manning Dr
(Address)

DeKalb
(City, Town, Village or County)

TAXPAYER: The undersigned is an owner/authorized officer of this business.

By: 
(Signature)

Patrick D Manning
(Print Name)

owner / General Manager
(Title)

815-756-6325
(Telephone Number)

Note: All requests must have a beginning and ending date. Incomplete request will be returned to the local government.