

## ORDINANCE NO. 1914

**BE IT ORDAINED** by the City Council (the “Council”) of the City of Talladega, Alabama (the “City”) as follows:

**Section 1. Findings.** That the Council, upon evidence duly submitted to and considered by it, hereby finds, determines and declares as follows:

(a) The former Jim Preuit Ford Dealership located at 723 Battle Street E., Talladega, Alabama (the “Project Site”) ceased its operations as an automobile dealership within the corporate limits of the City leaving significant commercial space vacant and eliminating substantial sales tax revenue to the City.

(b) Serra Automotive, Inc, an affiliate of the Serra Automotive Group, (“Developer”) owns the Project Site and proposes to obtain, open and operate an automobile Dealership, including parts and vehicle sales and service facility primarily for the sale of late model used cars on the Project Site to be known as the Serra Autoplex (hereinafter “Serra Autoplex”).

(c) Developer will incur substantial expenses, in the amount of approximately \$1,200,000, for the cost of upgrading the equipment and facility and to remodel the existing vacant building, to re-pave and make improvements to the interior and exterior of the Project Site and to make significant other expenditures to equip and supply the Dealership as necessary to prepare the Project Site and for the operation of the new Serra Autoplex; and

(d) To enable Developer to compete effectively with automobile Developers in the area outside of the corporate limits of the City through more competitive pricing of automobiles and parts inventory sold by Developer, the City has determined it is in its best interest to provide certain incentives to Developer, as described herein;

(e) The City proposes entering into a Tax Revenue Sharing and Incentive Agreement (the “Agreement”) with Developer to grant Developer, an amount for the renovation and construction of the new sales lot, paid from fifty percent (50%) of the City’s sales tax revenue upon sales of tangible personal property and fifty percent (50%) business license fees for up to fifteen (15) years at the Project Site, as set forth in the Agreement, and issuance of the City’s Limited Obligation Project Revenue Warrant to secure payments under the Agreement (the “Warrant”) pursuant to the provisions of the constitution and laws of the State of Alabama, including particularly Section 94.01, also known as Amendment No. 772, of the Constitution of Alabama of 1901 (the “Economic Development Amendment”). The purpose of the Agreement and the Warrant are to enable Developer to redevelop and construct the new sales lot and service center at the Project Site thereby promoting economic development, increasing tax revenues, and encouraging other economic development in the City.

(h) The public benefits sought to be achieved by the Agreement and Warrant are the promotion of local economic development and the stimulation of the local economy, the inducement of commercial enterprises to locate new facilities in the City, increasing employment opportunities in the City (and resulting in additional tax revenues for the City) and the promotion of the expansion and retention of business enterprises in the City, inuring to the economic health of the City. For purposes of the Economic Development Amendment, Serra Automotive, Inc, an affiliate of the Serra Automotive Group, its successors and assigns are the business entities for whose benefit the City proposes to lend its credit or grant public funds or a thing of value. The expenditure of public funds for the purposes specified in this resolution will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(e) It is necessary and desirable, and in the best interest of the City and its inhabitants, for the City to grant public funds for the economic development in the City, as provided in the Agreement, and for such purposes to issue its Warrant, as authorized and described herein.

**Section 2. Authorization of the Agreement.** The Council does hereby authorize and direct the City Manager of the City to execute and deliver, for and in the name and behalf of the City, the Revenue Sharing and Incentive Agreement between the City and the Developer. The Council does also hereby authorize and direct the City Clerk to affix the corporate seal of the City

to the Agreement and to attest the same. The Agreement shall be in substantially the form, attached as Exhibit "A" to this ordinance, presented to the meeting of the Council at which this ordinance is adopted (which form shall be preserved in the permanent records of the City pertaining to said meeting and which are hereby adopted in all respects as if the same were set out in full herein), with such changes, not inconsistent with the provisions hereof, as the City Manager of the City, acting with the advice of counsel to the City, shall determine to be necessary or desirable to consummate the transactions authorized by this ordinance, the determination of the definitive form of the Agreement by such officer to be conclusively established by his execution of same.

**Section 3. Authorization of the Warrant.** Pursuant to the provisions of the constitution and laws of the State of Alabama, including particularly Section 11-47-2 of the Code of Alabama 1975, as amended, and Section 94.01, also known as Amendment No. 772, of the Constitution of Alabama of 1901, and in order to secure the grant under the Agreement the City hereby authorizes the issuance of its Limited Obligation Special Project Revenue Warrant payable with respect to City Assistance (1) comprising Sales Tax Revenue, on the Quarterly Payment Date, beginning with the month following the first month in which the Commencement Date, as set forth in the Agreement, occurs, and (2) comprising Business License Fee Revenue, on the Annual Payment Date, beginning with the Annual Payment Date following the first year in which the Commencement Date, as set forth in the Agreement, occurs (together the "Payment Dates") until the maturity date set forth therein.

**Section 4. Warrant Fund.** There is hereby created a special fund designated the "Serra Project Warrant Fund" (herein called the "Warrant Fund"), which shall be held by the City and maintained until the maturity date. The City will deposit or cause to be deposited into the Warrant Fund the City Assistance when and as received by the City. The City shall withdraw funds from the Warrant Fund to pay the principal on the Warrant as the same shall become due and payable. Money in the Warrant Fund may be invested by the City as permitted by law.

**Section 5. Limited Obligation Source of Payment.** The indebtedness evidenced and ordered to be paid by the Warrant is and shall be a limited obligation of the City payable solely from City Assistance during the period beginning on the first of the Payment Dates and ending on the maturity date. The Taxed Sales comprising City Assistance received by the City shall be used for the creation and maintenance of the Warrant Fund created in Section 4 hereof in order to provide for payment of the principal on the Warrant when due.

**Section 6. General Faith and Credit not Pledged.** The general faith and credit of the City are not pledged for payment of the Warrant. The Warrant shall not be a general obligation of the City but shall be payable solely out of moneys on deposit in the Warrant Fund. Neither this ordinance nor the Warrant issued hereunder shall be deemed to impose upon the City any obligation to pay the principal on the Warrant, or any other sum, except with moneys herein directed to paid into the Warrant Fund. The Warrant and any payments required by this ordinance shall never constitute an indebtedness of the City within the meaning of any constitutional provision or statutory limitation whatsoever, except as may be provided on the Economic Development Amendment. None of the agreements, representations or warranties made or implied in this ordinance, or in the issuance of the Warrant, shall ever impose any pecuniary liability upon the City, except with respect to the moneys herein directed to be paid into the Warrant Fund. Nothing herein contained, however, shall be construed to relieve the City from the performance of any of its agreements herein contained or relive any of the officials of the City of any of their official duties.

**Section 7. Execution of the Warrant.** The Warrant shall be executed on behalf of the City by its City Manager, who shall affix the official seal of the City to the Warrant, the Warrant shall be attested by the City Clerk of the City, and the certification of registration of the Warrant as a claim against the Warrant Fund shall be executed by the City Treasurer. Said officers are hereby authorized and directed to execute, seal and attest the Warrant.

**Section 8. Form of the Warrant.** The Warrant shall be in substantially the form attached to the Agreement as Exhibit "B", with appropriate insertions, omissions and other changes to comply with the provisions hereof and reflect the appropriate date and principal amount.

**Section 9. General Authorization.** The City Manager of the City, the City Clerk, the City Treasurer and all other officers of the City and the Council are hereby authorized and directed

to execute, deliver, seal and attest such other agreements, undertakings, documents and certificates and to take such other actions on behalf of the City as may be necessary to consummate the issuance of the Warrant and to carry out fully the transactions contemplated by this ordinance.

**Section 10. Effect of Headings.** The article and section headings herein are for convenience only and shall not affect the construction hereof.

**Section 11. Severability.** If any section, sentence, paragraph, clause, phrase or word of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding of invalidity shall not affect the remaining portions of this ordinance, and it shall be construed without such unconstitutional, invalid or inoperative part therein, and the remainder of this ordinance shall be deemed and held to be valid as if such parts had not been included therein.

**Section 12. Effective Date.** This ordinance shall become effective immediately upon its adoption and approval by the Mayor and Council of the City and posting as required by Alabama law.

Adopted and approved on this 15<sup>th</sup> day of August, 2022.

Council President Horace Patterson

Council Member Vickey Hall

Councilman Joe Power

Council Member Betty Spratlin

Councilman Trae Williams

City Manager Seddrick Hill

Attested to: Joanna Medlen, City Clerk

**EXHIBIT "A"**

**FORM OF REVENUE SHARING AND INCENTIVE AGREEMENT**

**STATE OF ALABAMA**                    )  
**COUNTY OF TALLADEGA**            )

**REVENUE SHARING  
AND INCENTIVE AGREEMENT WITH  
THE CITY OF TALLADEGA**

**THIS TAX REVENUE SHARING AND INCENTIVE AGREEMENT** ("Agreement") is hereby made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF TALLADEGA, ALABAMA** (the "City") and **SERRA AUTOMOTIVE, INC.** (hereinafter referred to as "Dealer" or "Serra"), an affiliate of the **SERRA AUTOMOTIVE GROUP** or its successors or assigns.

**RECITALS:**

WHEREAS, the City supports and encourages business development in order to increase tax revenues and improve the quality of life of its citizens; and,

WHEREAS, Amendment No. 772 to the Constitution of Alabama (1901) (Section 94.01(a)(3) of the Recompiled Constitution of Alabama (hereinafter referred to as "Amendment No. 772"), authorizes the City to lend its credit to or grant public funds and things of value in aid of or to any corporation or other business entity for the purpose of promoting the economic development of the City; and,

WHEREAS, The former Jim Preuitt Ford dealership previously located at 723 Battle Street E. in downtown Talladega, Alabama (the "Project Site") ceased its operations as an automobile dealer within the corporate limits of the City leaving significant commercial space vacant and eliminating substantial sales tax revenue to the City; and,

WHEREAS, Serra currently owns the Project Site and proposes to obtain, open and operate an automobile dealership, including parts and vehicle sales and service facility primarily for the sale of late model used cars on the Project Site to be known as the Serra Autoplex (hereinafter "Serra Autoplex"); and,

WHEREAS, Dealer will incur substantial expenses, in the amount of approximately \$1,200,000, for the cost of upgrading the equipment and facility and to remodel the existing vacant building, to re-pave and make improvements to the interior and exterior of the Project Site and to make significant other expenditures to equip and supply the dealership as necessary to prepare the Project Site and for the operation of the new Serra Autoplex; and

WHEREAS, Dealer's opening and operating the new Serra Autoplex dealership at the Project Site is expected to enhance the public benefit and welfare of the citizens of the City by, among other things: promotion of local economic and commercial development and the stimulation of the local economy; increasing employment opportunities and creating new jobs in the City; increasing the City's tax base, which will result in additional tax revenues for the City; promoting the location, relocation, expansion and retention of commercial enterprises in the City; and preserving and improving the aesthetic quality of commercial development, inuring to the economic health of the City; and,

WHEREAS, to enable Dealer to compete effectively with automobile dealers in the area outside of the corporate limits of the City through more competitive pricing of automobiles and parts inventory sold by Dealer, the City has determined it is in its best interest to provide certain incentives to Dealer, as described herein; and

WHEREAS, the City finds that it is necessary, proper and in the public interest, in accordance with Amendment No. 772, that the City provide certain incentives to Dealer in connection with the Project Site, and that providing such financial assistance is a public purpose consistent with and in furtherance of the objectives of Amendment No. 772; and

WHEREAS, the parties hereto are desirous of having such incentives set forth in a valid, binding, and enforceable agreement to set forth the framework for establishing a working partnership between the City and Dealer.

## **AGREEMENT**

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I DEFINITIONS**

1.1 “Annual Payment Date” means the day which is sixty (60) days following the end of each Calendar Year.

1.2 “Calendar Year” shall mean the end of any of the fifteen calendar years after the Completion Date, including the end of the calendar year during which the Term of this Agreement is ended.

1.3 “City” shall refer to the City of Talladega, Alabama.

1.4 “Business License Fee Revenue” means the revenue from the business license fee levied by the City and paid to the City with regard to Serra Autoplex’s business at the Project Site.

1.5 “City Assistance” shall have the meaning set forth in Section 2.2 below.

1.6 “Completion Date” means the date Dealer begins retail sales of automobiles at the Project Site.

1.7 “Effective Date” shall have the meaning set forth in Section 3.1 below.

1.8 “Fiscal Quarter” means the applicable three month period of the City’s Fiscal Year. The City’s Fiscal Quarters are October 1 through December 31, January 1 through March 31, April 1 through June 30 and July 1 through September 30.

1.9 “Serra” means Serra Automotive, Inc., an affiliate of the Serra Automotive Group, or its assigns.

1.10 “Indemnified Parties” means the City, its elected and appointed officials, officers, employees and agents.

1.11 “Project Site” has the meaning set forth in the recitals above.

1.12 “Quarterly Payment Date” means the day which is thirty (30) days following the end of each Fiscal Quarter.

1.13 “Sales Tax Revenue” means the revenue from general sales tax and automobile sales tax levied by the City and paid to the City with regard to Serra Autoplex’s business at the Project Site.

1.14 “Serra Autoplex” shall have the meaning set forth in the recitals above.

1.15 “Taxed Sales” means all sales generated from the Project Site that are taxable by the City and for which payment is actually made from Serra Autoplex to or on behalf of the City.

1.16 “Term” means the period commencing on the Completion Date and terminating fifteen (15) years from the end of the calendar quarter in which the Completion Date occurs.

1.17 “Termination Date” shall mean that date on which the City shall have no obligation to make any payment of City Assistance under this Agreement.

1.18 “Warrant” shall have the meaning set forth in Section 2.3.

## **ARTICLE II INCENTIVE**

2.1 Establishment and Operation of Dealership. In consideration for the City’s agreement to pay the City Assistance, Serra agrees to open the new Serra Autoplex at the Project Site and to continue to operate Serra Autoplex, for the Term of this Agreement. Dealer agrees to open said Serra Autoplex not later than one (1) year after the Effective Date. If Dealer has not opened said Serra Autoplex within one (1) year after the Effective Date, this Agreement shall terminate unless extended to such later date as may be mutually agreed to between Dealer and City.

### 2.2 City Assistance.

(a) In consideration of and as an inducement for Dealer’s agreement to open and operate the Serra Autoplex at the Project Site, the City hereby agrees to pay as reimbursement to Serra, an amount equal to one half (1/2) of the City’s Sales Tax Revenue and one-half (1/2) of the Business License Fee Revenue generated at the Project Site and paid to the City by Serra Autoplex during the Term of this Agreement (the “City Assistance”). Provided that Dealer is in material compliance with the terms and conditions of this Agreement, the City Assistance shall be paid to Dealer through quarterly or annual payments as provided in Section 2.2(b) below.

(b) The City agrees to provide the City Assistance to Dealer as provided in this Section 2.2(b). Upon written notification to the City that the Completion Date has occurred, the City will pay the City Assistance to Dealer as follows:

(i) Beginning on or before the first Quarterly Payment Date after the Completion Date, the City will pay Dealer the City Assistance in an amount equal to one half (1/2) of the City’s Sales Tax Revenue generated from the Project Site and paid to the City by Serra Autoplex in the preceding Fiscal Quarter and continuing with respect to each Fiscal Quarter during the Term of this Agreement. For example, if the Completion Date occurs on January 15, 2023, then the first Payment Date under this Agreement will be 30 days after March 30, 2023, and on such Payment Date the City shall pay Dealer that portion of the City Assistance attributable to Taxed Sales generated from January 15, 2023 to March 30, 2023.

(ii) Beginning on or before the first Annual Payment Date after the Completion Date, the City will pay Dealer the City Assistance in an amount equal to one-half (1/2) of the City’s Business Fee Revenue generated from the Project Site and paid to the City by Serra Autoplex based on their gross receipts for the preceding Calendar Year and continuing with respect to each Calendar Year during the Term of this Agreement. For example, if the Completion Date occurs on January 15, 2023, then the first Annual Payment Date under this Agreement will be sixty (60) days after December 31, 2023 and on such Annual Payment Date, the City shall pay Dealer that portion of the City Assistance attributable to the Business License Fee Revenue generated from the Business License Fee due and payable in January, 2024.

(iii) Dealer understands that the timely submission of sales tax and business license fee returns and payment of such taxes by Serra Autoplex shall be a condition precedent to the City’s obligation to make payments of the City Assistance. The City shall verify the amount of the Sales Tax Revenue for the preceding Fiscal Quarter and the amount of the Business License Fee Revenue for the next year before payment of the applicable City Assistance to Dealer and with such payment will provide to Dealer a written summary of the amounts of Sales Tax Revenue received by the City from the Dealer.

(iv) Dealer agrees that (A) in the event that no Taxed Sales are generated during any Fiscal Quarter or Calendar Year during the Term (such that the City would receive no revenue from either), neither Dealer nor its designees, successors or assigns, if any, shall have any general or other recourse against the City for the payment of City

Assistance, and (B) no interest, carrying charge or finance charge of any kind shall accrue or be added to the principal amount due Dealer by the City hereunder.

(c) Should Dealer close or discontinue operations at the Project Site for any reason, in its sole discretion, then the City obligation to make payments of the City Assistance shall terminate upon payment of the City Assistance through the date of said closure. As of the date of that payment, this Agreement shall terminate and neither the City nor Serra shall have any further liabilities or obligations hereunder.

(d) Notwithstanding any other provisions of this Agreement, the total amount of the City Assistance to be paid to Serra shall not exceed the amount provided for under Amendment 772.

### 2.3 The Warrant.

(a) The obligation of the City to pay the City Assistance hereunder shall be evidenced by a single limited obligation revenue warrant payable solely from, and secured by a pledge of, so much of the proceeds of the Sales Tax Revenue and the Business License Fee Revenue from Taxed Sales as shall be necessary to pay the City Assistance, in form and of content as the form of warrant attached to this Agreement as Exhibit A (the "Warrant").

(b) The Warrant shall never constitute a general obligation, or a charge against the general credit or taxing powers, of the City within the meaning of any constitutional provision or statutory limitation whatsoever and is subject to, in accordance with Johnson v. Sheffield, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all funds and revenues of the City (including without limitation the amounts which comprise the City Assistance) the legitimate and necessary governmental expenses of operating the City.

(c) The Warrant shall not bear interest, shall be dated the date of delivery, and shall mature on the Termination Date.

(d) The Warrant shall be duly executed, sealed, and attested by the City, and shall be registered by the City as a conditional claim against so much of the proceeds of the Sales Tax Revenue and the Business License Fee Revenue from Taxed Sales as shall be necessary to pay the City Assistance with respect to such warrant and the warrant fund established therefor as therein provided.

(e) The Warrant shall be registered and transferred as provided therein.

2.4 Audit. All pertinent books, accounts, or other records accumulated by Serra in connection with sales at the Project Site shall be available to representatives of the City for inspection and audit and shall be retained for three (3) years from the Termination of this Agreement. If any audit, claim or litigation is begun concerning this Agreement before the expiration of the three (3) year period, Dealer shall retain the records until the resolution of all litigation, claims, or audits involving such records. The City's right to audit pursuant to this Section 2.3 shall survive the termination of this Agreement.

## **ARTICLE III MISCELLANEOUS**

3.1 Effective Date. This Agreement shall become effective on the date upon which it is executed by the last party to sign (the "Effective Date").

3.2 Public Purpose. The City does hereby ascertain, determine, declare and find that the establishment of Serra Autoplex at the Project Site with the aid of cash subsidies to Serra on a limited basis in the form of the City Assistance is in the best interest of the City and will serve a public purpose and further enhance the public benefit and welfare by, among other things: promotion of local economic and commercial development and the stimulation of the local economy; increasing employment opportunities in the City; increasing the City's tax base, which will result in additional tax revenues for the City; promoting the location, relocation, expansion and retention of commercial enterprises in the City; and preserving and improving the aesthetic quality of commercial development, inuring to the economic health of the City. The City finds that the above-cited items constitute important public benefits to City and its citizens.

3.3 Assignment. Dealer may assign or transfer this Agreement or the Warrant or any interest herein or any part hereof to another entity affiliated with the Serra Automotive Group or other entity without the written consent of the City, so long as the assignee or transferee of this Agreement continues to operate the Serra Autoplex or a dealership, similar to that as originally proposed, at the Project Site. No other transferability is granted by the City. Any other transaction or assignment of this Agreement shall require the written consent of the City.

3.4 Default and Termination.

(a) Upon the occurrence of an event of default by Dealer which is not cured within thirty (30) days after written notice from the City, the City may, in its discretion, pursue any one or more of the following remedies:

- (i) seek and obtain injunctive relief or declaratory relief to the extent that the City may be entitled such relief; or
- (ii) terminate this Agreement and the Warrant.

(b) Upon the occurrence of an event of default by the City which is not cured within thirty (30) days after written notice from Dealer, the Dealer may, in its discretion, pursue any one or more of the following remedies:

- (i) seek and obtain injunctive relief, declaratory relief, or damages in the in the amount of the unpaid obligations of the City, if any; or
- (ii) terminate this Agreement.

3.5 Governing Law. This Agreement, all rights of the parties hereunder, and all disputes which may arise hereunder shall be subject to and governed in accordance with the laws of the State of Alabama. By executing this Agreement, the parties hereto do hereby consent to the jurisdiction and venue of the courts of Talladega County, Alabama with respect to any matter arising hereunder.

3.6 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

3.7 Notices. All communications and notices expressly provided herein shall be sent, by first class mail, postage prepaid, by facsimile, or by a nationally recognized overnight courier for delivery on the following business day, as follows:

To the City:

City Manager  
City of Talladega  
255 South Street W  
Post Office Box 498  
Talladega, Alabama 35161

with a copies to:

City Clerk  
The City of Talladega  
255 South Street W  
Post Office Box 498  
Talladega, Alabama 35161

City Attorney  
Thornton, Carpenter, O'Brien, Lawrence, Sims & Kulovitz  
212 West North Street  
Post Office Box 277  
Talladega, AL 35161



To Dealer: [Serra Automotive, Inc.](#)  
Attn: Anthony F. Serra  
9709 Parkway East  
Suite D  
Center Point, AL 35215

with a copy to:

Alton B. Parker, Jr.  
Brian V. Cash  
Spain & Gillon, LLC  
2117 Second Avenue North  
Birmingham, Alabama 35203

or to such other address as the parties shall be from time to time designate by written notice.

3.8 Cost and Expense. Each party agrees to pay its own costs incurred in connection with the negotiation and preparation of this Agreement.

3.9 Press Releases. The Dealer hereby agrees to cooperate fully with opening of the new Serra Autoplex dealership and the City in connection with the preparation and release of all press releases and publications concerning the business operations at the Project Site.

3.10 Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

3.11 Representations and Warranties.

(a) Dealer makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(i) Dealer is a duly organized and existing Alabama corporation, is in good standing under the laws of the State of Alabama, and has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(ii) The execution and delivery of this Agreement on the part of Dealer's undersigned officer have been duly authorized by Dealer.

(iii) All actions and proceedings required to be taken by or on behalf of Dealer to execute and deliver this Agreement, and to perform the covenants, obligations and agreements of Dealer hereunder, have been duly taken.

(iv) The execution and performance of this Agreement by Dealer do not constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which Dealer is a party.

(v) The representations, warranties and covenants made by Dealer herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

(b) The City makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(i) The City is a duly organized and validly existing Alabama municipal corporation and is vested generally with the authority generally provided to municipalities pursuant to Amendment No. 772.

(ii) The execution and delivery of this Agreement and the Warrant on the part of the City by its City Manager have been duly authorized by the City.

(iii) The representations, warranties and covenants made by the City herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

(iv) Notwithstanding the foregoing representations and warranties, Dealer has performed its own investigation as to the legal authority of the City to perform its obligations under this Agreement and the procedure by which this Agreement is authorized by the City. Should any litigation be instituted challenging the authority of the City to enter into this agreement and perform its obligations hereunder, the City and the Dealer agree to work together, each paying its own cost to defend the agreement and the payments of the City Assistance made hereunder and secured by the Warrant. In the event the City is adjudicated by a court of competent jurisdiction to lack the power or authority to enter into this Agreement or to perform its obligations hereunder, or if the power of municipalities generally under Amendment 772 is restricted by way of judicial opinion or legislative act, the City shall not be liable to Dealer for any City Assistance otherwise owed to Dealer.

3.12 Relationship of Parties. The City and Dealer agree that nothing contained in this Agreement, or any act of Dealer or of the City, shall be deemed or construed by either of the parties hereto, or by third persons, to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership or of a joint venture or of any association or relationship between Dealer and the City other than as independent contractors in a contract entered into at arm's length. Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no investment or equity interest in the business of Dealer, and shall not be liable for any debts of Dealer, nor shall the City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of Dealer, nor shall Dealer at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies or other thing whatsoever.

3.13 Compliance with Laws. Dealer shall comply, and shall cause its officers, agents, employees and contractors to comply, with all applicable federal, state and local statutes, regulations, rules, ordinances and other laws applicable to the operation of the Project Site.

3.14 Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of Dealer and its successors and assigns and shall be binding upon and shall inure to the benefit of the City and its successors and assigns.

3.15 Entire Agreement; Amendment. This Agreement constitutes one entire and complete agreement, and except for the Warrant neither of the parties hereto shall have any rights arising from any separate component of this Agreement without complying in all respects with its duties and obligations under all parts and components hereof. This Agreement and the Warrant constitute and include all promises and representations, expressed or implied, made by the City and Dealer. No stipulations, agreements or understandings of the parties hereto shall be valid or enforceable unless contained in this Agreement or Warrant. No oral conditions, warranties or modifications hereto shall be valid between the parties. This Agreement may be amended only by a written instrument executed by both parties.

[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date first above written.

**DEALER:**

SERRA AUTOMOTIVE, INC.

By: \_\_\_\_\_  
ANTHONY F. SERRA  
Title: President  
Date: \_\_\_\_\_

**CITY:**

CITY OF TALLADEGA, ALABAMA

By: \_\_\_\_\_  
SEDDRICK HILL, SR.  
Title: City Manager  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
JOANNA MEDLEN

**EXHIBIT “B”**

**FORM OF WARRANT**

THIS WARRANT HAS NOT BEEN REGISTERED (i) UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON THE EXEMPTIONS PROVIDED BY SAID ACT, OR (ii) UNDER ANY STATE SECURITIES LAW, IN RELIANCE UPON APPLICABLE EXEMPTIONS, AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION EXCEPT PURSUANT TO AN EXEMPTION THEREFROM.

**THIS WARRANT DOES NOT BEAR INTEREST**

**UNITED STATES OF AMERICA  
STATE OF ALABAMA**

**CITY OF TALLADEGA  
LIMITED OBLIGATION PROJECT REVENUE WARRANT (SERRA PROJECT),  
SERIES 2022**

**No. 1**

**DATED DATE:**

\_\_\_\_\_, 2022

**MATURITY DATE:**

Termination Date

**CITY OF TALLADEGA**, a municipal corporation of the State of Alabama (the “City”), for value received, hereby acknowledges itself indebted to

**SERRA AUTOMOTIVE, INC.**

or registered assigns (the “Holder”) in an amount calculated in accordance with Article II of that certain Revenue Sharing and Incentive Agreement dated \_\_\_\_\_, 2022 (as amended and supplemented, the “Agreement”) between the City and Serra Automotive, Inc., and hereby orders and directs the Treasurer of the City to pay to the Holder as set forth in the Agreement, solely from the City Assistance deposited in the Serra Project Warrant Fund hereinafter designated, said principal amount, without interest, on each Payment Date, until and including the Maturity Date specified above.

**Authority for Issuance**

This warrant is issued pursuant to the authority of the constitution and laws of the State of Alabama, including particularly and without limitation Section 94.01 of the Official Recompilation of the Constitution of Alabama of 1901 and Section 11-47-2 of the Code of Alabama 1975 (together the “Enabling Law”), and the Agreement.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Agreement.

Reference is made to the provisions of the Agreement, to and by which all of which provisions the Holder, by acceptance of this warrant, assents and agrees to be bound.

**Payment**

Payment of this warrant shall be made to or as directed by the Holder; provided the final payment of principal of this warrant shall be made only upon presentation and surrender of this warrant to the City for cancellation.

All payments of principal of this warrant by the City shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the City upon this warrant to the extent of the amounts so paid.

The person in whose name this warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of this warrant shall be made only to or upon the order of the Holder hereof or his legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

## **Security**

This warrant is a limited obligation of the City payable solely from the City Assistance as provided in the Agreement.

The City Assistance is hereby pledged to the payment, and for the benefit, of this warrant, subject to, in accordance with Johnson v. Sheffield, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all funds and revenues for the City (including without limitation the City Assistance) the legitimate and necessary governmental expenses of operating the City.

This warrant shall never constitute a charge against the general credit or taxing powers of the City within the meaning of any constitutional provision or statutory limitation whatsoever.

The City has established a special fund designated "Serra Project Warrant Fund" (the "Warrant Fund") for the payment of this warrant and has obligated itself to pay or cause to be paid into the Warrant Fund, solely from the City Assistance, sums sufficient to provide for the payment of this warrant in accordance with the terms and conditions of the Agreement.

## **No Prepayment and Redemption**

The City may not pay in advance the entire or any portion of the unpaid principal amount of this warrant.

## **Registration and Transfer**

This warrant is registered in the name of the Holder on the book of registration maintained for that purpose by the City. This warrant may be transferred or assigned only in accordance with the terms of the Agreement. Upon presentation to the City for transfer, this warrant must be accompanied by a written instrument or instruments of transfer satisfactory to the City, in form of the Assignment attached hereto, duly executed by the Holder or his attorney duly authorized in writing. The Holder shall pay all expenses of the City in connection with such transfer and any tax or other governmental charge required to be paid with respect thereto.

## **General**

No covenant or agreement contained in this warrant or in the Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the City in the individual capacity thereof and none of such parties or persons nor any officer executing this warrant shall be liable personally on this warrant or be subject to any personal liability or accountability by reason of the issuance of this warrant.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this warrant is lawfully due without condition, abatement or offset of any description, that this warrant has been registered in the manner provided by law, that this warrant represents a valid claim against the Warrant Fund, that all acts, conditions and things required by the constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this warrant, the adoption of the ordinance approving the Agreement, and the execution and delivery of the Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this warrant, together with all other indebtedness of the City, are within every debt and other limit prescribed by the constitution and laws of the State of Alabama.

**[Signatures Begin on the Following Page]**

**IN WITNESS WHEREOF**, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this warrant to be executed in its name and on its behalf by the City Manager of the City, has caused its corporate seal to be affixed hereto and the same attested by the Clerk of the City, and has caused this warrant to be dated the date and year first above written.

**CITY OF TALLADEGA**

By: \_\_\_\_\_  
City Manager

S E A L

ATTEST: \_\_\_\_\_  
Clerk

**REGISTRATION CERTIFICATE**

I hereby certify that this warrant has been duly registered by me as a claim against City of Talladega, in the State of Alabama, and the Serra Project Warrant Fund referred to herein.

\_\_\_\_\_  
Treasurer of City of Talladega

**REGISTRATION OF OWNERSHIP**

This warrant is recorded and registered on the warrant register of City of Talladega in the name of the last owner named below. The principal of this warrant shall be payable only to or upon the order of such registered owner.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Authorized Officer of City</u>
_____, 2022	<u>Serra Automotive, Inc.</u>	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**ASSIGNMENT**

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ this warrant and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney to transfer this warrant on the books of the within named City with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank or Trust Company)

By \_\_\_\_\_  
(Authorized Officer)