

DELTAHAWK FINANCIAL ASSISTANCE AGREEMENT

THIS AGREEMENT is made and entered into by and between **DELTAHAWK ENGINES, INC.** ("DeltaHawk"), a corporation organized and existing under the laws of the State of Wisconsin, and the **CITY OF RACINE**, a municipal corporation located in Racine County, Wisconsin (the "City").

RECITALS:

1. DeltaHawk is in the business of developing advanced technology aircraft engines that have the potential to significantly impact both civilian and military aviation markets.

2. DeltaHawk's engine development efforts have progressed to the point that DeltaHawk has need of additional space for a facility to finish its testing and to begin producing its new engines.

3. DeltaHawk was weighing different locations for its expansion needs, but has found a site for lease within the City that could be rendered suitable to both DeltaHawk's immediate and anticipated future needs, namely the building with land for expansion adjacent to Batten Airport and located at 2300 South Street, more particularly described as Parcel No. 276-00-00-17-812-004 (the "Site").

4. DeltaHawk has requested financial assistance from the City toward the costs of needed improvements to the current Site so as to render it usable for DeltaHawk's present needs, and also toward the costs of certain future work on the Site that may be necessary to accommodate DeltaHawk's anticipated growth.

5. To assist in the retention and growth of a potentially significant new business in the City, and to encourage the creation of new jobs and the future hiring of

City residents, the City is willing to provide up to \$1.2 million in financial assistance to DeltaHawk in the form of incremental, low-interest loans, forgivable to the extent that DeltaHawk satisfies certain job creation, employment residency preference, and other requirements, all as set forth below.

THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

2. **Defined Terms.**

(a) **“Development Loan,”** as used in this Agreement, shall mean the “Initial Advance” and all “Subsequent Advances,” both as defined elsewhere in this Agreement.

(b) **“FTE,”** as used in this Agreement, shall mean any regular, full-time position at the Site where an employee is required, as a condition of employment, to work at least 40 hours per week and at least 2,080 hours per year, including paid leave and holidays.

3. **Initial Advance.** Within two weeks of the effective date of this Agreement, and provided that the City is first given written assurance by DeltaHawk and RCI FirstPathways (“RCI”) that RCI’s \$3,000,000 loan commitment to DeltaHawk has not been rescinded, the City will advance to DeltaHawk \$200,000 toward DeltaHawk’s immediate costs to render the Site useable for its purposes (“Initial Advance”). Another condition precedent to the Initial Advance is that DeltaHawk shall execute and deliver to the City, and, to the extent necessary, cause others to execute

and deliver to the City, a security agreement and such other documentation as may be required for the City to perfect a first priority lien against DeltaHawk's assets, and to subordinate all of DeltaHawk's existing debt and any existing security interests in DeltaHawk's assets, to the Initial Advance and to the City's security interest relating to the Initial Advance, subject to the provisions of Paragraph 7(b).

4. **Subsequent Advances.**

(a) Provided DeltaHawk is not in default, and subject to the conditions precedent set forth in this Agreement, the City will advance to DeltaHawk additional Development Loan proceeds in the following amounts and in accordance with the following schedule:

i. Up to an additional \$200,000 on or before December 31, 2011, provided that by that date:

1. DeltaHawk has closed on and received funding from its pending \$3 million loan from RCI; and,
2. DeltaHawk has hired 7 new FTE, pursuant to the procedure set forth in Paragraph 8; and,
3. DeltaHawk has obtained a Federal Aviation Administration Type Certificate ("FAA-TC") for its 4-cylinder engine; and,
4. DeltaHawk has participated in one or more local supplier fairs sponsored by the Racine County Economic Development Corporation ("RCEDC") and

in one or more job fairs sponsored by Racine County Workforce Development Center (“WDC”).

ii. Up to an additional \$400,000 on or before December 31, 2012, provided that by that date:

1. DeltaHawk maintains its 4-cylinder FAA-TC; and,
2. DeltaHawk has hired a total of 37 new FTE, pursuant to the procedure set forth in Paragraph 8;

iii. Up to an additional \$400,000 on or before December 31, 2013, provided that by that date:

1. DeltaHawk maintains its 4 cylinder FAA-TC; and,
2. DeltaHawk has hired a total of 100 new FTE, pursuant to the procedure set forth in Paragraph 8.

(b) Subsequent Advances shall be made by the City solely toward the cost of those anticipated necessary Site improvements set forth in the build out schedule attached hereto as Exhibit A. Subsequent Advances shall be disbursed through a title company or another 3rd party escrow agent agreeable to the City who will ensure that Subsequent Advances are used solely for the permissible Site improvements set forth in Exhibit A, and that all appropriate lien waivers relating to such work are collected.

5. **Conditions Precedent to All Subsequent Advances**. Subsequent Advances shall be payable solely from the City’s Intergovernmental Revenue Sharing Fund, and only if:

- (a) At the time of each Subsequent Advance, the City's Intergovernmental Revenue Sharing Fund has an adequate balance to fund such Subsequent Advance and to also fund all other City obligations that are then payable or that will become payable from the Intergovernmental Revenue Sharing Fund; and,
- (b) DeltaHawk's business growth is sufficient that the Site improvements underlying the Subsequent Advances are necessary, and DeltaHawk's financial condition remains sufficiently positive to generate appropriate cash flow as would justify and support the contemplated Subsequent Advance by the City. RCEDC shall act as the City's agent for purposes of the financial analysis required by this Paragraph. To facilitate RCEDC's review of DeltaHawk's on-going financial status, DeltaHawk shall provide to RCEDC all financial information requested by RCEDC in a timely manner and in no event less than 60 days before initiating the improvements for which DeltaHawk will seek a Subsequent Advance from the City; and,
- (c) DeltaHawk secures a bank line of credit by December 31, 2011, in the amount of \$700,000, or such other appropriate amount as determined by the City and RCEDC, based upon DeltaHawk's financial condition at the time,.

6. **Development Loan Repayment.**

- (a) Unless DeltaHawk is in default of any obligation under this Agreement, the Development Loan shall bear interest at the rate of 2.0% per year from the date of the Initial Advance and any Subsequent Advance until December 31, 2013 (“Interest Accrual Period”). During the Interest Accrual period, DeltaHawk shall make an annual payment to the City of interest accrued through the last business day of each year, as determined by the City’s calendar. Unless DeltaHawk is in default of any obligation under this Agreement, between January 1, 2014 and December 31, 2018 (“Principal Repayment Period”), the interest rate on the Development Loan shall convert to 0% annually and DeltaHawk shall make an annual principal payment to the City, on or before the last business day of each year, as determined by the City’s calendar, in the amount of 1/5th of the Development Loan principal balance as of January 1, 2014. At any time during the life of the Development Loan, DeltaHawk may make partial or full prepayments of amounts then owed without penalty.
- (b) Development Loan Forgiveness. If, during the Principal Repayment Period, DeltaHawk creates any new FTE above the 100 required by this Agreement (“Excess FTE”), DeltaHawk’s annual principal payment shall be one-fifth of the Development Loan amount reduced by \$10,715 for each Excess FTE maintained by DeltaHawk during the expiring year. An example of the

calculation required by this Paragraph is attached hereto as Exhibit B. No reimbursement shall be paid for any Excess FTE that were maintained for only a part of the expiring year.

7. **Development Loan Collateral.**

- (a) Personal Guarantees. DeltaHawk's repayment of all amounts owed to the City under this Agreement, including all interest owed hereunder, shall be and hereby is personally guaranteed, jointly and severally, by Diane Doers, Douglas Doers, John Brooks and Jeanne Brooks, all of whom shall indicate their agreement to granting the City such personal guarantees by executing this Agreement in their respective personal capacities below.
- (b) RCI Loan Proceeds. DeltaHawk agrees to immediately set aside in escrow with a 3rd party escrow agent agreeable to the City \$200,000 from its \$3,000,000 loan from RCI as security for the City's Initial Advance, which shall be held until DeltaHawk has repaid the Development Loans in full and performed its obligations under this Agreement. In exchange for this escrow, the City will agree to subordinate its Initial Advance first priority security interest to RCI at the time that RCI's loan to DeltaHawk closes.
- (c) Subordinate security interest. With the exception of the Initial Advance, which shall have first priority secured party status until \$200,000 of the RCI loan is escrowed for repayment to the City as provided herein, DeltaHawk shall execute and deliver to the City a

security agreement and such other documentation as may be required for the City to perfect a subordinate position security interest on all current and future DeltaHawk assets.

- (d) Guarantee of Corporate Affiliates. DeltaHawk's repayment of all amounts owed to the City under this Agreement, including all interest owed hereunder, shall be guaranteed by DeltaHawk, Inc., DeltaHawk Engines, LLC and DeltaHawk Development, LLC, via corporate guarantees issued in a form acceptable to the City.

8. **City Resident Hiring Preference.** The following procedures shall be utilized in the recruitment, screening and referral of City of Racine residents for FTE that will be created by DeltaHawk:

- (a) DeltaHawk shall develop a job description for each of type of new FTE created or filled pursuant to this Agreement. The job description shall include the following: job title, description of job responsibilities, prerequisite education and/or training, hourly wage or salary and fringe benefits, estimated starting date, and the contact person for additional information. DeltaHawk shall provide this information on any opening directly to WDC.
- (b) DeltaHawk will notify the WDC when any job opening occurs. DeltaHawk will post the job on the JobCenterofWisconsin.com website; this site will refer applicants to apply in person at the WDC. DeltaHawk will provide application forms including an attachment identifying residency to the WDC. WDC will collect

applications and may conduct preliminary screening of applicants based on DeltaHawk's requirements. WDC will send the qualified candidates that reside in the City to DeltaHawk. If within two (2) weeks after DeltaHawk notifies WDC of job openings, there are no acceptable applicants available to DeltaHawk, then DeltaHawk may begin general advertising for the jobs. DeltaHawk agrees that if applicants are equally qualified, DeltaHawk will hire the applicant who resides in the City.

- (c) DeltaHawk agrees to provide the WDC with completed employee residency verification forms for those individuals interviewed and hired by DeltaHawk.

9. **Default.** In addition to any failure to comply with any of the above requirements, DeltaHawk shall be in default under this Agreement if:

- (a) DeltaHawk fails to add the required new FTE in accordance with scheduled incorporated herein or fails to maintain such new FTE at any time before the Development Loan, and all interest thereon, is repaid in full. To evidence its compliance with this obligation, DeltaHawk shall report to the City, on or on the last business day before December 15th of each year during which this Agreement remains in effect, written notice as to the number of FTE maintained at the Site during said year; or,
- (b) DeltaHawk abandons the Site; or,
- (c) DeltaHawk loses FAA-TC certification; or,

- (d) DeltaHawk enters into, voluntarily or otherwise, bankruptcy, receivership, or any other assignment for the benefit of creditors; or,
- (e) DeltaHawk, or a controlling interest therein, is purchased by a company not headquartered within the City, or DeltaHawk relocates its headquarters outside of the City.

If DeltaHawk fails to cure any default within the time period allowed herein, the interest rate on the Development Loan shall immediately and retroactively convert to 12% annual percentage rate, from the date of the Initial Advance and any Subsequent Advance. In addition, if the Site is purchased by DeltaHawk during the term of this Agreement, DeltaHawk agrees that in the event of an uncured DeltaHawk default, the City may immediately levy the unpaid Development Loan principal and interest balance as a special assessment against the Site. DeltaHawk hereby agrees and acknowledges that the Site will be benefited by the Development Loan and, pursuant to Sec. 66.0703 of the Wisconsin Statutes, DeltaHawk hereby waives any and all requirements of the Wisconsin Statutes which must be met prior to the imposition of special assessments (including, but not limited to, the notice and hearing requirements) with respect to any such special assessment levied hereunder. DeltaHawk further waives any right to appeal from any such special assessment.

10. **Legal Action.** In addition to the provisions set forth in this Agreement, the City may take any and all other appropriate action at law or equity to

enforce compliance with the provisions of this or any other agreement it may have with DeltaHawk, and in the event of a legal action in which the final determination is in favor of the City, the City shall be entitled to collect from the DeltaHawk statutory costs and disbursements, plus its actual attorneys' fees and costs.

11. **Laws To Be Observed.** DeltaHawk shall at all times observe and comply with all federal, state and local laws, regulations and ordinances (collectively, the "Laws") which are in effect or which may be placed in effect and which impact the occupancy of the Site and the exercise of its rights and obligations hereunder. DeltaHawk shall indemnify and save harmless the City and its agents, officers, consultants and employees, against any claims, costs and liability of every kind and nature, including reasonable attorney fees, for liability directly or indirectly arising from or based on the violation of any such Laws by DeltaHawk or its principals, agents, employees or contractors, except to the extent as such claims or liability arise by virtue of the negligence, unlawful or willful misconduct of the City and any of its agents, contractors, officers or employees. DeltaHawk shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to its anticipated occupancy of the Site and the exercise of its rights and obligations hereunder.
12. **Public Protection and Safety.** The City shall not be responsible for any damage, bodily injury or death arising out of DeltaHawk's occupancy of

the Site or DeltaHawk's exercise of its rights hereunder whether from maintaining an "attractive nuisance" or otherwise, except as caused by the negligence or willful misconduct of the City or any of its agents, contractors, consultants, officers or employees. Where apparent or potential hazards actually known by DeltaHawk occur incident to the conduct of DeltaHawk's rights or obligations under this Agreement, DeltaHawk shall provide reasonable safeguards. The City and DeltaHawk do not waive, and shall retain, all defenses to third party claims pursuant to applicable law.

13. **Personal Liability of Public Officials.** In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the City officers, agents, consultants or employees, it being understood and agreed that in such matters they act as agents and representatives of the City.
14. **Indemnification/Hold Harmless Agreement.** DeltaHawk hereby expressly agrees to indemnify and hold the City and its agents, consultants, officers and employees harmless from and against all claims, judgments, damages, penalties, fines, costs or loss (including reasonable fees for attorneys and consultants) and liability of every kind and nature, for injury (including death) or damage received or sustained by any person or entity in connection with, or on account of, DeltaHawk's occupancy of the Site and the exercise of its rights and obligations pursuant to this Agreement except to the extent as such claims or liability arise by virtue

of the negligence, unlawful or willful misconduct of the City or any of its agents, contractors, officers or employees. DeltaHawk further agrees to aid and defend the City or its agents (at no cost to the City or its agents, consultants and employees) in the event they are named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by DeltaHawk and except to the extent as such claims or liability arise by virtue of the negligence, unlawful or willful misconduct of the City or any of its agents, contractors, officers or employees. DeltaHawk is not an agent or employee of the City for any purpose.

15. **Assignment.** DeltaHawk may not assign its rights under this Agreement without the prior, written consent of the City.
16. **DeltaHawk Default.** In the event DeltaHawk fails to timely perform any one or more of its obligations under this Agreement (a “DeltaHawk Default”), the City shall promptly provide written notice to DeltaHawk to the extent known by the City of the action or omission constituting the basis for the default. The notice shall provide DeltaHawk at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty (60) day period may be extended to the period of time reasonably necessary to cure the default if DeltaHawk promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event

shall the period of time to cure the default exceed one-hundred and twenty (120) days from the date of the City's notice. In the event a DeltaHawk Default is not fully and timely cured by DeltaHawk or Owner, the City shall have all of the rights and remedies available at law and in equity.

17. **City Default.** In the event the City fails to timely perform any one or more of its obligations under this Agreement (a "City Default"), DeltaHawk or Owner shall promptly provide written notice to the City to the extent known by DeltaHawk or Owner of the action or omission constituting the basis for the City Default. The notice shall provide the City at least twenty (20) days from the date of the notice to cure any payment default and at least sixty (60) days to cure any other default not related to payment obligations. However, the sixty (60) day period may be extended to the period of time reasonably necessary to cure the default if the City promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event shall the period of time to cure the default exceed one-hundred and twenty (120) days from the date of DeltaHawk or Owner notice. In the event a City Default is not fully and timely cured by the City, DeltaHawk and Owner shall have all of the rights and remedies available at law and in equity.

18. **Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended or a successor designated by a

party to this Agreement, or upon facsimile transmission to the fax numbers set forth herein or a successor number or numbers designated by the party, or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows, or a successor party or address, or both:

To DeltaHawk: Diane Doers
DeltaHawk, Inc.
2903 Golf Avenue
Racine, WI 53404

To the City: City of Racine
Attention: City Clerk
730 Washington Avenue
Racine, WI 53403
Fax: (262) 636-9298

and

Brian F. O'Connell, AICP
Director of City Development
City Hall, Room 102
730 Washington Avenue
Racine, WI 53403
Fax: 262-635-5347

19. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be binding on all parties.
20. **Effective Date.** This Agreement becomes effective as of the date last executed by a party below.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

[SIGNATURE PAGE FOLLOWS]

DELTAHAWK ENGINES, INC.

By: _____ (date)

Title: _____

Attest: _____ (date)

Title: _____

CITY OF RACINE

By: _____ (date)

John Dickert, Mayor

Attest: _____ (date)

Janice Johnson-Martin, City Clerk

COUNTERSIGNED FOR CITY OF RACINE:

Provision has been made to pay the liabilities that will accrue under this Agreement.

_____ (date)

David Brown
City Finance Director

Approved as to form:

_____ (date)

Robert Weber
City Attorney

Diane Doers, Douglas Doers, John Brooks and Jeanne Brooks sign below exclusively for purposes of approving the personal guarantee obligation set forth in Paragraph 7(A) hereof.

_____(date)
DIANE DOERS

_____(date)
DOUGLAS DOERS

_____(date)
JOHN BROOKS

_____(date)
JEANNE BROOKS

Exhibits:
Exhibit A – Estimate Summary
Exhibit B – Loan Forgiveness Calculation Example.