

# CITY OF WISCONSIN DELLS MEETING AGENDA

**MEETING DESCRIPTION:** FINANCE COMMITTEE

**DATE:** Monday, September 18, 2017 **TIME:** 6:15 P.M. **LOCATION:** MUNICIPAL BUILDING COUNCIL CHAMBERS - 300 LA CROSSE STREET, WISCONSIN DELLS, WI 53965

COMMITTEE MEMBERS	
	Ald. Brian Holzem Chair
	Ald. Mike Freel
	Mayor Brian Landers
	Ald. Dar Mor
AGENDA ITEMS	
1	CALL TO ORDER, ATTENDANCE NOTED
2	APPROVAL OF THE AUGUST 21, 2017 MEETING MINUTES
3	DISCUSSION AND DECISION ON SCHEDULE OF BILLS PAYABLE DATED SEPTEMBER 18, 2017; AND ANY OTHER RELATED FINANCIAL INFORMATION
4	REVIEW AND DISCUSSION ON THE 12/31/2016 ANNUAL AUDIT REPORTS FOR GENERAL OPERATIONS AND THE UTILITIES AS PRESENTED BY BRETT HOFMEISTER REPRESENTING JOHNSON BLOCK AND COMPANY
5	DISCUSSION AND DECISION TO APPROVE THE 2017 AUDIT ENGAGEMENT LETTER FROM JOHNSON BLOCK & COMPANY
6	DISCUSSION AND DECISION TO APPROVE THE AGREEMENT FOR PUBLIC INFRASTRUCTURE IMPROVEMENTS & DEVELOPMENT MATTERS WITH CHULA VISTA FOR A SANITARY LIFT STATION & ASSOCIATED FORCE MAIN
7	DISCUSSION AND DECISION TO ESTABLISH TERM AND RENTAL FEE FOR THE DOCK USE AGREEMENT WITH DELLS BOAT TOURS, LLC AND DELLS DUCK TOURS, INC.
8	ITEMS FOR REFERRAL TO FUTURE MEETINGS
9	ADJOURN
	ALD. BRIAN HOLZEM, CHAIRMAN
	POSTED AND DISTRIBUTED: 09/15/2017
	<p><b>Open Meetings Notice: If this meeting is attended by one or more members of the Common Council who are not members of this committee, their attendance may create a quorum of another city commission, board or committee under the Wisconsin Open Meetings Law; However, no formal action will be taken by any governmental body at the above stated meeting other than the body, committee, commission, or board identified in this meeting notice. Please be advised that upon reasonable notice, the City of Wisconsin Dells will furnish appropriate auxiliary aids and services to afford individuals with disabilities an equal opportunity to participate in meeting activities.</b></p>

SCHEDULE OF BILLS PAYABLE  
SEPTEMBER 18, 2017  
MONDAY  
COMMON COUNCIL

10	GENERAL FUND	643,461.99
13	DEBT SERVICE FUND	0
14	CAPITAL PROJECTS FUND	264,650.35
26	FIRE SERVICE FUND	6,899.74
27	RIVER & BAY FUND	376.71
50	PARKING UTILITY FUND	10,637.77
53	SEWER FUND	39,633.18
52	WATER FUND	17,526.40
59	ELECTRIC FUND	853,615.69
	TOTAL	1,836,801.83



**Certified Public Accountants**

406 Science Drive, Suite 100 • Madison, Wisconsin 53711-1097 • TEL 608-274-2002 • FAX 608-274-4320

September 11, 2017

To the City Council and City Treasurer  
City of Wisconsin Dells  
300 La Crosse Street  
Wisconsin Dells, Wisconsin 53965

We are pleased to confirm our understanding of the services we are to provide for the City of Wisconsin Dells for the year ended December 31, 2017.

We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City of Wisconsin Dells as of and for the year ended December 31, 2017. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City of Wisconsin Dells' basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City of Wisconsin Dells' RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI (if prepared) is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's discussion and analysis
2. Budgetary comparison schedule for the general fund
3. Wisconsin Retirement System Schedules

We have also been engaged to report on supplementary information other than RSI that accompanies the City of Wisconsin Dells' financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements:

1. Schedule of assigned general fund balances
2. Combining statements of non-major governmental funds



### **Audit Objectives**

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles and to report on the fairness of the additional information referred to in the previous paragraph when considered in relation to the basic financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of the City of Wisconsin Dells' financial statements. Our report will be addressed to the City Council of the City of Wisconsin Dells. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or may withdraw from this engagement.

### **Audit Procedures – General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.



#### **Audit Procedures – Internal Control**

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

#### **Audit Procedures – Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City of Wisconsin Dells' compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

#### **Other Services**

We will also assist in preparing the financial statements of the City of Wisconsin Dells in conformity with U.S. generally accepted accounting principles based on information provided by you. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statement services previously defined. We, in our sole professional judgement, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

#### **Management Responsibilities**

Management is responsible for designing, implementing, and maintaining effective internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the preparation and fair presentation of the financial statements in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws and regulations.



### **Management Responsibilities (Continued)**

You are responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

You agree to assume all management responsibilities for financial statement preparation services and any other nonattest services we provide; oversee the services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

### **Engagement Administration, Fees and Other**

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

The audit documentation for this engagement is the property of Johnson Block & Company, Inc. and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a regulator or its designee. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Johnson Block & Company, Inc. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the regulator or its designee. The regulator or its designee may intend or decide to distribute the copies or information contained therein to others, including other governmental agencies.

We expect to begin our audit by the end of February, 2018 and to prepare our draft audit reports by June 15, 2018. Carrie Leonard, CPA is the engagement partner and is responsible for supervising the engagement and signing the report. We will also prepare the Department of Revenue financial report form, the Public Service Commission annual reports, and the TID annual reports. We will meet with the City Finance Committee at the conclusion of the audit to discuss our findings.



**Engagement Administration, Fees and Other (Continued)**

Our fees for the audit and other services will not exceed \$30,400. Fees related to individual parts are estimated as follows:

General City	\$ 8,775
Electric Utility	6,050
Water Utility	4,675
Sewer Utility	4,310
TIDs and CDA	5,260
BID	<u>1,330</u>
	<u>\$30,400</u>

Services related to GASB 68 annual reporting will be billed at our standard hourly rates.

Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. If additional services are necessary, we will discuss them with you and arrive at a fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to City of Wisconsin Dells and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the letter and return it to us.

Very truly yours,

*Johnson Block & Company, Inc.*

JOHNSON BLOCK & COMPANY, INC.  
CERTIFIED PUBLIC ACCOUNTANTS  
MADISON, WISCONSIN

**RESPONSE:**

This letter correctly sets forth the understanding of the City of Wisconsin Dells.

Management Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Governance Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## ADDENDUM A

We will perform the following services:

We will compile, from information you provide, the annual Financial Report Form to the Wisconsin Department of Revenue, for the year ended December 31, 2017. Upon completion of the compilation of the annual Financial Report Form, we will provide the City with our accountant's compilation report. If, for any reason caused by or relating to affairs or management of the City, we are unable to complete the compilation or if we determine in our professional judgement the circumstances necessitate, we may withdraw and decline to submit the annual Financial Report Form to you as a result of this engagement.

### **Our Responsibilities and Limitations**

We will be responsible for performing the compilation in accordance with *Statements on Standards for Accounting and Review Services* established by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of financial statements. We will utilize information that is the representation of management without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements in order for the statements to be in conformity with accounting principles generally accepted in the United States of America.

Our engagement cannot be relied upon to disclose errors, fraud, or other illegal acts that may exist and, because of the limited nature of our work, detection is highly unlikely. However, we will inform the appropriate level of management of any material errors, and of any evidence that fraud may have occurred. In addition, we will report to you any evidence or information that comes to our attention during the performance of our compilation procedures regarding illegal acts that may have occurred, unless they are clearly inconsequential. We have no responsibility to identify and communicate deficiencies in your internal control as part of this engagement.

### **Management's Responsibilities**

The City's management is responsible for the financial statements referred to above. In this regard, management is responsible for (i) the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, (ii) designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements, (iii) preventing and detecting fraud, (iv) identifying and ensuring that the entity complies with the laws and regulations applicable to its activities, and (v) making all financial records and related information available to us. Management also is responsible for identifying and ensuring that the City complies with the laws and regulation applicable to its activities.

Management is responsible for providing us with the information necessary for the compilation of the financial statements and the completeness and the accuracy of that information and for making City personnel available to whom we may direct inquiries regarding the compilation. We may make specific inquiries of management and others about the representations embodied in the financial statements.



## **ADDENDUM B**

We will perform the following services:

We will compile, from information you provide, the Public Service Commission Annual Reports, including the balance sheets of the water utility and the electric utility, enterprise funds of the City of Wisconsin Dells, as of December 31, 2017 and 2016, and the related statements of income and retained earnings for the years then ended and the supplemental schedules as of and for the year ended December 31, 2017. Upon completion of the Public Service Commission Annual Reports, we will provide the City with our accountant's compilation reports. If, for any reason caused by or relating to affairs or management of the City, we are unable to complete the compilation or if we determine in our professional judgment the circumstances necessitate, we may withdraw and decline to submit the Public Service Commission Annual Report to you as a result of this engagement.

### **Our Responsibilities and Limitations**

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Management is responsible for providing us with the information necessary for the compilation of the financial statements and the completeness and the accuracy of that information and for making City personnel available to whom we may direct inquiries regarding the compilation. We may make specific inquiries of management and others about the representations embodied in the financial statements.

DRAFT September 15, 2017

**Agreement for Public  
Infrastructure Improvements &  
Development Matters  
(GTAM and City of Wisconsin Dells)**

This Agreement is by and between the City of Wisconsin Dells, a Wisconsin Municipal Corporation (Wis Dells) GTAM, LLC, a Wisconsin Limited Liability Company (GTAM).

**RECITALS**

- A. GTAM owns the following described real estate in the City of Wisconsin Dells, Adams County, Wisconsin:
  
- B. GTAM will enhance and improve its hotel, convention and water park facilities by the development and construction of new or enhanced garage, laundry and employee housing facilities on site; and on site and off site public and private utility system facilities and improvements including a replacement sanitary sewer lift station.
  
- C. As provided in this agreement, Wis Dells will provide financial assistance for the following element of the GTAM project: The construction of the Sanitary Lift Station and associated Force Main.

AGREEMENT

1. GTAM shall:
  - a. Design, engineer, install and construct at its sole cost and expense the on-site new garage, laundry and employee housing facilities; and, on-site and the off-site public and private utility service system improvements.
  - b. Apply for and obtain all required approvals for the project and the improvements and submit to Wis Dells written verification of such approvals.
  - c. Provide project management and administration for the construction and installation of the utility service improvements including the services of an approved consulting engineering firm licensed to do business in the State of Wisconsin to provide such services.
  - d. Grant such easements as Wis Dells deems necessary in connection with this agreement.
  - e. Construct the required improvements in accordance with standard specifications and contract documents including the engagement of contractors whose qualifications have been approved by Wis Dells.
  - f. In particular, and in consultation with Wisconsin Dells, construct and install a sanitary sewer lift station adjacent to existing lift station as follows:
    1. The proposed Integral Valve Vault lift station will be constructed next to the old station.

2. The new sanitary Lift Station will be constructed in accordance with specifications used to construct the Crandall Bay Lift Station, Contract #1 – 2013. Modifications to the specifications regarding sizing, GPM, TDH, etc. will be determined by General Engineering with Wis Dells approval. Some specific requirements, but not limited to, are as follows:

New Station wet well will be 8 ft. round wet well constructed as a duplex station with two submersible pumps, mounted on stainless steel guide rails with disconnect flanges to allow removal of pumps without entering the wet well.

3. The station valves will be located in underground valve vault next to the wet well.
4. The operation of the station will be controlled by a transducer with backup float switches.
5. Station Controls as Wis Dells deems necessary including, without limitation, high water alarm, lag pump 1 on, lead pump on, pumps off and low water alarm.
6. The station will be equipped with a SCADA system to transmit the signal to City of Wisconsin Dells Public Works Department.
7. The station will be provided with two modes of emergency operation; a manual transfer switch and a generator receptacle to allow the connection of a portable generator at the station. The station will include bypass piping that will allow connection of a

portable pump and a discharge connection for the connection of a portable pump. The pump will discharge directly into the force main.

8. The project will include construction of approximately 1,700' of force main, size to be determined. The force main will discharge in the gravity manhole located east of the Building D Golf Villas.

2. Wis Dells shall:

- a. Timely cooperate with GTAM in the planning and completion of the project including such construction oversight and consultation as it deems necessary.
- b. Timely review and approve building and construction plans and permits for the project.

3. Dedication of public improvements. After completion and construction of the public infrastructure improvements, including the lift station, in accordance with standards and specifications and provided there is a written statement of "no objection" from the Wis Dells Director of Public Works, GTAM shall dedicate the public infrastructure improvements to the City provided acceptance of the dedication shall require approval of a resolution by the Common Council.

4. Guarantee of the Work. GTAM shall assure that the engineer and contractor guarantee and warrant all work and public infrastructure improvements performed and provided under this Agreement against defects in workmanship or materials for a period of fourteen (14) months from the date of acceptance of dedication. If any defect should appear during the guarantee period, as determined in the reasonable discretion of the Director of Public Works, the engineer and contractor

shall make required replacement or acceptable repairs of the defective work. Furthermore, following such notice to and repair, the guarantee period shall be extended for an additional fourteen (14) month period from the date of completion of the repair. All guaranties or warranties for materials or workmanship which extend beyond the guarantee period shall be assigned to Wis Dells.

5. Incentive payment.

- a. In connection with this Agreement and the project and the improvements, Wis Dells shall pay to GTAM a one-time development incentive payment as follows: one-third (1/3) of the final agreed upon price and cost of the replacement sanitary lift station as verified by records approved in writing by GTAM and Wis Dells. The incentive payment shall be paid to GTAM's lender for application on GTAM's loan for the project and improvements. Payment of the incentive shall be subject to Wis Dells' receipt of lien waivers from contractors, subcontractors, engineering firms and suppliers presented to and accepted by the Director of Public Works; and, receipt by Wis Dells of final project documents and record drawings as requested by the Director of Public Works.
- b. The incentive payment section is based upon an anticipated project cost of \$310,000.00. If the final project cost exceeds the anticipated cost, Wis Dells reserves the right to re-negotiate the amount and timing of the incentive payment.
- c. Costs related to restoration of GTAM golf course property shall be the sole responsibility of GTAM and not subject to 1/3 – 2/3 cost allocation.

6. Payment of professional fees and costs. On or before December 1, 2017, GTAM shall pay to Wis Dells \$3,000.00 as a contribution towards Wis Dells' fees and costs related to the preparation, review and approval of this Agreement and the project and infrastructure improvements.
7. Post dedication matters.
  - a. GTAM shall provide Wis Dells with a Bill of Sale for all of the equipment, fixtures and personal property which comprise the facility; along with lien waivers evidencing payment in full for all labor, materials and equipment; and, along with all operations and specifications, manuals and materials regarding the improvements and a complete set of as built drawings in a form acceptable to the City.
  - b. Wis Dells shall be solely responsible for operating, repairing and maintaining the lift station at its expense. Service restorations beyond the reestablishment of grade will remain the responsibility of GTAM in all areas outside the right-of-way.
  - c. GTAM shall install and maintain equipment recommended by Wis Dells, such as screening of discharge from the laundry facility, to prevent extraordinary repair and maintenance issues at the lift station associated with the on-site commercial laundry facility.
8. Compliance with law. When performing its obligations under this agreement, GTAM shall comply with all terms of this agreement and relevant laws, ordinances and regulations in effect having jurisdiction thereof. In the event of a conflict among the requirements, the stricter provisions shall control.

9. No vested rights granted. Except as provided by law, or as expressly provided in this Agreement, no vested rights in connection with this project shall inure to GTAM. Nor does Wis Dells warrant by this Agreement that GTAM is entitled to any other required approvals.
10. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Wis Dells and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. Wis Dell's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by GTAM or the acceptance of any improvement.
11. City Rights Retained. Wis Dells does not hereby waive, and expressly retains, its right to governmental immunity and other defenses that may be available to Wis Dells. The obligations set forth herein are not intended to, and shall not be interpreted to, limit Wis Dells' insurance coverage or other similar protections. To the extent not expressly contracted in this Agreement, Wis Dells retains and expressly reserves it legislative discretion.
12. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by Wis Dells and GTAM.
13. Default. A default is defined herein as Developer's breach of, or failure to comply with, the terms of this Agreement. Wis Dells reserves to itself all remedies available at law or equity as necessary to cure any default. Remedies

shall include, but not be limited to, stopping all construction. Remedies shall be cumulative, and the exercise of one shall not preclude the exercise of others.

14. Entire Agreement. This Written Agreement, and written amendments, and any other referenced attachments thereto, shall constitute the entire Agreement between GTAM and Wis Dells.
15. Severability. In any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of the Agreement.
16. Benefits. The benefits of this Agreement to GTAM are personal and shall not be assigned without the express written approval of Wis Dells. Such approval may not be unreasonably withheld, but any unapproved assignment is void.  
  
Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of GTAM and also shall be binding on the heirs, successors and assigns of GTAM.
17. Notice. Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified mail and return receipt requested, and addressed as follows:

If to GTAM:                   GTAM, LLC  
  Attn: Michael F. Kaminski  
  2501 River Road  
  Wisconsin Dells, Wisconsin 53965

If to Wis Dells:      City of Wisconsin Dells  
                                 300 LaCrosse Street  
                                 Wisconsin Dells, Wisconsin 53965

18. Effective Date. This Agreement shall be effective as of the date and year executed by both parties.

**CITY OF WISCONSIN DELLS**

Dated: \_\_\_\_\_, 2017.

\_\_\_\_\_  
Brian L. Landers, Mayor

Dated: \_\_\_\_\_, 2017.

\_\_\_\_\_  
Nancy R. Holzem, Clerk/Administrative  
Coordinator

**GTAM, LLC**

Dated: \_\_\_\_\_, 2017.

By: \_\_\_\_\_  
its: \_\_\_\_\_

## CITY OF WISCONSIN DELLS DOCK USE AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of September, 2015, by and between City of Wisconsin Dells, located in Adams, Columbia, Juneau and Sauk Counties, Wisconsin, a Wisconsin municipal corporation (hereinafter "City"), Dells Boat Tours, LLC, a Wisconsin limited liability company (hereinafter "Tours") and Dells Duck Tours, Inc., a Wisconsin corporation (hereinafter "Dells Ducks").

### WITNESSETH:

A. City owns certain real property fronting on the Wisconsin River and generally located between Broadway and the Eddy Street Bridge, and said real property (hereinafter "subject premises") is generally depicted in the sketch/map attached hereto as Exhibit A.

B. The subject premises have been the site of a dock and pier from which passengers have been loaded on and unloaded from sightseeing boats operated on the Wisconsin River for many years by Dells Boat Company, Olson Boat Lines, Inc., Riverview Boat Line, Inc., Tours, Dells Ducks and others.

C. Tours and Dells Ducks (collectively "licensees") wish to enter into an agreement providing for the use of the subject premises by licensees for the 2016 and 2017 seasons, and provide for certain obligations with respect to the usage thereof by licensees for the loading and unloading of passengers to and from sightseeing boats at such location for the 2016 and 2017 seasons, and wish to memorialize such agreement.

For good and valuable consideration, it is agreed by and between the parties hereto, as follows:

1. License. City hereby grants to Tours (and to any assignee or sub-licensee of Tours hereunder) and to Dells Ducks the exclusive right to use the subject premises as the site of a dock and pier from which passengers and crews may be loaded and unloaded to and from commercial sightseeing boats operated on the Wisconsin River by Tours (or any assignee or sub-licensee of Tours hereunder) or by Dells Ducks (or its assignees and sub-licensees) shall be permitted to use five-sixths (5/6) of the dock space for loading and unloading, and Dells Ducks shall be permitted to use one-sixth (1/6) of the dock space for loading and unloading. Dells Ducks shall use the dock and pier areas used by it in the 2010 season during the term hereof, and Tours shall use the rest of the space on the subject premises.

2. Property Included. The aforesaid exclusive right to make use of the subject premises shall include the exclusive right to use the pier, decking and other accessories annually installed, maintained and removed pursuant to the 1980 Municipal Dock Commercial Use and Maintenance Agreement, dated June 16, 1980, and all other personal property or fixtures of City located on the subject premises, whether installed by City or not.

3. No Warranties. Except as otherwise provided hereafter, City makes no representations or warranties with the regard to the condition of the pier, decking and other accessories, or other personal property or fixtures which are located on the subject premises, and Tours, its assignees or sub-licensees, and Dells Ducks accept the pier, decking and other accessories, and all other personal property and fixtures located on the subject premises, whether installed by City or not, in "AS IS" condition, without any warranty, express or implied.

4. Expenses; Payment. Tours and Dells Ducks will bear and pay all costs and expenses relating to the installation, maintenance or removal of the pier, decking and other accessories, and other personal property or fixtures located on the subject premises and owned by City as of the date hereof, and the cost of all utilities serving the subject premises, including, but not limited to, electric, water and sewer charges related to their use of the subject premises. Such costs and expenses shall be shared by Tours and Dells Ducks in the following proportions: five-sixths (5/6) of such expenses and costs shall be borne by Tours; one-sixth (1/6) of such expenses and costs shall be paid by Dells Ducks. In the event that Tours, or its assignees or sub-licensees, incur any expense or make any payment hereunder for or on behalf of Dells Ducks, and for an item for which Dells Ducks is required hereunder to share in such cost or expense, Tours, or its assignees or sub-licensees, shall bill Dells Ducks for the cost thereof not more often than monthly, and not less often than quarterly, for the actual and reasonable costs thereof. Any charges for services, work and expenses performed by a third party shall be charged to Dells Ducks at the actual cost thereof, without any mark-up received by Tours. Dells Ducks shall pay Tours, or its assignee or licensee, any such sum so billed to Dells Ducks within thirty (30) days after receipt of a statement therefore. Any sum unpaid thereafter shall accrue interest at the rate of 12% per annum. The utilities which are subject to this provision shall be billed in the name of Tours, or one or more of its assignees or sub-licensees.

5. Access. Tours, its assignees or sub-licensees, Dells Ducks, and all of their guests, passengers, agents, invitees and employees, may have access to the subject premises over any lands owned by City which are adjacent to the subject premises.

6. Ticket Booths. Tours and Dells Ducks may not erect, install or maintain any ticket booths on the subject premises.

7. Definition of "Subject Premises". For purposes hereof, the term "subject premises" is limited to the real property specified on Exhibit A and highlighted thereon. The term "subject premises" shall in no event include any public streets, sidewalks or other public rights-of-way which adjoin the subject premises and which are not included within the highlighted area set forth on Exhibit A.

8. Condition of Subject Premises. Tours and Dells Ducks represent that they have inspected and examined the subject premises and accept them in their present condition and agree that City shall not be required to make any improvements or repairs upon the subject premises. Tours and Dells Ducks agree to keep the licensed premises in good order, condition and repair, at their sole cost and expense. Tours and Dells Ducks will quit and surrender possession of the subject premises peaceably and in as good order and condition as the premises

were at the commencement of the term of this Agreement, reasonable wear and tear, damage by the elements, and fire or other casualty loss excepted. All costs provided for herein shall be shared between Tours, or its assignees or sub-licensees, and Dells Ducks in the following proportions: five-sixths (5/6) of the costs thereof shall be paid by Tours, or its assignees or sub-licensees; one-sixth (1/6) of the cost thereof shall be paid by Dells Ducks. All maintenance, repair or other work required to be done to the subject premises by virtue of this section shall be carried out by Tours, or its assignees or sub-licensees. Tours, or its assignees or sub-licensees, shall bill Dells Ducks and Dells Ducks shall pay for such maintenance and repair expenses in the same manner as provided in section 4 above. The obligations of this section shall extend to all stairways, ramps, and other means of ingress to and egress from the subject premises, but shall not include any streets, sidewalks or other public rights-of-way adjacent to the subject premises, or to any property of any other or third party.

9. Taxes. Tours and Dells Ducks shall each pay all taxes levied and assessed upon any personal property, fixtures and improvements belonging to such party and located upon the subject premises. The real estate constituting the subject premises and the personal property and fixtures owned by City and located thereon, as to which exclusive rights are granted hereby, will remain the property of City, subject to this Agreement, and it is the intent of the parties that such property shall not be subject to real or personal property taxes during the term of this Agreement.

10. Indemnity; Insurance. Tours, and its assignees or sub-licensees, and Dells Ducks shall severally hold City harmless from and with respect to any loss, costs or damage that may be suffered or incurred by City as a consequence of the use and occupancy of the subject premises by any of them, or by their agents, guests, passengers, customers or employees, provided however that any such person or entity shall only be liable to the extent that such party's willful or negligent acts or omissions caused the loss, costs or damages suffered by the City. There shall be no joint liability hereunder, and none of the parties hereto shall be liable for any act or omission of any third party who is not an officer, agent or employee of such party. Tours and Dells Ducks each agree to deliver to City, upon execution of this Agreement, a copy of a public liability and property damage insurance policy satisfactory to City, with an original certificate of insurance certifying that such insurance is in full force and effect, which policy shall name City as an insured thereunder and shall provide liability insurance coverage for City in the amount of not less than \$1,000,000.00 combined single limits coverage, and each party hereto shall keep such policy in full force and effect during the term of this Agreement.

11. Compliance with Laws. Tours and Dells Ducks severally warrant that all of their operations on the subject premises shall comply fully with all federal, state, county and municipal laws and regulations, including environmental laws and regulations, during the term hereof, and that each such party shall comply with all requirements for permits for the subject premises under any such laws and regulations. Tours, its assignees or sub-licensees, and Dells Ducks shall be jointly responsible for making the subject premises comply with the Americans with Disabilities Act of 1990, except with respect to any conditions which exist on the subject premises as of the date hereof. Tours, its assignees and sub-licensees, and Dells Ducks shall have no liability with respect to any conditions on the subject premises which are in violation of or do not comply with the Americans with Disabilities Act of 1990, and any regulations thereunder, as of the date hereof.

In the event that Tours or Dells Ducks are required to make improvements or changes to the subject premises under the Americans With Disabilities Act which, in the judgment of such parties, are not economical under reasonable commercial standards, Tours or Dells Ducks may terminate their obligations and rights hereunder at any time thereafter, upon not less than thirty (30) days advance written notice to City. In the event that City is required to make any changes or improvements to the subject premises to comply with the Americans with Disabilities Act which, in the judgment of City is not economical under reasonable commercial standards, City may terminate this Agreement at any time thereafter upon not less than thirty (30) days advance written notice to the other parties.

The obligation hereunder of Tours and Dells Ducks shall extend to the sidewalks, ramps and other means of ingress to or egress from the subject premises, but shall not include any streets, sidewalks or rights-of-way of City which are not included within the description of subject premises on Exhibit A hereto or to any property of any other or third party.

12. Inspection. City may enter upon the subject premises at any time for any purpose, including, but not limited to, having access to a City utility station which is situated upon City land adjacent to the subject premises.

13. Term. The term of this Agreement shall be for a period of two (2) years, commencing September 21, 2015 and ending on September 21, 2017.

14. Notices. Any notices that are required herein or which either City, Tours, its assignees or sub-licensees, or Dells Ducks may serve upon any other party hereto shall be in writing and be deemed served when delivered personally or when deposited in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, and addressed to City at 300 La Crosse Street, Wisconsin Dells, Wisconsin 53965, directed to the attention of the Mayor or City Clerk, or to Tours, its assignees or sub-licensees, as follows: Dells Boat Tours, LLC., P.O. Box 117, Wisconsin Dells, Wisconsin 53965; or, Dells Duck Tours, Inc., ATTN: George Field, P.O. Box 11, Wisconsin Dells, Wisconsin 53965.

15. No Lease. All of the parties hereto acknowledge and agree that this is not a lease of real property and Tours, its assignees or sub-licensees, and Dells Ducks acknowledge and agree that they have no legal rights as tenants under this Agreement or any renewals thereof.

16. Assignment and Sub-License. Tours and Dells Ducks may not assign or sub-license their interests in this Agreement without the consent, in writing, of City.

17. Binding Effect; Survival. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be modified only by an instrument signed in writing by authorized representatives of the parties hereto. In the event of a termination of this Agreement as to one or both of the licensees, the indemnification obligations hereunder shall survive the termination.

18. Default. In the event of a default by any party hereto, any party asserting that such a default exists shall provide notice thereof of not less than ten (10) days duration to the defaulting party, and such defaulting party shall have a period of ten (10) days from and after the

date of receipt of such notice in which to cure such default, except that in the case of a default which cannot reasonably be cured within such ten (10) day period (other than defaults with respect to payment of money), the initiation of reasonable and diligent efforts on the part of the defaulting party to cure such default shall be sufficient if concluded within a reasonable time period. In the event that such default is not cured, then the party asserting the existence of such default shall be entitled to any and all remedies provided by law, including in the case of the City, termination of the defaulting licensee. Termination of the rights of Tours or of Dells Ducks under this Agreement as a consequence of such default, shall not terminate the rights of the other licensee, and the rights of the non-defaulting party shall continue under this Agreement, except that the non-defaulting licensee shall assume the obligations of the terminated licensee which arise thereafter for maintenance, repairs and insurance.

19. Fee. Notwithstanding City Code sec. 8.02(4), Fee shall be \$2,500 for the first leased dock and \$750 for any additional dock. Therefore, Dells Boat Tours and Dells Ducks Tours shall pay to the City the aggregate sum of Eight Thousand and no/100 (\$8,000.00) annually, payable as follows:

	<u>Tours</u>	<u>Dells Ducks</u>
On or before August 1	\$ 2,750.00	\$1,250.00
On or before September 1	\$ 2,750.00	\$1,250.00

20. Right of First Refusal. In the event that the City offers to continue any arrangement during the first year after the expiration or termination of this Agreement with any party for the use of the facilities covered by this Agreement, the City agrees to provide prior written notice of the terms of such offer to Tours and Dells Ducks, and Tours and Dells Ducks shall have the right to accept such offer of the City for the use of such premises within 10 days thereafter by written notice to the City, with rights to the use of such facilities to be divided between Tours and Dells Ducks on the same basis as set forth in this Agreement.

**SIGNATURES ON FOLLOWING PAGE**