

EXHIBIT A
COST SHARING AND CONSTRUCTION AGREEMENT
(DISTRICT NO. 3)

COST SHARING AND CONSTRUCTION AGREEMENT

(Painted Prairie Dog Park Phase I)

This Cost Sharing and Construction Agreement (this “**Agreement**”) is made and entered into this 29th day of August 2023, by and between PAINTED PRAIRIE PUBLIC IMPROVEMENT AUTHORITY, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**Authority**”) and PAINTED PRAIRIE METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), (the Authority and the District being singularly referred to as “**Party**” and jointly referred to as “**Parties**”).

RECITALS

A. The Authority is a quasi-municipal corporation and political subdivision of the State of Colorado organized in accordance with Section 29-1-203, C.R.S., and Section 29-1-203.5, C.R.S., and pursuant to the Painted Prairie Public Improvement Authority Establishment Agreement, as amended.

B. The District is a quasi-municipal corporation and political subdivision of the State of Colorado, organized in accordance with the provisions of Article I, Title 32, Colorado Revised Statutes (the “**Special District Act**”), with the power to provide certain public infrastructure, improvements, facilities and services as described in the Special District Act, and as authorized in the Amended and Restated Consolidated Service Plan for Painted Prairie Metropolitan District Nos. 1-9.

C. The Parties were organized, *inter alia*, to fund, plan, design, test, construct, install, acquire, operate and maintain public improvements for and on behalf of their respective residents, property owners, and taxpayers in connection with the Painted Prairie development in Aurora, Colorado (the “**Project**”).

D. The Authority is anticipated to construct one such public improvement, the Painted Prairie Dog Park Phase I (the “**Dog Park**”) through its contractor.

E. On December 22, 2022, the Authority’s engineer, Merrick & Company (the “**Authority Engineer**”), released an Invitation to Bid for construction of the Dog Park consisting of grading, concrete paving, irrigation and landscaping work (the “**Construction Activity**”).

F. At the Authority’s regular meeting held on June 22, 2023, the Board of Directors of the Authority approved the Authority Engineer’s recommendation to award the contract for the Construction Activity (the “**Construction Agreement**”) to Hall Contracting, LLC (the “**Contractor**”) for the maximum not-to-exceed amount of \$798,656.68.

G. The District currently has a surplus of ad valorem tax revenue generated by the general operating mill levy that will not be pledged to the Authority’s Series 2019, Special Revenue Bonds for the 2023 fiscal year.

H. In order to move forward with the Construction Activity, the District is willing to partially fund the amounts due under the Construction Agreement with its surplus of ad valorem



tax revenue. The remaining amounts due under Construction Agreement will be funded by the Authority's capital project fund.

I. Upon completion of the Construction Activity, the Authority is expected to convey the Dog Park to Painted Prairie Metropolitan District No. 1 for ownership, operation and maintenance pursuant to the Infrastructure Acquisition Agreement dated December 23, 2019.

J. The construction of the Dog Park will serve a public purpose and will promote the health, safety, security and general welfare on behalf of the Parties' residents, property owners and taxpayers.

K. Now therefore, in consideration of the above recitals, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals: Purpose. The foregoing recitals are incorporated herein as if set forth as material conditions of this Agreement. The purpose of this Agreement is to partially fund the amount due under the Construction Agreement with a one-time contribution of funds by the District to the Authority.

2. Construction. The Authority shall coordinate, administer and oversee the Construction Activity by the Contractor. The Authority, for the benefit of the Parties, is solely responsible for the construction and installation of the Dog Park. The Authority shall construct the Dog Park in full conformance with all applicable laws, standards, regulations, and requirements of the City of Aurora, Colorado, and any other applicable entities having jurisdiction over the Project, and, in its reasonable discretion, enforce the terms and provisions of the Construction Agreement for the Dog Park.

3. Funding of Construction Agreement. The District agrees to transfer to the Authority the sum of \$515,000 no later than 30 days after mutual execution of this Agreement to partially fund the amount due under the Construction Agreement, which funds shall be held by the Authority in a separate capital account related solely to the Dog Park (the "**District Contribution**"). The Parties agree that the District Contribution shall be the first monies expended toward the Construction Agreement and that the Authority shall fund the remaining amount due under the Construction Agreement after the District Contribution is expended, including any amounts resulting from approved change orders.

4. Accounting and Reporting. The Authority agrees to keep good and accurate books and records in sufficient detail to provide periodic reporting on any and all costs related to the Construction Agreement, as well as the payment of the same, which books and records shall be made available for review upon reasonable prior written notice to the Authority. While not anticipated, in the event the final costs associated with the Construction Agreement are less than the District Contribution, the Authority shall within 10 days of such determination, reimburse the appropriate amount of excess funds to the District.

5. Annual Appropriation. The Parties do not intend hereby to create multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Parties pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. Each Party expressly understands and agrees that the Parties' obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Parties, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Parties or statutory debt limitations, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Parties' funds. The Parties' obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement; provided, however, that by executing this Agreement, the Parties expressly agree to use best efforts to meet its obligations hereunder.

6. Assignment. Neither Party shall assign its rights or obligations under this Agreement without consent of the other Party. Any purported assignment or delegation in violation of the provisions hereof shall be void and of no effect.

7. Term. This Agreement shall become effective as of the date and year first above written and shall terminate upon completion of the Construction Activity; provided, however, that Paragraphs 5 (Annual Appropriation) and 9 (Non-Waiver) herein shall survive termination or expiration of this Agreement.

8. Notice of Completion. Upon completion of the Construction Activity, the Authority shall provide written notice to the District that the Construction Activity is completed and the Authority has conveyed the Dog Park to Painted Prairie Metropolitan District No. 1 for ownership, operation and maintenance pursuant to the Infrastructure Acquisition Agreement dated December 23, 2019.

9. Default/Remedies. If either Party fails to perform any of its responsibilities, obligations or agreements to be performed in accordance with the provisions of this Agreement, and if such failure of performance continues for a period of 30 days following written notice of default from the other Party (or such additional period of time as may reasonably be required to cure such default; provided that the curative action is commenced within such 30 day period and is diligently and continuously pursued to completion), then the non-defaulting Party, at its option, may elect (i) to treat this Agreement as remaining in full force and effect; or (ii) terminate this Agreement as of any specified date. The non-defaulting Party shall additionally be entitled to exercise all remedies available at law or in equity. In the event of any litigation or other proceeding to enforce the terms, covenants or conditions hereof, the non-defaulting Party in any such litigation or other proceeding shall obtain as part of its judgement or award its reasonable attorneys' fees.

10. Non-Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver



constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder. Notwithstanding any provision to the contrary in this Agreement, no term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protections provided to the Parties under the Colorado Governmental Immunity Act.

11. Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To Authority: Painted Prairie Public Improvement Authority
9155 East Nichols Avenue, Suite 360
Centennial, Colorado 80112
Attn: Chris Fellows

With a copy to: Cockrel Ela Glesne Greher & Ruhland, P.C.
44 Cook Street, Suite 620
Denver, Colorado 80206
Attn: Matt Ruhland

To District: Painted Prairie Metropolitan District No. 3
9155 East Nichols Avenue, Suite 360
Centennial, Colorado 80112
Attn: Chris Fellows

With a copy to: White Bear Ankele Tanaka & Waldron, P.C.
2154 E. Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attn: Megan Murphy

All notices, demands, requests or other communications shall be effective upon such personal delivery or 1 business day after being deposited with FedEx or other nationally recognized overnight air courier service, upon electronic confirmation of email transmission, or 3 business days after deposit in the United States mail. By giving the other Party hereto at least 10 days written notice thereof in accordance with the provisions hereof, each of the parties shall have the right from time to time to change its address. Additionally, all notices, demands, requests or other communications shall be delivered via email as a courtesy to the Parties.

12. Amendments. This Agreement may be amended only by written document signed by the Parties.

13. Severability. In the event that any of the terms, covenants or conditions of this Agreement or their application shall be held invalid as to any person, entity or circumstance by



any court having competent jurisdiction, the remainder of this Agreement and the application in effect of its terms, covenants or conditions to such persons, entities or circumstances shall not be effected thereby.

14. Waiver. The waiver by either Party of any breach by the other of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or other term, covenant, or condition.

15. Compliance with Law. This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations of the jurisdiction in which the Agreement is performed.

16. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for the county in which the Authority's mailing address is located.

17. Entire Agreement. This Agreement embodies the complete agreement between the Parties regarding the subject matter herein and supersedes all prior agreements and understandings, if any.

18. Section Headings. The section headings in this Agreement are inserted for convenience and are not intended to indicate completely or accurately the contents of the Sections they introduce, and shall have no bearing on the construction of the Sections they introduce.

19. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to his Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

20. Duly Authorized Signatories. By execution of this Agreement, the undersigned each individually represent that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory's execution of this Agreement.

21. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, *et seq.*, C.R.S. The Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.



EXECUTED as of the date first written above.

PAINTED PRAIRIE PUBLIC IMPROVEMENT
AUTHORITY

By 
Chris Fellows, President

Attest:


Tim O'Connor, Secretary

PAINTED PRAIRIE METROPOLITAN
DISTRICT NO. 3

By 
Chris Fellows, President

Attest:


Tim O'Connor, Secretary