

After Recording Return to:

Town Manager
Town of Prosper
P. O. Box 307
Prosper, Texas 75078

PARK IMPROVEMENT FEE AGREEMENT
(CREEKSIDE)

THIS PARK IMPROVEMENT FEE AGREEMENT (the "**Agreement**") is made and entered into as of this ____ day of _____, 2025 (the "**Effective Date**"), by and among **SHADDOCK-CREEKSIDE PROSPER LLC**, a Texas limited liability company ("**Developer**") Developer, and the **TOWN OF PROSPER, TEXAS**, a Texas home-rule municipality ("**Town**"), on the terms and conditions hereinafter set forth.

W I T N E S S E T H:

WHEREAS, Developer desires to fulfill its park improvement fee obligations associated with the development of the Property (as hereinafter defined in Section 1), as prescribed in the Town's ordinances; and

WHEREAS, in consideration of Developer's actions set forth below, the Town agrees that Developer may fulfill its park improvement fee obligations in the manner set forth below.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Town, and Developer agree as follows:

1. **Land Subject to Agreement.** The land that is subject to this Agreement is that certain real property owned by Developer in the Town of Prosper, Denton County, Texas, as more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "**Property**"); and

2. **Assessments.** Notwithstanding any provision in this Agreement to the contrary, the Property shall be assessed park improvement fees in the amount of \$1,500 per single family unit and \$2,000 per multi-family unit, in the Property (the "**Park Improvement Fees**") in accordance with the Town's ordinances as they now exist or hereafter may be amended. These payments of and/or credits to the Park Improvement Fees shall be in accordance with the obligations set forth in this Agreement.

3. **Park Improvement Fees Credits.**

(a) The Town shall provide credits to the Park Improvement Fees in an amount equal to the Construction Costs (as hereinafter defined in Section 3(b)) of the trails constructed by Developer adjacent to the Property as generally shown on Exhibit B and illustrated on the Town's Hike and Bike Master Plan (collectively, the "**Trail Improvements**") less the cost to construct a standard width sidewalk (the "**Trail Upsize Costs**"). Provided that the Developer completes the Trail Improvements in accordance with this Agreement, the Town

shall provide Credits (as hereinafter defined in Section 3(c)) to residential development within the Property for the Trail Upsize Costs of the Trail Improvements. No Credits will be given to non-residential developments.

(b) As a condition to receiving any Credit, Developer shall tender to the Town evidence, in a form(s) reasonably acceptable to the Town, including affidavits of payment/affidavits as to debts and liens ("**Evidence of Payment(s)**"), of the Construction Costs incurred and paid by Developer. The term "**Construction Costs**" as used herein shall include engineering and landscape architecture design costs, surveying costs, construction costs, and geotechnical materials testing costs.

(c) Upon Developer providing the Town the Evidence of Payment(s), the Town will credit the Developer for the amount of Trail Upsize Costs (the "**Credit**") set forth in the Evidence of Payment(s), which Credit shall be applied toward the actual amount of the Park Improvement Fees due or that may become due on the Property.

(d) Developer represents that the estimated construction costs for upsizing of the Trail Improvements are Fifty Thousand and No/100 Dollars (\$50,000.00) (the "**Estimated Trail Upsize Costs**"), as more particularly described in Exhibit E, attached hereto and incorporated herein for all purposes.

(e) If the Park Improvement Fees which are due on the Property at any time exceed the amount of the Credit available at such time, then Developer shall tender the remaining balance of Park Improvement Fees due (the "**Paid Park Improvement Fees**") under the Town's ordinances.

(f) The Town agrees to deposit the Paid Park Improvement Fees in and provide Reimbursements (as hereinafter defined in Section 5(c)) to Developer from, a segregated escrow account (the "**Escrow Account**"). The Town shall provide statements upon request by Developer showing the balance of such Escrow Account.

4. **Park Improvements.** Developer and Town agree to complete improvements to the approximately 7.0 acres of land within the Property to be dedicated via plat to the Town and as described on Exhibit D (the "**Parkland**").

(a) The improvements proposed for the Parkland are generally shown on Exhibit C (the "**Park Improvements**"). Developer represents that the estimated construction costs for the Park Improvements are Seven Hundred Twenty-Three Thousand Five Hundred Ninety-eight and No/100 Dollars (\$723,598.00) (the "**Estimated Park Improvements Costs**"), as more particularly described in Exhibit E. The final scope of the Park Improvements and the resulting estimated construction costs shall be developed and agreed upon by both Developer and the Town.

(b) Developer shall obtain bids on the construction of the Park Improvements from at least three (3) qualified contractors and shall provide a copy of such bids received, together with an estimated time frame for completion of construction of such portion of the Park Improvements, to the Town for their review and approval (the "**Approved Contractor(s)**" and the "**Approved Costs**").

(c) Town shall deposit funds (the "**Town Funds**") into the Escrow Account such that the Town Funds plus the Paid Park Improvement Fees (the "**Escrow Funds**") total to an amount equal to the 110% of the Approved Costs. Developer represents that the estimated Town Funds are Four Hundred Forty-two Thousand Ninety-eight and No/100 Dollars (\$442,098.00)

(d) Developer shall: (i) execute a contract for the construction of the Park Improvements; (ii) manage the construction of the Park Improvements; and (iii) use commercially reasonable efforts to complete the Park Improvements within the applicable estimated time frame and obtain the Town's acceptance of same.

(e) Provided that the Developer constructs the Park Improvements in accordance with this Agreement, the Town shall provide Disbursements (as hereinafter defined in Section 4(g)) from the Escrow Account to Approved Contractor(s) up to once per month for the Construction Costs of the Park Improvements.

(f) Developer shall review and approved applications for payment from the Approved Contractor(s) and tender to the Town a recommendation for Disbursement from the Escrow Account for the portion of the Park Improvements completed by the Approved Contractor(s) (each, a "**Payment Request**").

(g) The Town will provide payment to the Approved Contractor(s) for the amount of the Construction Costs for the Park Improvements completed to date (each, a "**Disbursement**") set forth in the Payment Request.

(h) Disbursements shall be paid to Approved Contractor(s) until the entire amount of the Construction Costs for the Park Improvements have been disbursed to Approved Contractor(s); provided, however, such Disbursements shall not exceed the Approved Costs unless the amount by which the actual Construction Costs incurred exceeds the Approved Costs is approved by the Town.

(i) If all Disbursements for the Park Improvements have been made or Developer and Town have terminated this Agreement, the Town may transfer any remaining Escrow Funds to the Town's general permanent park fees fund.

(j) The Park Improvements shall be constructed in accordance with all applicable Town ordinances, rules and regulations, and substantially in accordance with the plans and specifications to be prepared by Developer and approved by the Town for construction of the Park Improvements. Any modification or amendment to such plans and specifications is subject to approval by Developer and the Town, which approval will not be unreasonably withheld, conditioned or delayed.

(k) Notwithstanding anything to the contrary set forth herein or in applicable Town ordinances, rules or regulations, the Town agrees that if, in connection with construction of the Park Improvements, any trees are required to be removed pursuant to the Town approved plans and specifications for construction of the Improvements, Developer shall not be required to comply with any applicable tree mitigation requirements. Developer

must inform the Town of any tree removals and must limit the tree removal to those areas that are required to complete the Park Improvements.

5. **Park Improvements Maintenance Obligations.** Town agrees, at its sole cost and expense, to maintain the completed Park Improvements within the Parkland in accordance with Town Standards including (i) mowing and maintenance of the landscaping and (ii) maintenance of the irrigation system (the "**Maintenance Obligations**"). The Town and Developer agree that under no circumstances shall the Developer be responsible for any part or portion of the costs associated, directly or indirectly, with the Maintenance Obligations.

6. **Default.** Prior to the exercise of any remedy by the Town or Developer due to a default by any of the parties, (i) the non-defaulting party shall deliver a written notice to the defaulting party formally notifying in reasonable detail the defaulting party of its default, and (ii) the default(s) identified in the default notice shall not be a default hereunder and the non-defaulting party shall not exercise any remedy if the default is cured within thirty (30) days following the defaulting party's receipt of such default notice; provided, however, that if such default is non-monetary and cannot reasonably be cured within such thirty (30) day period, the defaulting party may have a reasonable period of time to cure such default if the defaulting party commences action to cure such default within such period of thirty (30) days and thereafter diligently proceeds to cure such default and provided that such extended period does not exceed an additional thirty (30) days. Notwithstanding anything to the contrary, the parties agree that if a default is not cured within the applicable time period, the sole and exclusive remedies of the non-defaulting party will be to terminate this Agreement and thereafter the parties will not have any further rights, duties or obligations under this Agreement, except that any obligations or liabilities that accrued prior to the date of termination will survive.

7. **Covenant Running with Land.** The obligations set forth herein relate to the Property, in whole and in part, and this Agreement shall be a covenant running with the land and the Property and shall be binding upon the Developer and their respective successors, assignees, and grantees. In addition, the parties shall cause this Agreement to be filed in the Real Property Records of Denton County, Texas. Notwithstanding the foregoing, the obligations herein that burden the Property shall be released either by (i) upon request by Developer upon completion of the Trail Improvements within its limits and payment of its Park Improvement Fees as established by Section 2 less the Credits established by Section 3(c), or (ii) upon request by Developer upon completion of items in (i), completion of the Park Improvements, and receipt of all Reimbursements for the Park Improvements as established by Section 4(g), or (iii) automatically as to each lot therein which is conveyed subsequent to the final plat for the Property, or portion thereof, being reviewed, approved and executed by the Town and filed in the Denton County Real Property Records. Any third party, including any title company, grantee or lien holder, shall be entitled to rely upon this Section to establish whether such termination has occurred with respect to any lot.

8. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of

same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Town: Town of Prosper
Attn: Town Manager
250 W. First Street
P. O. Box 307
Prosper, Texas 75078
Telephone: (972) 346-2640

With a copy to:

Town Attorney
250 W. First Street
P. O. Box 307
Prosper, Texas 75078
Telephone: (972) 346-2640

If to Developer: Shaddock-Creekside Prosper LLC
ATTN: William Shaddock
2400 Dallas Parkway, Suite 560
Plano, TX 75093
Telephone: (972) 985-5505

9. Captions and Headings. The captions and headings of the Sections of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement nor shall they be employed to interpret or aid in the construction of this Agreement.

10. Application of Texas Laws and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in Denton County, Texas.

11. Prevailing Party in Event of Legal Action. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any final non-appealable judgement in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

12. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

13. Invalidation. Invalidation of any one of the provisions of this document by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

14. **Counterparts.** A telecopied facsimile or emailed pdf of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

15. **Town Manager Authorized to Execute.** The Town Manager of the Town of Prosper is authorized to execute this Agreement on behalf of the Town.

16. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

17. **Binding Obligation.** The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Developer to same. Further, this Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

18. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation.

19. **Roughly Proportionate Determination under Texas Law.** Developer has been represented by legal counsel in the negotiation of this Agreement and been advised, or have had the opportunity to have legal counsel review this Agreement and advise Developer regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town in this Agreement, if any, as a condition of zoning approval, including the terms of this Agreement, are roughly proportional or roughly proportionate to the Project's anticipated impact. Developer specifically reserves their rights to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Developer hereby waives and releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure improvements required by this Agreement. This Paragraph shall survive the termination of this Agreement.

20. **Rough Proportionality Determination under Federal Law.** Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Texas Local Government Code in regard to this Agreement. Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements in this Agreement, if any, mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement.

Developer further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims. This Paragraph shall survive the termination of this Agreement.

21. **Vested Rights/Chapter 245 Waiver.** The signatories hereto shall be subject to all ordinances of the Town, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code, and nothing in this Agreement provides the Town with fair notice of Developer's project. This Section shall survive the termination of this Agreement.

22. **Developer's Warranties/Representations.** All warranties, representations and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to the Town under this Agreement shall be considered to have been relied upon by the Town and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by the Town or on the Town's behalf.

23. **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

24. **Sovereign Immunity.** The parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement, except as to Chapter 271, Subchapter I of the Local Government Code, to the extent applicable, if at all.

25. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

26. **Conveyances.** All conveyances required herein shall be made in a form acceptable to the Town and free and clear of any and all liens and encumbrances.

27. **Waiver.** Waiver by any party of any breach of this Agreement, or the failure of any party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive any such party's right thereafter to enforce and compel strict compliance.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective as of the Effective Date.

TOWN:

TOWN OF PROSPER, TEXAS

By: _____
Mario Canizares, Town Manager

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared Mario Canizares, Town Manager, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for **THE TOWN OF PROSPER, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2025.

Notary Public in and for the State of Texas

My Commission Expires: _____

DEVELOPER:

SHADDOCK-CREEKSIDE PROSPER LLC
a Texas limited liability company

By: _____
William C. Shaddock, Jr., Manager

STATE OF TEXAS §

§

COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared William C. Shaddock, Jr., Manager of **SHADDOCK-CREEKSIDE PROSPER LLC**, a Texas limited liability company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2025.

Notary Public in and for the State of Texas

My Commission Expires: _____

Legal Description of the Property



Exhibit B

Trail Improvements

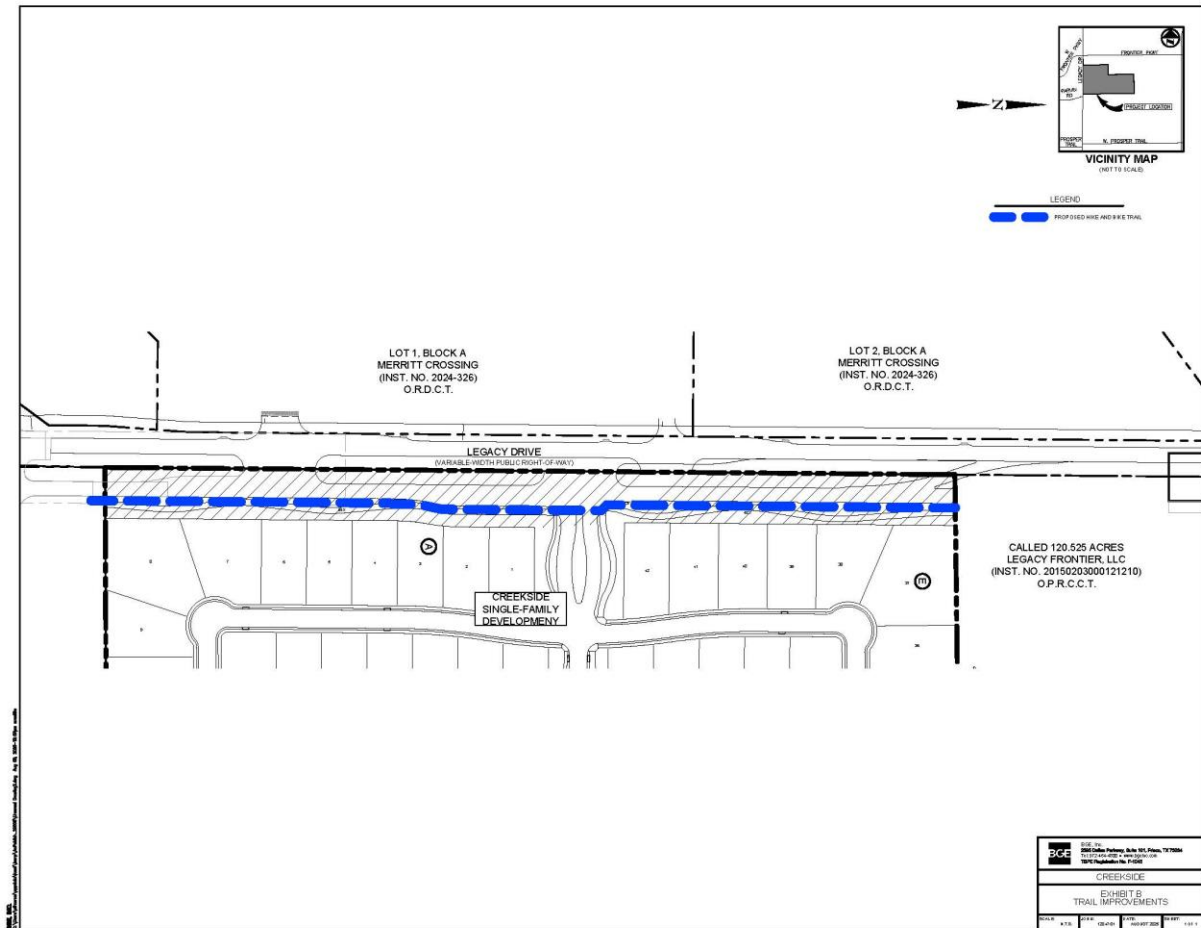
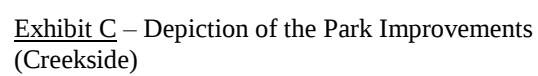


Exhibit B – Trail Improvements
(Creekside)

Park Improvements



Legal Description of the Parkland



Exhibit E

Estimated Costs

Architect's Preliminary Cost Estimate

RE: Creekside - Neighborhood Park Improvements
Town of Prosper, Collin County, Texas

1-Jul-25

Prepared By: Cody Johnson PLA, ASLA, LI
Johnson Volk Consulting, Inc.

A. Base Park Improvements

	Qty	Unit	Description	Unit Price	Total
1	1	LS	Final Grading	\$8,500.00	\$8,500.00
2	1	EA	Electrical Service and/or Lighting	\$18,500.00	\$18,500.00
3	1	LS	Park Signage	\$35,000.00	\$35,000.00
4	15,670	SF	10'-0" Width Concrete Sidewalk	\$7.50	\$117,525.00
5	2	EA	Barrier Free Ramp	\$1,450.00	\$2,900.00
6	1	LS	Misc. materials provided by landscape contractor	\$24,500.00	\$24,500.00
7	59	EA	4" cal. Shade Trees (spaced 40' on center along right of way areas only)	\$685.00	\$40,415.00
8	306,668	SF	Common Bermuda Solid Sod	\$0.58	\$177,867.44
9	306,668	SF	Complete Irrigation System	\$0.85	\$260,667.80
10	1	LS	Projected LA Design Fees	\$37,723.14	\$37,723.14
Subtotal: Base Park Improvements					\$723,598.38

