

**FAIR SHARE AGREEMENT
COUNTY LINE ROAD CORRIDOR IMPROVEMENTS
CALIMESA BOULEVARD TO BRYANT STREET**

This Agreement is made and entered into this ___ day of _____, 2017, by the City of Calimesa ("Calimesa") and the City of Yucaipa ("Yucaipa").

WHEREAS, the ~~Cities of~~ Calimesa and Yucaipa (collectively referred to as the "Cities" or "Parties", each individual constituting a "Party") recognize the need to construct improvements on County Line Road from Calimesa Boulevard to Bryant Street in order to improve operation and traffic flow through the intersections, and provide safe for improved paths of travel for pedestrians and bicyclists; and

WHEREAS, a critical component of these improvements includes various upgrades from Calimesa Boulevard to Bryant Street which include the ~~replacement~~ reconfiguration of various intersections at County Line Road from signalized or 4-way stop intersections to roundabout intersections; installation of sidewalks, Americans with Disabilities Act (ADA) curb ramps, bike lanes, and utility relocations; and associated street improvements including street widening and asphalt removal and replacements ~~(hereafter referred to as the "Project", detailed as described in Section I below, and shown on Exhibit "A" attached hereto);~~ such improvements are collectively referred to herein as the "Project"; and

WHEREAS, Yucaipa has received a Mobil Source Air Pollution Reduction (MSRC) Grant in the amount of \$380,000 for the design and construction of pedestrian access and bicycle lane improvements on the north and south side of County Line Road between Calimesa Boulevard and approximately 700 feet east of 5th Street (City Limits); and

WHEREAS, Yucaipa has received an Active Transportation Program (ATP) Grant in the amount of \$872,000 for the design and construction of pedestrian access and bicycle lane improvements on the north and south side of County Line Road between 3rd Street and California Street, and the south side of Avenue H from 3rd Street to Holmes Street (the improvements on Avenue H are not included in this Fair Share Agreement); and

WHEREAS, it is anticipated that these street improvements will be completed in several phases.

WHEREAS, the ~~Cities of~~ Yucaipa and Calimesa will mutually benefit from the Project in proportion to the work to be done in each City's jurisdiction, and fund the outstanding Project costs not covered by these grants, as shown as the "Calimesa Contribution" and the "Yucaipa Contribution", respectively, in Exhibit "B", which is attached hereto and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed by the Cities as follows:

SECTION I. PROJECT SCOPE OF WORK

A. 5th Street Intersection – Design and construct a new two-lane roundabout intersection to replace the current signalized intersection, between Park Avenue and the terminus of lane tapers and connections to existing lane configurations, including right-of-way acquisition, curb and gutter, sidewalk, ADA curb ramps, utility relocations, bike lanes, striping, markings and signage, associated street improvements, and the extension of a new storm drain and connection to the existing Riverside County Flood Control Calimesa Creek Channel or proposed storm drain if it is constructed first.

B. 3th Street Intersection – Design and construct a new roundabout intersection to replace the current four way stop intersection, between the terminus of lane tapers and connections to existing lane configurations, including right-of-way acquisition, curb and gutter, sidewalk, storm drain/drainage improvements, ADA curb ramps, utility relocations, bike lanes, striping, markings and signage, and associated street improvements.

C. 2th Street Intersection – Design and construct a new roundabout intersection to replace the current four way stop intersection, between the terminus of lane tapers and connections to existing lane configurations, including right-of-way acquisition, curb and gutter, sidewalk, storm drain/drainage improvements, ADA curb ramps, utility relocations, bike lanes, striping, markings and signage, and associated street improvements.

D. Bryant Street Intersection – Design and construct a new roundabout intersection to replace the current four way stop intersection, between the terminus of lane tapers and connections to existing lane configurations, including right-of-way acquisition, curb and gutter, sidewalk, storm drain/drainage improvements, ADA curb ramps, utility relocations, bike lanes, striping, markings and signage, and associated street improvements.

E. Calimesa Boulevard to approximately 700 feet east of 4th Street (MSRC Project) – Design and construct pedestrian access and bicycle lane improvements on the north and south sides of County Line Road, between the east terminus of Segment A – 5th Street to Park Avenue and 700 feet east of the intersection of 5th Street (City Limits) and between Calimesa Boulevard and the west terminus of Segment A – 5th Street Intersection, including ADA compliant sidewalks and curb ramps, asphalt pavement bike lanes, curb and gutter improvements, utility relocations, striping, markings, remove and replace (R&R) the existing asphalt and signage, and associated street improvements (does not include the widening of County Line Road)

F. 3rd Street to California Street (ATP Project)– Design and construct pedestrian access and bicycle lane improvements on the north and south sides of County Line Road, between the east terminus of Segment B – 3rd Street Intersection and the curb return at the west side of the intersection of California Street and County Line Road, including ADA compliant sidewalks and curb ramps, asphalt pavement bike lanes, curb and gutter improvements, utility relocations, striping, markings and signage, and associated street improvements (does not include work contained in Segment C – 2nd Street Intersection or intersection improvements at California Street)

SECTION II. OBLIGATION OF BOTH PARTIES

A. Both Parties agree to cooperate in a joint effort to complete the improvements herein in a timely efficient manner to the benefit of results to both communities.

B. Both Parties agree to cooperate in efforts to obtain additional State and Federal funding where practically for mutually beneficial, planning, transportation and park related improvements.

C. ~~Both Parties~~Each Party will be obligated to pay its fair share of the local match for the SAFTEALU Grant funding for the right of way ("ROW") acquisition costs related to the master planned improvements to County Line Road between the I-10 Freeway and the Easterly BC of the intersection with Calimesa Boulevard (pursuant to a separate agreement).

D. ~~Both Parties agree~~Each Party agrees to pay 50% of the cost of preparing, administering, and having reviewed a PSR for Interchange Improvements to the I-10 County Line Road Interchange. This effort will be the subject of a more detailed agreement between the parties and Caltrans (pursuant to a separate agreement).

SECTION III. OBLIGATIONS OF THE CITY OF YUCAIPA

A. Yucaipa shall serve as the lead agency for the Project soliciting Requests for Proposals for special consultants, as required, and awarding contract(s). The Project Scope of Work, as identified in Section I and Exhibit A, includes the preparation of plans, specifications and cost estimates; preparation of required environmental documents; the identification and acquisition of the necessary rights-of-way; preparation of bid documents and advertising of bids; construction inspection and management; and project administration.

B. Yucaipa shall provide the services of ~~the~~its City Engineer (known as Project Engineer) for the purpose of certifying plans, providing cost estimates, inspections, maintaining all records and providing all reporting as required by the California Department of Transportation (Caltrans) and MSRC Committee in the utilization of the ATP and MSRC Grants, approving all change orders and/or stop notices for that work in Yucaipa, and all other work necessary to complete the Project. The Segments may be constructed under one or more contracts in accordance with State law.

C. Yucaipa shall provide the services of a Project Manager for the purpose of administering the Project and coordinating the activities of Cities, consultant(s), contractor(s), permitting agencies, Caltrans, and MSRC.

~~D. Yucaipa shall provide Calimesa an opportunity to review and comment at all stages during the design of each Segment of the Project.~~

D. E. Yucaipa shall require consultant Yucaipa shall provide Calimesa an opportunity to review and comment at all stages during the design of each Segment of the

Project. Consultant(s) and contractor(s) to purchase and maintain the insurance specified in Exhibit "C" naming the Cities of Calimesa and Yucaipa as additional insureds with such insurance as primary to any insurance of either City. ~~Yucaipa shall require the contractor~~ Contractor(s) to furnish performance and payment bonds asto the extent required by State law. Calling of the bond(s) or use of any proceeds will be initiated by the City of Yucaipa at the direction of the Project Engineer).

E. ~~F.~~ Yucaipa shall require the contractor(s) to furnish in advance of the "Notice to Proceed" a traffic control plan(s) mutually agreeable to both Cities.

F. ~~G.~~ Yucaipa shall expend funds ~~as required~~ those funds which constitute the "Yucaipa Contribution" for the Project. ~~Cities shall be responsible for all Project costs, at the designated percentage, as identified on Exhibit "B".~~ In addition, Yucaipa shall be responsible for the MSCR Grant of \$380,000 and ATP Grant of \$872,000. Under no circumstances shall the total Project cost of all phases exceed \$_____ without an amendment to this Agreement.

G. ~~H.~~ Yucaipa shall ~~obtain approval from~~ will submit to Calimesa for its review, comment and approval each bid package prior to bidding a phase of construction.

H. ~~I.~~ Yucaipa shall allow Calimesa to inspect all work within the City of Calimesa's jurisdiction throughout the Project's term and to conduct a final inspection of the improvements prior to the recordation(s) of a Notice of Completion(s) for the improvements by Yucaipa.

I. ~~J.~~ Yucaipa shall obtain approval from Calimesa before issuance of any change orders or stop work orders that could potentially affect Calimesa's cost. This approval will be assured by requiring the Project Manager or Project Engineer to approve all change orders or stop work orders. Calimesa will be made aware of situations where time is of the essence in order to avoid potential delay costs and the review time will be shortened to 24 hours or the request will be deemed approved.

J. ~~K.~~ Yucaipa shall withhold retention from the contractor(s) according to State law and in accordance with Yucaipa's customary practices.

K. ~~L.~~ Yucaipa shall submit, on a monthly basis, a status of the work completed to date accompanied by a detailed listing of expenditures of the current month and total spent to date to Calimesa.

L. ~~M.~~ The Subject to the provision of funds as set forth in Exhibit "B" hereto, the design of the various intersection improvement projects (5th Street, 3rd Street, 2nd Street, and Bryant Street) will commence within 60 days after the execution of this agreement with the ROW acquisition anticipated to begin upon completion of the design within 5 to 6 months after that.

M. ~~N.~~ Following the recordation of a Notice of Completion of each individual contract in the Project, Yucaipa shall provide a final accounting of all costs incurred associated with that contract as outlined in this Agreement. This accounting shall be used to determine any reimbursement required from Yucaipa to Calimesa, and shall be completed no later than sixty (60) calendar days following said recordation.

SECTION IV. OBLIGATIONS OF CALIMESA

A. Calimesa shall provide the services of ~~the~~^{its} City Engineer for the purpose of certifying plans and as-builts, reviewing cost estimates, inspections and records as required for each Segment of the Project.

B. Calimesa shall complete the review and provide comments on all plans, specifications, cost estimates and other documents provided by Yucaipa within fifteen (15) working days of receiving the review request from Yucaipa or the submittal will be deemed approved. Calimesa will be made aware of situations where time is of the essence in order to avoid potential delay costs and the review time will be shortened to 24 hours or the request will be deemed approved.

C. Calimesa shall identify the source of funds and authorize the expenditure of up to \$_____ for payment of their share of improvements on ~~this~~^{those} moneys constituting the "Calimesa Contribution" for the Project, as identified in Exhibit "B".

D. In addition, Calimesa shall allocate a total of \$190,189 in funding from SB 1 (RMRA) over a period of five (5) years as local match for the MSRC and ATP Projects.

E. Calimesa shall deposit \$_____ in a separate (escrow) account upon acceptance of this Agreement by ~~both Cities~~^{each of Yucaipa and Calimesa}. This deposit shall be used for the preparation of plans, specifications, cost estimates and bidding documents for the Project and, to the extent applicable, for payments to property owners or for deposits to Court in connection with the consideration and processing of actions in connection with the acquisition of interests in property should such actions be undertaken.

F. Upon the opening of construction bid(s) for a Segment or Segments of the Project, Calimesa will deposit their share of that Segment(s) construction cost based on the percentage of share identified in Exhibit "B" and on the following as determined by Yucaipa:

- The bid of the lowest responsible, responsive bidder;
- Construction contingency;
- Inspection and construction administration costs.

G. Payments shall be made within thirty (30) days of receiving written requests from Yucaipa, and these funds shall be held in a separate escrow account by Yucaipa for this Project. Under no circumstances shall Calimesa's cost exceed \$_____ without an amendment to this agreement.

H. Calimesa shall be responsible for the acquisition of the necessary ROW for the ultimate master planned improvements per the Cities' General Plans for County Line Road between the I-10 Freeway and the easterly PCR of the Calimesa Boulevard Intersection (SAFTEALU Project).

SECTION V. MISCELLANEOUS

A. Notices. All notices, demands, requests, consents, approvals, or communications from one Party to another shall be personally delivered or sent by facsimile or e-mail to the persons set forth below or shall be deemed given five (5) calendar days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as any Party may from time to time specify to the other parties in writing:

To Calimesa: City of Calimesa
908 Park Avenue
Calimesa, California 92320
Attn: City Manager
Fax: 909.795.4399
E-mail: bjohnson@cityofcalimesa.net

To Yucaipa City of Yucaipa
34272 Yucaipa Boulevard
Yucaipa, California 92399
Attn: City Manager
Fax: 909.790.9203
E-mail: rcasey@yucaipa.org

The Parties agree to accept facsimile or scanned signed documents and agree to rely upon such documents as if they bore original signatures. Each Party agrees to provide to the other parties, within seventy-two (72) hours after transmission of such a facsimile or scan, the original documents that bear the original signatures.

B. Amendment. This Agreement may not be modified or amended, nor any provision or breach waived, except with approval of both Parties in a writing signed by both Parties which expressly refers to this Agreement.

C. Venue. The venue of any action or claim brought by any party to this Agreement shall be either the Superior Court of California, County of San Bernardino, San Bernardino District, or the Superior Court of California, County of Riverside. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to either the Superior Court of California, County of San Bernardino, San Bernardino District, or the Superior Court of California, County of Riverside.

D. Neutral Interpretation. City, Owner and Organization have each cooperated in the drafting and preparation of this Agreement and in any construction to be made of this Agreement, the same shall not be construed against either party to this Agreement in the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein.

E. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

F. Term. This Agreement shall terminate ninety (90) days after completion and acceptance of the final accounting of the contracts of all Segments of the Project (as identified in Section II) by both Cities, or as mutually agreed to by both Cities in writing.

G. Applicable Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

SECTION VI. MUTUAL AGREEMENT

A. No party to this Agreement nor officers nor employees thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other party to the Agreement under or in connection with any work, authority, or jurisdiction not delegated to the parties under this Agreement. It is also agreed that, pursuant to Government Code Section 895.4, each party shall fully indemnify and hold the other party harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done under or in connection with work, authority, or jurisdiction of that party under this agreement.

B. In the event any action is commenced to enforce or interpret the terms or conditions of this agreement, the prevailing party shall, in addition to any other costs and relief, be entitled to reasonable attorney's fees. Both parties agree to submit any unresolved issues to binding arbitration, upon terms to be negotiated and agreed upon between the parties.

IN WITNESS THEREOF, the parties hereto have authorized this agreement to be executed by their respective officials thereunto duly authorized.

ATTEST:

CITY OF CALIMESA
A Municipal Corporation

Darlene Gerdes, City Clerk

Date

Bonnie Johnson, City Manager

Date

ATTEST:

CITY OF YUCAIPA
A Municipal Corporation

Jennifer Shankland, City Clerk

Date

Raymond A. Casey, City
Manager

Date