

**FIX FIVE PARTNERSHIP  
REGIONAL TRANSPORTATION IMPACT FEE PROGRAM  
MEMORANUM OF UNDERSTANDING AND OPERATING AGREEMENT**

THIS REGIONAL TRANSPORTATION IMPACT FEE PROGRAM MEMORANDUM OF UNDERSTANDING (“MOU”) dated as of the Effective Date noted herein is made by and between the Shasta County Regional Transportation Planning Agency (“SCRTPA”), the Tehama County Transportation Commission (“TCTC”), the California Department of Transportation (“Caltrans”), and the following nine public agencies located within the Counties of Shasta and Tehama (collectively the “Participating Agencies”), including, the County of Shasta (“Shasta County”), the County of Tehama (“Tehama County”), the City of Anderson (“Anderson”), the City of Corning (“Corning”), the City of Redding (“Redding”), the City of Red Bluff (“Red Bluff”) the City of Shasta Lake (“Shasta Lake”) and the Redding Rancheria (the identified agencies are hereinafter collectively the “Fix Five Partnership”).

**RECITALS**

WHEREAS, the SCRTPA and TCTC have the responsibility as the region’s designated Metropolitan Planning Organizations and Regional Transportation Planning Agency and through their powers are to maintain and improve the Regional Transportation Network, and

WHEREAS, Interstate 5 is vital to the local economy, mobility and goods movement. All Partnership jurisdictions have a vested interest in the Partnership effort. Congestion on Interstate 5, if left unchecked, could have grave impacts on the local economy.

WHEREAS, a variety of indicators and data sources show significant congestion on Interstate 5 within 20 years. For the first time in the region, substantial congestion is in the foreseeable future.

WHEREAS, state and federal resources are no longer adequate to fund needed improvements. Additional capacity on Interstate 5 will not be possible without local contributions.

WHEREAS, Interstate 5 is a state and federal problem as well as a local problem. A key component of growing congestion is land use and related development. By recognizing this local share of responsibility, local jurisdictions can successfully team with state and federal entities to fully fund needed improvements.

WHEREAS, projected improvement needs are substantial and can only be completed thru a local/state/federal partnership since all parties are seeking to leverage funds from one another. Local, state, and federal agencies are most willing to devote resources when they have confidence that those resources will be leveraged by other funding sources. Consequently, a comprehensive partnership is the most effective mechanism for assuring success of a regional infrastructure project of this nature.

WHEREAS, participation from new development to fund a portion of the improvement need is critical to the success of the Partnership; it should be in the long-term interest of the building industry to avoid CEQA lawsuits, avoid congestion affecting our ability to grow, and to avoid more costly mitigation in the future.

WHEREAS, the improvements to Interstate 5 proposed by the Partnership are a cost-effective use of funds. Adequate right-of-way already exists, and such freeway improvements efficiently move large volumes of local traffic at high speeds. Furthermore, improvements to Interstate 5 have the highest potential to leverage other funds since Interstate 5 is also a high priority for state and federal agencies.

WHEREAS, early action to finance Interstate 5 improvements will result in a reduced burden to future development and public agencies in the long-term. Failure to act promptly will create system deficiencies that would severely hamper future efforts to improve Interstate 5. Allowing the creation of deficiencies will impose legal limits on future local funding options requiring consideration of general fund revenues to complete many of the improvements now contemplated.

WHEREAS, three public meetings, seven city council and board of supervisors hearings, and three private stakeholder outreach meetings have been held by the Partnership to inform and solicit feedback from the public; and

WHEREAS, the SCRTPA and TCTC, following extensive analysis and consultations with the Participating Agencies and other stakeholders, have prepared a Transportation Impact Fee ("Fix Five Fee") Nexus Study ("Nexus Study") that establishes a nexus between new development and its impacts (increased travel demand, reductions in service levels, and the need for capital improvements) upon Interstate 5; and,

WHEREAS, the Fix Five Partnership finds and declares that the Nexus Study has determined the extent to which new development of land will generate traffic volumes impacting Interstate 5 and have determined that the Transportation Impact Fee establishes a fair and equitable method to fund costs of transportation improvements necessary to accommodate the traffic volumes generated by future development of land within each City and the Counties; and,

WHEREAS, The Fix Five Partnership agrees that the information included in the Nexus Study and the Fix Five Impact Fee are only applicable to and may only be used by Participating Agencies.

WHEREAS, the Fix Five Partnership finds and declares that the impact fee amounts recommended for adoption are the minimum amounts needed to ensure a fully funded program after a thorough evaluation of expected revenues from state and federal sources and are lower than the amounts justified by the Nexus Study; and,

WHEREAS, the Fix Five Partnership finds and declares that the Fix Five Fee is necessary to help mitigate the impact of new development on Interstate 5 and in conjunction with other transportation funding mechanisms, in providing for the construction of Interstate 5 mainline improvements to accommodate traffic generated by land development; and,

WHEREAS, the Participating Agencies have adopted or will adopt a Regional Transportation Impact Fee ("Fix Five Fee") pursuant to their authority to protect the public health, safety, and welfare consistent with the provisions of California Government Code Section 66000 et seq.; and,

WHEREAS, the integrity and success of the Fix Five Program is dependent upon all Participating Agencies and the SCRTPA, TCTC, and Caltrans working cooperatively with each other in order to fulfill their obligations faithfully and promptly; and,

WHEREAS, funds collected pursuant to the Participating Agencies' ordinances and/or resolutions adopting the Fix Five Program are to be held and expended by those Participating Agencies.

WHEREAS, funds collected pursuant to the Participating Agencies' ordinances and/or resolutions will not be pooled or transferred to other agencies unless authorized by future agreements.

### **AGREEMENT**

Now, therefore, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived there from, the parties hereto represent, covenant and agree as follows:

#### **SECTION 1. PURPOSE**

- 1.1. The Fix Five Program requires management procedures that assure that the objective of the Fix Five Program is achieved. Specifically, the Fix Five Program objective is to obtain funding from development projects that have an impact upon Interstate 5 between Corning and Shasta Lake and to leverage these funds for federal and state revenues to provide capacity improvements identified in the Fix Five Program.
- 1.2. This Agreement defines the terms of the required management procedures for Participating Agencies and the SCRTPA, TCTC, and Caltrans including specifications regarding levy and collection, administration, project selection, fund management, appropriation of fee funds, and ongoing technical review and updating.

#### **SECTION 2. DEFINITIONS**

- 2.1. "Development Project" or "Project" means any project undertaken for the purpose of development including the issuance of a permit for construction or reconstruction, but not a permit to operate.
- 2.2. "Commercial Project" means any Development Project that involves retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise at a fixed point of sale, or any hotel or motel development.
- 2.3. "Fix Five Partners" means the agencies listed as parties to this MOU.
- 2.4. "Fix Five Fee" means the fee established by each Participating Agency consistent with this Agreement to implement the Interstate 5 capacity enhancements outlined in the Nexus Study.
- 2.5. "High-Generation Commercial Project" means any Commercial Project that consists of 24-hour convenience markets, gas stations, fast-food with and without drive-throughs; or banks with drive-throughs.
- 2.6. "Industrial Project" means any Development Project that proposes manufacturing, transportation, logistics or warehousing.

2.7. "Multi-Family Residential Unit" means a Development Project that uses a single parcel for two or more dwelling units within one or more buildings, including duplexes, townhouses, condominiums, and apartments.

2.8. "Neighborhood/Convenience Commercial Project" means any Commercial Project that consists of stand-alone commercial establishments up to 10,000 building square feet, stand-alone supermarkets and drug stores; or shopping centers up to 100,000 combined building square feet with three or more stores.

2.9. "Nexus Study" means the Fix Five Partnership Phase 1 Impact Fee Nexus Study dated September 28, 2007, and prepared pursuant to California Government Code, Section 66000 et seq., the Mitigation Fee Act.

2.10. "Office Project" means any Development Project that involves business activities associated with professional or administrative services, and typically consists of corporate offices, financial institutions, legal or medical offices, or similar uses.

2.11. "Participating Agencies" means the Counties of Shasta and Tehama, each of the cities situated in those counties, and the Redding Rancheria if such agencies have (1) adopted the Fix Five Fee by ordinance and/or resolution and (2) entered into this Agreement.

2.12. "Partnership" means the agreement and actions of the Fix Five Partners defined herein.

2.13. "Regional/Comparison Commercial Project" means any Commercial Project that consists of stand-alone commercial establishments exceeding 10,000 building square feet, shopping centers up to 100,000 combined building square feet with fewer than three stores, or shopping centers that exceed 100,000 building square feet.

2.14. "Residential Dwelling Unit" means a building or portion thereof, which is designed primarily for residential occupancy by one family including single-family and multi-family dwellings. "Residential Dwelling Unit" shall not include hotels or motels.

### **SECTION 3. FEE APPROVAL**

3.1. **Effective Date.** The Fix Five Fee shall be adopted and in effect within each Participating Agency on May 1, 2008.

3.2. **County Consensus Required.** This MOU may only go into effect within Tehama or Shasta County when a full consensus of the cities and unincorporated county within the fee area has been reached. This MOU may take effect in one county or both counties.

If consensus within a county is not achieved, a revised MOU will be prepared for consideration in that county by Caltrans, the RTPA, and the agencies that voted in the affirmative to participate. Under that revised agreement, the Fix Five Fees may still be feasible within a portion of one County, although revisions to the program may be needed.

### **SECTION 4. CALTRANS**

**4.1. CEQA Review.** Caltrans agrees that the payment of Fix Five Fees as mitigation for new development is deemed an acceptable mitigation of cumulative impacts on mainline Interstate 5 by new development. This finding will eliminate the need for developers to perform costly project-by-project traffic studies of their cumulative impacts on mainline Interstate 5 and will reduce new development's fair share cost through more uniform application of this mitigation program. This agreement applies to the Phase I Fix Five Fee, if adopted, and will apply to a future Phase II program providing the minimum scope items specified in Section 9.4 are completed and approved.

**4.2. Support Costs.** Caltrans agrees that every effort will be made to minimize Caltrans support costs (i.e., project delivery cost other than those attributed to the construction contract). Caltrans has agreed to a goal to limit support costs to 27% percent of the total project cost. This goal is 9 percent below the current Caltrans statewide average and 5 percent below the current Caltrans statewide goal. If these goals are not met or if Participating Agencies are otherwise dissatisfied with Caltrans support efforts, the SCRTPA, TCTC and The Participating Agencies reserve the right to exercise their option to provide local delivery of projects on the State Highway System.

**4.3. Leveraging State and Federal Funds.** Caltrans agrees to strongly support the Partnership in seeking maximum shares of state and federal funds for Fix Five improvements. It is understood by all parties that Caltrans does not allocate these funds, but can provide recommendations to the CTC. Caltrans agrees that the Fix 5 Fee funding contribution identified in the Nexus Study (one half the project cost in Shasta County and one-third in Tehama County) is reasonable to use in developing recommendations to the CTC when seeking project allocations. Caltrans agrees the balance of the funding would consist of State and Federal funds including, but not limited to STIP, SHOPP, Federal earmarks, and State bonds.

**4.4. Regional Improvement Program (RIP) Funds.** RTPA's agree that Regional Improvement Program (RIP) funds may be considered for Partnership improvements where the use of RIP funds strengthens the Partnerships ability to leverage state and federal funds. In considering the use of RIP funds within any city, county, or tribe for any transportation need, RTPA's may take into account that agencies participation in regional funding programs such as the Fix Five Partnership.

**4.5. Fix Five Analysis and Assumptions Are Only Applicable to this Program.** Caltrans and other Fix 5 Partners agree that the information and fees in this study are only applicable when used by Fix 5 Participating Agencies. Caltrans District 2 will request non-participating agencies to identify and mitigate cumulative I-5 impacts in accordance with the Caltrans "Guidelines for Traffic Impact Studies," which utilizes a proportional analysis for determining a project's fair share mitigation of the cumulative impacts, in accordance with the CEQA guidelines.

## **SECTION 5. FEE RATE**

**5.1. Alternative Fees by Land Use.** Each Participating Agency shall adopt a Fix Five Fee either in an amount equal to the following fees for each identified land use category consistent with the fee schedule in the Nexus Study or fees that vary in amount by land use but will generate the same total fee revenues.

5.2. **Alternative To Phase-In Fix Five Fee.** Each participating agency may phase-in the Fix Five Fee over a period of up to two years; however the total fee at the final phase shall be adjusted upward to generate the same total fee revenue over the life of the program.

**Fix Five Impact Fee Schedule**

Land Use	Cost per EDU	EDU Factor	Fee <sup>1</sup>	Fee / Ft.	Sq.
<b>Tehama County and Incorporated Cities</b>					
<i>Residential</i>					
Single Family	\$ 1,894	1.00	\$ 1,894		N/A
Multi-family	1,894	0.80	1,515		N/A
<i>Nonresidential</i>					
Neighborhood Commercial	\$ 1,894	1.05	\$ 1,990	\$ 1.99	
Regional Commercial	1,894	2.51	4,758		4.76
High-Generation Commercial	1,894	4.34	8,222		8.22
Office	1,894	2.20	4,164		4.16
Industrial	1,894	0.81	1,529		1.53
<b>Shasta County and Incorporated Cities</b>					
<i>Residential</i>					
Single Family	\$ 1,697	1.00	\$ 1,697		N/A
Multi-family	1,697	0.80	1,357		N/A
<i>Nonresidential</i>					
Neighborhood Commercial	\$ 1,697	1.05	\$ 1,782	\$ 1.78	
Regional Commercial	1,697	2.51	4,262		4.26
High-Generation Commercial	1,697	4.34	7,364		7.36
Office	1,697	2.20	3,730		3.73
Industrial	1,697	0.81	1,370		1.37

<sup>1</sup> Fee per dwelling unit for residential or per 1,000 building square feet for nonresidential.

Sources: Tables 5 and 8, MuniFinancial.

5.2. **Annual Adjustment.** The Fix Five Fee described in section 3.1 above shall be adjusted by each Participating Agency on an annual basis at the beginning of each fiscal year (July 1) based on the April to April Engineering News Record California Construction Cost Index.

**SECTION 6 COLLECTION OF FIX FIVE FEES**

- 6.1. **Payment of Fix Five Fees.** Payment of the Fix Five Fees shall be as follows:
- a) The Fix Five Fees shall be paid at the time of issuance of a building permit for the Development Project, or as otherwise required or permitted pursuant to Government Code section 66007.
  - b) The amount of the Fix Five Fees shall be the fee amounts in effect at the time of payment.

- c) Fees charged by square footage shall be assessed based on the actual building size and not rounded to the nearest, lowest or highest 1,000<sup>th</sup> of square feet.
- d) Building size calculations shall include roofs -- with or without floor or walls -- storage areas, or any other feature that is part of the structure footprint including in the building permit.
- e) Fix Five Fees shall not be waived or reduced unless the Participating Agency waiving or reducing the fees has identified an alternative revenue source equal to the amount of the fee waiver for the same purpose to ensure that the program remains fully funded.

**6.2. Payment by all Development Projects.** Payment of the Fix Five Fee imposed by all Participating Agencies shall be payable by (1) all Development Projects within the jurisdiction of the Participating Agency for which building permits or other entitlements for Development Projects are issued on or after the effective date of the adoption of the Fix Five Fee by the Participating Agency, and (2) all Development Projects within the Participating Agency for which building permits or other entitlements for Development Projects were issued prior to the effective date of the adoption of the Fix Five Fee by the Participating Agency and which permits or entitlements were issued subject to a condition requiring the developer to pay a Fix Five Fee to be imposed upon such Development Project within the jurisdiction of the Participating Agency.

**6.3. Exemptions from the Fix Five Fee.** The following Development Projects shall not be subject to the Fix Five Fee:

- a) The rehabilitation and/or reconstruction of any legal, residential structure and/or the replacement of a previously existing legal dwelling unit, including an expansion of an existing dwelling unit that does not create an additional dwelling unit.
- b) The rehabilitation and/or reconstruction of any non-residential structure where there is no net increase in square footage. Any increase in square footage shall pay the established applicable fee rate for that portion of square footage that is new.
- c) Development Projects for which an application for a vesting tentative map authorized by Government Code Section 66498.1 was deemed complete on or prior to the effective date of the adoption of the Fix Five Fee by the Participating Agency where no subsequent agreements require payment of the fee.
- d) Development Projects which are the subject of a development agreement entered into pursuant to Government Code section 65864 et seq. prior to the effective date of the adoption of the Fix Five Fee by the Participating Agency, wherein the imposition of new fees are expressly prohibited by the development agreement, provided, however, that if the term of such a development agreement is extended after the effective date of the adoption of the Fix Five Fee, the Fix Five Fee shall be imposed.

**6.4. Future Development Agreements.** All future development agreements entered into by the Participating Agencies shall require the full payment of the Fix Five Fee.

**6.5. Payment for mixed use projects.** For mixed land use projects, which are projects that have both residential and non-residential uses, the amount of the fee imposed on the entire Development Project shall be proportionally determined based on the following:

- a) The fee associated with the type of residence; and,

b) By building square, by land use, for the nonresidential portion of the project.

**6.6. Redding Rancheria.** The Fix Five Partners recognize that the Redding Rancheria requires a more flexible method for the collection of Fix Five funds since they routinely act as both the builder and the lead agency. In lieu of Fix Five Fees, the Redding Rancheria, as a participating agency, agrees to establish a dedicated account and deposit funds in amounts consistent with the Fix Five Fees based on new construction building size and use types within Redding Rancheria jurisdiction. The Redding Rancheria agrees that, within five years, the full amount of Fix Five funds allocated to the building activity will be deposited within the account. Funds in the account would be held and distributed pursuant to the same procedures as the cities and counties, and subject to the same annual reporting requirements.

## **SECTION 7. DISTRIBUTION OF FIX FIVE FEES**

**7.1. Purpose of Fix Five Fees.** All Fix Five Fees received by each Participating Agency shall be used solely for the purpose of funding Interstate 5 projects as specified in the Nexus Study. Each Participating Agency may spend Fix Five Fees held by that entity on Fix Five capital projects at the discretion of that entity.

**7.2. Sharing of Fee Revenue.** All fees collected by each Participating Agency pursuant to the Fix Five Fee may be held by that agency at its discretion so long as those fees are dedicated to eventual use for the designated Fix Five capital improvements. For projects with multi-jurisdictional components, the Participating Agencies may enter into future agreements with one another and any other funding entities on the pooling of fee revenues.

## **SECTION 8. ADMINISTRATIVE COSTS**

**8.1. Participating Agency Administrative Costs.** The amount of Fix Five Fee does not include a component for administrative costs. Participating Agencies may recover the costs of administering the Fix Five Fee program by either adopting an additional fee component on top of the fees prescribed by the Nexus Study or by drawing upon other revenue sources.

## **SECTION 9. ADMINISTRATION OF THE FIX FIVE PROGRAM**

**9.1. Fix Five Account or Fix Five Funds.** All fees collected pursuant to the Fix Five Fee by each Participating Agency shall be deposited in a Fix Five Fund and shall not be commingled with other funds of the Participating Agency. The contents of this Fix Five fund shall be designated solely for the purpose of contributing to the financing of the Fix Five capital projects included in the Nexus Study. Any interest income earned on the Fix Five fund shall also be deposited therein and shall only be expended for the purposes as set forth in this Agreement.

**9.2. Prohibition on Interfund Transfers or Loans.** Notwithstanding subsection (b)(1)(G) of section 66006 of the Government Code there shall be no interfund transfer, grant or loan of the Fix Five Fees or Fix Five account to other accounts, funds, programs

or fees. However, a Participating Agency may provide loans, grants or transfers of Fix Five Fees to other Participating Agencies provided that such funds are consistent with Fix Five Program and used for the development or construction of Fix Five capital projects.

**9.3. Annual Reports.** Each Participating Agency shall prepare an annual report consistent with the requirements of the Fee Mitigation Act (Gov. Code §§ 66000 et seq.) regarding the Fix Five Fees and submit that report to the Executive Director of the SCRTPA or TCTC, depending on the County in which the Participating Agency is located, by November 15 of each year that Fix Five Fee funds are held by the Participating Agency. Annual reports should include a complete listing of a development projects subject to the Fix Five Fees, detailed by land use, number of dwelling units, and building square feet for nonresidential projects, as well as the amounts of the fees collected.

## **SECTION 10. PHASE II SCOPE**

10.1. The Fix Five Fees presented in the nexus report constitute the first phase of a two-phased study of the need for capacity enhancements on Interstate 5. The Fix Five Partnership intends to complete a second phase fee study, intended to replace the phase one fee, within two years.

Participating agencies agree that Phase II will include the following minimum scope. If Phase II is limited to this minimum scope, the Partnership expects the total Fix Five improvement cost to increase by 20-percent:

- A Phasing Plan for capital improvements
- A fee administration program for collection and disbursement of funds
- An updated Memorandum of Understanding or consideration of a Joint Powers Authority
- Improvement needs, cost and fees for I-5 mainline merge points (i.e., ramp metering and merge lanes improvements)
- A refinement of growth projections and Equivalent Dwelling Unit (EDU) factors to ensure that the stated Fix Fee revenues in the Nexus Study will be generated.
- A study of needs, costs, and relative Interstate 5 benefits associated with parallel route improvements.
- A study of needs and cost of all necessary Interstate 5 interchange improvements. Such information would be based on existing studies.

At the discretion of participating agencies, Phase II may consider the following:

- Fee credits to create incentives for developments designed to minimize vehicle miles of travel (i.e., mixed use projects or project consistent with a regional blueprint).
- Zones of benefit (ZOBs) to account for disproportionate impacts to Interstate 5 and benefits from improvements to Interstate 5, taking into account traffic modeling and vehicle miles of travel within different geographic areas.
- A refinement of the maximum fair-share contribution for state and federal funding sources based on trip length and truck data developed through a

traffic model. This is not expected to change the Fix Five Fee amount, however, since the proposed Fix Five Fee is substantially lower than the maximum share attributable to new development. The intent of this refinement is to build the best possible case to leverage state and federal funds.

- Fees for improvements to parallel routes benefiting Interstate 5, or for Interstate 5 interchanges, pursuant to the studies noted above under “minimum” scope.” Since some agencies already have fees for such improvements, this fee option is available to individual Participating Agencies and is not a requisite to Fix Five Participation.

Phase II is not intended to revisit the following Phase I determinations:

- Cost estimates for mainline improvements
- Proposed Fix Five Fee revenues needed for mainline improvements unless, pursuant to the fair share refinement noted above, such fees are higher than the maximum share attributable to new development. It is the intent of this provision that the local fair share contribution percentage can go down in Phase II; however, it is protected from going up.

10.2. Although the Phase II program adds several desired points of additional analysis, the Phase I program is still determined to be adequate and defensible. If the Phase II program is delayed, the Phase I program be delayed or altered, the Phase I program will remain sufficient and sustainable based on the annual reporting requirements in Section 9.3 and the periodic review requirements contained in Section 10. Should some, but not all of the participating agencies adopt the Phase II program, the adopting agencies will need to determine at that time whether the Phase II program remains feasible. In this case, a new memorandum of understanding would be required to redefine operating procedures.

## **SECTION 11. PERIODIC REVIEW OF FIX FIVE FEES**

11.1. Upon completion of Phase II, periodic review of the phase one fee will not be required, outside of annual inflation updates as described in Section 3.2 of this agreement until the adoption of the second phase fee.

Should the Phase II program be delayed, the Fix Five Fees described herein should be adjusted accordingly, by all Participating Agencies and the SCRTPA and TCTC every five (5) years to reflect the projected revenues generated or any other local or new funding sources, and to reflect changes in actual and estimated costs of the Fix Five capital projects including, but not limited to, debt service, lease payments and construction costs. As appropriate, Fix Five Fee adjustments may also include reconsiderations of traffic conditions and improvement needs.

11.2. If the periodic reports prepared pursuant to section 8.1 above demonstrates a need, the Participating Agencies, in coordination with the SCRTPA and TCTC, may consider modifying the Fix Five Fee amount to ensure that it is a fair and equitable method of distributing the costs of the Fix Five improvements necessary to accommodate Interstate 5 mainline traffic volumes generated by future growth.

## **SECTION 12. FIX FIVE CAPITAL PROJECTS SELECTION**

12.1 Capital projects funded with Fix Five Fee revenues shall be limited to the mainline capacity-enhancement projects on mainline Interstate 5 between Corning and Shasta Lake that are listed in the Nexus Study. When funds from multiple sources must be combined to complete a project, the Participating Agencies and the funding entities will need to reach agreements on funding shares and phasing.

## **SECTION 13. CREDITS AND REIMBURSEMENTS**

**13.1. Reimbursements and Credits.** In the event that Fix Five capital projects are constructed by a developer in excess of the Development Project's Fix Five Fee obligation or in lieu of payment of Fix Five Fees by a developer pursuant to an agreement between the developer and the Participating Agency, the developer may be reimbursed or credited for future application costs for any costs based on the actual costs of construction of the Fix Five project incurred by the developer in excess of the amount of the Fix Five Fees that apply to the Development Project. Reimbursements shall be enacted pursuant to an agreement between the developer and the Participating Agency contingent on payment of funds when available for reimbursement to the developer.

## **SECTION 14. EXISTING REGIONAL TRANSPORTATION FEES**

14.1. Each Participating Agency shall evaluate and adjust, if necessary, its existing local fee program(s), if any, associated with regional traffic impacts to determine continued compliance with the Fee Mitigation Act due to the adoption of the Fix Five Program.

## **SECTION 15. WITHDRAWAL OR DELAYED PARTICIPATION**

**15.1. Withdrawal.** A Participating Agency may elect to withdraw from the Fix Five Program upon providing one year written notice to the SCRTPA or TCTC and each Participating Agency. If the withdrawing agency has accrued Fix Five Program Fee revenue, all funds plus interest earned shall be expended on Fix Five capital projects by the withdrawing agency or by any agreement with any remaining Participating Agency, pursuant to the Mitigation Fee Act.

**15.2. Nullification of Fix Five Benefits.** Withdrawing parties understand that such action will nullify all Fix Five Partnership benefits including but not limited to: 1) CEQA relief from litigation and cumulative impact assessments on I-5 mainline for all development projects; 2) strengthened ability to leverage funds and construct I-5 projects within that agency's jurisdiction; and 3) strengthened ability to add new access (interchanges) to I-5 or to enhance existing access to I-5.

Withdrawing parties further understand that a requirement for payment of a Fix Five fee for a limited subset of projects, such as those subject to CEQA, will not be accepted by Caltrans as sufficient mitigation for cumulative impacts to I-5 mainline under CEQA. The Fix Five funding plan is based on participation from all development activity that requires a building permit.

**15.3. Delayed Participation.** Any agency that elects to become a Participating Agency with an effective date after May 1, 2008, shall be considered a delayed participant. Acceptance into the Partnership, with all corresponding benefits, will require approval by the Fix Five Partners who have been paying into the program. Such approval may come from each of the Participating jurisdiction's chief official rather than the full elected board. Agencies requesting delayed participation shall, at a minimum, implement a Fix Five Fee program which is prorated to generate fees over the life of the program equal to the funding lost during the non-participating period. For example, an agency that delays participation for two years of a twenty-year program shall pay a Fix Fee 10% higher than would otherwise be necessary. In consideration of allowing delayed participation by an agency, the existing Fix Five Partners may also consider other revenue adjustments due to other factors including lost interest revenue, missed leverage opportunities, or lost revenue from unusually large development projects approved during the non-participating period that exceeded growth projections in the Fix Five Nexus Report.

## **SECTION 16. MISCELLANEOUS**

**16.1. Effective Date.** This Agreement shall be effective on May 1, 2008 at which time all Participating Agencies, the SCRTPA, TCTC and Caltrans shall be authorized to proceed under this Operating Agreement.

**16.2. Enforcement.** It shall be the responsibility of the Fix Five Partners to adopt, implement, and maintain the Fix Five Program consistent with the terms of this Agreement.

**16.5. Execution.** The Board of Supervisors of the Counties of Shasta and Tehama, and the City Councils of the Cities has each authorized execution of this Agreement as evidence by the authorized signatures below.

**16.6. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.