MEMORANDUM
DEPARTMENT OF PUBLIC WORKS
County of Placer

TO: BOARD OF SUPERVISORS
FROM: KEN GREHM
DATE: AUGUST 26, 2014

SUBJECT: TRAFFIC FEE REFUND AGREEMENT WITH NORTHSTAR BIG HORN LLC AND NORTHSTAR IRON HORSE LLC

ACTION REQUESTED / RECOMMENDATION
1. Authorize the Chairman to execute a traffic fee refund agreement for Northstar Big Horn LLC and Northstar Iron Horse LLC in the amount of $250,000 associated with improvements constructed on Northstar Drive. There is no net County cost.

BACKGROUND / SUMMARY
Development within the Northstar community has been required to make fair share contributions for improvements to Northstar Drive to mitigate traffic impacts. Developers of Northstar Village widened and improved a significant section of Northstar Drive including the intersections of State Route 267 and the Northstar intercept parking lot. With the completion of those new improvements, the County has collected more than required for the fair share contributions to Northstar Drive. The developers who constructed the improvements and also paid fair share contributions have requested a traffic fee refund.

The Department has reviewed the request and determined that a portion of the previously paid contributions will no longer be needed. The Developers and County have agreed to a refund of $250,000. The Developers spent well over $2,000,000 to construct various improvements along Northstar Drive. The cost to complete future improvements is contained in the Tahoe Region Capital Improvement Program.

ENVIRONMENTAL
The proposed action is not a project and is therefore exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the CEQA guidelines.

FISCAL IMPACT
The County has collected $655,200 in fair share contributions for improvements to Northstar Drive from the Developers. These funds have been held in a separate account for the purpose to which these funds are intended. The fee refund would come from this account. The remaining fair share contributions combined with funding from the County’s traffic impact fee program will eventually complete the proposed future improvements on Northstar Drive.

Attachments:
Traffic Fee Refund Agreement
TRAFFIC FEE REFUND AGREEMENT

This TRAFFIC FEE REFUND AGREEMENT (this "Agreement") is made this 7th day of July, 2014, by and between this County of Placer, a political subdivision of the State of California ("County") and Northstar Iron Horse, LLC and Northstar Big Horn, LLC ("Developer").

RECITALS

WHEREAS, Developer has developed various projects in eastern Placer County including Northstar Village (SUB 416); and

WHEREAS, Developer’s entitlements and environmental mitigation measures (MM 4.4.14) required that they contribute fair share contributions for various improvements including the widening of Northstar Drive (SR267 to Basque Drive); and

WHEREAS, Developer has contributed $655,200 towards the widening of Northstar Drive; and

WHEREAS, a large portion of the improvements have been constructed; and

WHEREAS, the County has established the Tahoe Region Traffic Mitigation Fee District ("Tahoe Region District") and has adopted a Capital Improvement Plan for the Tahoe Region District (the "CIP") that was amended in December 2013 to include future needed improvements to Northstar Drive; and

WHEREAS, a portion of the amount paid by Developer will no longer be needed; and

WHEREAS, the parties have agreed that Developer’s complete refund for the fair share contribution is $250,000.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE 1. REFUND

1.1 Refund Amount. Developer is entitled to a refund in accordance with the terms of this Agreement in an amount of Two Hundred Fifty Thousand Dollars ($250,000) (hereinafter the "Refund Amount") which is agreed to be the final refund amount and constitutes full compensation associated with the fair share contributions for various improvements paid by the Developer.

1.2 Sources for Reimbursement. Nothing in this Agreement shall be construed to create an obligation of, or be attributable to, County’s general or special funds, County Service Area accounts, or any other funds in the hands of County or its accounts now and in the future, except as otherwise expressly provided herein. County’s obligation hereunder to provide a refund is limited to the availability of previously paid fair share contributions being held by the County.

1.3 Timing of Reimbursement and Interest. The County will pay the Developer the total amount within 30 days of both parties executing the agreement.

ARTICLE 2. MISCELLANEOUS

2.1 Indemnification.

a. Indemnification by Developer. Subject to the provisions of this Section 2.1, Developer agrees and covenants to, and shall fully indemnify, defend and hold harmless County and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys’ fees, whether for outside counsel or the County Counsel), causes of action, claims, or judgments (collectively, 

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“Claims”) arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, or repair of the Improvements by any of the following: Developer, any of Developer’s creditors, engineers, contractors or subcontractors, or any other person or entity employed by or acting on behalf of or as the authorized agent for Developer, or any of Developer’s creditors, engineers, contractors or subcontractors. Provided, however, that Developer shall not be liable hereunder to indemnify, defined or hold harmless County and its elective and appointive boards, commissions, officers, employees and agents against Claims alleging sole and active negligence of County in its functions of design review, approval or construction inspection in connection with the Improvements; provided further, that nothing in this Agreement shall be construed as a waiver by County of any immunity or defense it may have relating to any such Claim, including without limitation immunity or defenses relating to design review and/or approval and/or construction inspection.

b. Duration of Indemnification Obligations. The indemnification and hold harmless agreement made by Developer in Section 2.1.a above, with respect to the refund shall not expire and shall remain in effect with respect to any Claims which are made, initiated, claimed, filed or assessed at any time as allowed by law, or which relate to (directly or indirectly) any such Claims.

2.2 Entire Agreement. This Agreement represents the entire agreement of the parties relating to the subjects covered by this Agreement. No oral or written statement, representation, or agreement not included within this Agreement shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof.

2.3 Notices. Each notice, request, offer, approval, consent or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (e.g., Federal Express or UPS), or United States certified mail (return receipt requested with postage fully prepaid), addressed to the appropriate party as follows:

If to County: Placer County
Department of Public Works
3091 County Center Drive, Ste 220
Auburn, California 95603
Attention: Public Works Director

If to Developer: Northstar Iron Horse, LLC
Northstar Big Horn, LLC
PO Box 2537
Truckee, CA 96160

Or at such other address as may be specified from time to time in the manner required herein. All such notices shall be deemed to have been given on the date personally delivered, the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given, or the next business day if delivered by an overnight courier service permitted by the terms of this Section 2.3.

2.4 Effective Date. This Agreement shall become effective upon its execution by all parties.

2.5 Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, terror, floods, drought, rain, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to County, within thirty (30) days of the commencement of such delay, an extension of
time for such cause shall be granted for the period of the enforced delay, or longer as may be mutually agreed upon.

2.6 **Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of California. Initial venue for any action shall be Placer County, California. Each party waives federal court removal and/or original jurisdiction rights it may have.

2.7 **Authority to Sign.** Each individual signing this Agreement represents and warrants that he or she has the power and authority to bind the entity or individual on behalf of whom he or she is signing.

**COUNTY:**

**NORTHSTAR:**

COUNTY OF PLACER, A political subdivision of the

By: ___________________

Name: ___________________

Title: ___________________

ATTEST:
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
County Counsel

DEPUTY COUNTY COUNSEL

NORTHSTAR IRON HORSE
a Limited Liability Corporation/
NORTHSTAR BIGHORN
A Limited Liability Corporation

By: Edward Morgan

Name: Edward Morgan

Title: Vice President