

From: [Elizabeth Collins](#)
To: [Alaxandra Pucciarelli](#); [Reid Miller](#)
Cc: [Kate Morley](#)
Subject: NAIPTA residential ecoPASS
Date: Thursday, April 25, 2019 11:56:42 AM
Attachments: [image002.png](#)
[Miramonte_residential_ecopass_04.18.2019.doc](#)

Hi Alaxandra and Reid, I wanted to give you an update on NAIPTA's conversation with Jack Kemmerly at Miramonte Homes. He was very interested in an agreement to provide an ecoPASS for each unit and bundle the cost into the HOA fee. NAIPTA was able to adapt our existing employer ecoPASS program into a residential ecoPASS. See attached agreement. I understand Jack is now taking this agreement to his HOA organization for review.

Please note that this agreement is a pilot program as we are currently going through a Fare Study. Part 3 of the agreement outlines this:

3. Pilot Program. It is understood that the initial rate of \$33.20 per bed is deemed a pilot program and is subject to change after a Fare Study is conducted. However, this agreement will grandfather the proposed development and any future increase, if applicable, will be capped at ten percent (10%) in any given year.

NAIPTA intends to continue offering the residential ecoPASS program to developers as high-density housing developments are proposed. As we reach out to developers, appropriate City staff will be included on the email and updated on any agreements that are made.

Thank you, Bizzy

From: Jacki Lenner
Sent: Friday, April 19, 2019 9:42 AM
To: Jack Kemmerly <JKemmerly@miramontehomes.com>; Jennifer Mott <JMott@awdlaw.com>
Cc: Elizabeth Collins <ecollins@naipta.az.gov>; Kate Morley <kmorley@naipta.az.gov>; Heather Dalmolin <hdalmolin@naipta.az.gov>
Subject: Miramonte, residential ecopass 04.01.2019

Good Morning Jack and Jennifer,

Please find attached a draft of an ecoPASS agreement for Miramonte's residential project on Ponderosa Parkway. I know we went back and forth on the number of units/residents. For the purposes of this agreement, I assumed that fell in the 51-200 range which is the \$33.50/pass price point. If it exceeds the 200 mark, the price would go down to \$28.50 per pass.

I've copied our Administrative Director Heather Dalmolin on this email, as she oversees our legal agreements. Please feel free to reply all, or contact Heather directly, with any feedback, questions, etc.

Have a wonderful weekend...

Jacki

Jacki Lenners
Marketing Manager
Mountain Line
3773 N. Kaspar Dr., Flagstaff, AZ 86004
W: 928.679.8933
C: 602.791.6879
www.mountainline.az.gov

ML Logo for Email



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AGREEMENT FOR TRANSIT PASSES

THIS AGREEMENT FOR TRANSIT PASSES ("Agreement") is entered into by, between and among the Northern Arizona Intergovernmental Public Transportation Authority, a corporate body and political subdivision of the State of Arizona ("NAIPTA"), and Miramonte Homes ("Developer") authorized to conduct business in the State of Arizona. NAIPTA and Developer are collectively referred to herein as "Parties," or individually as a "Party."

RECITALS:

A. NAIPTA is a public intergovernmental public transportation authority created pursuant to the provisions of Arizona Revised Statutes, Title 28, Chapter 26, and is responsible for providing certain public transit services in the City of Flagstaff, including the campus of Northern Arizona University.

B. Developer is the owner of Miramonte at Pondersosa Parkway, (the "Property"), within the City of Flagstaff.

C. Residents of the City have identified mitigation of traffic congestion as a significant community goal. Developer has proposed, as a means of mitigating traffic congestion, an agreement whereby the residents would purchase Residential ecoPASSES through their HOA fees for the next 10 years.

D. NAIPTA is authorized to enter into this Agreement with Developer pursuant to the provisions of A.R.S. § 28-9124.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and mutual promises set forth in this Agreement, NAIPTA and Developer agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions pursuant to which NAIPTA will provide to the Property a residential ecompass program for all households. The pass will provide access to all Mountain Line Transit routes within the City of Flagstaff.

2. Payment by Developer. Developer will pay NAIPTA the sum of \$33.50 per bed for 10 years, adjusted annually to reflect changes in the Transportation Consumer Price Index, for the Term of this Agreement. Payments will be made in 4 equal quarterly installments of the annual fee due for total beds of _____, in advance, on the first day of each quarter beginning with July 1, 2019.

3. Pilot Program. It is understood that the initial rate of \$33.20 per bed is deemed a pilot program and is subject to change after a Fare Study is conducted. However, this agreement will grandfather the proposed development and any future increase, if applicable, will be capped at ten percent (10%) in any given year.

4. **General Provisions.**

4.1 **Term.** This Term of this Agreement shall be for ten (10) years, unless terminated sooner as provided herein and will autorenew for 10 years in perpetuity unless notice is provided by either party no less than 180 days prior to the authorenwal.

4.2 **Notices and Filings.** All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and (i) delivered personally, (ii) sent by recognized courier service for next business day delivery or (iii) sent by certified United States Mail, postage pre-paid and return receipt requested, if to:

| | | |
|---------------|--|---------------|
| NAIPTA: | | Developer: |
| | | |
| With Copy to: | | With Copy to: |

or to such other address or addresses as may hereafter be specified by notice given by any of the above for itself to the others. Any notice or other communication directed to either Party shall become effective upon the earliest of the following: (a) actual receipt by that Party; or (b) thirty-six (36) hours after deposit with the United States Postal Service, addressed to the Party.

4.3 **Default.** Failure or unreasonable delay by a Party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement. Any breach not cured within thirty (30) days after written notice is received from another Party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. The thirty (30) day period shall not apply where an ordinance or statute requires NAIPTA to perform or otherwise act in a period in excess of thirty (30) days.

4.4 **Dispute Resolution.** If a dispute arises out of or relates to this Agreement and if the dispute cannot be settled through negotiation, the Parties agree that there shall be a forty-five (45) day moratorium on litigation while the parties first try in good faith to resolve the dispute by mediation before resorting to some other dispute

resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org with the exception of the mediator selection provisions, or the procedures used by the Alternative Dispute Resolution (“ADR”) Program at the Coconino County Superior Court. The parties shall agree upon a attorney mediator, failing which on the application of either party to the Director of the ADR Program (“Director”) at the Coconino County Superior Court, an attorney mediator will be appointed promptly by the Director for that purpose. Each party agrees to bear its own costs in mediation. The Parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This section does not constitute a waiver of a Party’s right to initiate legal action if a dispute is not resolved through good faith mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

4.5 Choice of Law and Venue. Any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by the substantive law of the State of Arizona, without regard to principles of conflicts of law. The sole and exclusive venue for any such dispute shall be the Superior Court of the State of Arizona, in and for the County of Coconino, and each Party waives the right to object to venue in Coconino County or to remove an action from such court for any reason. The Parties confirm that this Section 5.6 has been separately bargained for and constitutes additional consideration for NAIPTA’s entering into this Agreement.

4.6 Good Standing and Authority. The Parties represent and warrant that each is duly formed and validly existing under applicable state laws and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

4.7 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their successors in interest and assigns; provided; however, that a party's rights and obligations hereunder may be assigned, in whole or in part, only to a person or entity that has acquired any applicable property rights and has expressly assumed all of the rights and obligations of the assigning party.

4.8 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.

4.9 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof; and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is writing and is signed by the Party asserted to have granted such waiver.

4.10 Further Documentation. The Parties agree in good faith to execute

such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

4.11 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

4.12 Heading. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

4.13 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.

4.14 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or Legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Arizona time) on the last day of the applicable time period provided herein.

4.15 Conflict of Interest. This Agreement is subject to the terms of Arizona Revised Statutes § 38-511.

4.16 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitutes the entire agreement between the Parties.

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written are superseded by and merged in this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

NAIPTA:

By: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Dickinson Wright PLLC
NAIPTA General Counsel

DEVELOPER:

an Arizona limited liability company

By: _____

Its: _____

Date: _____