



FREEDOM OF INFORMATION COVERSHEET

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI reference: 24-133

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Schedule	Not Applicable
4. Documents	Published
5. Additional information identified	Not Applicable
6. Fees	Not Applicable
7. Processing time (in working days)	30 Days
8. Decision made by Ombudsman	Not applicable
9. Additional information identified by Ombudsman	Not Applicable
10. Decision made by ACAT	Not applicable

11. Additional information identified by ACAT	Not applicable
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Freedom of Information - Access Application to Transport Canberra and City Services - Submission confirmation

Your submission has been successful. Please keep a copy of this receipt for your records.

Date and time

Reference code

Transport Canberra and City Services
(TCCS)

GPO Box 158
Canberra City, ACT 2601

Phone: 02 6207 2987
TCCS.FOI@act.gov.au

Applicant details

Title

 ▾

Given name

Family name

Preferred name

Preferred method of contact

Phone

Email

Post

Contact phone number

Contact email address

Contact postal address

Address line 1

[Redacted]

Address line 2

[Redacted]

Suburb

CANBERRA

State

ACT

Postcode

2601

Preferred method to receive information*

Email

Post

Same as contact email address

Information request

Who are you making the request on behalf of?

Myself ▼

What type of information are you requesting access to?*

Other information

What information are you requesting access to under the Act?*

A copy of any agreement between Riverview Group and Transport Canberra relating to the provision of bus services to Ginninderry and any associated conditions or alterations to this agreement

Attach a description or additional details about the information you are requesting access to (optional)

Do you have a similar or identical request currently under review by another ACT Government Directorate?

Yes

No

Are you enquiring as

[Redacted] ▼

Provide a statement about how the release of information is in the public interest (optional)

Would you like to provide any additional information? (optional)

Attach additional documents to support your application (optional)

Dear [REDACTED]

Freedom of Information Request - Reference 24-133

I refer to your application made to Transport Canberra and City Services Directorate (TCCS) under the *Freedom of Information Act 2016* (FOI Act) on 16 September 2024. In your application you are seeking access to the following government information:

“A copy of any agreement between Riverview Group and Transport Canberra relating to the provision of bus services to Ginninderry and any associated conditions or alterations to this agreement.”.

Timeframes

A decision on your access application was due on 29 October 2024. In accordance with section 38 of the FOI Act, TCCS undertook third party consultation, and the due date of your application was extended until 19 November 2024. I am pleased to confirm that the third-party consultation has now been completed.

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Decision on access

A search for documents has been undertaken and one record has been identified as relevant to your request.

Upon reviewing the information within this record and applying the public interest test under section 17 of the FOI Act, I have found that some of the information within this record is, on balance, contrary to the public interest to disclose.

My decision is detailed further in the following statement of reasons. The record is enclosed at [Attachment A](#) with deletions applied to information which is contrary to the public interest to disclose.

Statement of Reasons

In reaching my access decision, I have taken the following into account:

- the FOI Act;
- the content of the documents that fall within the scope of your request;
- the *Humans Rights Act 2004*; and
- *the response to the section 38 third party consultation.*

The FOI Act has a pro disclosure bias, which requires information to be disclosed unless doing so would be contrary to the public interest. As an Information Officer, I must decide where, on balance, public interest lies in the disclosure of government information. Section 17(1) of the FOI

Act sets out the steps for completing the public interest test. As part of this process, I must identify all relevant factors in schedule 1 of the FOI Act. If no factor in schedule 1 is found relevant, I must then consider the factors listed in schedule 2 of the FOI Act and determine, on balance, where the public interest lies.

Schedule 1

- No relevant factors identified.

Factors favouring disclosure in the public interest (Schedule 2.1)

- Schedule 2.1(a)(viii) - reveal the reason for a government decision and any background or contextual information that informed the decision.
- Schedule 2.1(a)(i) - promote open discussion of public affairs and enhance the government's accountability.
- Schedule 2.1(a)(ii) - contribute to positive and informed debate on important issues or matters of public interest.
- Schedule 2.1(a)(iv) - ensure effective oversight of expenditure of public funds.

Factors favouring non-disclosure (Schedule 2.2)

- Schedule 2.2 (a)(ii) – prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*.

In making my decision on access, I acknowledge that you are seeking to access information regarding an agreement to provide transport services. The information within the relevant records is likely to provide contextual information on a government decision on providing the described service, as well as promoting open discussion of public affairs. As the service is delivered by Transport Canberra, I also find that disclosure may contribute to the oversight of expenditure of public funds. I also acknowledge that the pro-disclosure bias requires the public interest test to be approached on the basis that there are not simply empty scales in equilibrium, waiting for arguments to be put on each side. Rather, the scales are loaded in favour of disclosure.

In my review, I have also identified the personal information of third parties. I have considered that the information has been provided to TCCS with the expectation that it is handled in accordance with [published privacy statements and policies](#), and authority to access this information or evidence of identity to validate authority to release the personal information has not been provided in the submission of your application. I consider that this information is not readily available to the public and has not otherwise been disclosed by TCCS. I further consider that this information has come to be held by TCCS with the expectation that it is handled in accordance with the *Information Privacy Act 2014*.

I extended these considerations to the mobile numbers of ACT Government officers, which are either personal phone numbers or provided by ACT Government to staff for a specific reason. Where the number is provided by ACT Government, the use of the phone is for agreed purposes with limitations on calls outside of business hours and disclosure of these contact numbers is likely to prejudice the personal privacy of employees. As such, I find that the disclosure of this information would prejudice their right to privacy under the *Human Rights Act 2004*.

I find that the protection of an individual's right to privacy under the *Human Rights Act 2004* carries significant weight and disclosure is, on balance, contrary to the public interest.

I have found that the factors favouring disclosure can be satisfied by the deletion of information which is contrary to the public interest. I have attached the record with redactions enclosed at Attachment A.

Charges

No fee is applicable to this application as the number of pages being released is within the fee-free threshold.

Online publishing – disclosure log

Under section 28 of the Act, TCCS maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you will be published on the disclosure log with personal information removed.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek an Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in TCCS' disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision, you may write to the Ombudsman at:

ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the Act, if a decision is made under section 82 on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
CANBERRA CITY ACT 2601
Telephone: (02) 6207 1740
www.acat.act.gov.au

If you have any queries concerning the directorate's processing of your request, or would like further information, please contact the TCCS FOI team on (02) 6207 2987 or email to tccs.foi@act.gov.au.

Yours sincerely



Lisa Johnson
Information Officer

19 November 2024



TRANSPORT SERVICES AGREEMENT

Date

16/1/2020

Parties

AUSTRALIAN CAPITAL TERRITORY

AND

RIVERVIEW PROJECTS (ACT) PTY LIMITED
ACN 165 870 539

STRATHNAIRN BUS SERVICE

Prepared by

ACT Government Solicitor
Level 6, 12 Moore Street
Canberra ACT 2600
Ph: 6207 0498
Fax: 6207 0539
Ref: 637015

Version

FINAL: 13 January 2020

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Parties

Name	AUSTRALIAN CAPITAL TERRITORY the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth) represented by the Transport Canberra and City Services Directorate (Territory).
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Name	RIVERVIEW PROJECTS (ACT) PTY LIMITED ACN 165 870 539 of Unit 3, 28 Bougainville Street, Manuka ACT 2603 (Riverview Projects).
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Background

- A. The Territory and Riverview Developments (ACT) Pty Limited entered into a Joint Venture Agreement to develop and sell certain land in the Territory and New South Wales (**Ginninderry Development**).
 - B. Riverview Projects is engaged as the Development Manager for the Ginninderry Development and provides development management services to the Joint Venture pursuant to a Development Management Agreement between the Joint Venture and Riverview Projects.
 - C. The first new suburb being built as part of the Ginninderry Development is Strathnairn, which is located in West Belconnen and is expected to have residents from January 2020.
 - D. The Territory is currently looking at new models for the early delivery of public transport services in new suburbs in the ACT.
 - E. The Joint Venture, Riverview Projects and the Territory have been working together to develop a proposed new model for the early delivery of public transport to Strathnairn (**New Model**).
 - F. Under the proposed New Model, Riverview Projects will supply two new Hino Ponchos buses to the Territory and the Territory will deliver the services to Strathnairn using the Buses.
 - G. A trial of the New Model will provide the Territory with an opportunity to test the effectiveness of providing public transport services early in new suburbs and tests a model for delivering those services in collaboration with developers. If successful, the New Model may also be replicated or adapted by the Territory for future greenfield suburbs in Belconnen, Gungahlin or Molonglo Valley.
 - H. Riverview Projects has agreed to supply the new Buses and the Territory has agreed to deliver the Services in accordance with the terms and conditions of this Agreement.
-

Operative Provisions

1. Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement	means this agreement and includes all schedules, parts, appendices, annexures and exhibits to it.
Approved Route	means the route approved by both parties that will need to be travelled by the Buses in order to provide the Services, an initial draft of which is contained in Schedule 3 .
Associates	means, in relation to a party, any officer, agent, adviser, consultant, contractor or employee of that party.
Buses	means the two Hino Poncho buses specified in Schedule 5 and procured by Riverview Projects in accordance with clause 3.1 .
Bus Delivery Date	means the date specified as the "Bus Delivery Date" in Item 6 Schedule 1 .
Business Day	means a day in the Territory that is not: (1) a Saturday or Sunday; or (2) a public holiday for the Territory pursuant to the <i>Holidays Act 1958</i> (ACT).
Claim	means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made: (1) under or in connection with this Agreement; or (2) at Law or for specific performance, restitution, payment of money (including damages) or any other form of relief.
Commencement Date	means the date specified as the "Commencement Date" in Item 2(2) Schedule 1 .
Confidential Text	means any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in Item 6 Schedule 1 .
Contact Officer	means in relation to each party, the representatives whose names and contact details are specified in Item 1 Schedule 1 , or as notified from time to time by one party to the other.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).

Default means any failure by Riverview Projects to comply with any obligation of Riverview Projects under this Agreement (other than a Major Default or Default Termination Event).

Default Termination Event means the occurrence of any of the following events:

- (1) **(Insolvency Event):** subject to the Corporations Act, an Insolvency Event occurs in relation to Riverview Projects;
- (2) **(fraud):** Riverview Projects engages in fraud, collusion or dishonest conduct in performing its obligations under this Agreement;
- (3) **(assignment, transfer or disposal):** Riverview Projects assigns, transfers or otherwise disposes of any of its right, title or interest in or under this Agreement other than in accordance with this Agreement;
- (4) **(unremedied Major Default):** a Major Default is capable of remedy and Riverview Projects fails to remedy the Major Default within the time set out in the Major Default Notice;
- (5) **(Major Default not capable of remedy):** a Major Default is not capable of remedy and Riverview Projects fails to diligently comply with any reasonable requirements of the Territory to overcome the consequences of the Major Default within the time stated in the Major Default Notice; or
- (6) **(deemed Default Termination Event):** any other event which is deemed to be a Default Termination Event in accordance with this Agreement.

Expiry Date means the date specified as the "Expiry Date" in **Item 2(3) Schedule 1**.

Indirect or Consequential Loss means any:

- (1) loss of opportunity, profit, anticipated profit, business opportunities or revenue or any failure to realise anticipated savings; or
- (2) to the extent not prohibited by Law, any penalties payable under agreements other than this Agreement.

Information Privacy Act means the *Information Privacy Act 2014* (ACT).

Insolvency Event means, in relation to a party, the occurrence of any of the following events:

- (1) a liquidator, provisional liquidator, administrator,

- trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of the party or any asset of the party;
- (2) a distress, attachment or other execution is levied or enforced upon or against any assets of the party and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
 - (3) an order is made for the administration, dissolution or winding up of the party, or a resolution is passed for the administration or winding up of the party other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Territory;
 - (4) the party ceases, or threatens to cease, to carry on its business or payment of its debts generally, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Territory;
 - (5) the party enters, or resolves to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Territory;
 - (6) an inspector is appointed under any company legislation to investigate all or any part of the affairs of the party in relation to a possible contravention by the party of that legislation and the appointment:
 - (a) is not withdrawn within 10 Business Days; and
 - (b) in the reasonable opinion of the Territory, may have a material adverse effect on the performance of this Agreement;
 - (7) the party is, in the reasonable opinion of the Territory, unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law;
 - (8) for a party that is a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Act to cancel its registration; or
 - (9) any act is done, or any event occurs which has an analogous or similar effect to any of the events in paragraphs (1) to (8).

Joint Venture

means the unincorporated joint venture between the Territory and Riverview Developments (ACT) Pty Limited for the development and sale of certain land in the Territory and New South Wales.

Law

means:

- (1) those principles of common law and equity established by decisions of courts; and
- (2) all legislation, statutes, rules, regulations, by-laws, ordinances and subordinate legislation of the Commonwealth or the Territory.

Liability

means any debt, obligation, claim, action, cost (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (1) actual, prospective or contingent; or
- (2) currently ascertainable or not,

and whether under or arising out of or in any way in connection with this Agreement or arising at Law.

Major Default

means any of the following events:

- (1) **(representations and warranties):** a representation or warranty given by Riverview Projects under this Agreement is found to be materially incorrect or misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by Riverview Projects in respect of any financial statements or invoices or other books or records of Riverview Projects;
- (2) **(unremedied Default):** a Default capable of remedy (other than a Default Termination Event) has not been cured within 20 Business Days after Riverview Projects receives a notice from the Territory in relation to the Default;
- (3) **(Default not capable of remedy):** a Default is not capable of remedy and Riverview Projects fails to diligently comply with any reasonable requirements of the Territory to overcome the consequences of the Default within the time stated in a notice from the Territory in relation to the Default; or
- (4) **(Persistent Breach):** the Territory has notified Riverview Projects there are persistent breaches of this Agreement as follows:
 - (a) there have been three or more Defaults in

any six-month period; or

(b) there has been a persistent or repeated failure to comply with the obligations of Riverview Projects under this Agreement; or

(5) **(deemed Major Default)**: any other event which is deemed to be a Major Default under this Agreement.

Major Default Notice	has the meaning given in clause 14.2 .
Personal Information	means personal information as defined in section 8 of the Information Privacy Act.
Procurement Act	means the <i>Government Procurement Act 2001</i> (ACT).
Services	means the services described in Schedule 2 .
Service Commencement Date	means the date of first bus service specified in Item 7 Schedule 1 , being two weeks after the Bus Delivery Date.
Steering Group	means the steering group established in accordance with clause 5 .
Term	means the term of this Agreement described in clause 2 .
Territory	means, when used in: (1) a geographical sense, the Australian Capital Territory; and (2) any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).
Territory Information	means the kind of information that: (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential; (2) is notified (whether in writing or not) by the Territory to Riverview Projects as being confidential; or (3) is Personal Information, but does not include information that: (4) is or becomes public knowledge other than by breach of this Agreement; (5) has been independently developed or acquired

by Riverview Projects; or

- (6) has been notified to Riverview Projects by the Territory as not being confidential.

Timetable	means timetable for Service approved by both Parties an indicative draft of which is contained in Schedule 4 .
TPPs	means the Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the Information Privacy Act.
TPP Code	means a code of practice about information privacy which, having regard to section 21(1) and (3) of the Information Privacy Act, binds an agency that engages the Service Provider in the provision of the Services.

1.2 General

In this Agreement, headings are for convenience only and do not affect interpretation, and unless the context otherwise requires:

- (1) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any determinations, notifiable instruments or other subordinate legislation issued under that legislation or legislative provision;
- (2) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (3) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (4) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Agreement;
- (5) a recital, schedule, annexure or description of the parties forms part of this Agreement;
- (6) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- (7) a reference to any party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (8) where an expression is defined anywhere in this Agreement it has the same meaning throughout;
- (9) a reference to "dollars" or "\$" is to an amount in Australian currency;
- (10) the word "include" and its derivations are not to be construed as words of limitation; and
- (11) the expression "this Agreement" includes the agreement, arrangement, understanding or transaction recorded in this Agreement.

2. Term

2.1 Term

This Agreement commences on the Commencement Date and, unless extended in accordance with **clause 2.2** or terminated earlier, ends on the Expiry Date.

2.2 Extension of Term

- (1) The Territory may, in its absolute discretion, offer to extend the Term for an additional period of one year.
- (2) If the parties agree to extend the Term pursuant to this **clause 2.2(1)**, the parties agree that this Agreement will continue on the same terms and conditions, unless varied by the parties in accordance with **clause 17.4**.

3. Buses

3.1 Procurement and delivery of Buses

- (1) Riverview Projects will procure the Buses and loan them to the Territory for use by the Territory in delivering the Services.
- (2) Prior to the Service Commencement Date, the Buses will be modified to meet the specifications set out in **Schedule 5**. Cost of modifications made by the supplier prior to the Bus Delivery Date as set out in **Item 1 Schedule 5** will be borne by the Joint Venture. Cost of modifications made by the Territory prior to the Service Commencement Date as set out in **Item 2 Schedule 5** will be borne by the Territory.
- (3) The Buses must be delivered to the Territory's Belconnen bus depot no later than the Bus Delivery Date, being two weeks prior to the Service Commencement Date.
- (4) If Riverview Projects wishes to grant a charge or other security over the Buses during any part of the Term, Riverview Projects must ensure the party intending to take the charge or security executes a consent to an option granting the Territory a right to purchase the Buses.

3.2 Maintenance and storage of the Buses

- (1) The Buses must be securely stored at either the Territory's Belconnen bus depot or Tuggeranong bus depot when not in operation.
- (2) The Buses must be regularly cleaned (internally and externally) and maintained by the Territory in line with the servicing manual provided with the Buses.
- (3) The cost of cleaning and maintenance of the Buses will be the responsibility of the Territory.

3.3 Registration and insurance

- (1) The Territory will be responsible for registering the Buses.
- (2) Riverview Projects will be responsible for covering the cost of registering the Buses.

- (3) The Territory will invoice Riverview Projects for the cost of registration of the Buses.
- (4) Commercial motor vehicle insurance will be effected and maintained by the Territory during the Term, with Riverview Projects listed as an interested party. The cost of this insurance will be invoiced to Riverview Projects.

3.4 Inspection of Buses

The Buses will be inspected by the Territory following any routine servicing to ensure they are safe, roadworthy and clean, and maintained in accordance with the Territory's safety requirements.

3.5 Breakdowns

- (1) Riverview Project will ensure that the Buses are provided with Roadside Assist for the Term.
- (2) Where the Buses suffer a break down or are off the road for an extended period of time, the Territory will endeavour to provide a replacement vehicle in the short term.
- (3) Where the Buses are off the road for an extended period of time and the Territory is unable to provide a replacement vehicle for the duration the Buses are off the road, Riverview Projects may elect to procure a replacement vehicle until the Buses are cleared for service.

4. Services

4.1 Supply of Services

- (1) In consideration of Riverview Projects providing the Buses, the Territory agrees to use the Buses to provide the Services for the Term in accordance with the terms and conditions of this Agreement.
- (2) Prior to the Service Commencement Date, the Territory will confirm with Riverview Projects details concerning the Approved Route, Timetable and other information relating to the Services.

4.2 Variations to Services

The Territory may vary the Approved Route, Timetable and other details relating to the Services:

- (1) by giving Riverview Projects notice in writing of the variation, with the variation to take effect no earlier than 14 Business Days from the date of the notice being given; or
- (2) in the case of an emergency, with immediate effect by telephoning Riverview Projects' Contact Officer; or
- (3) in any case affecting the transport of students to school, with immediate effect by telephoning Riverview Projects' Contact Officer.

4.3 Handover to full bus operation

No later than one year from the Service Commencement Date, the parties must agree on a population or loading trigger that will be used to determine the transfer of the

Services to full-sized Territory buses as part of Territory's wider transport network.

5. Steering group

- (1) A steering group will be established with membership agreed by the parties.
- (2) At least one representative of each of the parties should be nominated. Proposed representatives are provided in **Schedule 6**.
- (3) The Steering Group will meet at minimum every two weeks prior to the Service Commencement Date to ensure the timely delivery of the Services.
- (4) Following the Service Commencement Date, the Steering Group will meet monthly during the Term.
- (5) The parties' nominated representative may be changed from time to time.

6. Advertising and media

- (1) Riverview Projects must submit the final design for the advertising wrap on the Buses within 14 days of signing this agreement.
- (2) Riverview Projects will coordinate and pay for any artwork design, production and installation on the Buses.
- (3) Final artworks for the Buses will be approved by the parties prior to production.
- (4) Riverview Projects will retain exclusive rights to external branding and advertising space on both Buses. Any external branding design must be agreed with the Territory.
- (5) Any internal advertising opportunities may be made available to third parties but must be approved by the Parties to ensure there is no conflict of interest and that the advertising accords with the Territory codes of practice for advertising on public transport.

7. Passenger journey profile

A record of patronage must be provided by the Territory to the Steering Group to allow for analysis of the Services. At a minimum, this should include:

- (1) time of boarding;
- (2) stop commence journey;
- (3) stop terminating journey; and
- (4) ticket type (seniors, concession, tertiary, student, adult etc.).

8. Option to purchase Buses

8.1 Limited application of this clause

This clause only applies where Riverview Projects is the owner of the Buses.

8.2 Option to purchase

Riverview Projects grants to the Territory an option to purchase the Buses upon expiry of the Term by giving notice in writing to Riverview Projects not later than 3 months

prior to the Expiry Date (**Option**).

8.3 Effect of exercise of Option

If the Territory exercises the Option in accordance with **clause 8.2**:

- (1) Riverview Projects is bound to sell the Buses to the Territory, and the Territory is bound to purchase the Buses from Riverview Project for a purchase price to be negotiated between the parties in good faith; and
- (2) completion of the purchase is to occur within one month after the Expiry Date.

9. Non-disclosure of Territory Information

9.1 Riverview Projects' use of Territory Information

Riverview Projects must:

- (1) use Territory Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) not transfer Territory Information held in connection with this Agreement outside of Australia, or allow any person (other than its authorised personnel) outside Australia to have access to it, without the prior approval of the Territory;
- (3) notify the Territory immediately if Riverview Projects becomes aware that a disclosure of Territory Information is required by Law, or an unauthorised disclosure of Territory Information has occurred; and
- (4) in respect of any Personal Information held in connection with this Agreement:
 - (a) comply with the TPPs and any applicable TPP Code and must not (and procure that any subcontractor engaged by Riverview Projects under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and
 - (b) co-operate with any reasonable requests or directions of the Territory arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act.

9.2 Employee awareness

Riverview Projects must ensure that each person engaged in performance of Riverview Projects' obligations under this Agreement requiring access to any Personal Information held in connection with this Agreement:

- (1) is by virtue of their employment, contract terms or profession obliged to maintain the confidentiality of all Personal Information or executes a deed of confidentiality in a form prescribed by the Territory to not access, use, disclose or retain Personal Information except in performing their duties of employment or contractual obligations; and
- (2) is informed that failure to comply with this undertaking may be a criminal offence and may also lead Riverview Projects to take disciplinary action against the person.

9.3 Reasonable requests, directions and guidelines

Riverview Projects must, in respect of any Personal Information held in connection with this Agreement, co-operate with any reasonable requests or directions of the Territory arising directly from, or in connection with the exercise of the functions of the Privacy Commissioner under the Information Privacy Act or otherwise, including the issuing of any guidelines concerning the handling of Personal Information.

9.4 Privacy complaints

A complaint alleging an interference with the privacy of an individual in respect of any obligations performed by Riverview Projects under this Agreement will be handled by the Territory in accordance with the following procedures, unless otherwise provided for in a TPP privacy policy made under TPP 1.3 which applies to a Territory agency as relevant to this Agreement:

- (1) if the Territory receives a complaint it will immediately notify Riverview Projects of only those details of the complaint necessary to minimise any breach or prevent further breaches of this Agreement;
- (2) if Riverview Projects receives a complaint it must immediately notify the Territory of the nature of the complaint but will only release Personal Information to the Territory concerning the complainant with that person's consent; and
- (3) after the Territory has given or been given notice under **clauses 9.4(1) or 9.4(2)**, it will keep Riverview Projects informed of all progress with the complaint concerning the actions of Riverview Projects.

9.5 Riverview Projects to protect Territory Information

- (1) Except as provided in this Agreement, Riverview Projects must not disclose Territory Information to any person, nor deal with the Information in any way except for the purpose of this Agreement, without the prior written consent of the Territory except to the extent that the Territory Information is:
 - (a) required or authorised to be disclosed by Law;
 - (b) disclosed to Riverview Projects' solicitors, auditors, insurers or advisers;
 - (c) generally available to the public; or
 - (d) in the possession of Riverview Projects without restriction in relation to disclosure before the date of receipt from the Territory.
- (2) Riverview Projects must take all reasonable measures to ensure that Territory Information accessed or held by Riverview Projects in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose and that only its authorised personnel have access to Territory Information.
- (3) Riverview Projects must do all things necessary to ensure that Territory Information accessible to Riverview Projects and Riverview Projects' personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon Riverview Projects' personnel obligations of confidentiality with respect to Territory Information.

9.6 Acknowledgement of effect of Crimes Act

Riverview Projects acknowledges that the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Agreement (other than to a person to whom Riverview Projects are authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

10. Confidential Text under Procurement Act

10.1 Territory may make Agreement publicly available

In giving effect to the principles of open and accountable government, the Territory may disclose documents and information unless it has otherwise agreed, or is otherwise required under Law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Territory will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

10.2 Territory must not disclose Confidential Text

If **Item 3 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 4 Schedule 1**, and **clause 10.3** applies.

10.3 Territory must not disclose Confidential Text

Except as provided in this Agreement, the Territory must not disclose Confidential Text to any person without the prior written consent of Riverview Projects (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (1) is required to be disclosed under Law;
- (2) is reasonably necessary for the enforcement of the criminal law;
- (3) is disclosed to the Territory's solicitors, auditors, insurers or other professional advisers on a confidential and need-to-know basis;
- (4) is generally available to the public;
- (5) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from Riverview Projects;
- (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (7) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

11. Representations and warranties

- (1) Riverview Projects represents and warrants that:
 - (a) it is duly incorporated or established and validly existing;
 - (b) it has full power, authority and legal right to execute, deliver and perform its obligations under this Agreement;
 - (c) this Agreement has been duly authorised, executed and delivered in accordance with its constituent documents; and

- (d) the execution, delivery and performance by Riverview Project of this Agreement does not and will not violate or be in conflict with any provision of any Law, regulation, authorisation, of any government body or its constituent documents.
- (2) The rights and remedies provided in this **clause 11** are in addition to, and do not limit, any other rights of the Territory under this Agreement or otherwise.
- (3) Riverview Projects acknowledges and agrees that all of the warranties and undertakings in this **clause 11** are correct and current:
 - (a) as at the date of this Agreement; and
 - (b) upon each instance of performance of its obligation under this Agreement during the Term.

12. Insurance

The Territory will effect and maintain during the Term and for any prudent run-off period:

- (1) the insurances set out in **Item 5 Schedule 1** (if any); and
- (2) all insurance which a prudent owner and operator would maintain when undertaking works or carrying out activities of a similar nature to the Services.

13. Indemnity

13.1 Indemnity for breach

Riverview Projects indemnifies the Territory from and against any Claim or Liability suffered or incurred by the Territory or any of its Associates in connection with any breach by Riverview Projects of this Agreement.

13.2 General indemnity

Riverview Projects indemnifies the Territory from and against any Claim or Liability suffered or incurred by the Territory or any of its Associates in connection with:

- (1) any loss or damage to or of property, including any real or personal property and including property belonging to the Territory or its Associates;
- (2) any injury to, illness or death of, any person; or
- (3) any third party actions brought against the Territory or its Associates,

to the extent caused or contributed to by Riverview Projects or any of its Associates in connection with this Agreement.

13.3 Limit on Riverview Projects' indemnity

Riverview Projects' liability to indemnify the Territory and its Associates in accordance with this Agreement will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

- (1) any breach by the Territory of this Agreement;
- (2) any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Territory or any of its Associates.

13.4 Continuing obligation

- (1) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- (2) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Agreement.

13.5 No Indirect or Consequential Loss

Neither the Territory nor any of its Associates has any Liability to Riverview Projects or its Associates for any Indirect or Consequential Loss suffered or incurred or sustained by Riverview Projects or its Associates as a result of any act or omission of the Territory or its Associates (whether negligent or otherwise) or due to any breach of this Agreement by the Territory or its Associates.

14. Default

14.1 Meaning of remedy or cure

Where the word “**remedy**” or “**cure**” or any other grammatical form of those words is used in this **clause 14** or the associated definitions in **clause 1.1**, it means to cure or redress the relevant occurrence or overcome its consequences so that there ceases to be any continuing detrimental effect of that potential or actual Default, Major Default or Default Termination Event and so that any prior detrimental effect is rectified so that the Territory and its Associates are in the position they would have been in had the relevant occurrence not taken place.

14.2 Notice of Major Default

- (1) Riverview Projects must:
 - (a) promptly notify the Territory upon the occurrence of a Major Default; and
 - (b) immediately take steps to mitigate, minimise or avoid the effects, consequences and duration of the Major Default.
- (2) If Riverview Projects notifies the Territory of a Major Default under **clause 14.2(1)** or if the Territory considers that a Major Default has occurred, the Territory may give Riverview Projects a notice in writing (“**Major Default Notice**”):
 - (a) stating that a Major Default has occurred;
 - (b) identifying and providing details of the Major Default; and
 - (c) if the Major Default:
 - (i) is capable of remedy, stating a date by which Riverview Projects must remedy the Major Default;
 - (ii) is not capable of remedy, stating any reasonable requirements of the Territory in connection with that Major Default and a date by which Riverview Projects must comply with those requirements; or
 - (iii) is not capable of remedy and the Territory has formed the view (acting reasonably) that there are no reasonable requirements

that can be met by Riverview Projects to overcome the consequences of, or compensate the Territory for, a Major Default, a statement to that effect along with its reasons for forming that view.

- (3) If Riverview Projects considers, in good faith, that:
- (a) the time stated in a Major Default Notice (or any other requirements of the Major Default Notice) is not reasonable; or
 - (b) it does not agree with the Territory's view stated in the Major Default Notice that there are no reasonable requirements that can be met by Riverview Projects to overcome the consequences of, or compensate the Territory for, a Major Default,

it must promptly notify the Territory including the reasons why and the time which it believes is reasonably required to remedy the Major Default or comply with any reasonable requirements of the Territory or overcome the consequences of, or compensate the Territory for, the Major Default.

- (4) The Territory must in good faith consider Riverview Projects' notice under **clause 14.2(3)** and:
- (a) make any changes to the Major Default Notice that it considers reasonable as a consequence of Riverview Projects' notice; and
 - (b) notify Riverview Projects of such changes (if any).
- (5) If having considered Riverview Projects' notice under **clause 14.2(3)**, the Territory maintains the view (acting reasonably and subject to **clause 14.2(4)**) that there are no reasonable requirements that can be met by Riverview Projects to overcome the consequences of, or compensate the Territory for, a Major Default, the Territory must notify Riverview Projects of this determination and the Major Default will be deemed to be a Default Termination Event.

14.3 Riverview Projects to provide remedy program and comply with Major Default Notice

If the Territory gives a Major Default Notice to Riverview Projects, then notwithstanding its rights under **clause 14.2(3)** to **14.2(5)** Riverview Projects must, within 10 Business Days:

- (1) where the Major Default is capable of remedy, unless the relevant Major Default is a failure to pay money, give the Territory a program to remedy the Major Default; and
- (2) where the Major Default is not capable of remedy, give the Territory a program to comply with any reasonable requirements of the Territory,

in accordance with the terms of the Major Default Notice.

14.4 Effect of curing

If a Major Default or Default Termination Event occurs and is cured by any person, any right to terminate this Agreement in respect of that Major Default or Default Termination Event (as the case may be) not exercised prior to it being cured may not thereafter be exercised.

15. Termination

15.1 Termination for Default Termination Event

- (1) If a Default Termination Event occurs, the Territory may terminate this Agreement by giving written notice to Riverview Projects.
- (2) Termination of this Agreement for a Default Termination Event will take effect upon the date specified in the notice given under **clause 15.1(1)**.

15.2 Termination of convenience

- (1) The Territory may at any time, for its convenience, and for any reason, terminate this Agreement by giving Riverview Projects not less than 60 Business Days' notice.
- (2) Termination of this Agreement for convenience will take effect upon the date specified in the notice given under **clause 15.2(1)** and the Territory will be liable to Riverview Projects only for any reasonable costs incurred by Riverview Projects and directly attributable to the termination, but not in respect of loss of prospective profits.
- (3) On receipt of a notice of termination, Riverview Projects must take all available steps to minimise loss resulting from that termination.

15.3 No prejudice

Nothing in this **clause 15** prejudices any other rights or remedies of the Territory in respect of any breach of this Agreement.

16. Dispute resolution

- (1) If a difference or dispute ("**Dispute**") arises in relation to this Agreement, before commencing any proceedings in a court the relevant party must give notice to the other that a Dispute exists, which specifies details of the Dispute.
- (2) The parties agree that they will meet ("**first meeting**") within 14 days of the issue of the notice to endeavour to resolve the Dispute. If the Dispute remains unresolved, the parties agree to meet ("**second meeting**") 30 days after the first meeting to attempt to resolve the Dispute. If the Dispute has not been resolved within 30 days following the second meeting, the parties will undertake mediation with an independent mediator, the cost to be shared by the parties unless otherwise agreed.
- (3) Nothing in this **clause 16** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

17. General

17.1 No employment, partnership or agency relationship

Nothing in this Agreement constitutes Riverview Projects, or its Associates as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose and Riverview Projects must not represent itself, and must ensure its Associates do not represent themselves, as being employees, partners or agents of the Territory.

17.2 Entire agreement

This Agreement comprises the entire agreement between the parties about its subject matter and supersedes any prior representations, negotiations, writings, memoranda and agreements on that subject matter.

17.3 Severability

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

17.4 Variation

No amendment or variation of this Agreement is valid or binding on a party unless made in accordance with the provisions of this Agreement or otherwise in writing executed by both parties.

17.5 No waiver

- (1) Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies the Territory may have in respect of that provision.
- (2) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (3) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

17.6 Governing law

This Agreement is governed by and construed in accordance with the laws for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

17.7 Notices

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contact Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent; or
- (3) if sent by electronic mail, on whichever of the following occurs first:
 - (a) the other party's acknowledgement of receipt by any means;
 - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
 - (c) the expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

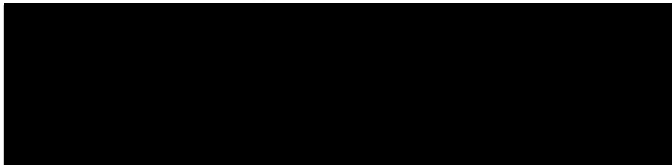
and if given in two or more ways, on the first of paragraphs (1) to (3) occurring.

17.8 Survival of clauses

The following clauses survive the expiration or termination of this Agreement:

- (1) clause 8 (**Option**);
- (2) clause 9 (**Territory Information**);
- (3) clause 13 (**Indemnity**); and
- (4) any other provision of this Agreement which, expressly or by implication from its nature, is intended to survive expiration or termination of this Agreement.

Schedule 1 – Agreement Details

Item 1.	Contact Officer	For the Territory: Ian McGlinn Email: ian.mcglinn@act.gov.au Phone: 02 6207 8000 For Riverview Projects: 
Item 2.	Term	(1) Term: two years with an optional additional of one year. (2) Commencement Date: 23 December 2019. (3) Expiry Date: 23 December 2021 with an option to extend the Agreement to 23 December 2022.
Item 3.	Confidential Text	Not Applicable.
Item 4.	Grounds for confidentiality of Confidential Text	Not applicable.
Item 5.	Insurance	(1) Public liability insurance. (2) Worker compensation insurance.
Item 6.	Bus Delivery Date	13 January 2020
Item 7.	Service Commencement Date	Two weeks after the Bus Delivery Date or as otherwise agreed between the parties.

Schedule 2 – Services

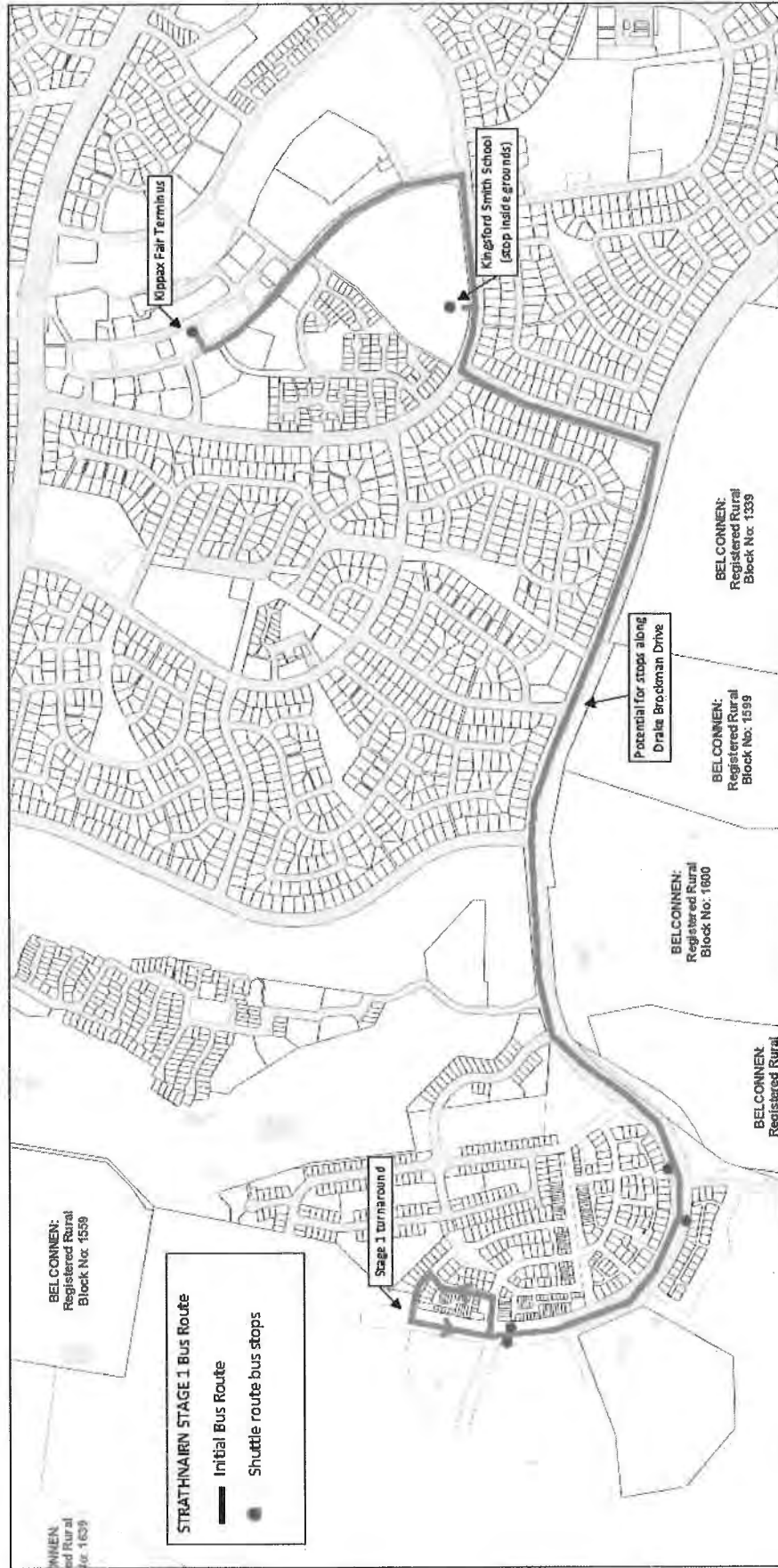
1. Scope of the Services

- (1) The following is a detailed description of the Services that will be provided by the Territory:
 - (a) a service of buses that travels between Strathnairn (2 stops), Drake Brockman Drive (1 stop), Kingsford Smith School and Kippax Fair terminal as shown in the Approved Route;
 - (b) the Buses will operate on a timetable equivalent to (or better than) the Timetable. The timetabled service will operate to allow for easy connections to Rapid bus services into the Canberra City and Belconnen from Kippax Fair;
 - (c) the Services will commence on the Service Commencement Date; and
 - (d) the Territory will be responsible for providing the drivers and all fuelling costs.

2. Timetable

The full seven-day timetable for the bus service is to be agreed between the parties prior to the Service Commencement Date.

Schedule 3 – Approved Route



Schedule 4 – Timetable

Full weekday shuttle bus timetable.

Bus	Inbound Shuttle to Kippax			R2 departs			R2 arrives		R2 departs		R2 arrives		Outbound Shuttle from Kippax		
	Turnaround	KS School	Kippax Fair	Kippax	City Bus Station	City Bus Station	City Bus Station	Arrives Kippax	City Bus Station	City Bus Station	Arrives Kippax	Kippax Fair	KS School	Turnaround	
1	06:39	06:48	06:52	06:56	07:39							06:55	06:58	07:05	
2	06:50	06:59	07:03	07:07	07:50							07:06	07:09	07:16	
1	07:10	07:19	07:23	07:29	08:12							07:26	07:29	07:36	
2	07:20	07:29	07:33	07:39	08:22						07:31	07:36	07:39	07:46	
1	07:40	07:49	07:53	07:59	08:42						07:44	07:56	07:59	08:06	
2	07:50	07:59	08:03	08:09	08:52						07:57	08:06	08:09	08:16	
1	08:10	08:19	08:23	08:29	09:11						08:20	08:26	08:29	08:36	
2	08:20	08:29	08:33	08:39	09:19						08:28	08:36	08:39	08:46	
1	08:40	08:49	08:53	09:01	09:40						08:54	08:56	08:59	09:06	
2	08:50	08:59	09:03	09:12	09:51						09:04	09:06	09:09	09:16	
1	09:20	09:29	09:33	09:39	10:18						09:26	09:36	09:39	09:46	
1	09:50	09:59	10:03	10:09	10:48						10:05	10:08	10:11	10:18	
1	10:20	10:29	10:33	10:39	11:18						10:35	10:38	10:41	10:48	
1	10:50	10:59	11:03	11:09	11:48						11:05	11:08	11:11	11:18	
1	11:20	11:29	11:33	11:39	12:18						11:35	11:38	11:41	11:48	
1	11:50	11:59	12:03	12:09	12:48						12:05	12:08	12:11	12:18	
2	12:20	12:29	12:33	12:39	13:18						12:35	12:38	12:41	12:48	
2	12:50	12:59	13:03	13:09	13:48						13:05	13:08	13:11	13:18	
2	13:20	13:29	13:33	13:39	14:18						13:35	13:38	13:41	13:48	
2	13:50	13:59	14:03	14:09	14:48						14:05	14:08	14:11	14:18	
2	14:20	14:29	14:33	14:39	15:18						14:35	14:38	14:41	14:48	
2	14:50	14:59	15:03	15:09	15:48						15:05	15:08	15:11	15:18	
1	15:05	15:14	15:18	15:24	16:03						15:20	15:23	15:26	15:33	
2	15:20	15:29	15:33	15:39	16:17						15:33	15:38	15:41	15:48	
1	15:35	15:44	15:48	15:53	16:31						15:51	15:53	15:56	16:03	
2	15:55	16:04	16:08	16:13	16:51						16:09	16:13	16:16	16:23	
1	16:05	16:14	16:18	16:23	17:01						16:29	16:33	16:36	16:43	
2	16:25	16:34	16:38	16:43	17:21						16:45	16:49	16:52	16:59	
1	16:48	16:57	17:01	17:03	17:41						17:00	17:05	17:08	17:15	
2	17:03	17:12	17:16	17:23	18:01						17:16	17:21	17:24	17:31	
1	17:18	17:27	17:31	17:36	18:14						17:27	17:33	17:36	17:43	
2	17:33	17:42	17:46	17:50	18:28						17:51	17:56	17:59	18:06	
1	17:50	17:59	18:03	18:05	18:43						18:03	18:08	18:11	18:18	
2	18:12	18:21	18:25	18:35	19:10						18:25	18:30	18:33	18:40	
1	18:23	18:32	18:36	18:50	19:22						18:36	18:41	18:44	18:51	

Schedule 5 – Bus Specifications

Make	Hino
Model	Poncho Bus
Product Code	HX9JLKE-FWU
VIN Numbers	Bus 1: JHDHX9JLKXXX40053 Bus 2: JHDHX9JLKXXX40054

Modifications made by Hino prior to delivery of the vehicles (Item 1)

- Driver's Seat ASRI 6860
- Wheelchair ramp (including extension) and lifting handle
- Inside back step height reduction
- Gear stick height reduced and moved to rear of mechanism
- Hanover destination sign unit
- Reversing camera
- 'Next Stop' indicator light on dash
- 'Next Stop' audible sound
- Driver's side window blind (sun visor)
- Top of windscreen blacked out to bottom of destination sign unit
- Top of outside passenger side mirrors on angle to bottom of left side of destination unit blacked out
- Driver's side window tint installed
- Driver's side external mirror bracket modified to lower mirror
- Emergency exit door open switch sign installed (to switch above door)
- Water bottle holder for driver
- Handle added to inside front left of door for passengers to use when entering/exiting bus (similar to handle next to wheelchair area)
- Turn indicator audio level increases
- Destination Sign adjusting control lowered
- Perspex sun visor extended to centre mirror
- Short stop removed (handbrake safety)
- Door handle override
- Covers over sharp points on seat backs
- Height limit signage installed inside driver's cabin area
- AM/FM Radio
- Handbrake off audio alarm warning

Modifications made by the Territory prior to the Service Commencement Date (Item 2)

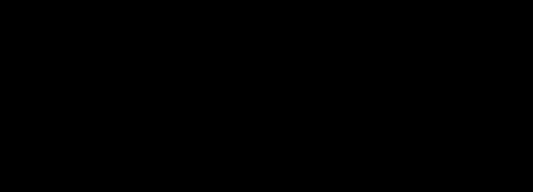
- Ticketing Machine (MyWay)
- NXTBUS system
- Territory Radio Network (TRN)
- CCTV
- Disconnect 'blue' floor pedal and install footrest/duress button
- Bike Rack

Schedule 6 – Steering Group Representatives

Organisation	Position	Name	Email	Phone
Transport Canberra and City Services	Director – Transport Canberra Operations	Ian McGlinn	ian.McGlinn@act.gov.au	02 6207 8000 [REDACTED]
Riverview Projects (ACT) Pty Ltd	Development Manager	[REDACTED]	[REDACTED]	1800 316 990 [REDACTED]
Riverview Projects (ACT) Pty Ltd	Sustainability Manager	[REDACTED]	[REDACTED]	1800 316 990 [REDACTED]
Suburban Land Agency	Development Director	Gareth Burdon	Gareth.Burdon@act.gov.au	02 6207 0282 [REDACTED]

EXECUTED as an agreement.

SIGNED for and on behalf of the Australian Capital Territory by:



Signature of Delegate

Ian McElhin

Name of Delegate

In the presence of:

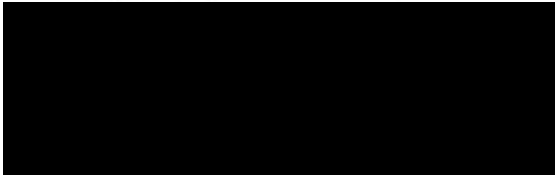


Signature of witness

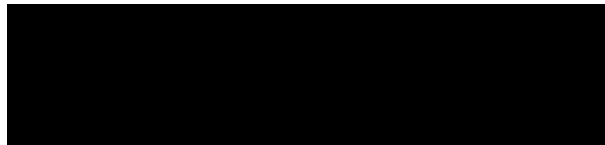
Tahnia Littlejohn

Name of witness

SIGNED for and on behalf of Riverview Projects (ACT) Pty Limited (ACN 165 870 539) by:



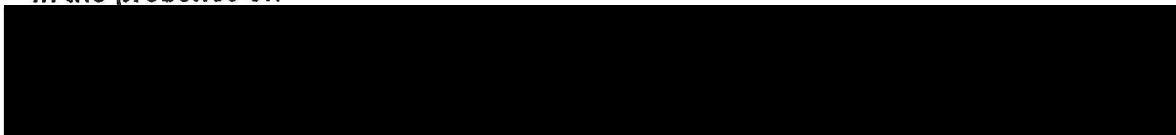
Signature of Delegate



Name of Delegate

who is authorised by Power of Attorney dated 4th November 2019 and who declares that he has at the time of execution of this document no notice of its revocation.

In the presence of:



Signature of witness

Name of witness