

## Funding Agreement – Construction Grant (Category 2P)

[Property address] [Application ID]

Auckland Council (“Funder”)		[Insert Recipient Name] (“Recipient”)	
<b>Street address</b>	135 Albert Street Auckland 1010	<b>Affected address</b>	[Insert Recipient Address]
We agree to provide the Funding to you, and you accept the Funding, on the terms of this Agreement, which includes this Signing Page, the Terms and any Schedules.			

**Important: By signing this Agreement, you acknowledge that you:**

- have read and understood the terms of this Agreement
- have had the opportunity to seek independent advice about this Agreement before signing it
- are satisfied with your obligations under the Agreement

**Interpretation explanation:** Throughout this Agreement, when we refer to ‘we’ ‘our’ or ‘us’ we mean **Auckland Council** or the **Funder**, and when we refer to ‘you’ or ‘your’ we mean **the Recipient**.

Signed under delegated authority for and on behalf of <b>Auckland Council</b> by:		Signed by:	
<hr/> <i>Authorised signatory</i>  <b>Name:</b>  <b>Position:</b>  <b>Date:</b> _____		<hr/> <i>Authorised signatory</i>  <b>Name:</b>  <b>Date:</b> _____	

  

	Our Representative		Your Representative
Name	Category 2P Team		
Email	<a href="mailto:2pgrants@aucklandcouncil.govt.nz">2pgrants@aucklandcouncil.govt.nz</a>		

# Terms

BACKGROUND	
A.	Your Property has been identified as having an intolerable risk to life arising from the Auckland severe weather events in 2023, but one where the intolerable risk to life could be mitigated if certain interventions are undertaken to reduce that risk. A description of the proposed intervention works is outlined in Schedule 1 attached ( <b>Risk Mitigation Works</b> ).
B.	[You elected to opt into the Category 2P Grant Scheme and we entered into an agreement with you dated [insert] to provide funding for the design and consenting of the Risk Mitigation Works ( <b>Design and Consent Agreement</b> ). That funding was provided and we completed a Feasibility Assessment under the Design and Consent Agreement. The result of the Feasibility Assessment is that we agreed to provide Funding to you to procure the Risk Mitigation Works outlined in Schedule 1.
C.	This Agreement sets out the terms and conditions upon which Auckland Council will grant the Funding to the Recipient for the Risk Mitigation Works.

<b>Agreement</b>	<p>The documents forming part of this Agreement are:</p> <ul style="list-style-type: none"> <li>• The Signing Page</li> <li>• The Terms</li> <li>• Schedule 1 – Scope of Risk Mitigation Works</li> <li>• Schedule 2 – Expected Milestones and Risk Mitigation Works Costs</li> </ul>
<b>Property</b>	The property at XXXX being comprised registered title [insertlegaldescriptionXXXX].
<b>Funding</b>	The total amount of funding that we will provide you under this Agreement is up to \$XXXX [GST (if any) inclusive]. The Funding will be paid to you by way of progress payments, subject to the Terms. 10%
<b>Purpose</b>	The purpose of the Funding is to meet the agreed costs of the Risk Mitigation Works.
<b>Indicative Timeframes</b>	<b>1: Construction Commencement: XXXX</b>
	<b>2: Anticipated Practical Completion;</b> Code of Compliance/Completion Certificates obtained (if required): XXXX  <i>Guidance Note: The Anticipated Practical Completion must fall within two years of the Categorisation Decision Date (being: [XXXX])</i>
	<b>3: Expected Milestone Dates:</b>
<b>1 Key Terms</b>	<p><b>1.1</b> You acknowledge and agree that:</p> <p><b>1.1.1</b> the Funding we provide is only for, and must solely be applied towards, the Risk Mitigation Works Costs and that</p>

	<p>there is no obligation on us to provide any additional funding;</p> <p><b>1.1.2</b> you are responsible for all cost overruns, including any unforeseen costs in the Risk Mitigation Works. Any costs of the Risk Mitigation Works above the agreed Funding will be met by you.</p> <p><b>1.1.3</b> you are required to ensure that the Risk Mitigation Works are completed.</p> <p><b>1.1.4</b> this Agreement represents a one-off proposal and is not a precedent for further or ongoing works for the Property or any future weather events;</p> <p><b>1.1.5</b> this Agreement is not legally binding until it has been signed by a delegated authoriser of Auckland Council and the registered owner (or all registered owners if more than one) of the Property;</p> <p><b>1.1.6</b> by providing this Funding and any approval throughout this process, we do not guarantee or warrant the effectiveness of the Risk Mitigation Works undertaken;</p> <p><b>1.1.7</b> you must inform us at <a href="mailto:2pgrants@aucklandcouncil.govt.nz">2pgrants@aucklandcouncil.govt.nz</a> of any known health and safety hazards at the Property, in addition to those known to us that have formed the categorisation of your Property;</p> <p><b>1.1.8</b> it is your responsibility to ensure you have complied with terms of any mortgage including notifying your bank of this Agreement. You acknowledge and accept that we have arrangements with registered New Zealand banks to inform them of all recipients receiving Category 2P grants;</p> <p><b>1.1.9</b> it is your responsibility to comply with any home and contents insurance policy obligations which relate to the Risk Mitigation Works, including any obligation to notify your home insurance company of the occurrence of the Risk Mitigation Works.</p>
<b>2 Term</b>	This Agreement commences on the Commencement Date and ends on the Expiry Date unless terminated earlier in accordance with this Agreement or at law, or otherwise extended by us.
<b>3 Expiry Date</b>	<p>The date which is the earlier of:</p> <p>(a) the final progress payment being made by us under this Agreement, following evidence that Practical Completion has occurred in accordance with clause 5.6; and</p> <p>(b) 30 months after the Categorisation Decision Date.</p>
<b>4 Conditions to Funding</b>	<p><b>4.1</b> Before any of the Funding will be made available to you under this Agreement, you must first provide us with the prescribed disclosure information and the prescribed checklist required to be given under section 362D of the Building Act 2004 prior to the construction contract being entered into.</p>

	<p>You must also provide us with a signed copy of the construction contract which:</p> <p><b>4.1.1</b> includes:</p> <ul style="list-style-type: none"> <li>(a) the Risk Mitigation Works scope;</li> <li>(b) an indicative programme for the Risk Mitigation Works, including the Anticipated Practical Completion Date and Expected Milestones dates;</li> </ul> <p><b>4.1.2</b> appropriate drawings and specifications related to the Risk Mitigation Works;</p> <ul style="list-style-type: none"> <li>(a) separate identification of any Betterment Works and details of the Betterment Costs;</li> </ul> <p><b>4.1.3</b> requires the Contractor to assist your compliance with the Reporting requirements set out in this Agreement;</p> <p><b>4.1.4</b> requires the Contractor to obtain and maintain insurance that is appropriate (in respect of both the type and level of insurance) to carry out the Risk Mitigation Works. At a minimum this would include contract works insurance for an amount equal to the value of the works plus an additional 10%, and public liability insurance for the protection of people and third-party property; and</p> <p><b>4.1.5</b> is consistent in all material respects with the scope and quotes provided under the Design and Consent Agreement,</p> <p style="padding-left: 40px;">in each case, satisfactory to us acting reasonably.</p> <p><b>4.2</b> Any review of the Construction Contract by us does not constitute any acceptance of the contract terms or acceptance of any risk, liability or obligations under the Construction Contract (including in respect of the Construction Contracts Act 2002).</p>
<p><b>5 Procurement of the Risk Mitigation Works</b></p>	<p><b>5.1 Risk Mitigation Works:</b> You will:</p> <ul style="list-style-type: none"> <li>(a) procure the construction and delivery of the Risk Mitigation Works with due expediency in accordance with this Agreement and at your own risk; and</li> <li>(b) to the extent not already obtained, obtain all necessary Consents required for the Risk Mitigation Works.</li> </ul> <p><b>5.2 Compliance:</b> You will ensure that the Risk Mitigation Works are carried out:</p> <p><b>5.2.1</b> in a proper and skilful manner by an appropriately qualified Contractor or Contractors using suitable materials and in accordance with good industry standards, principles and practices;</p>

	<p><b>5.2.2</b> in compliance with all applicable laws, regulations, bylaws, industry codes of practice, professional standards, licensing and Consents; and</p> <p><b>5.2.3</b> in accordance with the Risk Mitigation Works scope, plans and specifications, estimated costs and construction programme.</p> <p><b>5.3 Health and Safety:</b> You must require the Contractor to:</p> <p><b>5.3.1</b> at all times comply with all health and safety legislation, regulations, applicable codes of practice and standards; and</p> <p><b>5.3.2</b> take all practicable steps to ensure the health and safety of all personnel and any other parties associated with carrying out the Risk Mitigation Works, including the public, and visitors to any area under your control.</p> <p><b>5.4 Contractors:</b> You will engage an appropriately skilled and experienced Contractor or Contractors to manage and carry out the Risk Mitigation Works. You cannot change contractors without our prior written approval having first satisfied the process outlined in 4.1.</p> <p><b>5.5 Change in scope of the Risk Mitigation Works:</b> If there is any proposed change in scope of the Risk Mitigation Works, you must obtain our prior written approval before agreeing to, instructing, or ordering any change of scope. You will be solely responsible for any additional Risk Mitigation Works Costs relating to a change in scope.</p> <p><b>5.6 Practical Completion:</b> Once the Risk Mitigation Works have achieved Practical Completion, you must ensure that a Code Compliance Certificate (if applicable) is obtained and provide a copy of this to us as soon as reasonably practicable after issue. You must also ensure that your Contractor provides us with either a Practical Completion Certificate in the form prescribed by the Construction Contract or (if no such form is prescribed), a detailed report in writing confirming that all Risk Mitigation Works have been completed in accordance with the Construction Contract.</p>
<p><b>6 Reporting, Inspection and Performance</b></p>	<p><b>6.1 Reporting:</b> Together with every request for Funding under clause 7 you must provide us with:</p> <p><b>6.1.1</b> the Contractor's invoice for the part of the Risk Mitigation Works that the invoice relates to. The invoice must clearly identify the works that have been undertaken. And detail and separate any Betterment Costs (if any);</p> <p><b>6.1.2</b> a status report, signed by you and the Contractor, which details:</p> <p style="padding-left: 40px;"><b>(a)</b> the status of the Risk Mitigation Works, together with photographic evidence;</p>

	<ul style="list-style-type: none"> <li>(b) the stage of completion and when the Risk Mitigation Works are anticipated to achieve Practical Completion;</li> <li>(c) whether any Betterment Works have been undertaken and if so, outline the division between the Risk Mitigation Works Costs and the Betterment Costs.</li> <li>(d) what monies have been paid by you to the Contractor to date and what amounts remain to be paid under the Construction Contract; and</li> <li>(e) any other information as reasonably required by us from time to time.</li> </ul> <p><b>6.2 Additional Reporting:</b> You must provide us with sufficient evidence that the Risk Mitigation Works are being undertaken in accordance with the Construction Contract and this Agreement within 5 working days of our written request. We may reasonably ask for (and you must then provide) any information, additional reports or evidence if required to support a funding request.</p> <p><b>6.3 Notification of breaches:</b> You will immediately notify us in writing if an event occurs which does or may:</p> <ul style="list-style-type: none"> <li><b>6.3.1</b> constitute a material breach of the Construction Contract by either you or the Contractor;</li> <li><b>6.3.2</b> constitute a material delay in the Anticipated Practical Completion date (however described) under the Construction Contract;</li> <li><b>6.3.3</b> constitute a material breach of any term of this Agreement or render any warranty contained in this Agreement incorrect or untrue in any respect; or</li> <li><b>6.3.4</b> adversely impact in any way on the performance of your obligations under this Agreement (including any material dispute between you and the Contractor).</li> </ul> <p><b>6.4 Insolvency:</b> You will immediately notify us if you, or the Contractor becomes insolvent or is subject to any insolvency or similar procedure, including but not limited to voluntary administration, liquidation, receivership or bankruptcy (or either you or the Contractor is unable to pay debts when due, or enter into dealings with any of creditors generally with a view to avoiding or in expectation of bankruptcy or insolvency).</p> <p><b>6.5 Records and information requests:</b> You must keep full records and documentation in relation to the Funding, Risk Mitigation Works and this Agreement ("<b>Records</b>") and promptly provide copies of the Records to us on reasonable request.</p> <p><b>6.6 Performance review and right to inspect:</b> We may monitor and review your performance and compliance under this</p>
--	---

	<p>Agreement, and you agree to co-operate with us as may be reasonably requested including by:</p> <p><b>6.6.1</b> attending such meetings that are reasonably requested by us (including with the Contractor) to discuss and review any aspects of this Agreement; and</p> <p><b>6.6.2</b> allowing us access during business hours to the Property on reasonable prior notice to inspect the Risk Mitigation Works.</p> <p><b>6.7 Priority of Works:</b> You acknowledge that the Risk Mitigation Works must be undertaken in priority to any Betterment Works and, where appropriate for the staging and programme, must be carried out prior to any Betterment Works. If we have concerns about any Betterment Works being carried out at the expense of, or that risk non-completion of, Risk Mitigation Works we may require you to procure that any Betterment Works are paused and to take any necessary steps to ensure that the Risk Mitigation Works proceed as intended.</p>
<p><b>7 Funding and Payment</b></p>	<p><b>7.1 Funding:</b> Subject to the terms of this Agreement, we will provide you with the Funding which must be applied for the Purpose</p> <p><b>7.2 Progress payments:</b></p> <p><b>7.2.1</b> The Funding will be paid in instalments by way of progress payments, when works are complete. Progress payments will be made to your nominated bank account within ten (10) Working Days of you providing a satisfactory invoice to us from the Contractor or Contractors for the completed parts of the Risk Mitigation Works, along with supporting reports and evidence (see clause 7.3 below).</p> <p><b>7.2.2</b> You will be responsible for ensuring payment to the Contractor or other suppliers under the Construction Contract and for compliance with the requirements of the Construction Contracts Act 2002.</p> <p><b>7.3 Your Funding requests and Contractor Invoices:</b> When submitting your funding requests to us and before each progress payment is made to you under this Agreement the following must be satisfied:</p> <p><b>7.3.1</b> you must provide us with copies of the relevant Contractor invoice(s) and reports, demonstrating to our satisfaction that the relevant part of the Risk Mitigation Works which the invoice relates to has been completed and that the amounts claimed by you do not include any Excluded Costs.</p> <p><b>7.3.2</b> the invoice and reports must comply with the conditions of clause 6.1.</p> <p><b>7.3.3</b> any payment claims submitted by the Contractor are transparent and clearly identify the Risk Mitigation Works Costs. This requires each invoice to separate the Risk Mitigation Works Costs from any Betterment Costs or</p>

	<p>your additional costs (if any). Any GST must be apportioned between the Risk Mitigation Works and Betterment Costs or any of your additional costs (if any).</p> <p><b>7.4 Conditions of payment:</b> The Funding payments to be made by us under this Agreement are subject to us being satisfied in our sole discretion that:</p> <p><b>7.4.1</b> the amount of the payment requested proportionality reflects the value of the work completed by the Contractor;</p> <p><b>7.4.2</b> sufficient progress has been made towards the Risk Mitigation Works; and</p> <p><b>7.4.3</b> you have complied with all material obligations under this Agreement.</p> <p><b>7.5 Evidence of Payment:</b> We may, at our discretion, require you to provide evidence that you have paid the Contractor.</p> <p><b>7.6 GST:</b> The Funding is a grant and is not consideration for any supply of goods or services, and is inclusive of GST (if any). You acknowledge and agree that the Risk Mitigation Works Costs for which Funding will be provided do not include any GST component of the Risk Mitigation Works Costs for which you are entitled to claim a GST input tax deduction (if any) for the GST component. You must notify us at <a href="mailto:2pgrants@aucklandcouncil.govt.nz">2pgrants@aucklandcouncil.govt.nz</a> if you are a GST-registered person who is entitled to claim a GST input tax deduction for any GST component of any such costs. If you fail to provide such notification and any Funding provided to you covers any GST amount for which you are entitled to claim a GST input tax deduction, that amount of the Funding will be treated as Funding not used for the Risk Mitigation Works and as misused funds for the purpose of clause 11.</p> <p><b>7.7 Funding Lapse:</b> Our obligation to provide the Funding may lapse, at our sole discretion, if the Risk Mitigation Works are not completed by the Expiry Date.</p> <p><b>7.8 No obligation:</b> You acknowledge that, other than the Funding, we are under no obligation to provide any future funding to you in connection with the Risk Mitigation Works. Further, we are under no obligation to provide you with any progress payment for any part of an invoice which is in dispute with any Contractor. The progress payment will be made once any such dispute has been resolved, provided it is resolved and the invoice submitted to us at least 10 working days before the Expiry Date.</p> <p><b>7.9 Final Progress Payment:</b> We will not make the final payment until we have evidence of Practical Completion in accordance with clause 5.6.</p>
<b>8 Relationship</b>	<p><b>8.1 Representatives:</b> The Party Representatives are the first and primary contact persons in relation to this Agreement, except to the extent otherwise provided in this Agreement or agreed by the parties.</p>

	<p><b>8.2 No surprises:</b> You must promptly inform us of any issues likely to be of concern to us about your use of the Funding, the Risk Mitigation Work, the Construction Contract or this Agreement.</p>
<b>9 Confidentiality</b>	<p><b>9.1</b> This Agreement will be confidential to the parties and their advisers and will not be disclosed, copied or transmitted to any other person except with the prior written consent of the other Party, unless a Party is required to disclose the contents of this Agreement by law (including disclosure by us required under the Local Government Official Information and Meetings Act 1987).</p>
<b>10 Warranties</b>	<p><b>10.1 General warranties:</b> You represent, warrant and undertake on a continuing basis that:</p> <p><b>10.1.1</b> this Agreement is valid, binding and enforceable and you have taken all necessary action to authorise the execution and performance of this Agreement, and entry into this Agreement will not cause you to be in breach of any other agreement or obligation;</p> <p><b>10.1.2</b> you are not insolvent and are able to pay your debts when due;</p> <p><b>10.1.3</b> except as disclosed by you to us in writing, that you are not aware of any matter or event which does or may materially and adversely affect your ability to perform your obligations under this Agreement;</p> <p><b>10.1.4</b> all information and representations made by you (prior to or after the date of this Agreement, including in any funding application process leading to this Agreement) are true, complete and correct and not misleading in all material respects; and</p> <p><b>10.2 Reliance:</b> You acknowledge that we have, in entering into this Agreement, relied on your representations in this clause.</p>
<b>11 Refund of Funding</b>	<p><b>11.1</b> If:</p> <p><b>11.1.1</b> the Funding (or any part of it) is not used for the Risk Mitigation Works; or</p> <p><b>11.1.2</b> we terminate this Agreement pursuant to clause 13.1,</p> <p>we may refuse to make any further progress payments to you. You acknowledge that you are liable to repay to us immediately on demand (as a debt due) for any Funding not applied directly towards the Purpose. If you do not do so we may take enforcement action. You agree to indemnify us for all costs and expenses (including costs as between solicitor and own client) of any enforcement action or attempted enforcement action taken by us to recover Funding not applied directly towards the Purpose.</p>
<b>12 Termination</b>	<p><b>12.1 Termination:</b> We may immediately terminate this Agreement by written notice to you if:</p> <p><b>12.1.1</b> you commit a material breach of this Agreement that is not, in our reasonable opinion, able to be remedied;</p>

	<p><b>12.1.2</b> you commit a material breach of this Agreement, and, where such breach is capable of remedy, you fail to remedy such breach within ten (10) Working Days following receipt of written notice from us specifying the breach and requiring it to be remedied;</p> <p><b>12.1.3</b> any warranty contained in this Agreement is untrue in any material respect; or</p> <p><b>12.1.4</b> you breach clause 16.3 (no assignment or legal changes without consent).</p> <p><b>12.2 Consequences of Termination:</b> On termination of this Agreement, you will refund to us any portion of the Funding, as required in accordance with clause 11;</p> <p><b>12.3 Accrued rights:</b> Termination of this Agreement is without prejudice to the accrued rights of the parties, and any express rights under this Agreement are additional to any other right or remedy a party may have.</p> <p><b>12.4 Survival:</b> Any provisions intended to survive termination of this Agreement will remain in full force and effect.</p>
<b>13 Dispute Resolution</b>	<p><b>13.1 Disputes:</b> Neither party may commence any court proceedings related to any dispute or difference that arises under this Agreement (a “<b>Dispute</b>”) unless it has given the other party written notice of the Dispute at least 20 working days prior to filing. If the Dispute cannot be resolved by the parties themselves within 20 working days, then either party may commence court proceedings. Any dispute that is referred to the dispute resolution process established by Auckland Council for categorisation decisions will not be a Dispute for the purposes of this clause.</p> <p><b>13.2 Continued compliance:</b> You must still comply with your obligations under this Agreement pending the resolution of any Dispute.</p> <p><b>13.3 Urgent Relief:</b> Nothing in this clause 13 restricts or limits the right of either party to obtain urgent injunctive relief or to exercise any right under this Agreement (for example, to terminate).</p> <p><b>13.4 Construction Contract:</b> You are solely responsible for any disputes under the Construction Contract.</p>
<b>14 Indemnity, Liability and Insurance</b>	<p><b>14.1 Indemnity:</b> You indemnify us, our employees, agents and officers against all claims, demands, actions, proceedings, costs (including solicitor and own client costs), losses, expenses and damages which are made or brought against any of the above-mentioned indemnified parties or incurred or suffered by those parties in connection with your breach of this Agreement, a negligent act or omission of you or anyone you are responsible for, or any claim made by a third party in relation to the your activities.</p> <p><b>14.2 Your responsibilities:</b> Under no circumstances will we, or our employees or consultants or agents, be liable in contract, tort or otherwise to compensate you or any third party for any loss,</p>

	<p>injury or damage, direct or indirect, including, loss of profit or business or for any direct or indirect or consequential loss whatsoever arising from any act, permission, error, default or delay in respect of the performance or non-performance by you (or in the case of a third party claim, the Recipient) of its obligations under this Agreement.</p> <p><b>14.3 Insurance:</b> Where appropriate or required by us, you and/or the Contractor will hold and maintain such insurance cover as may be reasonable to insure against any material risks in relation to the Risk Mitigation Works. At a minimum this would include contract works insurance for an amount equal to the value of the works plus an additional 10%, and public liability insurance for the protection of people and third-party property.</p> <p><b>14.4 No Liability:</b> You acknowledge that we are not responsible in any way whatsoever for:</p> <p><b>14.4.1</b> any loss or liability incurred, either directly or indirectly, from construction of the Risk Mitigation Works;</p> <p><b>14.4.2</b> ensuring that the Risk Mitigation Works are completed nor for ensuring that the Purpose to be achieved through the Risk Mitigation Works is in fact achieved; or</p> <p><b>14.4.3</b> the insurability of the Property or improvements on it following Practical Completion.</p>
<b>15 Retrospective Works</b>	<p><b>15.1</b> Where this Agreement applies to Retrospective Works, the terms and conditions of this agreement shall still apply but with such necessary modification as required for Retrospective Works. The Recipient warrants and represents that the Retrospective Works would have satisfied the conditions of this Agreement had the Agreement been signed before the Retrospective Works were commenced and agrees and acknowledges that:</p> <p><b>15.2</b> the Recipient is not relieved from that warranty and representation simply because the Funder has (or has had the opportunity) to review information about the Retrospective Works before entering into this Agreement; and</p> <p><b>15.3</b> the Funder is acting in full reliance on that warranty and representation in entering into this Agreement.</p>
<b>16 General</b>	<p><b>16.1 Costs:</b> Each party will bear its own costs and expenses in respect of the preparation and completion of this Agreement.</p> <p><b>16.2 Notices:</b> Notices under this Agreement must be delivered in writing to the relevant party at its Contact Address (by post, email or courier delivery), marked for the attention of the Party Representative, and also copied by email to the Party Representative. Notices are deemed delivered:</p> <p><b>16.2.1</b> In the case of post or courier delivery, when the notice is delivered to the correct Contact Address; and</p> <p><b>16.2.2</b> In the case of email, at the time the email communication is received at the address.</p>

	<p><b>16.2.3</b> Notices delivered after 5pm on a Working Day, or on a non-Working Day, will be deemed received on the next Working Day.</p> <p><b>16.3 Assignments and transfers:</b> You must not assign or transfer any of your rights or obligations under this Agreement except where the Property is to be sold before the Risk Mitigation Works have been completed, in which case you must ensure that (prior to the transfer of the Property) any such transferee enters into direct deed of covenant with us (in a form approved by us) to record the status of the payment of the Funding and the transferee's obligations in relation to this Agreement going forward. Where the Recipient is a company, any change in the effective control or beneficial ownership of the Recipient or its shareholder will be deemed an assignment for the purposes of this clause 16.3.</p> <p><b>16.4 Further acts:</b> Each party must sign all documents and do all things reasonably requested by the other party necessary or convenient to give effect to this Agreement according to its true intent and spirit.</p> <p><b>16.5 Rights, benefits and obligations:</b></p> <p><b>16.5.1</b> Except as expressly provided, this Agreement is not intended to grant benefits or enforceable rights on contractors, subcontractors or any persons other than the parties.</p> <p><b>16.5.2</b> If the Recipient is more than one person or entity (whether or not trustees) then this Agreement binds them jointly and severally.</p> <p><b>16.5.3</b> Provisions in this Agreement for the benefit of the Funder are cumulative.</p> <p><b>16.6 Regulatory capacity:</b> Auckland Council is a local authority and has signed this Agreement in its non-regulatory capacity. Nothing in this Agreement affects or fetters any regulatory power of Auckland Council or any of its council-controlled organisations. You have no recourse under this Agreement with respect to the exercise (or not) of such powers, including on licensing or consenting matters. When acting in its regulatory capacity, Auckland Council may consider all applications to it without regard to this Agreement. Auckland Council will not be liable for any expense, costs, loss or damages you or any person claiming through you suffers or incurs because of Auckland Council lawfully carrying out its statutory duties.</p> <p><b>16.7 Severability:</b> If any provision of this Agreement is or becomes unlawful or unenforceable it will be treated as severable from the other provisions of this Agreement which will remain in full force and effect.</p> <p><b>16.8 Variation and waiver:</b> The provisions of this Agreement may only be varied or waived by written agreement signed by the parties. Any delay or failure to exercise any remedy is not a waiver.</p>
--	--

	<p><b>16.9 Entire agreement:</b> This Agreement constitutes the entire agreement between the parties in relation to its subject-matter, and supersedes all prior oral and written representations, understandings, arrangement and agreements except to the extent expressly retained under the terms of this Agreement.</p> <p><b>16.10 Governing law and jurisdiction:</b> This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts, and may not object to the exercise of jurisdiction by those courts.</p> <p><b>16.11 Counterparts:</b> This Agreement may be executed in any number of counterparts and by electronic signature, and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties. A party may transmit an electronic copy of the Agreement by email (or other electronic means) to the other party.</p>
--	---

## DEFINITIONS AND INTERPRETATION

**Definitions:** Unless the context otherwise requires, capitalised words have the meanings given to them in this Agreement and as follows:

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>“Authority”</b>	means every territorial authority, regional authority, government or other authority (including any Network Utility Operator, as defined in section 166 of the Resource Management Act 1991) having jurisdiction over the Property and/or the Risk Mitigation Works;
<b>“Betterment Costs”</b>	means any costs relating to Betterment Works;
<b>“Betterment Works”</b>	means works carried out at the Property which are not the Risk Mitigation Works;
<b>“Categorisation Decision Date”</b>	means the date on the letter when you were notified of the categorisation of your property (as Category 2P);
<b>“Contact Address”</b>	means, in relation to a party, the physical and postal addresses and email address (as the case may be) for purposes of communications under this Agreement notified by that party to the other party from time to time;
<b>“Consents”</b>	means any resource consent, building consent, engineering approval, landowner approvals, or other authorisation required from any Authority for construction and use of the Risk Mitigation Works;
<b>“Construction Contract”</b>	means the construction contract for the Risk Mitigation Works as required by clause 4 and entered into by you and the Contractor;
<b>“Contractor”</b>	means the contractor appointed by you to undertake the Risk Mitigation Works;
<b>“Design and Consent Agreement”</b>	has the meaning given to that term in the Background.
<b>“Excluded Costs”</b>	<p>means any costs:</p> <ul style="list-style-type: none"> <li>• for non-residential property works;</li> <li>• not related to the Risk Mitigation Works scope;</li> <li>• for Risk Mitigation Works that are covered by insurance or EQC payments;</li> <li>• relating to non-construction consumables, home furnishings, other home contents and other non-fixed home items;</li> <li>• associated with resource consent, building consent, engineering approval or other authorisation required from any Authority where that approval is unrelated to the Risk Mitigation Works;</li> <li>• that are accommodation costs;</li> </ul>

	<ul style="list-style-type: none"> <li>• for the repayment of existing debts;</li> <li>• of salary/wages and entitlements for persons not specifically engaged to deliver the Risk Mitigation Works; or</li> <li>• that require recurrent or ongoing funding such as maintenance costs.</li> </ul>
<b>“Feasibility Assessment”</b>	means the feasibility assessment undertaken by us prior to agreeing to entering into this Agreement;
<b>“Funding”</b>	means the total financial funding set out in section 2 of the Terms;
<b>“GST”</b>	means goods and services tax as provided in the Goods and Services Tax Act 1985;
<b>“Handbook”</b>	The Category 2P homeowner handbook, which helps the homeowner understand the scheme details, such as the cost and time limits for work funded by the council. In support of this Agreement, the Handbook outlines the 2P Grant Scheme and its processes, including what the grants do and do not cover.
<b>“Intolerable risk to life”</b>	<p>Refers to a level of potential harm or danger considered unacceptable or unmanageable. It implies a balance between the benefits of an activity or circumstance and the acceptable degree of risk to human life associated with it. For the purposes of categorisation, how the Council defines “intolerable risk to life” is set out in its Categorisation Approach. For flooding, there is an “intolerable risk to life” where there is a high risk to life to vulnerable people in an existing 1% AEP flood event. For landslides, there is an “intolerable risk to life” where the Annual Individual Fatality Risk is 1 in 10,000 or greater for the most vulnerable user.</p> <p>Auckland Council’s Categorisation Approach was developed to implement the government’s categorisation framework for Auckland homes affected by the January and February 2023 severe weather events. The Categorisation Approach sets out how properties will be categorised and includes information about the how the council will assess when there is an “intolerable risk to life”.</p>
<b>LIM</b>	A LIM (Land Information Memorandum) report is a summary of information that Auckland Council holds on a property as required by section 44A of the Local Government Official Information and Meetings Act 1987 ( <b>LGOIMA</b> ).
<b>“Party Representative”</b>	means Our Representative and Your Representative (as the case may be) set out in the Terms, or anyone else who is appointed by a party (and duly notified to the other party) to discharge those roles from time to time;
<b>“Practical Completion”</b>	means the stage at which the Risk Mitigation Works are complete, except for minor omissions and minor defects which do not prevent the Risk Mitigation Works from being used for their intended purpose, as may be required to be certified under the Construction Contract;
<b>“Practical Completion Certificate”</b>	means a certificate issued under and in the form (if any) prescribed by the Construction Contract;

<b>“Practical Completion Date”</b>	means the date Practical Completion is achieved;
<b>“Property”</b>	means the Property set out in the Terms and all improvements on it from time to time;
<b>“Risk Mitigation Works”</b>	as defined in the Background and which are more particularly described in Schedule 1;
<b>“Risk Mitigation Works Costs”</b>	means the costs relating to the Risk Mitigation Works as described in Schedule 2;
<b>“Working Day”</b>	has the meaning given to the term ‘Working Day’ in the Property Law Act 2007;
<b>References and interpretation: Except where the context otherwise requires, this Agreement will, be interpreted and applied in accordance with the following principles:</b>	
<b>Agreement:</b>	references to this “Agreement” include the Signing Page, Terms and Schedules;
<b>Clauses and schedules:</b>	references to clauses and schedules are to clauses in the Terms and the schedules to this Agreement (unless stated otherwise);
<b>Including:</b>	“including” and similar words do not imply any limitation;
<b>Legislation:</b>	all references to legislation include all subordinate legislation and regulations, any re-enactment of or amendment to that legislation or regulation and all legislation or regulation passed in substitution for that legislation or regulation (as applicable);
<b>Material Breach:</b>	references to “material breach” include any series of breaches of a similar or recurring nature which taken together are material;
<b>Negative obligations:</b>	an obligation on you not to do something includes a reference to you ensuring that your staff, subcontractors and anyone else you are responsible for do not do that thing;
<b>Party:</b>	references to any “party” mean a party to this Agreement and include their respective successors and permitted assigns (as the case may be);
<b>Persons:</b>	references to a “person” include a natural person, firm, corporation, association or other entity, whether incorporated or not and whether or not having a separate legal personality;
<b>Singular and plural:</b>	where the context permits, the singular includes the plural and vice versa.

## **Schedule 1 - Scope of Risk Mitigation Works**

## **Schedule 2 – Milestones and Risk Mitigation Works Costs**