



Ministry for the
Environment
Manatū Mō Te Taiao

COMMERCIAL

Emergency Waste Management

Deed of Funding

Between

Ministry for the Environment

and

Recipient Council

Deed number: **[MfE Procurement to insert Deed number]**

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Part 1: Key Details

1. Parties	THE SOVEREIGN in right of New Zealand, acting by and through the Ministry for the Environment (Ministry) AND [Insert name of recipient], (Recipient)	
2. Start Date	The date this Deed is executed	
3. End date	[XX Month Year]	
4. Background	Emergency Waste funding supports local government to : <ul style="list-style-type: none">• coordinate and manage the waste material generated by an emergency event, and• repair and replace waste management and minimisation infrastructure damaged in the emergency event	
5. Project title	[Insert project title]	
6. Project purpose	The purpose for which the Grant is provided is to fund the Recipient’s delivery of [insert concise description of the emergency waste management activities and the repairs and replacement of waste management and minimisation infrastructure needed following an emergency event] where the waste generated is (a) likely to be beyond the resources of Council, and (b) poses a risk to public health or the environment The Project, including Situation Reports and / or Deliverables, are detailed in the Emergency Waste Management Plan.	
7. Location Details	[Insert location(s)]	
8. Project objectives	#	Objective
	1	Deliver emergency waste management and repair or replacement of waste management and minimisation infrastructure consistent with the Criteria for Emergency Waste funding at Appendix 1 by the end of the Project.
9. Grant	\$[XXX,XXX]	
10. Reporting	In accordance with clause 3.2 the Recipient will provide the Ministry the following reports in the form directed by the Ministry: <ul style="list-style-type: none">• Situation Reports;• Project Completion Report; and	

- Any other information that is notified by the Ministry in writing to the Recipient.

11. Special Terms

This Deed includes the following Special Terms:

1. Upfront Payment

- The Ministry shall pay to the Recipient \$XXX,XXX (XX%) of the total Grant set out at clause 9 above (plus GST if any), being a portion of the Grant, in advance (**Upfront Payment**) as soon as is reasonably practicable following receipt of a valid invoice.
- Payment of the Upfront Payment is subject to the Ministry's receipt of a correct tax invoice for this amount. The Upfront Payment will be applied by the Recipient to activities associated to the Project with any remainder being an advance payment of the rest of the Grant.

Total Grant amount (up to \$XXX,XXX);

- Upfront Payment (up to \$XXX,XXX); and
- Final payment (up to \$XXX,XXX)
- The Recipient's invoice for the Upfront Payment must quote the deed number on this Deed.
- The Recipient will account for and reinvest into the Project any underspend of the Upfront Payment and any interest amount accrued on the Upfront Payment. The Recipient will provide details of any underspend of the Upfront Payment (including the value and planned allocation of any underspend to other Project activities and any interest amount accrued on the Upfront Payment) in the Milestone Reporting to the Ministry.
- If at the expiry or termination of this Deed, there is any underspend of the total Grant amount, the Recipient shall repay to the Ministry any such amount within 20 Working Days of the date of expiry or termination.

2. No Retrospective Costs Exemption

- Notwithstanding clause 2.6 (No Retrospective Costs) of the General Terms, the Recipient may apply a portion of the Grant toward costs it incurred prior to the Start Date relating to the following items:

- b. Project Cost incurred from [date of Emergency Event] as a result of [Emergency Event name]
6. **Waste Disposal Levy Waiver:**
- a. The Recipient agrees that if any levy payable under the Waste Minimisation Act 2008 (WMA) is waived (in accordance with amendments made to the WMA by the Waste Minimisation (Waste Disposal Levy) Amendment Act 2024, including through application by and / or arrangements with Waste Disposal Facility Operator(s), the total Project Costs shall be calculated taking into account the amount of any Levy waived and the Ministry may reduce the amount of the Grant accordingly pursuant to clause 3.1 above, or direct repayment of a corresponding amount of the Grant by the Recipient.
- b. If the Recipient anticipates that the levy (or a portion of it) could be waived, it will report the anticipated waiver amount, and progress of waivers (as it reasonably can on the basis of information from Waste Disposal Facility Operator(s)), and final waived levy amounts to the Ministry as requested and in conjunction with other reporting required under the Deed.

12. Contact details

	Ministry	Recipient
Name:		
Title:		
Address:		
Phone:		
Email:		

13. Recipient Key Personnel

Name	Role	Project responsibilities	Email	Phone

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Agreement: The Recipient will complete the Project in accordance with this Deed (including the attached Emergency Waste Management Plan at Appendix 1).

Signed and delivered as a Deed on: [Insert the date the final party signed the deed]

The date that the Deed is signed is the date at which both Parties have signed the Deed, that is, the date the final Party signed the Deed. This date must be added on the Deed by the Party who signs the Deed last.

Signed and delivered as a deed by [name], [role], [team] **on behalf of the Ministry for the Environment**

On (date): [insert date signed]

Signature: [insert DFA signature]

In the presence of:

Witness Name:

Witness Signature:

Witness Occupation:

Witness Address:

Signed and delivered as a deed by [Recipient]

On (date): [insert date signed]

Signature: [insert signature]

Signature: [insert signature]

Print Full Name: [insert name]

Print Full Name: [insert name]

Print Authorised Signatory's Job title:

Print Authorised Signatory's Job title:

In the presence of:

Witness Name:

Witness Signature:

Witness Occupation:

Witness Address:

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Under the Local Government Act 2002 (LGA), a Local Authority is a "body corporate" (section 12). Section 9 of the Property Law Act 2007 sets out the requirements for a body corporate to sign a Deed. Local authorities must execute a deed by at least two elected members of the local authority. Authorised delegates can also sign a deed pursuant to cl 32 sch7 of the LGA.

Part 2: General Terms

1. Definitions, Interpretation and Precedence

1.1. Definitions:

In this Deed, unless the context requires otherwise, the following definitions shall apply:

"Activities" means the activities performed or to be performed by the Recipient as described in the Milestone table in the Emergency Waste Management Plan and this Deed;

"Change" means any amendment, deletion or addition to this Deed (including the Emergency Waste Management Plan);

"Change Request" means a written request for a Change;

"Confidential Information" means information in relation to this Deed or the Project whether provided before, during or after the term of the Deed that:

- (a) is by its nature sensitive or confidential;
- (b) is marked by either Party as 'confidential', 'in confidence', 'restricted', 'commercial in confidence' or with a similar designation;
- (c) is provided by either Party or a third party 'in confidence';
- (d) either Party knows or ought to know is confidential.

"Conflict of Interest" A conflict of interest arises if a Party or its personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Deed. A Conflict of Interest may be:

- (a) actual: where the conflict currently exists;
- (b) potential: where the conflict is about to happen or could happen; or
- (c) perceived: where other people may reasonably think that a person is compromised.



“Corrective Action Plan” means a written plan outlining the full details of a Delivery Issue and the steps the Recipient will take to eliminate and mitigate the effect of the Delivery Issue and prevent the Delivery Issue from recurring, as applicable in accordance with clause 4.9 (Corrective Action Plan);

“Deed” means this legal agreement between the Ministry and the Recipient that comprises Parts 1 and 2 , Appendix 1 (Emergency Waste Management Plan), and any other documents attached or incorporated by reference;

“Deliverable” means any deliverable the Recipient shall complete as part of the Project as set out in this Deed;

“Delivery Issue” means the issue identified by the Ministry or the Recipient and notified in accordance with clause 4.9 (Corrective Action Plan) ;

“Emergency” has the same meaning as in section 4 of the Civil Defence Emergency Management Act 2002 and means:

- (a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and
- (b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and
- (c) cannot be dealt with by emergency services, or otherwise requires a significant and co-ordinated response under this Act

“Emergency Waste” means:

- (a) waste that has been caused by an emergency; or
- (b) any thing identified as emergency waste by notice made under section 38A of the Waste Minimisation Act 2008.

“Emergency Waste Management Plan” means the Waste Management Plan agreed between the Parties as part of the funding process, including as amended from time to time, and appended as to this Deed as Appendix 1 and incorporates any and all Project, Activity, Milestone and / or Deliverables tables and Project budgets;

“End Date” means the date specified in Part 1 (Key Details) of this Deed;

“Force Majeure Event” means:

- (a) fire, explosion, lightning, storm, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, riot and civil commotion;
- (b) failure by any utility company or other like body to carry out works or provide services;
- (c) any failure or shortage of fuel or transport;
- (d) war, civil war, armed conflict or terrorism;
- (e) any official or unofficial strike, lockout or other labour dispute;
- (f) governmental action; or



- (g) such other substantially similar circumstances which prevents either or both Parties from performing its obligations under this Deed;

“Fund” means the Waste Minimisation Fund as administered by the Ministry under the Waste Minimisation Act 2008 and all associated Regulations;

“General Terms” means the terms and conditions set out in the General Terms section (Part 2) in this Deed;

“Grant” means the sum of funding provided by the Ministry from the Fund pursuant to this Deed, as set out in Part 1 (Key Details) of this Deed;

“Insolvency Event” means:

- (a) the Recipient is unable or is deemed to be unable to pay its debts when they fall due;
- (b) a receiver, liquidator or other encumbrancer is appointed to the Recipient or to any part of its assets or undertakings;
- (c) a compromise or arrangement is proposed or made between the Recipient and its creditors or any class of them;
- (d) any indebtedness of the Recipient is not paid when due or shall become due and payable or steps are taken to enforce any charge, mortgage, or Security Interest for such indebtedness; and/or
- (e) any present or future charge, mortgage or Security Interest over or in respect of any of the assets of the Recipient becomes enforceable or is enforced;

“Intellectual Property” means all manner of intellectual property rights including (without limitation) patents, trademarks and service marks, logos, copyright, design rights, know-how and mātauranga Māori, whether registrable or not in any country;

“Milestone” means any milestone the Recipient shall complete as part of the Project as set out in this Deed;

“Minister” means the Minister for the Environment;

“Objectives” means the Project objectives listed in Part 1 (Key Details);

“Parties” means the Ministry and the Recipient and **“Party”** means either one of them as the case requires

“Project” means the project to be completed by the Recipient in accordance with the Waste Management Plan;

“Project Completion Report” means the report the Recipient shall prepare and submit in accordance with clause 3.2(b);

“Project Costs” means those costs that are reasonable and correctly incurred in furthering the Project in accordance with this Deed.

“Project Year” means any 12-calendar month period, or part period thereof, commencing on the Start Date;

“Situation Report” means a regular report (weekly/monthly) to inform the Ministry of the Recipient’s progress against the Objectives that the Recipient shall complete and submit in accordance with clause 3.2(a);

“Special Terms” means any terms specified in Part 1 (Key Details) to this Deed;

“Start Date” means the date specified in Part 1 of this Deed;

“Sub-Recipient” means any person or body which the Recipient pays in whole or in part from the Grant whether as a supplier, contractor or otherwise and whether by payment or grant; and

“Working Day” means any day other than Saturdays, Sundays or statutory public holiday in Wellington, New Zealand.

1.2. **Interpretation:** In the interpretation of this Deed, unless otherwise stated:

- (a) No executive or prerogative power or right, or any immunity, of the Crown is affected by this Deed;
- (b) “Including” and similar words do not imply any limitation;
- (c) Reference to the singular includes the plural and vice versa and references to any gender includes all genders;
- (d) Headings are included for ease of reference only and shall not affect the interpretation of this Deed;
- (e) References to paragraphs, clauses, schedules and appendices are references to paragraphs, clauses, schedules and appendices to this Deed;
- (f) Amounts are in NZ\$ and exclude GST (if any);
- (g) If the Recipient comprises more than one person, each of those person’s liability to the Ministry is joint and several;
- (h) References to a party or a person include any form of entity and their respective successors, assigns and representatives; and
- (i) Any statutory reference includes any statutory extension, amendment, consolidation or re-enactment and any statutory instrument, order of regulation made under any statute for the time being in force.

1.3. **Precedence:** In the event of a conflict between:

- (a) The Special Terms and the General Terms of this Deed, the Special Terms shall take precedence;
- (b) Appendices to this Deed (including the Emergency Waste Management Plan) and the General Terms of this Deed, the appendices shall take precedence, except to the extent the Parties expressly agree in writing otherwise with reference to this clause 1.3.

2. Funding

2.1. **Grant:** The Ministry approves the Grant in the amount of \$X

2.2. **Use of Grant:** The Recipient shall:

- (a) ensure that the Grant is only used for Project Costs;
- (b) not use any part of the Grant for Capital Costs, except with the prior written agreement of the Ministry including as set out in a Emergency Waste Management Plan;

- (c) account for the Grant in accordance with generally accepted accounting practices, with appropriate internal controls and, cost codes (or equivalent) that relate specifically to all costs incurred for the Project so that the Project Costs can be categorised and reported by their nature;
 - (d) comply with any cost policies provided by the Ministry from time to time in relation to the accounting treatment of Project Costs and use of the Grant;
 - (e) follow appropriate procurement processes when buying goods or services for the Project so that only reasonable, open market costs are incurred on an arm's length basis avoiding any conflict of interest. If a conflict of interest is unavoidable the conflict must be declared to the Ministry and managed appropriately by the Recipient;
 - (f) not claim for costs or expenses that have been, or will be, claimed from other sources, except as expressly provided for in this Deed;
 - (g) not claim or use any part of the Grant to support or assist activities which are political (eg, supporting a political party or movement, running a political campaign, or lobbying for or against the Government); and
 - (h) Return any unspent portion of the Grant at the conclusion of the Project.
- 2.3. **Eligibility:** Without prejudice to any other rights to which the Ministry may be entitled, the Recipient accepts that eligibility for payment of the Grant may, at the Ministry's sole discretion, be lost if:
- (a) claims for payment and related information are not given to the Ministry within 30 calendar days following the due date of the relevant Deliverable; or
 - (b) the Project is not completed by the End Date; or
 - (c) the Project is not completed by and claims for payment (and any required supporting documentation) are not given to the Ministry by the end of the Project Year in which the End Date falls.
- 2.4. **No Retrospective Costs:** The Ministry will not be liable for any costs or liabilities incurred by the Recipient prior to the Start Date unless specified in the Special Terms and then only to the extent specified in the Special Terms.
- 2.5. **Independent quality assessor:**
- (a) The Ministry may from time to time appoint an independent quality assessor) to assess and/or audit the quality of the Deliverables and / or the Recipients use of the Grant. The following provisions apply in respect of the independent quality assessor:
 - (i) the Recipient must cooperate with the assessor in all respects, including by providing access to the relevant locations, personnel (including, to avoid doubt, the Project Manager) and all

relevant information and documentation as soon as it is created (to avoid doubt, the assessor may take copies of such information and documentation); and

- (ii) the Ministry must pay the costs of the assessor except where the result of the assessment and/or audit shows material non-compliance with this Deed, in which case, the Recipient must pay those costs.
- (b) Completion of an assessment and/or audit (in accordance with this clause) that is to the Ministry's satisfaction does not include an assessment of liability and is not acceptance of liability for, nor acceptance or endorsement of any works funded by the Grant.

3. Recipient's Rights and Responsibilities

3.1. **Project Delivery:** The Recipient must carry out the Project and complete the Deliverables in accordance with the Emergency Waste Management Plan, this Deed and to the Ministry's satisfaction. In particular, the Recipient shall:

- (a) promptly and efficiently carry out the Project with due skill, care and diligence in accordance with generally accepted standards of the Recipient's profession(s) or industry;
- (b) achieve successful, timely completion of the Milestones and Deliverables on or before their due date;
- (c) efficiently and economically source and provide everything the Recipient needs to undertake the Project at the Recipient's risk and cost including ensuring that all personnel are appropriately trained and qualified;
- (d) comply with all New Zealand, and each relevant jurisdiction's, laws, codes and standards and all applicable international conventions including; the Hazardous Substances and New Organisms Act 1996 (HSNO Act), Resource Management Act 1991 (RMA), the Health and Safety at Work Act 2015 (HSWA), Civil Defence and Emergency Management Act 2002 (CDEM) and the Privacy Act 2020 (and any amendments or replacements to those Acts) and any related regulations, codes of practice and industry best practice guidelines as applicable to the Project.

3.2. **Reporting:** The Recipient must submit reports in a form specified by the Ministry. In particular, the Recipient must provide:

- (a) Situation Reports - brief reports/emails at regular intervals that detail the progress the Recipient has made to address emergency waste and on repairs and replacement of waste management infrastructure either prior to the Deed being signed or since delivery of the previous Situation Report. The Situation Report is also to highlight any waste related risks or issues the Recipient has identified.
- (b) Final Project Completion Report – a report to be completed on the Project's completion. This report is to detail the following:
 - i. The Activities undertaken to manage emergency waste

- ii. The repairs and replacement of waste management and minimisation infrastructure
- iii. The volume/tonnage of emergency waste managed through:
 - 1. recycling
 - 2. reused/repurposed
 - 3. composted/digested
 - 4. disposal
 - 5. any other methods
- iv. Detailed breakdown of Project Costs and use of the Grant towards these.
- v. lessons learnt
- vi. recommendations for any future events

3.3. Intellectual Property Rights:

- (a) Pre-existing Intellectual Property: Intellectual Property owned by a Party or its licensors prior to the commencement of this Deed, and Intellectual Property developed by a Party independently from this Deed, remains the property of that Party or its licensors as the case may be.
- (b) New Intellectual Property: Subject to clause 3.3(c) and the Recipient complying with this Deed, any Intellectual Property created or developed Including improvements or enhancements to its pre-existing Intellectual Property) by the Recipient in the course of the Project shall become the property of the Recipient.
- (c) Recipient Intellectual Property: The Recipient grants to the Ministry a non-exclusive, sublicensable, royalty free, perpetual and irrevocable licence to use, modify, develop, sublicense and disseminate all Intellectual Property in the Deliverables for any reasonable purpose.
- (d) The Recipient warrants and represents that it is legally entitled to grant this licence.

3.4. Third Party Intellectual Property Rights: The Recipient:

- (a) warrants that providing the Deliverables does not infringe the Intellectual Property of any third party; and
- (b) indemnifies the Ministry against any claim arising from the Recipient's infringement or alleged infringement of any third party's Intellectual Property or the Ministry's use or possession of Intellectual Property in the Deliverables.

3.5. Public statements: The Recipient shall ensure no public statement is made by or on behalf of the Recipient (or any Sub-Recipient) relating to the commencement of this Deed, the Grant, or the Project before the earlier of:

- (a) such a statement being made by the Ministry or Minister; or

- (b) the date two months after the Start Date; and
 - (c) Prior to the release of any information relating to the Deed, the Grant, or the Project to the public or media:
 - i. all Parties shall consult with the other Parties allowing sufficient time for comment to be received and incorporated as appropriate; and
 - ii. in respect of any proposed release of information to the public or media by the Recipient, the Recipient must notify the Ministry in advance and obtain the Ministry's prior written approval of such release (such approval not to be unreasonably withheld or delayed).
- 3.6. **Endorsement:** The Recipient acknowledges and agrees that the Minister does not necessarily endorse the Project and the Recipient shall not represent that the Minister endorses the Project.
- 3.7. **Project Information:** The Recipient shall make information about the Project (particularly outcomes) freely available to any person who wishes to use it for any non-profit purpose.
- 3.8. **Conflicts of Interest:** The Recipient must notify the Ministry immediately in writing if any Conflict of Interest arises at any time during the term of this Deed in relation to the Project or this Deed. If a Conflict of Interest does arise the Parties must discuss, agree, and record in writing whether it can and if so how, it will be managed.
- 3.9. **Corrective Action Plan:**
- (a) If at any time:
 - i. the Ministry considers that the Recipient has breached, or will breach this Deed; or
 - ii. the Recipient has given the Ministry notice of a breach or likely breach of any of this Deed (a "Delivery Issue") the Ministry may give notice to the Recipient setting out the Delivery Issue ("Delivery Notice").
 - (b) As soon as possible after the receipt of a Delivery Notice (and in any event within 10 Working Days of receipt), in consultation with the Ministry, the Recipient will prepare and provide to the Ministry a proposed plan ("Corrective Action Plan") setting out:
 - i. full details of the Delivery Issue (including its causes, expected duration and impact on the Project and the Recipient's obligations under this Deed);
 - ii. a plan (which may include proposed changes to the Waste Management Plan) setting out the steps it will take to eliminate and mitigate the effect of the Delivery Issue and prevent the Delivery Issue from recurring, as applicable.
 - (c) The Ministry will review the Corrective Action Plan and at its sole discretion either:
 - i. approve the Corrective Action Plan by written notice to the Recipient and confirm whether a deed of variation is required to reflect the approved Corrective Action Plan; or
 - ii. notify the Recipient of any required amendments, to the Corrective Action Plan and require it be resubmitted.

- (d) Following approval of the Corrective Action Plan the Recipient will immediately take all reasonable and appropriate steps to give effect to that Corrective Action Plan. If a Corrective Action Plan cannot be agreed following a re-submission pursuant to (c)ii above the Ministry may elect to terminate this Deed or refer the matter to Dispute Resolution via clause 5.8.
- 3.10. **Allow Access:** The Recipient agrees that upon the Ministry's request (whether during the term of the Deed or following the expiry or termination of the Deed), it shall provide, access to its premises, personnel and records (physical files and electronic) for the purpose of audit and verification of work undertaken, use of the Grant and other reasonable purposes in connection with this Deed, in accordance with clause 4.5 (Project Audit). The Recipient shall ensure that the Ministry has the same rights of access in respect of any Sub-Recipient.
- 3.11. **Confidentiality:** The Recipient must keep confidential and secure all information disclosed by the Ministry in connection with the negotiation or performance of this Deed, including the terms of this Deed. The Recipient must not disclose any Confidential Information except:
- (a) with the Ministry's prior written consent;
 - (b) as necessary to fulfil the Recipient's obligations in this Deed;
 - (c) to the extent the Confidential Information is in the public domain (other than through a breach by the Recipient of its obligations in this clause); or
 - (d) as otherwise required by law.
- 3.12. **Official Information Requests:**
- (a) The Recipient shall immediately inform the Ministry of any request received by it for information under the Official Information Act 1982 (OIA) or the Local Government Official Information and Meetings Act 1987 (LGOIMA) in relation to this Deed.
 - (b) The Recipient shall immediately transfer to the Ministry any request received by it for information under the OIA or the LGOIMA in relation to this Deed and shall advise the person requesting the information of such transfer.
 - (c) The Recipient shall mark clearly all commercially sensitive information as commercially sensitive when the Recipient provides that information to the Ministry.
 - (d) The Ministry will use reasonable endeavours to advise the Recipient of any request received by it under the OIA that relates to the Recipient's commercially sensitive information.
- 3.13. **Health and safety systems:**
- (a) At all times the Recipient will have, maintain, and follow safety management systems which comply with the Health and Safety at Work Act 2015 (HSWA) (and any amendments or its replacements) and applicable regulations, codes of practice and industry best practice guidelines.
 - (b) The Recipient will notify the Ministry of any health and safety incidents connected to the Project that require notification to Work Safe New Zealand at the same time it notifies Work Safe New Zealand.

3.14. Assignment:

- (a) The Recipient's rights under this Deed are exclusive to the Recipient and the Recipient must not, without the prior written consent of the Ministry (in its sole and absolute discretion) assign or otherwise transfer any benefit or burden of this Deed. Any transfer of shares, or any other arrangement affecting the Recipient which results in a change in the effective control of the Recipient will be deemed to be an assignment of this Deed.
- (b) The assignment by the Recipient of any of its rights or obligations under this Deed in whole or in part will not relieve the Recipient of any of its obligations under this Deed.

3.15. Financing Statements: The Recipient will not register a financing statement against the Ministry, the Minister, or the New Zealand Government on the Personal Property Securities Register in respect of the arrangements under this Deed.

3.16. Default Interest: If the Recipient fails to pay, when due, an amount payable by it under this Deed then, without prejudice to its other obligations, the Recipient will pay default interest on that overdue amount (including interest payable under this clause) calculated from its due date to the date of its receipt by the Ministry (after as well as before judgment) payable daily and to the extent not paid in any calendar month compounded on the first day of the next calendar month. This obligation to pay default interest will arise without the need for notice or demand. The rate of default interest in a calendar month will be 5 per cent per annum above the Ministry's cost of funds (expressed as an annual percentage rate) from whatever sources the Ministry may select, calculated on a daily basis.

3.17. Indemnity: The Recipient will, on demand, indemnify the Ministry against any cost, loss, expense, or liability (including all reasonable legal expenses on a full indemnity basis) incurred by the Ministry in connection with this Deed and / or the Recipient's use of the Grant. .

3.18. Insurance: The Recipient must, at the Recipient's cost, have and maintain appropriate insurance cover with a reputable insurance company to cover all of its liabilities arising out of the Project for the term, and for a period of 36 months following the termination or expiry, of this Deed. The Recipient shall provide the Ministry with evidence to the Ministry's satisfaction of such cover upon demand.

3.19. Relationship and Authority:

- (a) Nothing in this Deed shall constitute a partnership, joint venture, principal/agent, or employer/employee relationship between the Parties for any purposes. The relationship between the Parties is a relationship only for the supply of funding on the terms set out in this Deed.
- (b) The Recipient does not have the Ministry's (or the Minister's) authority to say or do anything on behalf of the Ministry (or the Minister).

3.20. Subcontracting: The Recipient may sub-contract any of its obligations or make any sub-grant under this Deed subject to the following:

- (a) the Recipient continues to be responsible for delivery of the Project and performance of this Deed and will remain wholly responsible for the work, acts and/or omissions of all Sub-Recipients;

- (b) the Recipient must ensure any sub-contract or sub-grant arrangement it enters into is on terms consistent with this Deed;
- (c) the Recipient shall be responsible for any costs incurred by the Recipient in engaging any Sub-Recipients;
- (d) the Recipient must promptly end the involvement of any Sub-Recipient (or any of their personnel) or any sub-grant as may be reasonably requested by the Ministry.

3.21. **Invoices:** The Recipient will promptly provide the Ministry with a correct tax invoice in accordance with relevant Milestones (including all relevant Deliverables). All invoices must quote this Deed's deed number.

3.22. **Recordkeeping:** The Recipient shall keep accounts (to Generally Accepted Accounting Practice standards) and other records which enables prompt and accurate verification of any matter in relation to the Project. Records must be retained and available for review, audit, copying and use by the Ministry at any time during the Project, and for at least seven years after the End Date.

3.23. **Reputations:** The Recipient shall not permit or omit to do anything that may attract adverse publicity or damage the reputation of the Fund, the Minister, the Ministry, or the New Zealand Government.

3.24. **Representations and Warranties:** The Recipient represents and warrants to the Ministry that:

- (a) it has full power and authority to enter into and perform this Deed and this Deed has been executed by a duly authorised representative of the Recipient;
- (b) all information, documents and accounts of the Recipient submitted to the Ministry for its appraisal of the Project are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect; and
- (c) the Recipient has disclosed to the Ministry all information which would or might reasonably influence the Ministry in awarding the Grant to the Recipient.

4. Ministry's Rights and Responsibilities

4.1. **Ministry Publicity and Confidentiality:** The Ministry may disclose any information in relation to the Project to anyone at any time. However, the Ministry shall not publicly disclose information that is deemed by the Ministry to be sensitive (e.g. Commercial information, certain mātauranga Māori) except:

- (a) with the Recipient's prior written consent;
- (b) as necessary to fulfil the Ministry's obligations in this Deed or to use the Deliverables;
- (c) to the extent the information is in the public domain (other than through a breach by the Ministry of its obligations in this clause);
- (d) as otherwise required by law, including the Official Information Act 1982, the Privacy Act 2020; or
- (e) as required by a Select Committee or a Minister of the Crown, parliamentary convention or by procedures in relation to the appropriation of public money.

- 4.2. **Invoice:** Payment of any Grant monies is not due until the Ministry has received a correct tax invoice (along with all supporting documentation required by the Ministry) from the Recipient and the Milestone and / or all relevant Deliverables to which the tax invoice relates has been completed to the Ministry's satisfaction. Sufficient evidence of the costs incurred by the Recipient in undertaking the Project shall be provided promptly upon the Ministry's request.
- 4.3. **Payment:** The Ministry shall pay the relevant portion of the Grant to the Recipient upon the Recipient's successful completion of each Milestone (including all relevant Activities and Deliverables), as set out in the Waste Management Plan, subject to:
- (a) the Recipient's compliance with this Deed; and
 - (b) the availability of funds in the Fund.
- 4.4. **Project Review:** The Ministry may, in accordance with clause 3.10 (Allow Access), observe and inspect anything at any time in relation to the Project and for the purposes of audit in accordance with clause 4.5 (Project Audit) below.
- 4.5. **Project Audit:**
- (a) At any time during or after the term of the Deed, the Ministry may direct that an audit of the Project be undertaken. The audit may take the form of a full technical, financial, compliance and/or health and safety audit, or a more informal assessment, of the Recipient and/or Sub-Recipient(s) to check, compliance with this Deed, appropriate use of the Grant, and/or review the Recipient's ability to perform any obligations under or in connection with this Deed.
 - (b) The Ministry will inform the Recipient of an audit;
 - i. Audits will be carried out either by an accountant or technical specialist independent of the Ministry, or by Ministry staff.
 - ii. The Recipient must promptly provide any records the Ministry requests as part of the audit including records held by Sub-Recipients in respect of their delivery of Project activities.
 - (c) At the end of the audit, the Recipient will receive a written document advising of the outcome.
 - (d) In the event that the audit reveals any misappropriation of the Grant or material non compliances with this Deed the Recipient will be liable for the costs of the audit, as well as the repayment of any misappropriated or incorrectly claimed Grant monies.
- 4.6. **Recovery of Grant:**
- (a) The Ministry may reduce, suspend, or withhold the Grant or require all or part of the Grant to be repaid, if:
 - i. the Ministry judges the performance of the Project, including as pursuant to any Corrective Action Plan to be unsatisfactory;
 - ii. the Recipient fails to comply with this Deed;

- iii. any legal or regulatory enforcement action is commenced against the Recipient in relation to the Project or in any other capacity;
- iv. this Deed is terminated in accordance with clause 4.7 (Termination);
- v. any information provided in the application for funding, a claim for payment, or in subsequent or supporting correspondence is incorrect or incomplete;
- vi. the Ministry judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory;
- vii. the Ministry has consented to a change in the Project, or any other event occurs which in the Ministry's opinion reduces the amount of Grant needed;
- viii. an Insolvency Event occurs in relation to the Recipient; or
- ix. any other circumstances or events that in the opinion of the Ministry are likely to adversely affect the Recipient's ability to deliver the Project or result in a risk that the Project will not be completed.

- (b) The Recipient agrees that on receipt of notice requiring repayment of the Grant, (or a portion thereof), it shall make such repayment within 20 Working Days of the date of the notice.

4.7. **Termination:** Without prejudice to any other rights of the Ministry, if:

- (a) the Recipient breaches this Deed, or fails to properly or promptly perform any of the Recipient's obligations under this Deed;
- (b) the Recipient fails to achieve any Milestone;
- (c) an Insolvency Event occurs in relation to the Recipient;
- (d) if the Ministry judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory,

then the Ministry may:

- (e) withhold any payment otherwise due to the Recipient until the matter is resolved to the Ministry's satisfaction; and/or
- (f) suspend or terminate (in whole or in part) this Deed (including Grant payments) by written notice to the Recipient with immediate effect.

4.8. **Termination by Notice:** The Ministry may terminate this Deed at any time by giving the Recipient at least one month's written notice.

4.9. **Termination on Expiry:** Notwithstanding clause 2.4 (Eligibility), if the Recipient has not completed the Milestones to the Ministry's satisfaction by the End Date, the Ministry may terminate this Deed by written notice to the Recipient with immediate effect.

- 4.10. **Ministry Not Liable:** The Ministry will not be liable in contract, tort (including negligence) or otherwise to the Recipient or any other person for any direct or indirect damage, loss or cost whatsoever in relation to this Deed and / or the Recipient carrying out the Project.

5. General

- 5.1. **Changes:** Any Change to this Deed must be in accordance with the following:
- (a) The Recipient may submit a Change Request to the Ministry at any time.
 - (b) The Ministry, at its sole discretion, will consider the Recipient's Change Request within a reasonable timeframe and may request further information, including via completion of the Ministry's nominated form (Change Request Form).
 - (c) If the Ministry agrees to the proposed Change, it will, at its sole discretion, require the Recipient to execute appropriate documentation to give effect to the Change. A Change may be implemented by recording it, via an exchange of correspondence or lodgement of a Change Request Form recorded in any Ministry online 'file management system' or similar or by execution of a deed of variation at the Ministry's election.
 - (d) The Recipient will not act on any proposed Change, until it receives the Ministry's written approval to the Change and it is recorded pursuant to (c) above.
 - (e) Each Party shall bear its own costs in relation to the seeking of, consideration and agreement of a proposed Change.
- 5.2. **Term:** This Deed shall commence on the Start Date and shall, subject to a Party's rights of termination under this Deed, continue in force until the Recipient has completed the Project, including all Deliverables to the satisfaction of the Ministry.
- 5.3. **Consequences of Expiry / Termination:** Termination or expiry of this Deed shall be without prejudice to any rights or liabilities accrued at the date of termination or expiry, provided that the Ministry shall cease to have any obligation to pay the Grant to the Recipient (which may, at the Ministry's sole discretion, include payment of any overdue or outstanding invoices).
- 5.4. **Entire Agreement:** This Deed (including the Emergency Waste Management Plan and attachments) contains everything the Parties have agreed on in relation to the Grant. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent, or employee of that Party, save as permitted by law.
- 5.5. **Severability:** If any term of this Deed becomes or is declared by any court to be invalid or unenforceable in any way:
- (a) such invalidity or unenforceability shall in no way impair or affect the remainder of the Deed which will remain in full force and effect; and
 - (b) the invalid or unenforceable term will be replaced with a provision which as far as possible accomplishes the original purpose of the term.

- 5.6. **Waiver:** Any delay or failure by either Party at any time to exercise (in whole or in part) any right or remedy under this Deed shall not be construed as a waiver of any such right or remedy and shall not affect the validity of the Deed (in whole or in part). No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing. Any waiver will not constitute a waiver of any subsequent exercise of the same right or remedy in the future.
- 5.7. **Governing Law and Jurisdiction:** This Deed is governed by the law of New Zealand and the Parties submit to the exclusive jurisdiction of New Zealand's courts.
- 5.8. **Dispute resolution procedure:**
- (a) If any dispute arises out of or in connection with this Deed, each Party shall use all reasonable endeavours to resolve it as promptly as possible within 15 Working Days of a Party notifying the other Party of the dispute ("Date of Notification"). Subject to such persons having met at least twice, either Party may at any time formally refer such a dispute to their respective Chief Executives (or equivalent) for resolution within 10 Working Days of the date of referral.
 - (b) If a dispute is not settled in accordance with clause 7.7(a), either Party may refer the dispute to:
 - i. mediation or some other form of alternative dispute resolution ("Mediation") conducted in New Zealand and governed by New Zealand law; or
 - ii. the jurisdiction of the New Zealand courts.
 - (c) If the Parties do not agree within 5 Working Days of reference of the dispute to Mediation (or such other period as agreed by the Parties in writing):
 - i. the resolution of the dispute; or
 - ii. the Mediation procedures to be adopted;
 - iii. the timetable for all steps in those procedures; and
 - iv. the selection and compensation of the independent person required for the Mediation, then the Parties shall mediate the dispute per the mediation rules of the Resolution Institute, and the Chair of the Resolution Institute (or nominee) shall select the mediator and determine the mediator's remuneration.
 - (d) The Parties shall make all reasonable efforts to resolve the dispute by Mediation within 3 months (or such other period as agreed by the Parties in writing) from the Date of Notification. If the dispute is not resolved by Mediation within such period, the Parties may seek any other remedies available to them.
 - (e) Nothing contained in this clause 5.8 shall prevent either Party seeking any interim or interlocutory relief from the court.
 - (f) Except in respect of Mediation (the costs of which shall be paid as set out above), each Party shall pay their own costs for resolving any dispute.

- 5.9. **Third Party Rights:** Unless expressly stated, no part of this Deed shall create rights in favour of any third party pursuant to Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 (contractual privity).
- 5.10. **Notices:** Any notice given under or pursuant to this Deed shall be in writing and signed by an authorised person and may be delivered personally by hand, post, or email to the other Party at the address stated in Part 1 (Key Details) of this Deed. Notices shall be deemed delivered as follows:
- (a) if delivered personally by hand, at the time of delivery;
 - (b) if posted, on the third Working Day after posting;
 - (c) if emailed, on the day of successful transmission as confirmed by the email system; and
 - (d) if delivered after 5.00 pm, at 9.00 am the next Working Day.
- 5.11. **Counterparts:** This Deed may be executed by the Parties in two or more counterparts (including emailed copies), each of which shall be deemed an original and constitute a binding and enforceable agreement between the Parties.
- 5.12. **Force Majeure:** A Party ("the Affected Party") shall not be liable to the other Party for any delay or failure to perform any of their obligations under this Deed if such delay or failure results from a Force Majeure Event, provided that where a Party seeks to rely upon this clause:
- (a) As soon as the Affected Party becomes aware of the Force Majeure Event, it shall immediately notify the other Party and confirm the estimated period that the delay or failure shall continue.
 - (b) The Affected Party shall use its best endeavours to continue to perform its obligations under this Deed and minimise the effect of any Force Majeure Event.
 - (c) If any Force Majeure Event prevents the Affected Party from performing its obligations under the Deed for a period in excess of 60 calendar days, either Party may terminate the Deed by notice in writing with immediate effect.
- The Affected Party will not be entitled to relief under this clause in any circumstances to the extent that it has directly or indirectly caused or contributed to any delay or failure in the performance of its obligations.
- 1.4. **Survival:** The following clauses shall remain in full force and effect after expiry or termination: clauses 5.7 (Governing Law and Jurisdiction), 5.8 (Dispute Resolution Procedure), 3.3 and 3.4 (Intellectual Property Rights), 7.9 (Notices), 2.4 (No Retrospective Costs), 3.2 (Reporting) 3.6 (Endorsement), 3.5 (Public Statements) 3.7 (Project Information), 3.10 (Allow Access), 3.11 (Confidentiality), , 3.12 (Official Information Requests), , 3.16 (Default Interest), 3.17 (Indemnity), 3.18 (Insurance), 3.23 (Reputations) 4.1 (Ministry Publicity and Confidentiality) 4.4 (Project Review), 4.5 (Project Audit), 4.6 (Recovery of Grant), 4.10 (Ministry Not Liable), this clause and any other clauses of this Deed which by their nature are intended to survive expiry or termination of this Deed.

Appendix 1: Emergency Waste Management Plan

Emergency Waste Management Plan

[Emergency Event Name/Date(s)]

Undertaken by

Name of Council

Purpose of this document

This Emergency Waste Management Plan (Plan) applies to emergency events where the waste generated is likely to be beyond the resources of Council and poses a risk to public health or the environment. The purpose of this document is for Council to provide information on project work scope and estimated costs to enable the Ministry and/or the Crown to approve projects for Emergency Waste funding.

This Plan is a part of your Deed of Funding

The Plan is part of the Deed of Funding (the Deed) which comprises the terms your organisation and the Ministry need to agree to, for your organisation to receive funding. The Form is part of the contractual arrangements between your organisation (the Recipient) and the Ministry; these are legally enforceable.

Applicant Details

Organisation Name:	
Entity Type:	Territorial Authority
Organisation Type:	District council
Primary contact	
Name of contact person:	
Job title:	
Phone number:	
Email address:	

Project Summary

Event name and date(s)	
Project Summary: Short and concise description of the emergency event and emergency waste management activities required.	
Project Location(s) impacted	
Total number of residential properties in your Council area	
Total number of impacted properties in your Council area.	

Project Objective

Objective #	Objective
1	Deliver emergency waste management for emergency waste that poses a risk to public health or the environment in line with Criteria for Emergency Waste Funding (Appendix A) by the end of the Project.

Cost Estimates

1. Emergency Waste Management Activities

Activity/Description	Waste Material Type	Source/Location	Estimated Waste Volume (Tonnes)	Contractor/subcontractor Name (if any)	Cost estimate
Collection					
Transportation					
Disposal					
Recycling					

Composting					
Digestion					
Temporary storage and sorting					
Other					
TOTAL ESTIMATE					

Council must, where possible and practical, keep records of costs incurred, emergency waste sources, volumes (tonnes or cubic metres) and destinations for recycling, storage or final disposal.

2. Repair/replacement of waste management or minimisation infrastructure

Kua Tākupu [MP1]: Section 2 & 3 (Infrastructure / betterment) can be deleted if not applicable.

Asset description	
Location	
Asset number	
Asset value (if known)	
Asset damage (outline of damage)	
Proposed works (list)	<ul style="list-style-type: none"> • Xxx • Xxx • Xxx
Do the proposed works comply with the Criteria?	YES/NO
TOTAL ESTIMATED COST (excl. Betterment)	\$
Approved Crown funding rate:	%
Estimated Crown cost	\$
Estimated Council cost	\$
Forecast design start date:	
Forecast design completion date:	
Forecast construction date:	
Forecast construction completion date:	

2 a. Option consideration and associated costs of infrastructure repair/replacement

Options	Cost
Option 1: brief description	\$
Option 2: brief description	\$
Option 3: brief description	\$
Preferred option:	
<ul style="list-style-type: none"> Option X: further detail on why this is the preferred option? 	

2 b. Scope of work for preferred option: cost estimates

Description	Quantity	Cost
Total including overheads		

3. Betterment description

Description	Quantity	Cost
Total		



Budget Summary

Activity	Estimated Amount
1. Total Emergency Waste Management Activities	\$
2. Total Repair/replacement of waste management or minimisation infrastructure	\$
3.Total Betterment	\$
Total	\$

Funding Summary

	Amount	Percentage
Estimated Total Cost of Emergency Waste activities?	\$	%
Estimated Recipient (Council) Contribution	\$	%
Estimated Funding from Third Party or other sources (e.g. NZTA)	\$	%
Waste Minimisation Fund contribution	\$	%
Upfront Payment	\$	%

Declaration

You must agree to this declaration to submit this Waste Management Plan.

Name: [XXXXXXXX]

As a duly authorised representative of the applicant organisation:

- I declare that, to the best of my knowledge, the information contained in all sections of this Emergency Waste Management Plan or supplied by us in support of our Emergency Waste Plan is true and accurate
- I declare that I am authorised to submit this Plan on behalf of the applicant organisation
- I declare that none of the organisations named in the Emergency Waste Management Plan are in receivership or liquidation
- I declare that the Emergency Waste Management Plan is not being made by an undischarged bankrupt or someone prohibited from managing a business or from directing a company
- I acknowledge that the Minister for the Environment may publicise any successes or results from this Project (while respecting commercial confidentiality)

Agree

- I acknowledge that the Ministry may be required to share information with other Government Agencies as part of the management of this emergency event and under Official Information Act (OIA) requests
- I confirm that the information in this Emergency Waste Management Plan must remain confidential throughout this planning phase
- I give permission that the content provided in the Project Summary be made public if this Deed negotiation is successful

Official Information

Important: Information presented to the Minister for the Environment or the Ministry for the Environment is subject to disclosure under the Official Information Act 1982 (OIA). Certain information may be withheld in accordance with the grounds for withholding information under the OIA. Further information on the OIA is available at www.ombudsman.parliament.nz.

Information held by the Minister and Ministry may have to be released under the OIA in response to a request from a member of the public (or any other body) for that information. If you wish to provide sensitive information to the Minister or Ministry which you do not want released, it is recommended you consult with the Ministry as to whether the information is necessary for the application, and whether there may be grounds in the OIA for withholding the information. For instance, if release of the information would disclose a trade secret, or be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information, then there may be grounds to withhold the information. The Ministry will endeavour to contact you to discuss an OIA request relating to your application if one is received, and what the implications of releasing your information are.

The grounds for withholding must always be balanced against consideration of public interest that may justify release. Although the Ministry does not give any guarantees as to whether information can be withheld under the OIA, it may be helpful to discuss OIA issues with the Ministry in advance, if information provided with an application is sensitive.

Appendix A – Emergency Waste Management Plan, Activities and Deliverables

The Recipient will carry out the Project in accordance with the Criteria listed at 1, 2 and 3 below

1. Emergency Event Criteria

- (1) This Project applies to [insert named / dated event] (the Event) where the waste generated is emergency waste, being waste generated by the Event and
- (a) likely to be beyond the resources of a local authority to properly manage, and
 - (b) poses a risk to public health or the environment if not properly managed.

2. Criteria for funding management of emergency waste and repair or replacement of waste management and minimisation infrastructure

- (1) Costs - means the costs that local authorities may occur in management of emergency waste and the repair and replacement of emergency damaged waste management and minimisation infrastructure.
- (2) Subsection 1 does not apply to any costs to the extent to which that cost could reasonably be expected to be covered by a contract of insurance.
- (3) Subsection 1 does not apply to any costs to the extent to which the local authority has recovered, or, having regard to the circumstances of the event, may reasonably be expected to recover, any compensation for, from other government agencies.

3. Emergency waste management - means the following emergency waste management activities -

- 1.(a) Collection - the collection of emergency waste from private, commercial and industrial, (including agricultural), premises to be deposited at transfer stations, landfills and temporary storage sites.
- (b) Transportation - the transportation of waste from transfer stations, landfills and temporary storage sites to alternate waste recovery, recycling and disposal facilities.
- (c) Disposal - has the same meaning as in section 6 of the Waste Minimisation Act 2008 (the Act)
- (d) Recycling has the same meaning as in section 5(1) of the Act
- (e) Composting - the managed, aerobic biological decomposition of organic emergency waste materials by microorganisms
- (f) Digestion - the managed, anaerobic biological decomposition of organic emergency waste materials by microorganisms
- (g) Temporary storage and sorting - the storage and sorting of emergency waste at a facility established for the emergency event. (h) Recovery has the same meaning as in section 5(1) of the Act
- (h) Repair/replacement of waste management and minimisation infrastructure

4. Waste management and minimisation infrastructure - the following types of infrastructure and associated equipment that are used to support waste management and minimisation:

- (a) Waste transfer stations

- (b) Weighbridges
- (c) Material recovery facilities
- (d) Wastewater treatment facilities
- (e) Disposal facilities
- (b) landslide materials
- (c) natural vegetation

Appendix B – Activities and Deliverables

Project Delivery					
Activity #	Activity	Deliverable	Start Date	End Date	Expense estimate
1.0					
1.1					
1.2					
1.3					
1.4	Submit Ministry Situation Reports (brief report/email) at regular intervals detailing: <ul style="list-style-type: none"> the progress to address emergency waste and on repairs and replacement of waste management infrastructure and highlight any waste related risks or issues the Recipient has identified. 	Situation Report(s)	Regular intervals		N/A

Final Report					
Activity #	Activity	Deliverable	Start Date	End Date	Expense estimate
2.0	Submit Ministry final report detailing activities undertaken to manage emergency waste,	Final Report	[Date of Event]	[3 months prior to Deed End Date]	N/A



	repairs and replacement of waste management and minimisation infrastructure and the volume/tonnage of emergency waste managed through: <ul style="list-style-type: none">• recycling• reused/repurposed• composted/digested• disposal• any other methods Detailed breakdown of Project Costs and use of the Grant, lessons learnt and recommendations for any future events.	(Final report, claim form, evidence of expenditure and invoice to Ministry)			
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