

FUNDING AGREEMENT Version 3.0 – April 2016

Māngere Mountain Education Trust



Dated:

**Date once both parties have signed (Recipient to sign first)*

Auckland Council (“Funder”)	
Street address	Manukau Civic, Level 5, 31-33 Wiri Station Road, Manukau
Postal address	Private Bag 92300, Wellesley Street, Auckland 1142
Company No.	[For company CCO use]

Mangere Mountain Education Trust (“Recipient”)	
Street address	100 Coronation Road, Mangere Bridge, Auckland
Postal address	As above
Company No.	2562580

Funder agrees to provide the Funding to Recipient, and Recipient accepts the Funding, on the terms of this Agreement, which includes this Signing Page, the Specific Terms, General Terms and any Schedules.

Important: By signing this Agreement, Recipient acknowledges that:

- It has read and understood the terms of this Agreement
- It has had the opportunity to seek advice about this Agreement before signing it
- It is satisfied as to the amounts payable for performance of its obligations.

Signed under delegated authority for and on behalf of Auckland Council by:	
<hr/> <i>Authorised signatory</i>	
Name:	Mark Bowater
Position:	Head of Parks Services
Date:	Click here to enter a date.

Signed for and on behalf of Community Education Trust Auckland (COMET) by:	
<hr/> <i>Authorised signatory</i>	
Name:	Simon Kozak
Position:	Chief Executive Officer
Date:	_____

SPECIFIC TERMS

Clause references are to the General Terms.

Funder Representative	
Name	Steve Owens
Phone	N/A
Mobile	021 804 361
Fax	N/A
Email	Steve.owens@aucklandcouncil.govt.nz

Recipient Representative	
Name	Simon Kozak
Phone	09 634730
Mobile	0272017239
Fax	
Email	simon@mmet.co.nz

BACKGROUND	
A.	<p>On Thursday, 21 July 2016 the Council-Controlled Organisation Governance and Monitoring Committee resolved:</p> <p>Māngere-Ōtāhuhu Local Board Resolution 21 June 2017:</p> <p>Parks, sport and recreation draft annual work programme financial year 2017-2018 Resolution number MO/2017/114</p> <p>MOVED by Chairperson L Sosene, seconded by Member N Bakulich: That the Māngere-Ōtāhuhu Local Board: a) approves the Māngere-Ōtāhuhu Parks, Sport and Recreation draft Annual work programme 2017-2018 financial year as detailed in Attachment A</p> <p>This Funding Agreement is intended to give effect to the actions agreed to and set out in the Statement of Intent (SOI). These have been aligned to Auckland Council's strategic direction, priorities and targets via the SOI process.</p>
B.	<p>This Agreement sets out the conditions of the Funding.</p>

DOCUMENTS (cl 1.2)	<p>The documents forming part of this Agreement are:</p> <ul style="list-style-type: none"> • The Signing Page • The Specific Terms • The General Terms • Schedule 1 – KPI's and Reporting
FUNDING (cl 2.1)	<p>The total amount of funding is \$94,000 (not subject to GST).</p> <p>The funding will be paid as follows:</p> <ul style="list-style-type: none"> • Single payment of \$94,000
FUNDING PERIOD (cl 3.1)	1 July 2017 - 30 June 2018
PURPOSE (cl 3.1)	The objects of the Māngere Mountain Education Trust are to:

	<ul style="list-style-type: none"> a. undertake and facilitate the study of Māngere Mountain and its related environs including, without limitation, its natural, historic and cultural values (both before and after European settlement) and spiritual significance to the Tangata Whenua b. manage, promote and maintain the Education Centre for the purpose of: <ul style="list-style-type: none"> (i) providing environmental and bicultural education programmes for young people and the wider community about the natural, historic and cultural values of Māngere Mountain and its related environs (ii) making resources relating to Māngere Mountain, and its related environs that have natural, historical, cultural and spiritual associations with Māngere Mountain, available to teachers, students and other interested members of the public c. provide information and assistance to the Tupuna Maunga o Tamaki Makaurau Authority, Auckland Council and the Mangere-Otahuhu Local Board in the formulation of any Reserve management plan(s) or conservation policies for each of the Māngere Mountain Reserves d. support and contribute - but always with the agreement of the Tupuna Maunga o Tamaki Makaurau Authority and Council / Mangere Otahuhu Local Board - to the protection and enhancement of the Mangere Mountain Reserves in accordance with any Tupuna Maunga Integrated Management Plan or other plans for those reserves, for the general benefit of the Māngere community and public at large. e. [In carrying out the objects of the Trust, the Trustees acknowledge that te Tupuna Maunga o Tamaki Makaurau Authority in some cases, and the Auckland Council Governing Body or the Mangere-Otahuhu Local Board, in others have the ultimate statutory authority for the administration of each of the Mangere Mountain Reserves.]
OBJECTIVES & MEASURES (cl 3.4)	Refer to Schedule 1
REPORTING (cl 5.1)	Refer to Schedule 2
RECOGNITION (cl 2.5)	<p>Recipient shall give fair and proper public acknowledgement of Funder's support, including as follows:</p> <ul style="list-style-type: none"> (a) <u>Promotional materials</u>: Placement of Funder's name and logo on advertising and promotional material (e.g. print advertising, posters, newsletters, signage).

	<p>(b) <u>Website</u>: Acknowledgement of Funder on Recipient's website, including a link to Funder's website using Funder's logo.</p> <p>(c) <u>Communications</u>: Acknowledgement of Funder as a supporter, wherever possible, in press conferences, news releases, speeches, launches, articles sent to any publications, magazines, editorial and annual reports.</p> <p>(d) <u>Opportunities</u>: Recipient shall advise Funder of any marketing and promotional opportunities for Funder to promote its role as a supporter of Recipient.</p> <p>The acknowledgements above shall be commensurate with the amount of the Funding (including placement and prominence relative to acknowledgements by Recipient of its other supporters). Use by Recipient of Funder's name and logo must be in accordance with Funder's brand guidelines, as notified by Funder from time to time, and Recipient shall copy all such promotional material to Funder's Representative.</p>
<p>TERMINATION (cl 9.1)</p>	<p>Clause 9.1 of General Terms to apply.</p>
<p>HEALTH AND SAFETY (cl 3.3)</p>	<ol style="list-style-type: none"> 1. The Recipient must immediately provide the Funder with information about any health and safety matters relating to this Agreement if requested; and comply with all reasonable directions given by the Funder in relation to health and safety in connection with this Agreement. 2. Information requests: The Recipient will, upon request, at all times during the Term immediately provide the Funder with information about any health and safety matters relating to this Agreement. 3. Cooperation: The Recipient must: <ol style="list-style-type: none"> a. so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with the Funder in relation to this Agreement; b. facilitate engagement between the Parties (and/or its designees) in relation to work health and safety matters; and c. ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately. 4. Funder Site: If the Recipient is carrying out any activities at the Funder's (or its CCO) owned or controlled site then the Recipient must: <ol style="list-style-type: none"> a. participate in the Funder's emergency procedures, workplace assessments, training or orientation and any other relevant health and safety activities (if requested); b. participate in the Funder's worker participation practices if requested (if requested); and c. identify and address any special needs requirements. 5. Audits: The Funder (or its representatives) may carry out an audit of the Recipient to ensure compliance with all obligations set out under this clause. The Recipient must: <ol style="list-style-type: none"> a. actively cooperate and participate in any health and safety audits carried out by the Funder; b. provide all necessary access and information required by the Funder in relation to the audit and any other health and safety monitoring; and c. take all reasonable steps to immediately rectify any issues raised by the Funder. 6. Incidents and investigations: The Recipient must immediately notify the Funder of any:

	<ul style="list-style-type: none"> a. “notifiable event” (as defined in the Health and Safety at Work Act 2015); b. near miss or exposure the Recipient becomes aware of in the course of undertaking the Services; c. any WorkSafe inspection, investigation or information request in connection with the Supplier’s performance of the Services; and/or d. breach of this clause; <p>and provide the Funder with such assistance and information as the Funder requires in relation to any of these matters;</p> <p>7. Health and Safety Plans: The Recipient shall, prior to commencing any activities in relation to the Funding, undertake a site specific risk assessment and prepare and submit to the Funder a site specific safety plan.</p> <p>8. This clause also applies to the Recipient’s subcontractors, including the reporting, notification and compliance obligations. The Recipient shall ensure that its subcontractors are aware of and comply with these obligations.</p> <p>9. Suspension/Termination by the Funder: The Funder may immediately terminate or suspend this Agreement in whole or in part by written notice to Recipient if the Recipient or any of its subcontractors breaches any of its obligations under this clause.</p> <p>10. Survival: This clause survives expiry or termination of this Agreement.</p>
<p>OTHER TERMS (cl 1.3)</p>	<p>Not applicable.</p>

GENERAL TERMS (Version 3.0)

1 DEFINITIONS AND INTERPRETATION

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

“Business Day” means a weekday (Monday to Friday) excluding any New Zealand public holidays and Auckland Anniversary Day;

“Contact Address” means, in relation to a party, the physical and postal addresses, facsimile number, 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;

“Funding” means the total financial funding set out in the Specific Terms.

“Funding Period” means the period to which the Funding relates and will be applied for the Purpose, as set out in the Specific Terms.

“GST” means goods and services tax as provided in the Goods and Services Tax Act 1985;

“Insolvency Event” means anything that reasonably indicates that there is a significant risk that Recipient is insolvent or is or will become unable to pay its debts as they fall due including:

- (a) any step being taken to make the person bankrupt, wind up the person’s business or to have a receiver, receiver and manager, administrator, liquidator or statutory manager appointed to or in respect of the person or any of its assets;
- (b) any statutory demand being served on the person, or any proceedings being brought or threatened against the person for recovery of a liquidated or undisputed debt;
- (c) the person ceasing to carry on its business; or
- (d) a meeting of the person’s creditors being called or held or the person entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors;

“Objectives and Measures” means those outcomes, objectives, measures, key performance indicators (KPIs), goals and targets set out in the Specific Terms;

“Party Representative” means the Funder Representative and Recipient Representative (as the case may be) set out in the Specific 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;

“Probity Event” has the meaning given in clause 9.4; and

“Purpose” means the purpose for which the Funding is to be used as set out in the Specific Terms.

1.2 References and interpretation: Except where the context otherwise requires, this Agreement shall, be interpreted and applied in accordance with the following principles:

Agreement: references to this “Agreement” include the Signing Page, Specific Terms, General Terms and Schedules;

Clauses and schedules: references to clauses and schedules are to clauses in the General Terms and the schedules to this Agreement (unless stated otherwise);

GST: all monetary amounts are stated exclusive of GST and in New Zealand dollars unless provided otherwise;

Including: “including” and similar words do not imply any limitation;

Legislation: all references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;

Material Breach: references to “material breach” include any series of breaches of a similar or recurring nature which taken together are material;

Negative obligations: an obligation on the Recipient not to do something includes a reference to the Recipient ensuring that its staff, subcontractors and anyone else it is responsible for do not do that thing;

Party: references to any “party” mean a party to this Agreement and include their respective successors and permitted assigns (as the case may be);

Persons: 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;

Singular and plural: where the context permits, the singular includes the plural and vice versa.

1.3 Terms: The Specific Terms prevail over these General Terms to the extent of any inconsistency. The General Terms do not limit additional rights or obligations in the Specific Terms or in any schedules.

2 FUNDING AND PAYMENT

2.1 Funding: Subject to Recipient complying with this Agreement, Funder will provide the Funding to Recipient for the Purpose as set out in the Specific Terms.

2.2 Payments: The Funding will be paid in accordance with Funder’s grant payment process. Payment of the Funding is not subject to GST.

2.3 Conditions: The Funding (and any instalments thereof) will be paid to Recipient subject to the following conditions:

- (a) Funder is satisfied Recipient has complied with all material obligations under this Agreement (including the reporting requirements) and is not in default of any obligations;
- (b) Funder continues to have confidence in the Recipient’s structure, governance, management, operational practices, and financial stability/solvency; and
- (c) Funder is satisfied that Recipient intends to only use the Funding for the Purpose during the Funding Period.

2.4 Non-exclusive funding: For avoidance of doubt, this Agreement does not limit Funder’s freedom to fund any other organisation with the same or similar objectives to Recipient.

2.5 Recognition: Recipient will give fair and reasonable acknowledgement of Funder’s funding contributions, including as set out in the Specific Terms.

3 RECIPIENT’S RESPONSIBILITIES

3.1 Use of Funding: Recipient will use the Funding during the Funding Period solely for the Purpose and in a manner that is diligent and prudent.

3.2 Legal compliance: Recipient shall:

- (a) obtain all necessary licences, authorisations, permits and registrations to enable it to achieve the Purpose; and
- (b) comply with all applicable laws, regulations, bylaws, industry codes of practice, ethical and professional standards, and licensing and consent requirements.

- 3.3 Health and Safety:** Without limiting any additional obligations set out in the Specific Terms, the Recipient must
- at all times comply with all health and safety legislation, regulations, applicable codes of practice and standards;
 - ensure that it takes all practicable steps to ensure the health and safety of all personnel of the Recipient and any other parties associated with the use of the Funding Services, including the public, and visitors to any area under the control of the Recipient;
 - will have and keep current, all relevant Health and Safety qualifications required to perform its obligations in respect of the use of the Funding; and
 - allow the Funder to audit its Health and Safety compliance at any time and provide the Funder with any information as the Funder requires in relation to those matters.

- 3.4 Objectives and Measures:** Recipient will use its best endeavours to try to achieve the Objectives and Measures during the Funding Period.

3.5 No additional funding:

- Recipient is responsible for organising all additional funding over and above the Funding which may be required for the Purpose or other activities and operations of the Recipient.
- Recipient will actively seek funding contributions during the Period to assist it with the costs associated with the Purpose from other sources, i.e. sponsorship, donations, grants and through other fund raising initiatives.
- The Funding is only for the Period and Purpose and Funder is under no obligation to provide any funding to Recipient other than the Funding. Any decision about providing further funding to Recipient will be at Funder's sole discretion and subject to a separate funding agreement.

4 PARTIES' RELATIONSHIP

- 4.1 Representatives:** 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.

- 4.2 No surprises:** Recipient shall communicate regularly with Funder about its use of the Funding, including promptly raising and escalating any issues (including media issues) likely to be of concern to Funder.

- 4.3 Publicity and reputation:** Recipient acknowledges that its activities may affect Funder's reputation, and accordingly:

- Disrepute: Recipient must not do anything which brings, or would be likely to bring, Funder or any of its Funder-controlled organisations, into disrepute; and
- Public communication: Recipient shall not make any representations or public statements relating to or impacting upon its relationship with the Funder or this Agreement, without the prior written approval of Funder or as permitted under this Agreement.

- 4.4 Funder publicity:** Funder may at its discretion promote in any media its support of Recipient and the Purpose.

4.5 Conflicts of interest:

- Recipient undertakes that it has disclosed, and that it will disclose, to Funder in writing any actual, potential or perceived conflict with the interests of Funder under this Agreement or in any other material way.
- Recipient shall manage any conflicts in consultation with Funder. If Funder considers that a conflict is not being, or cannot be, appropriately managed by Recipient then Funder may immediately terminate this Agreement by written notice to Recipient.

4.6 Recipient's responsibility:

- Recipient is not (by virtue of this Agreement and the Funding) an employee, contractor, partner, joint venturer, or subsidiary of Funder and Recipient is not entitled to pledge the credit of Funder nor act as its agent, except as expressly authorised by this Agreement.
- Recipient will be solely liable for all debts, losses, expenses and taxation on Recipient's income.

5 REPORTING AND PERFORMANCE

5.1 Reporting:

- Recipient shall provide regular reports on its use of the Funding and other obligations under this Agreement in accordance with the Specific Terms or as otherwise as reasonably required by Funder from time to time.
- If Funder is dissatisfied with any report provided by Recipient, Funder may, in its sole discretion, require more frequent/detailed reporting and/or refuse to make any further payments to Recipient.

- 5.2 Notification of breaches:** Recipient will immediately notify Funder if an event occurs which does or may:

- 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
- adversely impact in any way on the performance of Recipient's obligations under this Agreement.

- 5.3 Records and information requests:** Recipient must keep full records and documentation in relation to the Funding and this Agreement ("**Records**") and provide copies of Records to Funder on reasonable request, and immediately notify Funder of any disclosure requests Recipient receives (including under the Local Government Official Information and Meetings Act 1987).

- 5.4 Performance review:** Funder may monitor and review the performance and compliance of the Recipient under this Agreement, and Recipient agrees to co-operate with Funder as may be reasonably requested including by:

- providing all information that is requested by Funder;
- attending such meetings that are reasonably requested by Funder to discuss and review any aspects of this Agreement; and
- allowing Funder reasonable access to any sites under the control of Recipient.

The foregoing shall also apply where Funder has a reasonable concern about Recipient's financial viability or ability to continue to operate.

6 CONFIDENTIAL INFORMATION AND IP

- 6.1 Confidentiality:** The parties acknowledge that some information provided by them in connection with this Agreement may be commercially sensitive or not for general publication. Where so, the party providing the information should specify which information they provide is confidential, and the party receiving the information agrees not to disclose it without the prior consent of the other party, except as required by law or where the information is already publically available (other than through a breach of this Agreement).

- 6.2 Intellectual property:** Recipient acknowledges that the Funder owns all intellectual property in respect of the Funder name and logo ("Funder trade marks"). All use of the Funder trade marks (if permitted by this Agreement) shall comply with Funder's logo and brand guidelines or otherwise as reasonably required by Funder from time to time in writing. All goodwill associated with Funder trade marks shall inure exclusively to the benefit of Funder.

6.3 Publishing of information: Auckland Council regularly publishes information on its procurement activities, spending and contracting as part of its public information programme (“the Programme”). Notwithstanding anything else in this Agreement/ Contract, the Recipient consents to Auckland Council disclosing information about this Agreement/ Contract in its Programme publically, including, but not limited to

- (a) a description of the Funding being supplied;
- (b) the name of the Recipient;
- (c) the Term of the Agreement;
- (d) the value of the Agreement;
- (e) the total funding received by the recipient regarding all agreements or contracts with Auckland Council.

7 WARRANTIES

7.1 General warranties: Recipient represents and warrants and undertakes on a continuing basis that:

- (a) **Entity status:** Recipient is:
 - a. a duly constituted corporation, society or trust under the laws of New Zealand; and
 - b. registered with the Charities Commission if its activities are charitable or not-for-profit,
 and that status and registration will be maintained during the Funding Period.
- (b) **Enforceable:** this Agreement is valid, binding and enforceable and it has taken all necessary action to authorise the execution and performance of this Agreement, and entry into this Agreement will not cause Recipient to be in breach of any other agreement or obligation;
- (c) **No impediment:** except as disclosed by Recipient to Funder in writing, Recipient is not aware of any matter or event which does or may materially and adversely affect the ability of Recipient to perform its obligations under this Agreement;
- (d) **Solvency:** no Insolvency Event has occurred in respect of it;
- (e) **No inducements:** no form of inducement or reward has been or will be directly or indirectly provided or offered by Recipient to any of Funder’s employees, agents, officers or representatives in connection with this Agreement;
- (f) **Tax resident:** Unless notified otherwise to Funder prior to the date of this Agreement, Recipient is a New Zealand tax resident;
- (g) **Correct information:** all information and representations made by Recipient (prior to or after the date of this Agreement, including in any contestable funding application process leading to this Agreement) are true, complete and correct and not misleading through non-disclosure; and
- (h) **No double funding:** Recipient has not sought or received any funding from any other person that “doubles up” on the Funding in excess of Recipient’s actual requirements for the funded activities in question.

7.2 Reliance: Recipient acknowledges that Funder has, in entering into this Agreement, relied on Recipient’s representations in clause 7.1.

8 REFUND OF FUNDING

8.1 If the:

- (a) Funding (or any part of it) is not used for the Purpose; or
- (b) Funder terminates this Agreement pursuant to clause 9.1,

then Funder may refuse to make any further payments to Recipient and Recipient will refund (in the time and manner requested by Funder) up to 100% of that portion of the Funding already paid to Recipient as determined by Funder. Funding that has been legitimately spent for the Purpose will not be required to be refunded.

9 TERMINATION

9.1 Termination: Funder may immediately terminate this Agreement by written notice to Recipient if:

- (a) Recipient commits a material breach of this Agreement that is not, in the reasonable opinion of Funder, able to be remedied;
- (b) Recipient commits a material breach of this Agreement, and, where such breach is capable of remedy, Recipient fails to remedy such breach within ten (10) Business Days following receipt of written notice from Funder specifying the breach and requiring it to be remedied;
- (c) Recipient suffers an Insolvency Event or a Probity Event occurs; or breaches any of its obligations under clause 4.3.
- (d) any warranty contained in this Agreement is untrue in any material respect; or
- (e) Recipient breaches clause 12.2 (no assignment or legal changes without consent).

If provided in the Specific Terms, the Funder may also terminate this Agreement without cause (in the Funder’s sole discretion) on given the period of written notice provided in the Specific Terms.

9.2 Consequences of termination: On termination or expiry of this Agreement:

- (a) Recipient must return to Funder any property, including Funder’s Intellectual Property, in Recipient’s possession or control; and
- (b) Recipient will refund any portion of the Funding, as required in accordance with clause 8;

9.3 Accrued rights: Termination or expiry 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.

9.4 Probity events: For purposes of clause 9.1(c), “Probity Event” means:

- (a) **Inducement:** where any improper inducement, reward or benefit has been provided on behalf of Recipient to any of Funder’s staff or other persons to influence their actions in relation to Recipient or this Agreement; or
- (b) **Offence or breach:** where Recipient commits any offence relating to fraud or dishonest acts, or breaches the Commerce Act 1986 in relation to this Agreement, or Recipient defrauds, or attempts or conspires to defraud, Funder;
- (c) **Ethical wrongdoing:** where Recipient engages in governance, ethical or business practices which are fundamentally incompatible with Funder’s values or the local government accountability and legislative framework; or
- (d) **Related party transactions:** where Recipient enters into or performs any financial transaction (including payments, koha or gifts) with related parties (such as trustees, staff or other associated persons),

irrespective of whether the transaction is demonstrably at under-value, except for the following permitted transactions:

- a. koha or gifts that comply with policies and financial limits expressly disclosed to Funder prior to entering into this Agreement;
- b. arms-length services payments or remuneration; or
- c. distributions that fall directly within Recipient's charitable purposes or objects in its constituting documents,

and includes any of these things done for or on behalf of Recipient or anyone it is responsible for.

9.5 Survival: Any provisions intended to survive expiry or termination of this Agreement (including clauses 5.3, 5.4, 6, 8, 9.2, 9.3 and 11.1 to 11.3, and any provisions incidental to or required in order to give effect to any surviving clauses) will remain in full force and effect.

10 DISPUTE RESOLUTION

10.1 Disputes: The parties will engage in good faith negotiations as soon as reasonably practicable to resolve any dispute or difference (a "Dispute") that arises under this Agreement. Recipient must still comply with its obligations under this Agreement during any Dispute.

10.2 Proceedings: Neither party may commence any court proceedings related to the Dispute unless it has first complied with this clause 10. However, nothing in this clause 10 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).

11 INDEMNITY, LIABILITY AND INSURANCE

11.1 Indemnity: Recipient indemnifies Funder, its 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 Recipient's breach of this Agreement, negligent act or omission of Recipient or anyone it is responsible for, or any claim made by a third party in relation to Recipient's activities.

11.2 Recipient's responsibility: Under no circumstances shall Funder, or its employees or consultants or agents, be liable in contract, tort or otherwise to compensate Recipient or any third party for any loss, 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 Funder (or in the case of a third party claim, Recipient) of its obligations under this Agreement.

11.3 Trustee limitation: Despite anything stated or implied in this Agreement, if Recipient is a trust, Funder agrees that the trustees of Recipient enter into this Agreement as trustees for Recipient and not in any personal capacity. The liability of each of the trustees of Recipient under this Agreement (except in matters of fraud, criminal act, or wilful wrongdoing by that trustee) is limited to the assets for the time being of Recipient.

11.4 Insurance: Where appropriate or required by Funder, Recipient will hold and maintain such insurance cover as may be reasonable to insure against any material risks in relation to Recipient's activities (including in the Purpose).

12 GENERAL

12.1 Notices: Notices under this Agreement must be delivered in writing to the relevant party at its Contact Address (by facsimile, post or courier delivery), marked for the attention of the Party Representative, and also copied by email to the Party Representative. Notices are deemed delivered:

- (a) In the case of facsimile, as soon as the sender receives from the sender's facsimile machine a report of an error free transmission to the correct facsimile number; and
- (b) In the case of post or courier delivery, when the notice is delivered to the correct Contact Address.

Express acknowledgement by the relevant Party Representative that it has received an email copy of the notice constitutes delivery. Notices delivered after 5pm on a Business Day, or on a non-Business Day, will be deemed received on the next Business Day.

12.2 Assignments and transfers: Recipient must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Funder. Any change in effective control or beneficial ownership of Recipient shall be deemed an assignment for purposes of this clause 12.2. If Funder consents, Recipient will pay Funder's reasonable legal and other costs relating to consent and assignment.

12.3 Further acts: 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.

12.4 Rights, benefits and obligations:

- (a) **Benefits:** Except as expressly provided, this Agreement is not intended to confer benefits or enforceable rights on subcontractors or any persons other than the parties.
- (b) **Joint liability:** If Recipient is more than one person or entity (whether or not trustees) then this Agreement binds them jointly and severally.
- (c) **Cumulative rights:** Provisions in this Agreement for the benefit of Funder are cumulative.

12.5 Regulatory capacity: Nothing in this Agreement affects or fetters any regulatory power of Auckland Council or any of its council-controlled organisations. Recipient has no recourse under this Agreement with respect to the exercise (or not) of such powers, including on licensing or consenting matters.

12.6 Severability: If any provision of this Agreement is or becomes unlawful or unenforceable it shall be treated as severable from the other provisions of this Agreement which shall remain in full force and effect.

12.7 Variation and waiver: 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.

12.8 Entire agreement: 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.

12.9 Governing law and jurisdiction: This Agreement is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts, and shall not object to the exercise of jurisdiction by those courts.

12.10 Counterparts: This Agreement may be executed by facsimile or scan, and in any number of counterparts all of which will be deemed an original and together be taken as a single instrument.

SCHEDULE 1

KPI's and Reporting

Mangere Mountain Education Trust, 2017/2018

The list below set out the outcomes, key performance indicators (KPIs) and delivery requirements that council has established for the Recipient.

Outcomes	Outcome Description	KPIs/Delivery Requirements	Reporting
1. Prepare a 10-year strategic plan for MMET	Approve strategic plan to underpin annual SOI, funding applications and accountabilities. Review and provide for updates.	Final version to be completed by 2018 New projects to Business Plan Review annually in time for inclusion of new directions in each SOI	Six monthly
2. Governance Review of MMET	Review the Trust Deed to reflect changed status as a CCO, to better reflect the relationships with the Tupuna Maunga o Tamaki Makaurau Authority, Mānagere-Ōtāhuhu Local Board, and Mana Whenua, and to review the membership of the Trust and their mode of appointment.	Submit to Auckland Council and Te Waiohūa for approval of, and implementation of change by end of 2017	Six monthly
3. Relationship Management	Identify key institutional relationships to be managed including: <ul style="list-style-type: none"> Te Waiohūa and local Marae Auckland Council Governing Body The Māngere Ōtāhuhu Local Board Te Tupuna Taonga Trust Te Tupuna Maunga o Tamaki Makaurau Authority National Agencies including DOC and MCH Schools and other education partners Waikato Tainui Strategic alliances with other visitor attractions and commercial stakeholders. 	Each institution invited to contribute to strategic planning. Regular follow-up meetings with each institution from July 2017 Relationships section to be included in SOI from 2017 to report on strategic alliances with key third party stakeholders List of key institutions to be reviewed annually Cherish and exercise through manawhenuatanga the special relationship and partnership between the board and Makaurau and Pukaki Marae	Six monthly

<p>4. Deliverables programme</p>	<p>Learning outside the classroom (LOTC) educational programmes on Mangere Mountain and environs covering:</p> <ul style="list-style-type: none"> • History • Environment • Pre-European life • Gardening, fishing and food research and establish flax gardens • Archaeology and history- Mountain Report (2017) • King Taawhiao's cottage • Reserve management planning • Facilitating management planning • Volunteer programmes <p>Increase reach of participation of schools from within Māngere-Ōtāhuhu</p> <p>Continue to grow participation of local ECEs</p> <p>Complete Participatory Science Project as part of SouthSci in association with curious minds – designed to promote science learning within South Auckland.</p> <p>Host PopUp South Collective activities in order to actively promote Polynesian arts and crafts within Mangere and</p>	<ul style="list-style-type: none"> • Prepare a plan and performance measures for each element of the programme. • Extend the target audiences for elements of the 2017 education programme. • Increase programme participation from 3100 in 2014-15 to 5000 in 2017-18. • Participate fully in the Reserves Act Management planning being conducted by Tupuna Maunga o Tamaki Makaurua Authority with respect to Mangere Mountain Reserves. • Outline historic programme inspired by Taawhiao's cottage and that period by April 2017 and initiate programme by 2018/19. • Complete Archaeology Report December 2017. • Publish report by July 2018. • Investigate and if appropriate establish flax gardens 2018. <ul style="list-style-type: none"> • Increase participation of schools within Māngere-Ōtāhuhu from 22 to 48. • Grow visitation from local ECEs including Tadpoles ECE, Kauri ECE and White Heron ECE. • Increase participation levels of SouthSci project. • To host at least one PopUp South Collective 	<p>Six monthly</p>
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	<p>surrounds</p> <p>Outreach destination for Sir Keith Park School</p> <p>Development of Pacific Garden in partnership with the Auckland Teaching Garden Trust</p> <p>Provide venue for local church groups and other community led activities such as fitness classes</p> <p>Work with Mangere Arts Centre to structure and implement a week long Arts at the Mountain event, facilitating participation, engagement and exhibition of local art within the local community.</p>	<ul style="list-style-type: none"> • Host Sir Keith Park School three days per week • Complete creation of Pacific garden • Provide venue for church groups and other community groups on weekly basis throughout year • Deliver a week long Art at the Mountain event in 2017/2018 	
<p>6. Strategic Alliances</p>	<p>Identify and work with strategic partners who are aligned with the spirit of the Trust, to ensure we can achieve its objectives.</p> <p>Nestle Foods (Ka Tuna Ka Ora programme) Stardome and Motat have been selected because they:</p> <ul style="list-style-type: none"> • Enhance and amplify our brand presence • Embed MMEC as a viable visitor destination • Augment delivery of our education programmes • Drive visitation • Develop new programmes and products • Build revenue 	<ul style="list-style-type: none"> • MOUs with key partners • New programmes that we can market to the education sector • New visitor programmes • Partner funded marketing • Partner funded implementation resources • Partner funded human resources • Accountable increases in participation numbers, defined as new participants that would not have otherwise participated • Accountable increases in revenue – defined as new revenue streams that are incremental • Increase in brand health and awareness –measured by consumer unpromoted and 	<p>Six monthly</p>

		prompted response	
6. Capital programme	Taawhiao's cottage council building project has now been completed. The building has been blessed and tapu lifted.	Use as focal point for local history and events in Mangere in nineteenth century.	Six monthly

Specific projects delivering on Māori outcomes

Outcomes	Outcome Description	KPIs/Delivery Requirements	Reporting
All project / initiatives	All projects contribute to a better understanding of the cultural and sacred importance of Te Pane o Mataoho to Mana Whenua.		Six monthly
New programmes	All programmes (Reserve Management, Taawhiao, flax, Archaeology and partnership) to be developed with hapu input and to illuminate traditional hapu perspectives.	Strengthen Te Waiohū involvement in the design and delivery of programmes relating to their rohe and history.	Six monthly