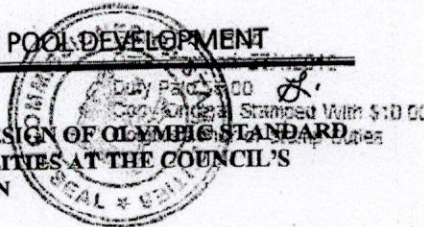


Ashok

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

**CONSULTANCY SERVICES FOR PLANNING AND DESIGN OF OLYMPIC STANDARD
SWIMMING POOL WITH ASSOCIATED FACILITIES AT THE COUNCIL'S
BOTANICAL GARDEN**



This Agreement is made and effective this 19th day of December 2017: **M**

BETWEEN: LAUTOKA CITY COUNCIL ("Council"), a body corporate constituted under the Local Government Act, Cap 125 and situated at 169 Vitogo Parade, P O Box 124, Lautoka of the one part

AND: ASHOK BALGOVIND trading as ASHOK BALGOVIND & ASSOCIATES a business duly registered in Fiji ("Consultant") of 1st Floor, FTU Headquarters Complex, 1-3 Berry Road, Suva of the other part.

(May collectively be referred to as the "Parties")

WHEREAS:

- A. The Council engages the Consultant to provide the professional services set out in the Scope of Services in **Appendix A** and agrees to pay the Consultant in the manner described in the Fees, Expenses and Payment Schedule in **Appendix B**.
- B. The Consultant will provide professional services to the Council as set out in the Scope of Services in **Appendix A**.
- C. The Council engages the Consultant as an independent contractor and not as an employee, on the terms and conditions stipulated in this Agreement.
- D. The Consultant will provide professional services to the Council as an independent contractor and not as an employee, on the terms and conditions stipulated in this Agreement.
- E. In consideration of the foregoing and of the mutual undertakings, representations and warranties set forth herein, and intending to be legally bound,

THE PARTIES AGREE AS FOLLOWS:

1.

In this contract, except where the context otherwise requires:

- (a) The singular includes the plural and vice versa, and a gender includes other genders;

M **h** **M**

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to a clause is a reference to a clause in this contract;
- (e) a reference to a party to a document includes the Party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this document or any part of it;
- (h) reference to dollars and "\$" refers to the amounts in Fijian Dollars unless expressed otherwise;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- (j) headings are for ease of reference only and do not affect interpretations.

INTERPRETATION

2.

Unless the context otherwise requires, then in construing this Contract:

Agreement

means this entire agreement between the council and the Consultant, any other documents forming part of this Contract and any amendment to the Contract from time to time upon the written consent of the parties.

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

Confidential Information: means any professional advices or other information of sensitive nature, whether or not specifically identified as confidential; and any information about the parties, or their business gained during the duration of this Contract that is not already in the public.

Force Majeure: means an event or circumstance which;

- (a) is beyond the reasonable control of either Party;
- (b) is not caused by either Party;
- (c) may occur with or without human intervention; and
- (d) was not reasonably foreseeable by the Parties at the time of entering into this contract, the consequences of which could not have been reasonably prevented by the Party affected.

Works: means the services provided for under the Scope of Services under Appendix A of this agreement.

Term: means the term referred to in clause 2 of this contract.

Third Party: means any other person or entity as the context requires, including a contractor and other consultants including sub consultants.

Working Day: means a calendar day other than any Saturday, Sunday or any public holiday.

WORKS

3. The Consultant agrees to perform for the Council the professional consultancy services set out in the Scope of Services in **Appendix A ("Works")**.

CONSULTING PERIOD

4. (a) The Council retains the Consultant and the Consultant agrees to render professional services to the Council commencing on the **24th day of August 2016** and until the **23rd day of November 2018** or to final completion of the project, unless varied by the Parties in accordance with this Agreement or terminated in accordance with Clause 10.

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

- (b) Any renewal or extension of the Consulting Period of this Agreement is subject to the written mutual agreement of the Parties.

OBLIGATIONS OF THE CONSULTANT

5.

The Consultant:

- (a) Agrees to effectively and efficiently devote its best efforts, care, skills and diligence to the performance of the Works and to such other services as may be reasonably requested by the Council.
- (b) Shall ensure that its Agents are skillful, diligent and competent and possesses sufficient working knowledge of the Council's research, development and products to fulfill its obligations. Any Agent of the Consultant who, in the sole opinion of the Council, is unable to adequately perform the Works specified in this Agreement, shall be replaced by the Consultant within 7 days after receipt of notice from the Council of its desire to have such Agent replaced.
- (c) Shall use its best efforts, care, skill and diligence to comply with, and to ensure that each of its Agents comply with all policies and practices regarding the use of facilities at which the Works are to be performed pursuant to this Agreement.
- (d) Agrees that the Agents hired to perform the Works stipulated in this Agreement will be deemed the Consultant's Agents and will not for any purpose be considered employees, servants or agents of the Council. The Consultant assumes full responsibility for the actions of such Agents while performing the Works pursuant to this Agreement and shall be solely responsible for their supervision, daily direction and control, provision of employment benefits (if any) and payment of salary (including all required withholding of taxes).
- (e) Confirms that the Council will not be required to furnish or provide any training to the Consultant to enable the Consultant to perform the Works pursuant to this Agreement. The Works shall be performed by the Consultant or its Agents and the Council shall not be required to hire, supervise or pay any assistants to help the Consultant.
- (f) Must comply with the laws of Fiji in the performance of the Works, including the Health and Safety Act 1996 and obtain all necessary statutory consent, processes, and approvals where applicable.

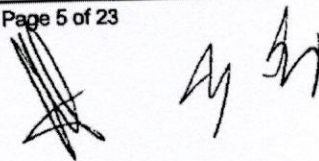
CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

- (g) Must, at all times, ensure that conflicts of interest do not arise and must notify the Council immediately in writing of a potential conflict of interest that may arise or if a conflict of interest has arisen.
- (h) To the best of the Consultant's knowledge, there should be no claims, investigations or proceedings in progress or pending or threatened against the Consultant which, if determined adversely, would have a material adverse effect on the capacity of the Consultant to fulfill its obligations under this Agreement.
- (i) The Consultant shall not, during the Consulting Period of this Agreement and after its expiration, disclose any confidential information or make any public statement relating to the Works, this Agreement or the Council's business or operations without the prior written consent of the Council.
- (j) Will give written notice within seven (7) working days, to the Council if the Consultant becomes aware of any matter which will change and which has changed the scope or timing or performance of the Works and the notice will contain, as far as practicable, in the circumstances, particulars of the change. Where matters are within the control of the Consultant, it shall take all reasonable and practicable steps to remedy such delay.
- (k) Undertakes to perform the Works with the highest standards of professional and ethical competence and integrity.
- (l) The Consultant will provide its employees and its Agents with the necessary equipment and the protective wear needed to undertake the Works.

OBLIGATIONS OF THE COUNCIL

6.

- (a) The Council undertakes to pay the Consultant the Fees in the manner set out in **Appendix B** after the submission of the required Reports. There will be no additional costs other than what is agreed between the Parties and there will be no increase in the Fees as it is inclusive of all costs except Value Added Tax (VAT).
- (b) Council must:
 - i) provide free of charge any relevant information related to the performance of this Agreement as reasonably requested by the Consultant;
 - ii) in response to the Consultant's request, provide additional relevant information, within a timeframe that does not materially delay the performance of the Works; and



CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

- iii) accept responsibility for the accuracy of the information provided. The Consultant is expected to review all the information provided to ensure that it contains no manifest errors or omissions. No Variation will exist if the information provided by the Council contained manifest errors or omissions that the Consultant should reasonably have been expected to find.
- (c) The Council shall render assistance as is necessary to facilitate the Works and shall not willfully or unnecessarily interfere with or obstruct the proper performance of the Works. For the avoidance of any doubt, inquiries by the Council as to the proper performance of the Works shall not be constructed as interference.
- (d) The Council shall, as soon as practicable, make arrangements to enable the Consultant to have access to the relevant documents to allow the Consultant to perform the Works.
- (e) The Council will be responsible in overseeing the administration of the Works and will monitor the Works to determine that it is achieving its specific intent within the timeline specified in clause 2 of this Agreement.
- (f) If the Council becomes aware of any matter which may be reasonably expected to change the Scope of timing of the Works, the Council will give written notice to the Contractor.

EXPENSES

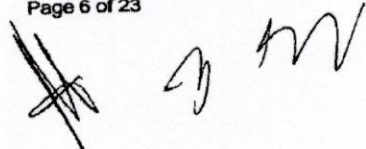
- 7. All lodgment fees payable to the Water Authority of Fiji, the National Fire Authority, Fiji Electricity Authority, Occupational Health & Safety Services, etc. are payable by Council.

INVOICING

- 8. The Council shall pay the Agreement Fee within thirty (30) days of receipt of invoices from the Consultant, in accordance with normal commercial practice.

PAYMENT

- 9. (a) The council shall pay the consultant an amount FJD\$.....VIP. This amount excludes the consultant's reimbursable expenditures.



CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

- (b) The council shall pay the consultant 10% of the total amount specified within 7 days of engagement.
- (c) Payment shall be made in Fiji Dollars not later than 7 days after submission of invoices in duplicate to the Council's Coordinator designated in clause 6 of this contract.

TERMINATION

10.

(a) Non-Compliance

If the consultant fails to perform its obligation with the terms of this Contract or breaches this Contract, the council will have the right to terminate this Contract if the Consultant does not remedy the default within thirty (30) days or within any further period as the Council may subsequently approved in writing of the consultant receiving written notice from the Council for such default.

(b) Non-Payment Dues to Consultant

If the Council fails to pay such sums of money that become due to the Consultant, the Consultant will have the right to terminate Contract if the Council does not remedy the default within thirty (30) days of it receiving written notice from the Consultant for such default.

(c) Criminal Offence or Illegal Activities

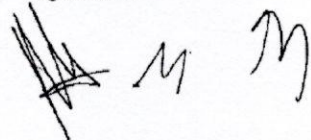
The Council will have the right to terminate this Contract if the Consultant engages in any illegal activities, including but not limited to bribery and corruption or commits any criminal offence pursuant to law during the performance of this Contract.

(d) Discretionary

The Council reserves the right to terminate this Contract for any reason whatsoever within thirty (30) days' notice in writing to the Consultant, after ensuring that any due payment to the Consultant has been settled.

(e) Early Termination

In the event of an early termination under clauses 10.0 above, the Consultant shall immediately reimburse to the Council, monies already paid toward the Services which have not been completed or performed and any Government property which is in its possession.

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CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

(f) Insolvency

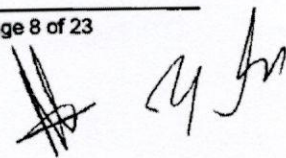
- (A) The Council reserves the right to terminate this Contract immediately if the Consultant;
- (i) being an individual, at any time be adjudged bankrupt or has a receiving order for administration of the Consultant's estate made against the Consultant or takes any proceeding or liquidation or composition under the Bankruptcy Act [Cap. 48], or makes any conveyance or assignment of the Consultant's effects or composition or arrangement for the benefit of the Consultant's creditors, or purports so to do;
 - (ii) being a company, passes a resolution or the court makes an order for the liquidation of its affairs, or a receiver or manager on behalf of the creditors shall be appointed or circumstance shall have arisen which entitles the court or creditors to appoint a receiver or manager or the company becomes the subject of winding-up or liquidation proceedings; or
 - (iii) fails to be able to pay its debts when due.
- (B) In this event, the Consultant must immediately provide an account of all the funds used and reimbursed any unused funds.

(g) Recovery of Sums Due

Any sums of money recoverable from or payable by the Consultant under this Contract may be deducted from any sum that is due, or which at any time thereafter may become due to the Consultant under this contract or under any agreement with the Council or with the Government or any of its departments or offices thereof.

(h) Breach of Contract includes but is limited to the following:

- (h) failure of the Consultant to commence the Services by the date stipulated in this Contract;
- (ii) where the Consultant abandons the Services part way through the Term referred to in clause 4 and this is verified by the Council;
- (iii) where the Consultant consistently refuses to commence the Services after the signing of this Contract;



CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

- (iv) if the Consultant performs the Services below the standard that is required by the Council;
- (v) if the Consultant without reasonable causes fails to proceed diligently with the Services or wholly fails to follow the Council's instructions; and
- (vi) where the Consultant becomes bankrupt or enters into any composition with its creditors or has a receiver or manager appointed over any of its assets or is subject to any order for winding up or arrangement.

Should the Services as stipulated in this Contract not performed in accordance with the requirements of this Contract, the Council shall be at liberty, without prejudice to any other remedy for breach of this Contract, at any time, to cancel the unexpired portion of this Contract by notice in writing addressed to the Consultant. The Council may then obtain the Services elsewhere and charge the Consultant the difference between the cost of obtaining the same Services from an alternative Consultant and Contract price.

- A. On termination of this Contract all rights and obligations of the parties ceases, except:
 - i) rights and obligations that have accrued on or before the date of termination or expiration; or
 - ii) rights that expressly survive the termination of this Contract.
- B. This Contract may be extended if agreed in writing between the parties, in which case the provisions of this Contract shall continue to apply, unless agreed otherwise.
- C. At any time, either Party may terminate, without liability, the Consulting Period for any reason, with or without cause, by giving 60 days advance written notice to the other Party.
- D. Consultant hereby acknowledges and agrees that all property, including, without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints, and other documents, or materials, or copies thereof, and equipment furnished to or prepared by Consultant or its Agents in the course of or incident to its rendering of services to the Council, including, without limitation, records and any other materials pertaining to invention ideas belong to the Council and shall be promptly returned to the Council upon termination of the Consulting Period. Following termination, neither the Consultant nor any of its Agents will retain any written or other tangible material containing any confidential information.
- E. The representations and warranties contained herein and the Consultant's obligations under Clauses 15, 22, 26, 27 and 29 shall survive the termination of the Consulting Period and the expiration of this Agreement.

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

ASSIGNMENT

11.

Neither the Council nor the Consultant shall assign this Agreement or any of their rights or obligations under this Agreement without the prior written consent of the other Party.

PLACE OF WORK

12.

The Consultant's professional services will be rendered largely at Lot 1, DP 4995 & Lot 3, DP 3379, Botanical Garden, Thomson Crescent, Lautoka but the Consultant will, on request, attend to the Council's address of 169 Vitogo Parade, Lautoka, or such other places designated by the Council, to meet with representatives of Council.

TIME DEVOTED TO WORK

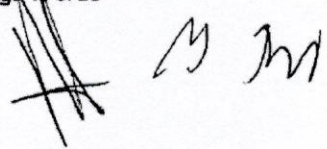
13.

The performance of the Works and the hours the Consultant is to work on any given day will be entirely within the Consultant's control and the Council will rely on the Consultant to put in such number of hours as is reasonably necessary to complete the said Works.

CONFIDENTIAL INFORMATION

14.

- (a) The Parties shall hold in trust and shall not disclose to any non-party to this Agreement, any confidential information which relates to either of the Parties' research, development, trade secrets or business affairs, but does not include information which is generally known or easily ascertainable by non-parties of ordinary skill in computer systems design and programming.
- (b) The Consultant hereby acknowledges that during the performance of this Agreement, the Consultant may learn or receive confidential information concerning the Council and therefore the Consultant hereby confirms that all such information relating to the Council's business will be kept confidential by the Consultant, except to the extent that such information is required to be divulged to the Consultant's clerical or support staff or associates in order to enable Consultant to perform its obligations.
- (c) The Consultant agrees not to disclose or use, except as required in Consultant's duties, at any time, any information disclosed to or acquired by Consultant during the term of this Agreement. The Consultant shall disclose promptly to the Council all inventions, discoveries, formulas, processes, designs, trade secrets, and other useful technical information and know-how made, discovered, or developed by the Consultant (either alone

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CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

or in conjunction with any other person) during the term of this Agreement. The Consultant agrees that it shall not, without the written consent of Council, disclose to third parties or use for its own financial benefit or for the financial or other benefit of any competitor of the Council, any information, data, and know-how, manuals, disks, or otherwise, including all programs, computer system, listings, tapes, summaries of any papers, documents, plans, specifications, or drawings.

- (d) The Consultant shall take all reasonable precautions to prevent any other person with whom the Consultant is or may associate with, from acquiring confidential information at any time.
- (e) The Consultant agrees that all confidential information shall be deemed to be and shall be treated as the sole and exclusive property of Council.
- (f) Upon termination of this Agreement, the Consultant shall deliver to Council all drawings, manuals, letters, notes, notebooks, reports, and all other materials (including all copies both in hard and electronic of such materials), relating to such confidential information which are in the possession or under the control of Consultant.

SERVICES FOR OTHERS

15.

The Consultant will not perform any services for any other person or firm that will potentially adversely affect the performance of the Works or affect its obligations, representations and warranties pursuant to this Agreement, without the Council's prior written approval.

USE OF WORK PRODUCT

16.

Except as specifically set forth in writing and signed by the Parties, the Consultant may have copyright and patent rights with respect to all materials developed under this Agreement, and the Council is hereby granted a non-exclusive license to use and employ such materials within the Council's business.

COUNCIL'S REPRESENTATIVES

17.

The Director Engineering and/or Director Building Services shall represent the Council during the performance of this Agreement with respect to the Works and with prior approval from the Council, execute written modifications or amendments to this Agreement. The contact information for the Council's representative is contained in Appendix C.

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

CONSULTANT'S REPRESENTATIVES

18.

The Architect or the Deputy Architect shall represent the Consultant during the performance of this Agreement with respect to the Works and with prior approval from the Consultant, execute written modifications or additions to this Agreement. The contact information for the Consultant's representative is contained in **Appendix D**.

DISPUTE RESOLUTION

19.

(a) Disputes that arise between the Parties with respect to the performance of this Agreement shall first be submitted to the Architect of the Consultant and the Chief Executive Officer of the Council for resolution and the Parties shall use their best efforts to settle amicably any disputes arising out of or in connection with this Agreement.

(b) If after 21 days, such disputes which have been submitted to the Architect of the Consultant and the Chief Executive Officer of the Council for resolution cannot be settled amicably, such disputes may be submitted to arbitration. Arbitration proceedings shall be conducted in accordance with the Arbitration Act (Cap 38).

(c) The cost of any arbitration shall be borne as the Arbitrator may direct.

GOVERNING LAW

20.

This Agreement shall be governed and constructed exclusively by the Laws of Fiji and the Parties agree that the Courts of Law in Fiji shall have exclusive Jurisdiction to entertain any action in respect of and flowing from this Agreement.

DURATION OF LIABILITY

21.

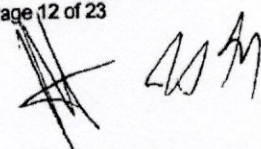
The duration of liability shall be one (1) year after design and documentation phase.

INSURANCE

22.

1.1 The consultant must ensure that the following insurance are obtained and maintained in full force and effect during the term of this contract:

- a) for workers compensation and employers indemnity in respect of the Consultant's employees, agents and contractors at all level appropriate for the Consultant's business and number of employees, agents and contractors;



CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

- b) for public liability with a cover of not less than FJD\$1,000,000.00 (or such greater sum as the Council may from time to time specify) in respect of any one occurrence;
- c) insurance for the Services performed in relation to the Project, with a minimum value of the total Contract Price;
- d) other insurance appropriate to the Consultant's business, assets and operations (such as business interruption and professional indemnity insurance); and
- e) any other policy of insurance which the Council acting reasonably may from time to time require from the Consultant to effect and maintain with an amount of cover and on such terms as the Council may reasonably specify.

1.2 the Consultant must ensure that each insurance policy:

- a) is with an insurer approved by the council;
- b) is on terms and for an amount specified by the Council (or, failing specification, that a prudent person would obtain and maintain in the circumstances);
- c) (except for an insurance policy for professional indemnity, employers' liability or workers' compensation insurance) names the Council as an insured; and
- d) Cover events occurring while policy is current regardless of when claims are made.

1.3 the Consultant must;

- a) pay all insurance premiums on any policies referred to in this clause 22 not later than the due date for payment specified in the first premium notice or demand for payment;
- b) on request promptly deliver to the council a copy of each insurance policy and any variations made from time to time;
- c) not do or allow anything to be done or omit to do anything which might cause an insurance policy, or a claim under it, to be prejudiced;
- d) not materially change the cover under an insurance policy without Council's Consent; and
- e) notify the Council immediately if something happens which could give rise to a claim under or could prejudice any policy or allow the insurer to cancel the relevant policy.

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

1.4 If:

- a) The Consultant fails to take out or to keep in force an insurance policy as required in this clause 22; or
- b) The Council reasonably determines that an insurer either may become entitled to cancel or avoid an insurance policy or may not be capable of meeting a claim under the insurance policy, the Consultant agrees that the Council may do anything it determines necessary or desirable to take out, maintain or replace the insurance policy at the Consultant's cost. The Council is not obliged to do anything under this clause.

1.5 The Consultant agrees that if it receives a notice from the Council that the Council will take over the Consultant's rights in respect of a claim under an insurance policy:

- a) the Council may exercise those rights as it sees fit; and
- b) the Consultant must not make, enforce, settle or compromise the claim or do anything inconsistent with the Council's exercise of those rights.

1.6 The amount of professional indemnity cover shall be FJD\$1,000,000.00

FORCE MAJEURE

23.

- (a) The Consultant is not liable for the failure to perform its obligations stipulated under this Agreement if such failure is as a result of an Act of God [including fire, flood, earthquake, storm, hurricane or other natural disaster], war, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.
- (b) If the Consultant asserts Force Majeure as an excuse for failure to perform its obligations under this Agreement, then the Consultant must prove that it took reasonable steps to minimize the delay or damage caused by foreseeable events, and that the Consultant has substantially fulfilled all non-excuse obligation, and that the Council was timely notified of the likelihood or actual occurrence of an event described above.

ENFORCEABLE

24.

The terms and conditions of this Agreement shall be enforceable notwithstanding the existence of any claim or cause of action of the Consultant against the Council whether predicated on this Agreement or otherwise.

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

REPRESENTATIONS AND WARRANTIES

25.

Consultant represents and warrants as follows:

- (a) it has no obligations, legal or otherwise that is inconsistent with the terms and conditions of this Agreement or with its undertakings with the Council;
- (b) the performance of the Works under this Agreement do not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party;
- (c) it will not use in the performance of the obligations under this Agreement, any confidential information or trade secrets of any other person or entity; and
- (d) it has not entered into or will not enter into any agreement (whether oral or written) in conflict with this Agreement.

INJUNCTIVE RELIEF

26.

- (a) The Consultant acknowledges that the disclosure of any confidential information by it may give rise to irreparable injury to the Council which may be inadequately compensable in damages. Accordingly, the Council may seek and obtain injunctive relief against the breach or threatened breach of the disclosure of confidential information, in addition to any other legal remedies which may be available.
- (b) The Consultant further acknowledges and agrees that the representations and warranties contained in this Agreement are necessary for the protection of the Council's legitimate business interests and are reasonable in scope and content.

COMPLETE AGREEMENT

27.

This Agreement contains the entire agreement between the Parties with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Consultant by any of its employees or Agents, or contained in any sales materials or brochures, shall be deemed to bind the Parties with respect to this Agreement. The Council acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein.

INDEMNIFICATION

28.

The Consultant indemnifies the Council from and against any liability, loss, damage, cost (including reasonable legal costs and expenses), or expense which arises out of a claim against

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

the Council as a consequence of the provision of Works, except where the liability, loss, damage, cost or expense under a claim arises because the Council acts in a manner that is unreasonable or irresponsible.

REMEDY FOR BREACH

29.

The Parties agree that in the event of a breach or a threatened breach of this Agreement by the Consultant, the damage or imminent damage to the value and the goodwill of the Council's business may be incalculable, and that therefore the Council shall be entitled to injunctive relief against the Consultant in addition to any other relief (including damages and the right of the Council to stop payments hereunder which is hereby granted) available to the Council under this Agreement or under law.

SEVERABILITY

30.

If any provision of this Agreement, is or becomes unenforceable, illegal or invalid for any reason, that provision shall be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and shall not affect the enforceability, legality, validity or application of any other provision of this Agreement.

SCOPE OF AGREEMENT

31.

If the scope of any of the provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law and the Parties consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

MODIFICATION/AMENDMENT

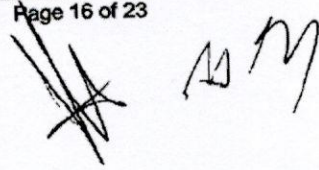
32.

Modification of this Agreement, including any modification or amendment of the scope of the Works, may only be made by written Agreement between the Parties. Each Party shall give due consideration to, and not unreasonably delay, a considered response to any proposals for the modification made by the other Party.

ADDITIONAL WORK

33.

- (a) If the Council requests an order which adds to the Works, the Consultant may, at its discretion, take reasonable action and expend reasonable amounts of time and money to fulfill the order.

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CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

- (b) The Council agrees to pay the Consultant for the action taken and the reasonable amount of time and money spent by the Consultant for the added work.

NOTICES

34.

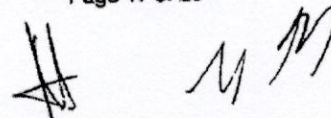
All notices or other communications required or permitted under this Agreement shall be made in writing and shall be deemed to have been duly given if delivered by hand or mailed, electronic mail, postage prepaid, by certified or registered mail, return receipt requested, and addressed to the Council at:

Lautoka City Council
169 Vitogo Parade
P O Box 124
LAUTOKA

or to the Consultant at:

Ashok Balgovind & Associates
1st Floor, FTU Headquarters Complex,
1-3 Berry Road, Suva
GPO Box 15090
SUVA

Notice of change of address shall be effective only when done in accordance with this Clause.

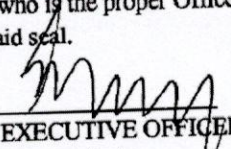
Handwritten signatures and initials, including a stylized 'H' and several other marks.

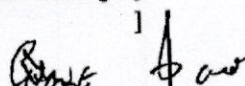
CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first hereinbefore written:

For the Council

THE COMMON SEAL of the LAUTOKA CITY COUNCIL]
was hereunto affixed in the presence of the Chief Executive]
Officer who is the proper Officer authorized to attest the affixing]
of the said seal.]

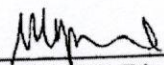

CHIEF EXECUTIVE OFFICER
[Jone Nakauvadra]


WITNESS SIGNATURE


Name of Witness: CYNTHIA RAO
Occupation: Director Human Service
Address: P.O. Box 124 Lautoka

For the Consultant

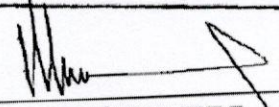
THE COMMON SEAL of the Ashok Balgovind & Associates]
was hereunto affixed in the presence of the Director]
who is the proper officer to attest to the fixing of the said seal]
be affixed]


ARCHITECT (Director)
[Ashok Balgovind]

ASHOK BALGOVIND & ASSOCIATES
REGISTERED ARCHITECTS & ENGINEERS
P.O. BOX 15090, SUVA
PH: 314833, 314750. FAX: 314884


Signature of Director

Director [Name]


WITNESS SIGNATURE

Name of Witness: Rohitash Balgovind
Designation: Deputy Architect

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

APPENDIX A

SCOPE OF SERVICES

Consultancy Services for the Planning and Design of Olympic Standard Swimming Pool with Associated Facilities at the Council's Botanical Garden Site known as for Lot 1, DP 4995, Lot 3, DP 3379, Thomson Crescent, Lautoka]

Scope of Services:

- i) Architectural Work
- ii) Engineering works
- iii) Mechanical & Electrical Services
- iv) Project Management

Design and Documentation Phases:

- i) Concept design & planning
- ii) Developed design
- i) Detail design - Civil & structural engineering design
- Engineering calculation & Design Certification
- iii) Construction detailing

Services Provided:

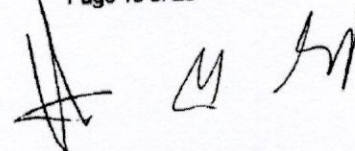
- ii) Project management services
- iii) Constructability evaluations
- iv) Material availability
- v) Value engineering

Tender Process & Evaluation

- i) Pre-tender co-ordination meetings
- ii) Preparation of tender documents
- iii) Thorough tender evaluation and interview of tenderers
- iv) Evaluation report
- v) Value engineering

Construction Observation

- i) Attend site meetings and site visits as requested
- ii) Project management services – including project meeting minutes
- iii) Provide site inspection reports
- iv) Generally reviewing activities of the contractor on site through direct liaison and observation of the works with the objective of reporting on compliance with design intent
- v) Administration of Agreement



CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

APPENDIX B FEES, EXPENSES AND PAYMENT SCHEDULE

ESTIMATE COSTING FOR FEE CALCULATION

The estimate cost of project is \$2,000,000.00 plus VAT. This will vary as per detailed requirements and would be finalized on the final tender price.

Fee is based on percentage and will vary on 'pro rata' basis of the final cost. Other conditions of Fiji Association of Architects apply regarding disbursement.

For project cost of \$2,000,000.00 the fees shall be as follows:

Architectural Work	4.5% of the Project Cost plus VAT = \$ 90,000.00 + VAT
Engineering Works	1.8% of the Project Cost plus VAT = \$ 36,000.00 + VAT
Mechanical &	
Electrical Engineers	0.5% of the Project Cost plus VAT = \$ 10,000.00 + VAT
Total	6.8% of the Project Cost plus VAT = \$136,000.00 + VAT

Concept Design Phase	-	\$ 15,000.00 + VAT
Detail, Design & Project Management	-	\$121,000.00 + VAT

Basic Services

Work Stage C	Outline Proposals
Work Stage D	Scheme Design
Work Stage E	Detail Design
Work Stage F&G	Production Information, Drawing and Specification
Work Stage H	Tender Action
Work Stage J	Project Planning
Work Stage K	Operations
Work Stage L	Completion

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

	Work Stage	Proportion of Fees	Accumulative
C	Outline Proposal	15%	15%
D	Development Design & Final Scheme Plan	20%	35%
E	Detail Design	20%	55%
F& G	Production Information, Drawing and Specification	20%	75%
H&I	Tender Action Provide Tender Documents Drawing Submitted for Approval of Fire Authority, OHS and Council	10%	85%
JKL	Supervision to Completion	15%	100%

Payments for Stages K and L shall be claimed at monthly intervals for the duration of the construction of the project i.e. 15% construction period on monthly basis.

RETENTION

That 5% of the consultancy service fee to be withheld by council from the progress claim as retention which shall be released after the successful completion of the defects liability period by the contractor appointed for the project.

Expenses and Disbursements

All expenses and disbursements are not in the fee.

For the purpose of Expenses and Disbursements, it shall be based as per schedule referred in FAA Conditions of Engagement.

The said Expenses and Disbursements shall be incurred with prior approval of council and the claims shall be accompanied by documentary evidence.

Payment Schedule:

The Consultant will submit regular fee accounts for payment within thirty (30) days of receipt of invoices in accordance with normal commercial practice

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

	Work Stage	Proportion of Fees	Accumulative
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CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

APPENDIX C COUNCIL'S REPRESENTATIVE

Director Building and Director Engineering Services
Lautoka City Council
169 Vitogo Parade
PO Box 124

LAUTOKA

Tel: (679) 666 0433
Cell: (679) 990 8557
Email : lcc@connect.com.fj
building@lcc.com.fj

Subject to change on the instruction of the Council

CONSULTING AGREEMENT – SWIMMING POOL DEVELOPMENT

APPENDIX D

CONSULTANT'S REPRESENTATIVE

Mr. Rohitash Balgovind
Deputy Architect
Ashok Balgovind & Associates
1st Floor, FTU Headquarters Complex,
1-3 Berry Road, Suva
GPO Box 15090
SUVA

Phone: (+679) 9990382
Email: abasfj@gmail.com