

CONFIDENTIALITY AGREEMENT

(**"Agreement"**)

Executed by and between:

The City of Kragujevac

(the **"City"**)

and

[*name of the Bidder*]

(the **"Bidder"**)

(hereinafter jointly referred to as the **"Parties"**);

Preamble

WHEREAS the City has published a Public Invitation to bid no. 144/22, on 30 December 2022 in the procedure of granting the concession right for financing, designing, constructing, operating and maintaining of a public garage located on the territory of the City of Kragujevac (**"Concession Procedure"**, such project referred to as the **"Project"**);

WHEREAS the Bidder, _____ [*corporate ID no*], having its seat at _____ has demonstrated interest to participate in the Concession Procedure and to receive the Tender Documentation setting out the Concession Procedure;

WHEREAS in the course of participation in the Concession Procedure the City may provide the Bidder with certain information relating to the Project thereby enabling Bidder to prepare its binding bid;

NOW, THEREFORE, the Parties have agreed as follows:

1. Confidential Information

1.1 For the purposes of this Agreement, the following data and information shall be deemed **"Confidential Information"**:

1.1.1 information and contents of the tender documentation (**"Tender Documentation"**) that shall be received by the Bidder upon signing of this Agreement, information and documents disclosed during the due diligence process of the Project;

- 1.1.2 any analyses, data, plans, compilations, studies and other documents prepared by the City which contain or otherwise reflect or are generated from any such information as is specified in paragraph 1.1.1 above;
- 1.1.3 any other information on the City, Concession Procedure and/or the Project; and
- 1.1.4 information pertaining to the existence and content of this Agreement.

2. Rights and Obligations of the Parties

- 2.1 The Bidder undertakes to keep confidential and not to disclose in any way any Confidential Information.
- 2.2 The Bidder undertakes in particular to:
 - 2.2.1 within its means, deny access to the Confidential Information to all persons except Privileged Persons (as defined below);
 - 2.2.2 within its means, protect the Confidential Information from unauthorised use, publication or disclosure;
 - 2.2.3 use Confidential Information solely for the purposes of preparing and submission of its bid in the Concession Procedure and conducting its due diligence of the Project;
 - 2.2.4 refrain from making copies in any form, reproducing or distributing in whole or in part any information or any documents, material or other data containing Confidential Information other than needed to evaluate the Project with the Privileged Persons, without the City's explicit written consent; and
 - 2.2.5 observe other reasonable instructions of the City relating to the protection of the Confidential Information.
- 2.3 All of the Confidential Information shall remain the property of the City. Disclosure of such Confidential Information to the Bidder shall not confer upon the Bidder any rights or licence whatsoever in respect of any part of the Project i.e. the Concession Procedure;
- 2.4 Obligations listed under paragraphs 2.2.1 to 2.2.5 shall apply *mutatis mutandis* to the Privileged Persons. The Bidder shall be liable for any breach of obligations set forth under paragraphs 2.2.1 to 2.2.5 by any of the Privileged Persons.
- 2.5 If the City so requests in writing at any time or if the Bidder ceases to participate in the Concession Procedure, for any reason envisaged by the Tender Documentation, or the Concession Procedure is cancelled, in line with the Tender Documentation, the Bidder will forthwith return to the City or destroy all Confidential Information together with all copies, analyses, memoranda or other notes containing or reflecting any of the Confidential Information made by the Bidder or the Privileged Person. In addition the Bidder and/or the Privileged Person will delete all Confidential Information from any computer, word processor or other device containing Confidential Information in their possession, custody or control. The destruction or return of any Confidential Information according to this obligation does not release the Bidder or the Privileged Persons from the confidentiality

obligation set under this Agreement.

3. Privileged Persons

- 3.1 The Bidder is permitted to disclose the Confidential information only to its directors, officers, employees, partners, auditors, accountants, advisers or agents, provided that involvement of these persons is necessary or advisable to the Bidder for preparation of its bid and participation in the Concession Procedure (these persons, the "**Privileged Persons**").

4. Exceptions

- 4.1 The obligation to confidentiality pursuant to Clause 2 of this Agreement is not applicable to Confidential Information (A) which is in the public domain at the moment of disclosure to the Bidder or a Privileged Person, (B) which becomes publicly available after disclosure to the Bidder or Privileged Persons for other reasons than due to a breach of an obligation of confidentiality by the Bidder, a Privileged Person or a person the actions of which are attributable to the Bidder or a Privileged Person, or (V) which the Bidder is obliged to disclose under applicable law or upon decision or request of the competent court or other competent state authority or regulatory authority, provided that the City has been timely informed by the Bidder about the required disclosure and the reason for such disclosure.

5. Term

- 5.1 This Agreement is concluded for an indefinite term.

6. Damages

- 6.1 In the event of a breach of the provisions of this Agreement, by the Bidder or Privileged Persons, the Bidder shall be obliged to compensate the City for all the damage for each breach of the Agreement committed by the Bidder and/or Privileged Person.

7. No representation

- 7.1 The City gives no representations or warranties regarding the accuracy, completeness and reasonableness of the Confidential Information provided to the Bidder. The Bidder agrees that neither the City nor any of its respective representatives, employees, advisers and agents shall have any liability for any direct or indirect loss or damage of the Bidder or Privileged Person resulting from either (i) furnishing or use of the Confidential Information or (ii) relying on any statement contained in or omitted from the Confidential Information.

8. Miscellaneous

- 8.1 This Agreement and the relationship between the Parties shall be governed by and interpreted in accordance with the laws of Serbia, without reference to conflict of laws rules.
- 8.2 All disputes arising out of or in connection with this Agreement not amicably reconciled shall be finally settled before the competent court in Kragujevac.
- 8.3 The invalidity or unenforceability of any provision of this Agreement shall in no way affect

the validity or enforceability of any other provision of this Agreement. Should any provision of this Agreement be declared invalid or unenforceable, such provision shall be substituted by a provision that is valid, enforceable and suitable to carry out the intent of such invalid or unenforceable provision.

8.4 Amendments and supplements to this Agreement shall be binding upon the Parties only if made in writing and executed by both Parties.

8.5 This Agreement is concluded in 4 (four) counterparts, 2 (two) for each of the parties.

On _____

The City

Name: _____

Position: _____

The Bidder

Name: _____

Position: _____