

SCOPE: **Supply and setting up of a bike-sharing system**

COMPANY: (name and tax/VAT identification number)

In the year TWO THOUSAND. , on the _____ of _____, in a hall of the Municipality of Trieste. Whereas: by management resolution to award no. of , signed by ... , for the grounds stated therein, the tender documentation for the aforementioned supply was approved and the tender system was identified; by management resolution no. of , signed by ... , for the grounds stated therein, the provisional award of the Contract above was approved; by management resolution no. of , signed by ... , for the grounds stated therein, the final award of the Contract above was approved; seen art. 83, par. 3, of Legislative Decree no. 159 of 06. 09. 2011 as amended and supplemented; that being stated; the MUNICIPALITY OF TRIESTE – represented by ..., domiciled for the purposes of this deed at the City Hall of Trieste, Piazza dell'Unità d'Italia no. 4, who takes part in and enters into this deed in his/her capacity as the legal representative of the Municipality of Trieste pursuant to and for the purposes of art. 107, sub. 3, letter c), of Legislative Decree no. 267 of 18/08/2000 and art. 82 of the Regulations on Public Procurements and Contracts of the Municipality of Trieste – who declares to only act in the name, on behalf and in the interest of the Municipality of Trieste that he/she represents;

and the Company/Undertaking/Partnership/Cooperative ... , hereinafter also referred to as the “Contractor”, represented by ... , born in ... , on ... , domiciled for his/her office at the registered office of the said Company in ... , via ... no. ... ; agree upon the following:

CONTRACT

Art. I. SCOPE

The Municipality of Trieste, represented as above, by virtue of the resolutions mentioned in the recitals, entrusts ... , which accepts through the said legal representative, with the supply and setting up of a **bike-sharing system (including pick up and return points, management system and communication plan)**. The Contractor undertakes to perform the supply and setting up of the bike-sharing system in compliance with the “Special Descriptive and Performance Conditions” (hereinafter also referred to as the “Special Conditions”) enclosed with this Contract under letter “_____” and being an integral and substantial part hereof.

Art. I. DOCUMENTS THAT ARE AN INTEGRAL PART OF THE CONTRACT

Art. 2. The following documents, although not expressly enclosed with this Contract, shall be an integral part hereof:

- ~ Special Conditions;
- ~ Technical offer;
- ~ Economic offer.

In case of discrepancies between the provisions laid down in this Contract and the provisions laid down in the Special Conditions or other design documents, the provisions laid down in this Contract shall prevail. The said documents, which have been already signed by the Parties, are filed with the Strategic Projects, Public Procurements, Public Contracts and General Affairs Department.

Art. I. DURATION

This Contract shall have a duration of **150 (one hundred fifty) calendar, consecutive and uninterrupted days** from signing. Therefore, it shall be in force until _____ or the achievement of the available amount. In particular:

- ~ Detailed design shall be prepared within **15 calendar, consecutive days** from signing of Contract,
- ~ Setting up of all pick up and return points and commissioning of the system shall occur as soon as detailed design is approved by the Municipal Authority but before the expiry date of the Contract.

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The Contractor shall prepare a time schedule for setting up and commissioning the system in compliance with the time limits above.

Art. I. REMUNERATION

The amount payable to the Contractor for full performance of Contract as per the offer enclosed herewith shall be EUR ____ (__) + **EUR 2,500.00 (two thousand five hundred)** for safety costs as estimated by the Contracting Authority, plus VAT at the legal rate.

Art. I. AMENDMENTS TO THE CONTRACT

During the performance of Contract, the Municipal Authority will be entitled to increase or decrease the supply by one fifth of the total amount stated under art. 4 above. In this case, the Contractor will be obliged to comply with this requirement at the same contractual conditions pursuant to art. 311 of Presidential Decree no. 207 of 05. 10. 2010.

Art. I. CHECK OF CONFORMITY

art. 2. A check of conformity shall be completed within **90 days** of the completion of contracted works.

Art. 3. This check of proper execution of contracted works shall be carried out by performing the inspections required by the entity entrusted with the check of conformity.

Art. I. SUPPLY AND SETTING UP

The material shall be delivered and set up at the sites shown on the plans and agreed upon with the Contracting Authority in compliance with the requirements laid down in the Special Conditions as well as with the requirements laid down in the "Safety Coordination Plan" (hereinafter also referred to as "SCP"). In addition to supply and setting up of a bike-sharing system, the scope of this Contract shall also include:

- ~ Any removal and repositioning of structures that interfere with the setting up of pick up and return points at the locations identified according to the guidelines issued by the Contract Performance Manager,
- ~ Any change to be made to road markings in the areas involved in the project,
- ~ Disposal of transport packaging materials,
- ~ Disposal of waste, if any.

Art. I. PAYMENTS

The amount under art. 4 shall be paid upon submission of regular invoices according to the following schedule of completion of setting up works (including bicycles and service management system) for all pick up and return points:

~ **90%** following the issue of the certificate of completion of works;

~ **10%** following the check of system conformity with reference to both infrastructure and service operation management.

~ The supply of non-requested materials shall not be paid.

Pursuant to Law no. 244 of 24 December 2007 and the relevant regulations laid down in Decree no. 55 of 3 April 2013, invoices shall be sent to the certified e-mail address: comune.trieste@certgov.fvg.it. Pursuant to Legislative Decree no. 231 of 9 October 2002 as amended and supplemented, the amount due shall be paid within 30 days of the date of receipt of the relevant invoice after checking that the supply meets contractual requirements and obtaining the certificate of social security compliance. The payment of any invoice may be suspended in the event some services provided and invoiced by the Contractor are rejected. Pursuant to and for the purposes of art. 4, par. 3, of Presidential Decree no. 207/2010, the Contractor shall calculate a hold back of 0.5% on each invoiced amount as a guarantee of supply. These hold backs shall be released upon final settlement at the end of Contract following check of conformity and receipt of the certificate of social security compliance by the Contracting Authority. Pursuant to and for the purposes of the State Accounting Law, it is specified that the payments relative to this Contract shall be transferred to the current account stated under art. 9 below. The Paying Authority shall be relieved from any liability in this regard.

Art. I. TRACEABILITY OF FINANCIAL FLOWS

The Contractor undertakes to comply with the provisions on traceability of financial flows laid down in Law no. 136 of 13.08.2010 as amended, having special regard to art. 3. All the agreements entered into for (partial) performance of this Contract between the Contractor and its sub-contractors shall include special clauses whereby sub-contractors undertake to comply with the provisions on traceability of financial flows laid down in the said Law. The Contractor undertakes to promptly notify the Contracting Authority and Prefecture – Territorial Bureau of the Government of Trieste of any failure to comply with the said obligations by any of its counterparties as soon as it becomes aware of such a default. Pursuant to art. 3 of Law no. 136/2010, payments shall be traceably transferred to the postal/bank current account IBAN _____ opened at (name of the bank) _____ – branch/agency in _____/postal branch in _____, being the dedicated current account notified by the Contractor for the purposes of this Contract. The entities empowered to act with the said dedicated current account are:

- Mr./Ms _____, born in _____ on _____ – tax identification number _____

- Mr./Ms _____, born in _____ on _____ – tax identification number _____

Any change to the information notified by Contractor pursuant to this article shall not require any amendment to the Contract. Pursuant to art. 3, par. 9bis, of Law no. 136/2010 as amended, failure to

comply with the obligation to use bank or postal transfers or other suitable means to ensure full traceability of financial transactions shall be a ground for Contract termination.

Art. I. REVIEW OF PRICES

Prices shall not be reviewed. It is understood that the Contractor has determined its price fully aware of all implications. Therefore, the price shall remain unchanged and independent from any event or circumstance whatever that has not been taken in account by the Contractor.

Art. I. SECURITY DEPOSIT

The final security deposit under art. 113 of Legislative Decree no. 163/08 shall amount to EUR _____ and has been established by the Contractor by means of a duly filed _____. Should this security deposit be decreased by penalties, the Contractor shall replenish the security deposit returning the balance to its initial amount within 10 days of the relevant notice sent by the Contracting Authority.

Art. I. ADDITIONAL INSURANCE OBLIGATIONS

Pursuant to Legislative Decree no. 163/2006 and Presidential Decree no. 207/2010, and as required by art. 12 of the Special Conditions, the Contractor has provided insurance policy no. _____ issued by (name of the insurance company) _____ - Branch in _____ - of _____. This policy, duly filed with the Contracting Authority, covers all risks resulting from the execution of works as well as all liabilities to third parties, including the Municipal Authority.

Art. I. CONTRACTOR'S LIABILITIES AND OBLIGATIONS RESULTING FROM EMPLOYMENT CONTRACTS

The Contractor undertakes to comply with all insurance, social security and social insurance obligations to its employees or working members (in case of cooperatives) as well as to fully apply all the provisions laid down in the National Collective Bargaining Agreement or in local supplementary agreements and resulting from legal and regulatory provisions in force or contractual obligations as well as to comply with the legislation in force in the field of safety and health at work and to bear all the relevant costs. The Contractor declares that its workers are applied the following National Collective Bargaining Agreement _____. The said obligations shall be binding upon the Contractor for the whole duration of this Contract.

Art. I. SAFETY COSTS

Pursuant to the obligations resulting from art. 26 of Legislative Decree no. 81/2008, it is specified that, given the nature of this Contract, a SCP has been prepared. The said plan includes estimated safety costs. The Contractor undertakes to comply with all the requirements laid down in the plan, which is an integral part of design and tender documents as duly filed. It is understood that the Contractor shall remain fully liable for all safety risks falling within the scope its activity.

Art. I. WARRANTY

The Contractor shall perform the supply according to the best rules of the trade and bear any civil or criminal liability resulting from improper performance of supply and leading to damage to people and/or things. Pursuant to art. 1490 and followings of the Italian Civil Code, the Contractor shall provide a warranty against apparent and hidden defects in delivered goods. The procedures to check, report and remedy apparent and hidden defects are described under art. 18 below.

Art. I. ADDITIONAL COSTS TO BE BORNE BY THE CONTRACTOR

In addition to the costs for services, activities, personnel, equipment and materials provided for by contractual documents, the Contractor shall bear all costs resulting from accessory requirements that, owing to the complex organisation of this Contract, cannot not be identified and/or predicted in advance or are missing for any reason whatever, but that will be objectively necessarily to perform the supply. The Contractor shall bear all packaging and transport costs for goods to be delivered to and handled within the sites identified on project plans with no additional expenses to be borne by the Municipal Authority. Furthermore, the Contractor shall bear all loading and unloading expenses for goods to be delivered at the sites shown on project plans. The Contracting Authority shall not make available any means, equipment or personnel. Lastly, the Contractor shall bear all costs resulting from all actions and precautions to be implemented according to the “SCP”.

Art. I. CONTRACTOR'S LIABILITIES

The Contractor shall be liable for any damage resulting from Contract performance or suffered by people or things in general. The Municipality of Trieste shall be relieved from any liability in this regard. In particular, the Contractor shall be liable for:

- Damage resulting from improper execution of works;
- Damage resulting from provision of services by the Contractor or its personnel and suffered by municipal or third-party personnel or equipment;
- Proper disposal of transport packaging materials;
- Proper disposal of waste, if any.

Furthermore, the Contractor shall be directly liable for any breach of laws and regulations in force in the field of prevention of accidents at work, safety and health at work and environmental protection.

Art. I. CHECKS

Supply and setting up operations shall be duly recorded by the Engineer identified by the Contracting Authority on a special “Register of Supplies”, which shall be signed by the Contractor. This Register shall be used for the performance of checks in compliance with this article and art. 8. The Contracting Authority shall check the suitability for use of all delivered goods within 8 (eight) calendar, consecutive days of delivery through a qualified engineer. Any apparent defect identified upon check (goods not meeting the requirements, goods showing a quality lower than provided for by contractual documents, etc.) shall be reported within 8 calendar, consecutive days to the Contractor, which shall collect rejected goods at its expenses within 10 calendar, consecutive days of report and replace them with goods meeting the relevant requirements. Any hidden defect that cannot be identified upon delivery or within the time limit above may be reported to the Contractor within 8 calendar, consecutive days of its discovery. The Contractor shall collect rejected goods at its expenses within 10 calendar, consecutive days of report and replace them with goods meeting the relevant requirements. Any identified non-conformity or default shall be reported in writing by fax or e-mail. The acceptance of supplies by the Contracting Authority shall not relieve the Supplier from its obligation to remedy apparent or hidden defects, defaults or non-conformities of works, also when they are not identified upon delivery, but at a later stage. In case of partial or total failure to deliver or delayed delivery of goods, or when goods turn out not to meet requirements upon check, the Contracting Authority reserves the right:

- To reject defective goods, which shall be promptly replaced at the Contractor's expenses and risks;
- To apply a penalty pursuant to the provisions laid down in this Contract.

Rejected goods shall remain at the Contractor's disposal for collection for 10 days. The Contracting Authority shall not be liable for devaluation or deterioration of rejected goods.

Art. I. EXECUTION BY SUBSTITUTION

Notwithstanding the provisions laid down in art. 20 of this Contract, in case of failure to execute the works under this Contract or a portion thereof, express refusal to replace defective goods by the Contractor, delay in delivery exceeding thirty days or failure to comply with an essential term stated in the delivery order pursuant to art. 1457 of the Italian Civil Code, the Contracting Authority will be entitled to obtain the execution by substitution, also by resorting to third parties, at the Contractor's expenses, without prejudice to its right to apply for compensation of further damage, if any.

Art. I. PENALTIES

In case of delayed performance of supply by the Contractor, the following penalties shall be applied:

- Delayed delivery of detailed design: for each day of delayed delivery a penalty of 1 (one) per thousand of the net contractual amount shall be applied;
- Delayed setting up of pick up and return points and system commissioning: for each day of delayed setting up a penalty of 1 (one) per thousand of the net contractual amount shall be applied;
- Failure to replace or delayed replacement of supply in case of rejected services, use of defective and/or non-conforming materials, failure to comply with the provisions laid down in art. 15: for each day of delayed replacement a penalty of 5 (five) percent of the amount of the defective goods shall be applied.

In case of other contractual breaches not implying Contract termination and not resulting from force majeure events, the Contracting Authority shall send a formal notice stating the amount of the applicable penalty within the limits of art. 298 of Presidential Decree no. 207/2010. The application of penalties shall be preceded by regular notice of default. The Contractor will be entitled to submit its counterclaims within two days of notice of breach. If the said counterclaims are not applicable or if the Contractor does not remedy its breach within the time limit stated under the relevant notice, the Municipality of Trieste shall apply a penalty. The Contracting Authority may deduct the penalty from the security deposit or from sums payable to the Contractor now or in the future, without prejudice to any other claim for damage suffered by the Municipal Authority.

Art. I. TERMINATION

This Contract shall be terminated by full right pursuant to art. 1456 of the Italian Civil Code, also with no warnings, for the following causes:

- Failure to start the activities within the time limit set in this Contract, which is regarded as essential unless postponed or delayed for justified reasons by the Municipality;
- System inactivity for two consecutive months owing to reasons that can be attributed to the Contractor;
- Failure to replenish the final security deposit within 15 (fifteen) consecutive days of receipt of the relevant request from the Municipality in case of deduction;
- Application of penalties globally exceeding 10% of the remuneration payable, irrespective of the seriousness of the cause that has led to a penalty;

- Misstatements discovered after signing this Contract entailing failure to comply with the criteria laid down in art. 38 of Legislative Decree no. 163/2006 as amended and supplemented;
- Application of restrictive measures pursuant to Legislative Decree no. 231/01 as amended and supplemented;
- Failure to comply also partially with the non-assignability clause or unauthorized sub-contracting pursuant to art. 118 of Legislative Decree no. 163/2006 as amended and supplemented;
- Failure to comply with the traceability clause;
- Any other default not mentioned above that makes the continuation of activities impossible because the conditions for trusting the Company are irrevocably and seriously breached.

In all cases of Contract termination, the Municipality will be entitled to definitively retain the security deposit established without prejudice to its right to obtain compensation for damage.

Art. I. NON-ASSIGNABILITY CLAUSE

The Contractor will not be entitled under any circumstance to assign, even partially, this Contract to third parties pursuant to art. 118 of Legislative Decree no. 163/2006, under penalty of invalidity.

Art. I. SUB-CONTRACTING

Sub-contracting shall be admitted within the limits and in compliance with the requirements under art. 14 of the Special Conditions.

Art. I. COMPLIANCE WITH THE CODE OF CONDUCT OF CIVIL SERVANTS

During the performance of Contract, any Contractor's collaborator will be obliged to comply with all applicable obligations under the Code of Conduct of Civil Servants approved by Presidential Decree no. 62 of 16.04.2013, a copy of which is delivered upon signing of Contract. Breach of the said obligations may imply termination or lapse of rights under this Contract.

Art. I. REFERENCE

With regard to all issues that are not expressly dealt with in this Contract, reference is made to the provisions laid down in the Special Conditions, the Italian Civil Code, Legislative Decree no. 163 of 12.04.2006 as amended and supplemented and its implementing regulations approved by Presidential Decree no. 207 of 05.10.2010 as well as to any other applicable law or regulation currently in force.

Art. I. DISPUTES

Any dispute, controversy or claim arising from or in connection with the enforcement and/or construction of this deed that cannot be settled between the Parties shall be deferred to ordinary courts. The place of jurisdiction shall be Trieste.

Art. I. COSTS

The Contractor shall bear all costs, administrative fees, taxes and disbursements arising from or in connection with this Contract, plus VAT, if applicable, at the legal rate

Art. I. DATA PROCESSING

Pursuant to Legislative Decree of 30 June 2003 no. 196, the Parties mutually acknowledge that their personal data collected for the purposes of this contractual relationship shall only be processed to meet contractual needs and the relevant legal obligations as well as to effectively manage their

commercial relations. Personal data shall be processed by manual and electronic information and communication means; persons authorised to perform these tasks and permanently identified, duly trained and regularly informed about the obligations arising from Legislative Decree of 30 June 2003 no. 196; by implementing security measures that are suitable to ensure the data subject confidentiality and to avoid access by unauthorized persons or third parties. Personal data shall be disclosed if their disclosure is required by legal provisions in force. Furthermore, personal data may be transmitted to professionals or advisors, financial institutions, insurance companies and debt collection agencies. The Parties mutually acknowledge that art. 7 of Legislative Decree no. 196 of 30 June 2003 provides for special rights in this regard.

In particular, the Parties will be entitled to obtain the following from the relevant controller confirmation of whether their personal data has been stored and its transmission in a clearly understandable format; knowledge of the origin of the data itself, rationale and purposes on which processing is based; controller's personal details; data deletion, anonymisation or blocking in case of breach of legal provisions; data updating, rectification or supplementing, where required; lastly, either Party will have the right to oppose, for legitimate grounds and in writing, to the processing of data by the other Party. The data controller for the Principal is the Municipality of Trieste. The data supervisor is the Public Open Spaces and Green Spaces Department Manager.

Art. I. DOMICILE

The Contractor declares that it is domiciled for tax purposes in _____, via _____ no. _____, where it elects domicile for the purposes of this Contract. Made in one original counterpart, comprising annexes, read, approved and signed.
Trieste,