



EUROPEAN TERRITORIAL COOPERATION 2007-2013

"ALPINE SPACE" OPERATIONAL PROGRAMME

**Subsidy Contract
for the project
" "**

investing in your future



The following contract between the Land of Salzburg as Managing Authority (hereinafter "MA") of the European territorial co-operation programme "Alpine Space", represented by the Government Office of the Land of Salzburg, department 15 (economy, tourism, energy)

and

, based in , represented by as Lead Partner of the project is concluded on the basis of:

- the EU regulations laying down provisions on the structural funds, in particular Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999, Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund, each of these regulations in its version in force,
- the European territorial co-operation programme "Alpine Space" 2007-2013, reference number CCI 2007 CB 163 PO 014, approved by the European Commission on 20 September 2007 (decision number C (2007) 4296), hereinafter referred to as "OP";
- the agreement between the participating EU Member States and the Land of Salzburg (acting as MA and Certifying Authority) as well as the declarations of consent given by the participating Non-Member States Liechtenstein and Switzerland.

Article 1 Award of subsidy

(1) Based on the application documents (application form and partnership agreement) dated from and in accordance with the decision and recommendations of the Programme Committee (PC) dated from an earmarked subsidy is awarded to the Lead Partner on the below-mentioned conditions from the European Regional Development Fund (ERDF) in the maximum amount of

,-- €

(verbal:)

- (2) The award of a subsidy from ERDF-funds is limited to the amount as mentioned in par. (1). Furthermore, it is limited with a maximum of % of the total eligible costs of the project. The co-funding with ERDF-funds decreases proportionally if the eligible costs fall below the calculated amount as laid down in the project application.
- (3) Should it become apparent that the project will not spend the maximum amount of funding awarded to it, the PC, deciding on a motivated proposal of the MA, based on a risk analysis on the expenditure, may in exceptional cases decide to reduce the award accordingly.

Article 2

Object of Use, Eligibility of Costs

- (1) The subsidy is awarded exclusively for the project as it is described in the project application documents and as it is approved by the PC. The application documents form an integrated component of this subsidy contract.
- (2) Project costs which qualify for a co-funding with ERDF-funds consist exclusively of project costs listed in the application documents approved by the PC. The eligibility of project costs for ERDF-co-funding is regulated in the eligibility rules as set up by the programme respectively applicable stricter national rules. Eligible are only costs that have arisen after .
- (3) It is explicitly stated that the project must not make use of funds from other programmes co-funded by the European Union to finance the present project.

Article 3

Reporting and Requests for Payments

- (1) The LP may only request payments by providing a progress report to the Joint Technical Secretariat (JTS). Model progress reports will be provided by the JTS.
- (2) The financial part of the report shall comprise the amount indicated in all certifications of expenditure related to the project expenditures that have arisen so far and that can be objectively and spatially be imputed to the project or about costs that are to be considered similar according to relevant EU-regulation. All expenditures must be certified by the responsible national authorities or private institutions, depending on the national frame for this first level control. To this end the LP verifies that each project partner enables the responsible authority/institution in the state it is situated to audit the proper use of funds as will the LP itself. Furthermore, the LP will pre-check the certifications of expenditure received for setting up the progress reports with regard to plausibility and correct issuing.

- (3) The activity part of the report shall inform about the project realisation (realisation of work packages so far, deviations in comparison to planned activities and the envisaged next steps).
- (4) The LP shall make sure that the project implementation sticks to the work packages and the time schedule as indicated in the application form. Only if it is inevitable the LP is allowed to change the time schedule (see article 8 (4) of the present contract).
- (5) The first progress report must be submitted to the JTS/MA on 31 October 2009 at the latest. Subsequently further progress reports have to be submitted every six months.
- (6) A final report shall be submitted to the JTS/MA three months after project closure. Beside the elements mentioned in par. (2) and (3) the final report shall include the following items:
 - a comparison of planned and actually realised activities (indicating reasons for occurred deviations) and expenditure occurred and a critical assessment of the project's progress,
 - a presentation of results, especially with regard to the fulfilment of the criteria and indicators laid down in the OP,
 - experiences with transnational co-operation,
 - details on planned follow-up activities and further steps for utilisation and dissemination of the results.
- (7) Based on the fact that the payments by the European Commission to the Certifying Authority (CA) will only be made in accordance with the corresponding budget commitments the LP must report on the costs as foreseen for each reporting period in the application form.
- (8) In case the LP requests less funds than indicated above the following rule shall apply: deviations from the ERDF-tranches to be requested per reporting period as set out in the application form are accepted within the flexibility rule of 20%. If less than 80% of the spending target is met, the difference is to be considered as "under risk" and might be lost if the programme experiences a de-commitment (see article 1 (3)).

Article 4

Paying out of Subsidy

- (1) After the progress reports and the final report have been presented in due time and completely to MA/JTS and the JTS in co-ordination with the MA has proved that the documents fulfil all conditions, the MA will instruct the CA to pay out the subsidy to the LP according to the presented statements. The LP has to be available for any revision of the final report also after the project closure until JTS and MA have approved it.
- (2) The funds will be disbursed in Euro (€).

- (3) Disbursement of the subsidy is subject to the condition that it can be covered by the available ERDF-funds the CA has received from the European Commission.
- (4) By paying out the subsidy according to this agreement the Land of Salzburg fulfils its obligations resulting from the present contract. The LP has no further right to claim against the Land of Salzburg.

Article 5

Representation of project partners, liability

- (1) The LP guarantees that it is entitled to represent the partners participating in the project and that it has established with the project partners the division of the mutual responsibilities in a partnership agreement. The present subsidy contract will not enter into force unless the LP has presented the signed partnership agreement to the JTS and it has been checked by the JTS and the MA to verify if all essential provisions have been made. The LP guarantees furthermore that it has complied with all the relevant legal and other requirements under the law which applies to it and to the project partners and that all necessary approvals have been obtained.
- (2) The LP is liable to the MA for ensuring that all of its partners have a legal status that is in line with the definition set out by the programme (see programme implementation handbook) as it is in force on the date when this contract is signed. The LP is furthermore liable towards the MA for ensuring that the project participants fulfil their obligations. It is liable towards the MA for infringements by the project partners of obligations under this contract in the same way as for its own conduct.
- (3) If the MA demands repayment of the subsidy in accordance with this contract, the LP is liable to the MA for the amount requested to be repaid.
- (4) The MA cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the LP or one of its partners while the project is being carried out. The MA therefore cannot accept any claim for compensation or increases in payment in connection with such damage or injury.
- (5) The LP shall assume sole liability to third parties, including liability for damage or injury of any kind sustained by them while the project is being carried out. The LP shall discharge the MA of all liability associated with any claim or action brought as a result of an infringement of rules or regulations by the LP or one of its partners, or as a result of violation of a third party's rights.

Article 6

Additional obligations of the Lead Partner

- (1) In addition to the obligations of the LP as mentioned in this contract the LP undertakes:
- a) to ensure a professional management of the project,
 - b) to co-ordinate the start and implementation of the project according to the time schedule approved by the PC,
 - c) to install a separate (sub)account for the settlement of the present project and to safeguard that the eligible costs as well as the received subsidies can be clearly reproduced,
 - d) to constantly monitor the exhaustion of the project budget foreseen for each project participant and ensure that budget shifts are carried out within the limits and according to the rules as set out by the programme,
 - e) to ensure that the expenditures made by the project participants have been used for the purpose of implementing the project and correspond to the activities agreed between the project participants and set out in the project application form,
 - f) to inform the MA and JTS immediately about all circumstances that delay, hinder or make impossible the realisation of the project as well as all circumstances that mean a change of the disbursement conditions and frameworks as laid down in this contract (e.g. loss of a project partner, making use of additional subsidies) or circumstances which entitle the MA to reduce payment or demand repayment of the subsidy wholly or in part,
 - g) to provide the MA and JTS with any information requested without any delay,
 - h) to retain for audit purposes all files, documents and data about the project at least until 31 December 2022, either in original or as certified copies on commonly used data media safely and orderly. Other possibly longer statutory retention periods as might be stated by national law remain unaffected,
 - i) to implement the project in accordance with the European Union's and national legislation, especially on public procurement and state aid and to ensure that also the project partners respect these rules,
 - j) to provide data for the monitoring system in compliance with this contract and according to the MA and JTS instructions,
 - k) to inform the MA and JTS without any delay about any envisaged changes of the partnership agreement,
 - l) to ensure that information and publicity measures of the project are carried out in accordance with the respective EU-structural funds regulations as well as the rules set up by the programme (see programme implementation handbook),
 - m) to submit with the respective progress report all studies and analysis carried out during the project at least in electronic version as well as a specimen of each produced information and publicity material,
 - n) to participate in transnational seminars organised by the programme,

- o) to support the programme in its information and publicity activities (e.g. join project exhibitions, submit texts for programme website and brochures and press releases).
- (2) In the name of all project partners the LP agrees, according to the Law on Data Protection 2000, Austrian Federal Law Gazette No. 165/1999, that the MA is entitled to use the personal data, which are contained in the project application and which are acquired in the course of the realisation and winding-up of controls of the project and that the MA may convey these data to the organs and authorised representatives of the following bodies and authorities: Land Audit Office, Federal Audit Office, Federal Ministry of Finance, to the European Union according to the provisions under Community Law.
- (3) Furthermore the LP agrees on behalf of all project partners that the names and addresses of all project participants, the purpose and the amount of the subsidy may be used by the programme bodies in the framework of communication measures concerning the programme.

Article 7

Information and Publicity

- (1) Unless the MA requests otherwise, any notice or publication by the project, including at a conference or a seminar, shall point out that the present project was implemented through financial assistance from ERDF-funds of the European Territorial Co-operation Programme "Alpine Space". All information and publicity measures of the project shall be carried out in accordance with the application documents and under co-ordination of the LP (article 6 (1) lit I).
- (2) The LP shall ensure the realisation of the following mandatory outputs:
 - a) creation and use a project logo,
 - b) setting up of a project website (whereby the respective activities shall start before the submission of the first progress report) and keeping it online for a period of at least two years after project closure,
 - c) publication and dissemination of at least one brochure presenting the project results
 - d) organisation of a public final event.

Article 8

Project Changes

- (1) The LP shall be allowed to carry out the following project changes under the conditions as set out below.
- (2) Content related changes that are not resulting in changes of the results and outputs of the project as laid down in the application documents are accepted and shall be reported within the regular progress reports. Content related changes that are resulting in changes of the above-mentioned

results and outputs need the approval of the PC in advance and shall be reported immediately and prior to implementation to the JTS.

- (3) The LP is allowed to carry out budget shifts between work packages, cost categories and project participants as long as they are below 20 % of the respective budget line or as they are below the amount of 10.000 €. In these cases the JTS and the MA shall be informed of the reallocation of funds through the regular reporting routines, whereas it remains the duty of the LP to monitor the compliance with the above mentioned thresholds. If the reallocation exceeds these limits the approval by the PC in advance is necessary. To this end the LP has to submit a well-founded request for the envisaged changes to the JTS as soon as it learns about the necessity to do them.
- (4) As regards deviations from the approved time schedule of the project the following rules shall be applied: deviations that result in a prolongation of the project duration up to six months shall be reported to JTS and MA immediately and need the approval of the MA, deviations that result in a prolongation of the project duration of more than six months shall be reported to JTS and MA immediately and need the approval of the PC.
- (5) All project changes requiring an approval of the programme bodies will only enter into force after approval has been given. Basis for the project changes is the application form approved by the PC.

Article 9

Changes in the project partnership

- (1) In the application documents the contribution of each project participant is clearly defined. The LP guarantees that in case a project participant backs out of or is debarred from the project its contribution to the project will be covered by one or more of the present or new project participants as soon as possible, within three months after the official communication to JTS at the latest. If this is not possible a re-approval of the project by the Programme Committee is necessary.
- (2) In case the contribution of the project participant that left the project is covered by the remaining project participants the LP will immediately report to the JTS the loss of the project participant and the new division of work and budget between the project participants. Furthermore, it will adapt the partnership agreement accordingly and send the draft of the amendments for approval to the MA immediately.
- (3) In case the contribution of the project participant that left the project shall be at least partially covered by a new project participant the LP will immediately report to the JTS the loss of the project participant and the envisaged new division of work and budget between the project participants. At the same time it will send a well-founded request for the entry of a new project

participant to the JTS and a draft of the envisaged amendments of the partnership agreement for approval to the MA immediately.

- (4) In case a new project participant intends to enter the project partnership, the LP will send a request to the JTS and provide it with information as regards the new division of work and budget. At the same time it will provide the MA with information on the envisaged amendments of the partnership agreement.
- (5) The JTS will examine the request for the entry of a new participant and give its recommendation, after consultation of the relevant ACP, within one month. The MA will examine the planned changes of the partnership agreement. The entry of a new project participant has to be approved by the PC and the changes in the partnership agreement need the approval of the MA.
- (6) In case of a loss of a project participant its project costs are eligible and will be co-funded until the date on which the LP reports to the JTS the backing out of a project participant.
- (7) The LP is aware of the fact that the MA is entitled to withdraw from this subsidy contract if the minimum number of project participants is not given any longer. If a reduction of the project participants would mean a change in the evaluation result of the project a re-approval by the PC is necessary. Until this decision is made in the PC the LP and its project partners shall stop any payments related to the project.

Article 10

Assignment, legal succession

The assignment of rights and duties of the LP resulting from this subsidy contract is illegitimate. However, the LP is allowed to assign its duties and rights under this contract if prior consent of the MA and the PC is given. This approval shall be granted if the party to which assignment is made provides for the same guarantee as the transferring LP for the fulfilment of its rights and duties related to the project. In this case the LP is obliged to assign all rights and obligations and all project related documents to each and any legal successor. This provision shall also apply in case of a change of the legal form of the LP.

Article 11

Financial Control, Audits

- (1) The responsible auditing bodies of the EU, and, within their responsibility, the auditing bodies of the participating EU Member States as well as the programme bodies are entitled to audit the

proper use of funds by the LP or by the project partners or arrange for such an audit to be carried out by authorised persons.

- (2) With regard to such financial controls the LP is, in addition to the reporting and information obligations as laid down above, obliged to:
 - (a) keep available all files, documents and data related to the project for a period of three years following the closure of the programme (i.e. at least until end of 2022), either in original or as certified copies on commonly used data media safely and orderly,
 - (b) make all necessary arrangements to ensure that any audit, notified by the duly authorised authority, can be carried out smoothly,
 - (c) give these authorities any information about the project they request and give them access to the accounting books, supporting documents and all other documentation related to the project.
- (3) The LP is obliged to guarantee fulfilment of the duties stipulated above in relation to all its project partners.
- (4) The LP shall inform the JTS at the occasion of submitting a progress report about any audits that have been carried out by the above-mentioned bodies.

Article 12

Right of withdrawal

- (1) The MA is entitled to withdraw from this contract by registered letter, especially in case the European Commission requests for it, and to demand immediate repayment of funds in full or in part, if
 - a) the co-funded project cannot or could not be realised resp. realised in due time, or a precondition for the approval of the project (e.g. minimum number of project partners) is lost,
 - b) the correctness of the final report and herewith the entitlement to make use of ERDF-co-funding cannot be verified any longer before 31 December 2022, unless the documents have got lost without fault of the LP, or
 - c) the LP has become insolvent or bankruptcy proceedings have been instituted against the LP before the project has been properly terminated or if bankruptcy proceedings are instituted against the LP or the institutions of such proceedings are refused because of lack of assets within 3 years after termination of the project and therefore especially the objectives of the OP do not seem accessible or secured, or if the LP wholly or partly closes down, sells, leases or lets the project to a third party within this time, or
 - d) the LP has obtained the subsidy through false statements or has given false or incomplete information towards organs/appointees of the European Commission and the MA or any other authority involved in the implementation of the programme, or

- e) the LP fails to submit foreseen reports or to provide evidence or to provide necessary information, provided a written notice of cancellation including a reasonable “period of grace” and the expressive reference to the legal consequences of noncompliance of this notice has been without success, or
- f) the LP fails to provide immediate information about circumstances that delay hinder or make impossible the realisation of the co-funded project, as well as about any circumstances that mean a change of the disbursement conditions and frameworks as laid down in this contract or entitle the MA to reduce or demand repayment of the subsidy wholly or in part,
- g) the LP hinders or frustrates foreseen control measures, or
- h) the subsidy has been used wholly or partly against its dedication, or
- i) the prohibition of cession has not been obeyed, or
- j) regulations of the EU-law (especially provisions concerning public procurement and state aid and environmental law and regulations concerning equal treatment of men and women) have been violated, or
- k) any other preconditions for subsidy or obligations of the LP contained in the present contract or set out by the programme or in any other Austrian and Community regulations, especially those which shall safeguard the achievement of the general objectives of the OP, have not been observed.

- (2) If the MA exercises its right of withdrawal the LP is obliged to reimburse the repayment amount to the MA. The repayment amount is due within one month following the date of the letter by which the MA asserts the repayment claim.
- (3) In all cases mentioned under par. (1) lit d to k the LP is obliged to pay moratory interests of 3 % per annum above the Austrian basic rate of interest per annum on the amount to be paid back from the date on which the Certifying Authority has transferred the respective ERDF-funds. In the other cases interests in the same height are to be paid if the LP or any other person it has commissioned to prepare the documents needed for the award of subsidy or for implementing the project, is culpable for the circumstance leading to the demand of repayment. If in the lastly mentioned cases the LP or any other person are not culpable, 4 % per annum of interests shall be paid on the amount demanded to be repaid.
- (4) In case one of the circumstances listed above occurs before the ERDF-co-funding has fully been paid out the MA is entitled to stop any further payment of subsidies and to commission a control in order to confirm the suspicion. If this suspicion is confirmed any claim of the LP for paying out of ERDF-funds that have not yet been transferred expires.
- (5) Any other legal-based claims of the parties are not touched by this agreement.

Article 13
Ownership/use of results

- (1) All project outcomes and results shall be the joint property of all project participants. Consequently, the LP safeguards that each project participant shall grant a simple, non-exclusive right of use of any produced work of authorship to all other project participants.
- (2) The LP takes note of the fact that the results of the project, especially any study or analysis produced in the course of the project, shall be made available to the public whereby the appropriate way of publication will be laid down in the programme implementation handbook. Moreover, the LP will ensure that the project participants shall play an active role in any actions organised by the programme to disseminate and capitalise on these results.

Article 14
Concluding provisions

- (1) All correspondence between LP and MA respectively JTS under this contract must be in English language. In general it has to be transmitted by e-mail, and only when not possible or expressly demanded by the MA or the JTS by postal service.
- (2) Both parties agree herewith that the subject of the present agreement is exhaustively and completely regulated in this document and the above-mentioned integrated parts.
- (3) Amendments and supplements to the present contract must be in written form. Consequently, any changes of the present contract shall only be effective if they have been agreed on in writing and have been designated as amendment of or supplement to the contract (the exchange of letters via postal services and fax is sufficient). Modifications to the project that are approved by the responsible programme bodies (PC respectively MA) shall be effective as alterations of the present contract, also without adherence to this formal requirement.
- (4) If any provision in this contract should be wholly or partly ineffective, the remaining provisions remain binding on the parties. The parties agree to replace the ineffective provision by one which serves the purpose of the agreement as closely as possible.
- (5) In case of differences that are not ruled by this agreement, the parties agree to find a conjoint solution.
- (6) The parties will make an effort to settle any disputes arising from this contract out of the court. In case a solution cannot be found, the parties herewith agree that Salzburg shall be the venue for all legal disputes arising from this contract.

(7) The laws of Austria shall apply to all legal relations arising in connection with this agreement.

(8) Two copies will be made of this agreement; of which each party keeps one.

(9) The present contract shall come into force upon signature of all parties and guarantee of any national public co-funding to be granted to the project according to the application documents. It shall remain into force until the LP has discharged in full its obligations towards the MA (i.e. at least until end of 2022).

Place, date: _____

Place, date: _____

For the Land of Salzburg:

For the Lead Partner:

(Christian Salletmaier)
Stamp

(name of the legal representative of the LP)
Stamp