

Headquarters U.S. Air Force

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Air Force Community Partnership Program Brownbag: Legal Aspects of How to Draft Successful Partnership Agreements



August 24, 2016

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Overview

- **Introduction**
- **Key Ingredients to Success**
- **Ingredients For A Successful Agreement**
 - **It All Starts with Authority**
 - **10 USC 2679 Intergovernmental Support Agreements (IGSAs)**
 - **Agreement Types**
 - **Agreement Examples**
 - **Common Provisions**
- **Closing**



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Presenters

- **Introduction and Closing – Col Patricia Pettine, SAF IEI**
- **AFCP Structure, Authorities and IGSAAs – Ms. Carolyn White, SAF/GCN**
- **Agreement Types, Examples and Issues – Mr. Jerry Kohns, SAF/GCN**



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Key Ingredients to A Successful Agreement

- **What Air Force need/requirement does the project address?**
 - **How is that need/requirement being met now? (e.g., internal resources, via contract)**
 - **Is there any agreement covering that need/requirement currently? (e.g., FAR contract, Economy Act agreement)**
- **Communications**
 - **Who is the primary project proponent at the base? (the person the base commander is looking to be his or her point person on the project)**
 - **Who will be the project manager?**



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Key Ingredients, Continued

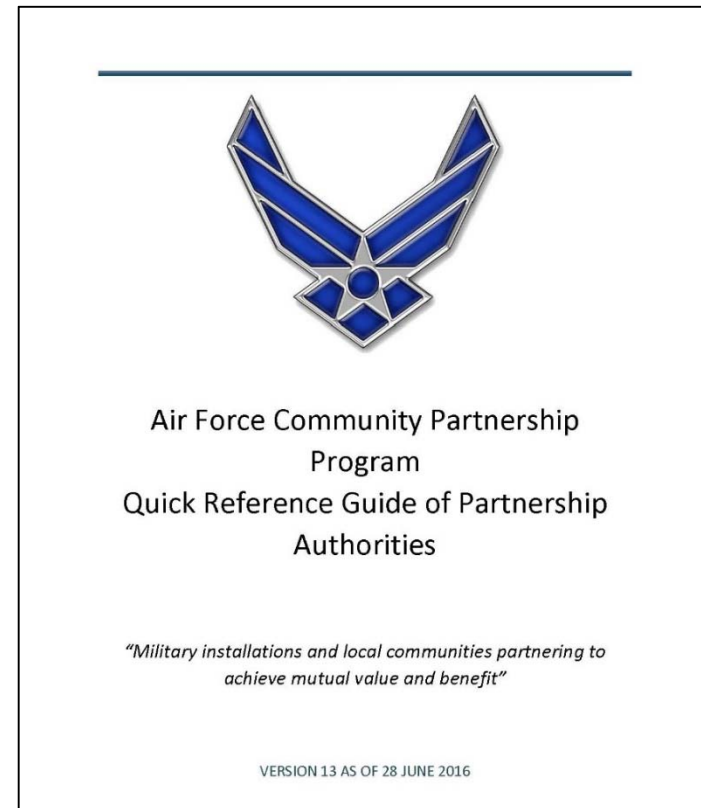
- **Collaboration**
 - **Who is the primary community proponent? What type of government entity are they? What are their expectations?**
 - **Does the Air Force and community have sufficient subject matter expertise to plan and execute this project? Are the right people engaged?**
 - **Is a lawyer participating on behalf of the AF/state/county/city/municipality?**
- **Does this involve subject matter where functional or legal experts should be involved?**
 - **What Air Force offices need to be at least aware of the project (and perhaps engaged) based on its subject matter?**
 - **What Air Force/community offices will need to review the project agreement?**



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Authorities – Overview

- You should use the authority that makes the most sense for a particular project/proposal
 - In most circumstances, there is something that applies & has been used successfully in the past
- Community Partnership proposals work to maximize the array of tools and authorities available – not “around” or “outside” of existing authorities and roles/responsibilities
- Communication is key!



Download a copy at the AF Community Partnership Program SharePoint Site:
<https://wss.apan.org/s/airforcepartnerships>



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Agreement Authorities

- Most agreements must cite an authority
 - Law (e.g. 10 USC 2679), DoDD, DoDI, AFI
 - However, agreements that only capture the intent of the parties to talk do not need an authority
- **Common mistakes** the PMO sees in signed agreements!
 - No authority is cited
 - AFPD 90-22, AF Community Partnerships cited – this is not an authority for specific initiatives/actions
 - DoDI 4000.19, Support Agreements, and/or AFI 25-201, Intra-Service, Intra-Agency, and Inter-Agency Support Agreement Procedures cited
 - DoDI 4000.19 and AFI 25-201 merely provide a framework for managing support agreements (in support of other authorities)
 - If 10 USC 2679 (IGSA for installation support services) is cited, then you must submit 4 docs, including a Business Case Analysis, to SAF/IEI for approval
- Remedies
 - AFCP Quick Reference Guide lists authorities for many common agreements
 - Send request to SAF/IEIM Workflow; the Program Management Office (PMO) and General Counsel will search proper authority



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Intergovernmental Support Agreements (IGSAs)

- **10 USC 2679 [formerly 10 USC 2336]**
- **Secretary may enter into IGSA**
 - **On a sole source basis (“notwithstanding any other law governing the award of Federal contracts for goods or services”)**
 - **With a state or local government**
 - **To provide, receive or share installation-support services**
 - **If the Secretary determines the agreement will serve the best interests of the department by enhancing mission effectiveness or creating efficiencies or economies of scale, including by reducing costs.**
- **Other provisions**
 - **Agreement term: not to exceed 5 years**
 - **Wage grades: those normally paid by that State or local gov’t**
 - **Installation or state/local gov’t must already provide services/goods**
 - **Any contract awarded pursuant to an IGSA must be awarded on a competitive basis**
 - **Doesn’t affect first responder arrangements**
 - **OMB Circular A-76 still applies**
- **SECAF authority delegated to SAF/IEI, which must approve agreements**



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IGSA Overview

- **Legal review touchpoints**
 - **Consistency/clarity of language – do the documents make sense?**
 - **Compliance with law – does the deal make sense?**
 - **“Agreement vehicle” – does the implementation of the deal make sense?**
- **IGSA staffing package to SAF/IEI**



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Potential Agreement Vehicles

Instrument	Key Features	When best used
MOU	Describes a bilateral or multilateral agreement between parties; indicates an intended common line of action	Where parties want to memorialize the details of the commitment (normally no commitment of money or resources beyond meetings/communication)
MOA	Used to clarify and/or specify the terms of a cooperative or collaborative arrangement involving two or more organizations.	Where parties wish to commit resources (whether cash or in-kind) to accomplishing the goals of a collaborative arrangement
Written Contract	A legal document enforceable in court; statement of an agreement between or among two or more parties that involves an "exchange of value."	Usually where one party wishes to provide consideration for another party to provide goods or services.
Cooperative Agreement	Instruments that establish a relationship between a Federal agency and a state or local government, tribal government, educational institution, nonprofit organization or other recipient.	Most commonly used for making Federal grants where the government will have substantial involvement; also used to transfer real property assets from Federal to state and local governments and for other purposes. Governed partially by DoDGRS and OMB Circulars
Intergovernmental Support Agreement	Instruments that establish a relationship between Federal agencies or between a Federal agency and a state or local government, tribal government, or other recipient.	Often used to "detail" Federal employees with particular expertise from one Federal agency to another; also used to share services between Federal agencies and other parties; may be used to formalize MOUs between Federal agencies and other parties
Interlocal Agreement	Instruments that establish a relationship between a Federal agency and a state or local government, tribal government, or other recipient.	Commonly used to formalize mutual aid agreements between Federal facilities and local emergency services agencies; also used for schools, social services, and for other purposes
Specialized Agreements (e.g., Research & Dev., Facilities Use)	Focused for a specific purpose	Used for a variety of purposes according to need; facilities use clauses are often included in Cooperative Agreements and other contracts (e.g. a utility provider needs to use the electrical grid on a military base to provide electricity)
Real Property Instruments (e.g., deed, lease, license, permit)	Used to acquire or convey an interest in real property	Used for a variety of purposes when real property interests are involved. Agreements are tailored to the type of interest, the goal(s) of the transaction, and other relevant factors



Common Air Force Agreements

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- **Joint Use (e.g., airfields/airports; cooperative agreements under statute, executive orders, DODI or AFI; agreements for joint security training)**
- **Services/Morale, Welfare, & Recreation (MWR) activities (e.g., libraries, gyms, recreational facilities, etc.)**
- **Mutual Aid (Police, fire and emergency services)**
- **Training Affiliation (Medical training/sharing of resources)**
- **All have functional experts who normally engage program experts (and JA or GC as needed) who address that specific subject matter**



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Common Provisions

- **Preface/Purpose - describes IGSA, state benefit to parties**
- **Authority**
- **Documenting Instrument – MOA, contract, IGSA, cooperative agreement**
- **Responsibilities of parties**
- **Term**
- **Funding (if applicable)**
- **Payment (if applicable) – availability of funds, billing, financial specifics for reimbursement**
- **Supervision of Personnel**
- **Termination/Expiration**
- **Applicable law**
- **Claims and Disputes**
- **Points of Contact**
- **Correspondence/Notices**
- **Review – frequency**
- **Modification**
- **Access to Facilities/Duty to Protect Property on the Facility**
- **Continuity of Services – phase-in for replacement service/goods provider**
- **Hold Harmless**
- **Wages and Labor Law**
- **Non-Discrimination/Sexual Assault/Harassment**
- **Assignment**
- **Effective Date**



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Questions?

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Next AFCP Brownbag

- To register for the next brownbag and for the latest information on AFCP's brownbag series, go to <https://community.apan.org/wg/airforcepartnerships/p/training>

Title	Date
Building and Completing Successful Business Case Analyses for Partnerships	September 21, 2016 at 11:00 EST



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Brownbag Feedback

We want your feedback!

Please complete the following short survey:

<https://www.surveymonkey.com/r/L6DQLHQ>

(Please copy and paste the link into your browser)

Thank you!



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Backup

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Real Property Key Points

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- **Various laws, regulations, and policies govern the use, acquisition, and disposal of real estate interests**
- **Actions may be stand-alone (pure real property actions) or may accompany other actions (e.g., a lease in connection with a contract)**
- **Various types of instruments, e.g., leases, licenses, permits, rights-of-way**
- **Larger, more complex transactions handled by Air Force Civil Engineering Command; small, less complex transactions handled by the base or major command**



Acquisition Key Points

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- **Array of authorities and tools available**
 - **IGSAs that buy goods/services with appropriated funds by policy are based on FAR Part 12**
 - **Nonappropriated fund contracts via DoD Instruction 4105.67**
- **More Community Partnership proposals falls within this area than any other**



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Directions for AFCP SharePoint Account

How to Register:

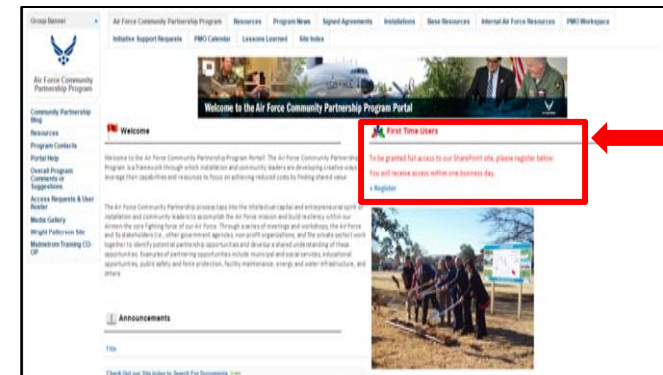
The process of establishing an account consists of two steps:

1. Create an APAN account:

- To register for an account, go to <https://wss.apan.org/s/airforcepartnerships> or www.airforcepartnerships.org (for use outside the AF firewall only)
- In the upper right hand corner of the site, click the green "Create an Account" button
- Enter your e-mail address as requested
- A validation e-mail will be sent to you from APAN Support. Follow the instructions provided in the e-mail to set up your account

2. Register on the site as a user:

- Proceed to <https://wss.apan.org/s/airforcepartnerships> or www.airforcepartnerships.org (for use outside the AF firewall only)
- Register under First Time Users on the main page to be added as a user. Until you request access, you will only have limited access to content on the Welcome page. You will receive access within one business day



Hosted on All Partners Access Network (APAN), a web-based, non .mil collaboration platform developed to foster information and knowledge sharing between DOD and non-DOD entities

For any technical issues or questions, please contact: Marta Dunn, Knowledge Manager, SAF/IEI, Ctr; E-mail: dunn_marta@bah.com; Phone: 703.622.5581

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