

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE  
AND THE CITY OF MISSOULA REGARDING THE MISSOULA  
POLICE DEPARTMENT'S RESPONSE TO SEXUAL ASSAULT**

## I. RECITALS

- A. This Agreement (“Agreement”) is entered into by the City of Missoula (the “City”) acting through the Missoula Police Department (“MPD”), and the United States Department of Justice (“DOJ”) (collectively, “the Parties”). This Agreement is intended to resolve DOJ’s investigation of MPD, initiated pursuant to 42 U.S.C. §14141 and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d. DOJ has provided the City and MPD preliminary feedback indicating areas of concern. The City and MPD have engaged in open dialogue about concerns raised by DOJ regarding response to sexual assault.
- B. The United States has investigated claims of gender bias by MPD in its response to sexual assault. The City and MPD enter into this agreement expressly denying any claims of constitutional or statutory violations. The City and MPD have fully and completely cooperated with the DOJ investigation. DOJ acknowledges that MPD had been working to improve its response to sexual assault prior to DOJ initiating its investigation. DOJ has issued a Letter of Findings regarding the conclusions of its investigation. The City and MPD are agreeable to making changes to improve practices.
- C. The purpose of this Agreement is to provide for a cooperative effort by DOJ and the City to institute improvements to MPD’s policies, practices, and supervision that will promote effective, nondiscriminatory law enforcement and community support for victims, the MPD, and its officers. Entry of this Agreement is in the public interest since it provides for expeditious changes in the community’s interest.
- D. The Parties recognize that public safety, constitutional policing, and the community’s trust in its police force are interdependent. The United States recognizes that the City and MPD have already taken steps to help effectuate these goals. This Agreement is intended to continue promoting all three of these goals by requiring MPD to implement new or revise existing policies, provide training, and change practices, to improve its response to sexual assault, including by combating gender bias. The Parties’ mutual intent is to ensure that law enforcement responds to sexual assault in a nondiscriminatory manner that complies with the Constitution and laws of the United States; improves the safety and security of victims of sexual assault in Missoula; and

increases the Missoula community's confidence in law enforcement's response to sexual assault.

- E. DOJ acknowledges that, by already taking proactive steps to help effectuate the intent of this Agreement, the City and MPD have demonstrated their commitment to improving MPD's response to reports of sexual assault. The Parties intend that MPD will continue to implement improved policies, provide increased training, and modify practices, in order to further improve its response to sexual assault and ensure that there is no gender bias. This Agreement further requires MPD to demonstrate that the implementation of this Agreement has eliminated the practices that may unnecessarily compromise sexual assault investigations and result in violations of federal law, and that MPD has put in place the systems and oversight that will prevent patterns or practices of gender bias or unconstitutional conduct from occurring. To that end, the Agreement calls for MPD to develop procedures for gathering and analyzing data to assess the incidence and outcomes of reports of sexual assault; to work with an Independent Reviewer, community-based organizations, and other stakeholders to develop and implement the reforms described in the Agreement; and to evaluate MPD's success in effecting meaningful reform.
- F. The Parties acknowledge that this Agreement is intended to ensure the success of MPD's efforts to improve its response to sexual assault. Nothing in this Agreement shall be construed as an acknowledgement, an admission, or evidence of liability of the City or MPD for any violation of State or Federal law, violation of the State or Federal Constitution, or for any alleged gender bias in the performance of law enforcement duties.
- G. DOJ agrees to forego the filing of any claim relating to MPD's response to sexual assault under Section 14141 for the duration of this Agreement. The Parties acknowledge that nothing in this Agreement shall preclude DOJ from filing any other claims against the City or MPD, including claims under Section 14141.
- H. The City agrees to fully implement this Agreement within two years of the Effective Date of this Agreement. DOJ agrees it shall timely respond to requests for approval and shall not unreasonably withhold approval for any actions required by this Agreement. DOJ reserves its right to enforce the provisions of this Agreement through specific

performance in the United States District Court for the District of Montana if it determines that the City has failed to fully comply with any provision of this Agreement during that period of time.

- I. Noting the general principle favoring settlements, particularly settlements between government entities, the City agrees to undertake the measures set forth herein.

## **II. DEFINITIONS AND ABBREVIATIONS**

1. The following terms and definitions shall apply to this Agreement:
  - a) "DOJ" means the United States Department of Justice's Civil Rights Division and its agents and employees.
  - b) "Effective Date" means the date this Agreement is executed by the Parties.
  - c) "Implement" or "implementation" means the development or putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice.
  - d) "Include" or "including" means "include or including, but not limited to."
  - e) "Independent Reviewer" means a person, persons, or team of people, independent from the City and MPD, who shall be selected to assess and report on implementation of this Agreement.
  - f) "MPD" means the Missoula Police Department and its agents, officers, detectives, supervisors, command staff, employees (both sworn and unsworn), and contractors.
  - g) "MPD personnel" or "MPD employee" means all MPD employees, contractors, and volunteers, including command staff, supervisors, officers, detectives, and civilian employees.
  - h) "Policy" or "protocol" means a written regulation or directive, regardless of the name of the regulation or directive, describing the duties, functions, and obligations of MPD personnel, and/or providing specific direction in how to fulfill those duties, functions, or obligations.
  - i) "Sexual assault," for the purposes of this Agreement, means sexual assault as defined by Montana Code Annotated §§ 45-5-502 (sexual assault) and 45-5-503 (sexual intercourse without consent), exclusive of child sexual assault.
  - j) "Shall" means that the provision imposes a mandatory duty.

k) "Supervisor" means a sworn MPD employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for MPD personnel.

### **III. IMPROVING MPD'S RESPONSE TO SEXUAL ASSAULT**

In accordance with the Recitals set forth above, MPD shall develop and implement the following measures:

#### **A. Sexual Assault Policies and Protocols**

2. MPD shall assess and modify as necessary its policies and protocols to strengthen its response to sexual assault, and ensure that the policy incorporates the requirements of this Agreement and comports with best practices and current professional standards. These policy modifications shall include but not be limited to revising MPD's existing policy, entitled "Response to Rape and Sexual Assaults." MPD's revised sexual assault policy should incorporate the requirements of the International Association of Chiefs of Police Model Policy on Investigating Sexual Assaults on at least the following topics:

- a. Initial officer response to a report of sexual assault, including requirements specific to assisting the victim, evidence collection, and the identification and location of witnesses;
- b. Response to stranger and non-stranger sexual assault;
- c. The preliminary victim interview, including the development of a victim interview protocol, and the comprehensive, follow-up victim interview;
- d. Contacting and interviewing suspects;
- e. Medical forensic examinations and coordination with the forensic examiner;
- f. Participation of victim advocates;
- g. Investigative considerations regarding alcohol and drug-facilitated sexual assault, including requirements specific to evidence collection and the forensic examination of victims;
- h. The role of the supervisor; and
- i. Procedures for blind reporting of sexual assault.

## **B. Sexual Assault Response Training**

3. MPD shall provide initial and on-going annual in-service training to all MPD officers, detectives, and recruits about law enforcement response to sexual assault. This initial and annual in-service training shall ensure that all MPD officers and detectives understand and can perform their duties pursuant to this Agreement, and shall reflect and incorporate any developments in applicable law, best practices, and professional standards. Annual in-service training also shall address any training needs identified throughout the previous year. This initial and in-service training shall be of sufficient length and scope to include the following topics:
  - a. MPD's new or revised sexual assault policy, developed pursuant to this Agreement;
  - b. Effective law enforcement response to reports of sexual assault;
  - c. Effective law enforcement response to non-stranger sexual assault; alcohol and drug-facilitated sexual assault; and sexual assault where the victim is incapacitated or otherwise unwilling or unable to clearly describe the assault;
  - d. The dynamics of and relevant core scientific concepts related to sexual assault including counterintuitive behavior, tonic immobility, and the effects of trauma on memory;
  - e. Taking statements from individuals reporting sexual assault;
  - f. Forensic examinations of sexual assault victims, including understanding, interpreting, and documenting medical forensic reports; communicating and coordinating with medical staff involved in forensic exams; and using forensic exams in development of investigations and referrals for prosecution;
  - g. The impact of officers' and detectives' attitudes towards victims on investigative outcomes; and
  - h. The impact of bias in law enforcement agencies' response to sexual assault and strategies to ensure that bias does not undermine investigations, damage rapport with victims reporting sexual assault, or re-traumatize victims.
4. This training shall include presentations by victims of sexual assault and victims' advocates in order to provide officers with the unique perspectives of those who have been victimized by sexual assault and/or those who work with sexual assault survivors.

5. MPD shall provide additional in-depth training in sexual assault investigations to all MPD detectives who conduct such investigations. This training shall include the following topics:
  - a. The elements of sexual assault offenses under Montana law;
  - b. Forensic and investigative steps to be taken in response to sexual assault allegations, including focused training on the forensic and investigative steps specific to non-stranger sexual assault, alcohol and drug-facilitated sexual assault, and sexual assault involving victims who are incapacitated or otherwise unable or unwilling to clearly describe the assault;
  - c. Taking statements from and interviewing individuals reporting sexual assault; and
  - d. Taking statements from, interviewing, and interrogating suspects in non-stranger and alcohol and drug-facilitated sexual assault.
6. MPD personnel who provide direct supervision of officers who respond to reports of sexual assault and of detectives who investigate sexual assault allegations shall receive training on how to review sexual assault response and investigations for comprehensiveness and to detect indications of bias, including how to implement the supervisory reviews and responsibilities contained in this Agreement.
7. Training pursuant to this Agreement shall be provided in accordance with best practices and include adult-learning methods that incorporate role-playing scenarios and interactive exercises, as well as traditional lecture formats. Training also shall include testing and /or writings that indicate that MPD personnel taking the training comprehend the material taught.

### **C. Review of Policies and Training**

8. Each of the requirements of this Agreement shall be incorporated into MPD policy, and all relevant MPD officers and employees shall be trained how to meet the requirements of this Agreement. MPD shall submit new and revised policies and protocols related to sexual assault and/or the terms of this Agreement, and all curricula for trainings developed pursuant to this Agreement to the Independent Reviewer and DOJ for review and comment prior to implementation and/or training delivery. MPD will seek to address all reasonable concerns raised by the Independent Reviewer or DOJ. MPD

shall publish and/or implement the policies, protocols, and/or curricula within 30 days of approval by the Parties and Independent Reviewer.

9. MPD's sexual assault related policies shall be publicly available.

**D. Investigating Non-Stranger and Alcohol- or Drug-Facilitated Sexual Assault**

10. MPD shall enhance and improve policy, training, and oversight to ensure that patrol officers and detectives: 1) recognize the prevalence of non-stranger and alcohol- or drug-facilitated sexual assault, and the relative infrequency of false reporting of such assault, and, 2) accordingly take all appropriate investigative steps when investigating non-stranger sexual assault, alcohol- or drug-facilitated sexual assault, and sexual assault involving victims who were incapacitated at the time of the assault or otherwise unable or unwilling to clearly describe the assault.

**E. Victim-Centered Response to Sexual Assault**

11. MPD shall enhance and improve policy, training and oversight to ensure victim-centered practices in the areas of sexual assault response, interviews, and investigations in order to increase the likelihood of victims' continued participation with law enforcement; improve the experience for victims; and strengthen sexual assault investigations. These practices shall include the following:

- a. Inviting and encouraging advocates to be present during interviews, if consistent with the victim's wishes;
- b. Conducting interviews at times and locations convenient to the victim, whenever possible;
- c. Introducing particularly sensitive lines of questioning by first explaining why those questions are important to the investigation;
- d. Instructing detectives and officers not to ask victims whether they wish the assailant to be prosecuted;
- e. Ensuring that officers describe the process of taking forensic exams and working with law enforcement and the courts in a manner that is both sensitive to the needs of victims and supports their participation in the criminal justice process;
- f. Documenting reports of sexual assault using the language of non-consensual sex, as appropriate, and using the victim's own language as much as possible; and

- g. Transporting the victim to the designated medical facility for a forensic exam where such an examination is warranted and the victim consents.

**F. Close Supervision and Internal Oversight**

- 12. MPD shall establish and implement measures to ensure close supervision and internal oversight of all sexual assault investigations. These measures shall include:
  - a. MPD shall develop and implement measures, including a survey designed and administered consistent with best practices, to obtain feedback on the treatment of victims from victims and advocates.
  - b. The treatment of sexual assault victims, especially the treatment of victims of non-stranger sexual assaults, shall be included as a factor in evaluating MPD detectives and patrol officers.
  - c. Non-stranger and alcohol or drug-facilitated sexual assault investigations shall be assigned only to those detectives with the demonstrated skills, interest, and training to conduct those investigations effectively and without bias.
  - d. The Captain of Detectives shall sign off on any sexual assault investigation that is not referred for prosecution.
  - e. A supervisor shall review all sexual assault reports within 48 hours of the report being taken to ensure consistency with MPD policy for initial officer response and documentation.
  - f. A supervisor shall review all sexual assault investigations to ensure comprehensive investigation has been conducted and all indicated follow up has been completed before they are closed or referred to the prosecutor.
  - g. Before a sexual assault investigation is closed, MPD shall refer the case for review by the relevant prosecuting agency and a MPD supervisor shall make all reasonable efforts to consult with a supervising prosecutor regarding whether closure is appropriate or whether additional investigation should be conducted.
  - h. MPD supervisors shall conduct a periodic review of closed cases and cases where victims declined to participate in the investigation to identify any systemic problems. Periodic reviews shall include a review of case files, recorded interviews, and victim and advocate feedback for investigative comprehensiveness and indications of bias.

## **G. Coordination with Law Enforcement and Community Partners**

13. To improve the reporting and participation experience for victims of sexual assault, MPD shall increase and improve its communication, coordination, and collaboration with community and law enforcement partners, including the University of Montana (the “University”), the University’s Office of Public Safety (“OPS”), the Missoula County Attorney’s Office (“MCAO”), and community advocates. MPD shall:

- a. Draft and work with MCAO to seek a Memorandum of Understanding with MCAO clarifying the roles and responsibilities of MPD and MCAO involved in the referral of a sexual assault case from MPD to MCAO, and take affirmative steps to ensure effective communication and collaboration between MPD and MCAO, especially on subjects including case referrals, charging decisions, and areas for investigative follow up.
- b. Develop an effective mechanism to ensure that MPD understands and documents why MCAO downgrades, upgrades, or declines to prosecute sexual assault cases referred by MPD. Where MCAO declines a case due to insufficient evidence, this mechanism proposed to MCAO shall request sufficient information from MCAO for MPD to ensure it understands which elements lack evidence to support a charge and whether additional avenues for investigation may exist.
- c. Ensure that relevant MPD personnel understand their role and responsibility, pursuant to MPD’s Memorandum of Understanding with OPS, to respond to on-campus sexual assault reported directly to MPD or referred by OPS.
- d. Take affirmative steps to ensure effective communication and coordination between MPD, the University, and OPS.
- e. Increase coordination and communication with medical staff and forensic examiners interacting with individuals reporting sexual assault, in order to improve sexual assault investigations and reduce unnecessary burdens on individuals reporting sexual assault. Measures to increase such coordination and communication shall include:
  - i. in cases where law enforcement has been involved prior to the victim’s forensic exam, briefing the medical staff and/or forensic examiners about the reported assault prior to the forensic exam;

- ii. receiving a briefing following the exam from the medical staff and/or forensic examiners regarding their findings, including the results of the forensic examination;
- iii. including reference to any forensic examination, and specifically referencing findings related to all injuries and other significant evidence, in the case report;
- iv. incorporating information from the forensic report and communication with medical staff in development of investigative strategy and determination as to whether to refer the case for prosecution; and
- v. attaching a copy of the forensic examination report to the case file.

- f. Further strengthen the partnership and improve the cooperation between MPD and agencies involved in the First Step Resource Center Multidisciplinary Team and other community and systems advocates by facilitating opportunities for officers to meet with and learn about these agencies and advocates; and soliciting feedback from the agencies and advocates, identifying barriers, and implementing remedies in order to increase victim participation in sexual assault investigations and prosecutions; improve the experience for victims who participate in sexual assault investigations and prosecutions; and otherwise improve sexual assault investigations.

#### **H. Data Collection and Reporting**

14. To identify shortcomings, assess improvement, and increase community confidence in Missoula law enforcement's response to sexual assault, MPD shall enhance its data collection, analysis, and reporting. Data collection shall include the following:

- a. Collect and record information about rates of sexual victimization in Missoula and track reports of sexual assault received by MPD through their outcomes in the court system. This information shall include the number of sexual assault reports to MPD; the number of cases referred from other law enforcement agencies to MPD; and the number of cases in which MPD assisted in transporting or obtaining transport for a victim to a medical facility equipped to perform a medical forensic exam. To the extent that MPD can reasonably obtain this information, it shall collect and record the number of reported sexual assaults in

Missoula, regardless of the entity to whom the sexual assault was reported; and the number of cases referred to MPD by Missoula 911 or the YWCA Rape Crisis Hotline.

- b. To the extent permissible by applicable law, MPD shall share this information with the public, and with its University, community, and law enforcement partners to allow them to increase public safety and respond to and support the needs of sexual assault survivors.
- c. As to unresolved investigations of reports of sexual assault, implement and maintain the use of a database to collect crime-specific information in order to identify similarities between reported sexual assaults and previous, unsolved cases.

#### **IV. EXTERNAL REVIEW OF SEXUAL ASSAULT CASES**

15. The Parties shall jointly select and establish a group of qualified representatives, including experienced sexual assault prosecutors, public defenders and/or other legal service providers, experienced sexual assault investigators, and/or advocates, to serve as an external review group for sexual assault cases. Beginning three months after the Effective Date, the external review group shall review, on a semi-annual basis, all reports of sexual assault received by MPD, and all investigations of those reports opened by MPD, since the Effective Date. Thereafter, this external review group shall review all reports of sexual assault received by MPD, and investigations of those reports opened by MPD, since the external review group's last such review.

16. The external review group shall, in conjunction with MPD, develop a protocol to guide their review and ensure consistency. This protocol shall set out a methodology and outcome measures for examining sexual assault investigations for comprehensiveness and indications of bias through a review of written reports and recorded interviews, and to review feedback collected by MPD or the City from advocates and victims. The protocol shall include appropriate safeguards to protect ongoing investigations, confidential or privileged information, and personal information protected from disclosure by applicable laws. Upon approval by MPD and the external review group, the protocol shall be approved by DOJ and the Independent Reviewer.

17. MPD shall develop a protocol to ensure that feedback and recommendations from this external review group are shared with MPD supervisors and command staff and incorporated into policies, general training, and targeted training for specific officers or detectives; the decision to reopen, reexamine, or re-categorize cases; and the decision to pursue additional avenues of investigation, where warranted.

**V. COMMUNITY-CONDUCTED SEXUAL ASSAULT RESPONSE SAFETY AND ACCOUNTABILITY AUDIT**

18. With oversight and advice from the Independent Reviewer, the City shall organize and lead a sexual assault safety and accountability audit (“Audit”) designed to assess how the City, Missoula County, and the University respond to and collaborate to address sexual assault, with a focus on enhancing victim safety, support, and participation in the law enforcement process.

19. The Audit shall examine how, where, and if existing practices support victims of sexual assault and the accountability of offenders by undertaking a holistic examination of the processes, practices, routines, and functions of the criminal justice response to sexual assault. Specifically, the Audit will examine how the agencies and organizations participating in that response interact and work together to support victims and hold offenders accountable.

20. The Audit shall be designed to analyze and improve the criminal justice system’s response to sexual assault. The Audit is not intended to examine or evaluate any single individual’s work, or to review the MPD’s response to or investigation of individual reports of sexual assault.

21. The Audit shall be conducted by an inter-agency, multi-disciplinary Audit team, which shall consist of individuals from participant agencies and organizations within the Missoula community, and other key stakeholders. The Audit team may receive advice, training, and technical assistance from qualified experts and Audit teams from other communities that have implemented similar audits;

22. The Audit team shall solicit the participation of agencies and organizations that participate in the sexual assault response in Missoula. These agencies and organizations may include the MPD, the University, OPS, MCAO, the Missoula County Sheriff’s Office, the Missoula City Attorney’s Office, the Missoula District Court, the Missoula

Crime Victim Advocate Office, the First Step Resource Center Multidisciplinary Team, and community-based sexual assault advocates.

23. The Audit will comport with the Duluth Safety and Accountability Audit (“Duluth Model”), and include the following steps:

- a. Forming and preparing the Audit team;
- b. Mapping the response to sexual assault cases and the different systems and organizations’ roles, actions, and relationships;
- c. Observing that response by shadowing and interviewing participants and victims;
- d. Analyzing, to the extent allowable by relevant privacy laws, the documents and information collected, shared, and used by participants, including 911 and dispatch transcripts, police reports, medical forensic reports, and pre-sentence reports; and
- e. Making recommendations for changes that will improve participants’ ability to perform their duties, support victims, and hold offenders accountable, and a plan for implementing those changes.

24. Prior to conducting the Audit, the City shall invite the community to attend a forum on the Audit to provide interested community members an opportunity to learn about the purpose of the Audit and how it will be implemented, and to provide input.

25. The City shall hold a second forum following the conclusion of the Audit, during which members of the Audit team shall present their recommendations to the community.

26. Following the Audit, the Parties and the Independent Reviewer shall confer and determine whether changes to this Agreement are appropriate in light of the Audit’s findings.

## VI. INDEPENDENT OVERSIGHT

### A. Selection of the Independent Reviewer

27. The parties have jointly selected Thomas R. Tremblay to serve as the Independent Reviewer to oversee the terms of this Agreement. The parties have jointly selected Anne Munch, Esq., to assist the City, MPD, external review group and the Independent Reviewer with respect to training.

28. The Independent Reviewer shall be appointed for a period of two years and shall have his appointment presumptively extended every year until the City demonstrates compliance with the entire Agreement. The Parties anticipate that compliance can be demonstrated no later than two years from the Effective Date.
29. The City shall bear all fees and costs of the Independent Reviewer. In selecting the Independent Reviewer, DOJ and the City recognize the importance of ensuring that the fees and costs borne by the City are reasonable, and accordingly fees and costs were one factor considered in selecting the Independent Reviewer. The Parties shall work with Mr. Tremblay and Ms. Munch to reach mutually agreed upon reasonable limits on the Independent Reviewer's fees and costs.
30. The City shall provide the Independent Reviewer with office space and reasonable office support such as office furniture, secure internet access, telephones, secure document storage, and photocopying, faxing, and scanning equipment, that the Independent Reviewer may use while on-site in Missoula.

#### **B. Role of the Independent Reviewer**

31. The Independent Reviewer shall only have the duties, responsibilities, and authority conferred by this Agreement.
32. The Independent Reviewer will assess and report whether the requirements of this Agreement have been implemented. The Independent Reviewer will also analyze the data collected pursuant to this Agreement and report on all measurable changes in MPD's response to, and investigation of, reports of sexual assault. The Independent Reviewer shall conduct regular compliance reviews, outcome assessments, and investigation reviews specified by this Agreement, and such additional reviews and assessments as the Independent Reviewer or the Parties deem appropriate to assess and report whether this Agreement has been implemented and is having the intended effect.
33. If the Independent Reviewer resigns from his or her position as Independent Reviewer, the former Independent Reviewer may not enter into any contract with DOJ or the City on a matter related to the Agreement without the written consent of the other Party while the Agreement remains in effect.

### **C. Compliance Reviews, and Outcome Assessments**

34. The Independent Reviewer shall conduct regular compliance reviews to determine whether MPD has implemented and continues to comply with the material requirements of this Agreement. Compliance with a material requirement of this Agreement requires that MPD has: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; (c) ensured comprehension of all training received; and (d) ensured that the requirement is being carried out in actual practice. Compliance reviews shall contain both qualitative and quantitative elements as necessary for reliability and comprehensiveness.

35. In addition to compliance reviews, the Independent Reviewer shall conduct regular outcome assessments to determine whether MPD's implementation of this Agreement is having its intended effect, and whether the implementation of this Agreement has had any unintended negative impacts on either accomplishing the purposes of this Agreement, or on MPD's ability to conduct effective, constitutional policing. Outcome assessments shall not be determinative of whether this Agreement is having its intended effect, as each outcome measure is not designed to be considered in isolation. These outcome assessments shall include collection and analysis, both quantitative and qualitative, of the following outcome data:

- a. Number of sexual assault reports made to MPD;
- b. Rate of victim participation in MPD sexual assault investigations;
- c. Sexual assault victims' experience with MPD, including those victims who declined to participate in an investigation;
- d. MPD detectives' perceptions of their own sexual assault investigations, including whether those investigations result in: a higher rate of victim participation, improved evidence collection, more frequent discovery of similar acts by the same perpetrator, and more information elicited from interviews;
- e. Clearance codes assigned to closed sexual assault cases;
- f. To the extent that MPD can reasonably obtain such information, prosecutors' stated reasons for declining to charge sexual assault cases referred for prosecution;
- g. Rate of declination of sexual assault cases referred to MCAO for prosecution;

- h. First Step Resource Center Multidisciplinary Team experience with MPD; and
- i. Outcome measures developed by the external review group and/or the Audit team in conjunction with MPD.

36. In conducting these compliance reviews and outcome assessments, the Independent Reviewer may use any relevant data collected and maintained by the City that the Independent Reviewer and United States deem reliable and sufficiently complete.

37. The parties acknowledge that, while the above information shall be gathered, tracked, and assessed to determine the need for further law enforcement or community action changes, such factors shall not be used by DOJ to determine compliance with this Agreement.

**D. Access and Confidentiality**

38. The Independent Reviewer shall have timely, full, and direct access to all individuals, facilities, data, and documents, including both open and closed sexual assault investigative files, that the Independent Reviewer reasonably deems necessary to carry out the duties assigned to the Independent Reviewer by the Agreement. To facilitate his work, the Independent Reviewer may conduct on-site visits and assessments without prior notice to the City. The Independent Reviewer will cooperate with the City to access personnel, facilities, and documents in a reasonable manner that, consistent with the Independent Reviewer's responsibilities, minimizes interference with daily operations, and will not compromise the integrity of any ongoing criminal investigation.

39. DOJ and its consultants, experts, and agents will have full and direct access to all City staff, employees, facilities, data, and documents, including both open and closed sexual assault investigative files, reasonably necessary to review MPD's compliance with and enforce this Agreement. DOJ and its consultants, experts, and agents will cooperate with the City to access involved personnel, facilities, and documents in a reasonable manner that, consistent with DOJ's responsibilities to enforce the Agreement, minimizes interference with daily operations.

**E. Independent Reviewer Plan and Review Methodology**

40. Within 45 days of the Independent Reviewer's appointment, the Independent Reviewer will develop an Independent Reviewer plan, including proposed interim

deadlines for MPD's implementation of the requirements of this Agreement. The Independent Reviewer plan will set out a schedule for conducting the compliance reviews and outcome assessments that is consistent with the interim deadlines for implementation of this Agreement. The Independent Reviewer shall submit the plan to the Parties for review and comment.

41. At least 45 days prior to the initiation of any outcome measure assessment or compliance review, the Independent Reviewer shall submit a proposed methodology for the assessment or review to the Parties. The Parties shall submit any comments or concerns regarding the proposed methodology to the Independent Reviewer within 15 days of the proposed date of the assessment or review. The Independent Reviewer shall modify the methodology as necessary to address any concerns or shall inform the Parties in writing of the reasons he is not modifying the methodology as proposed.

42. Where the Independent Reviewer recommends and the Parties agree, the Independent Reviewer may refrain from conducting a compliance review of a requirement previously found to be in compliance by the Independent Reviewer, or where outcome assessments indicate that the outcome intended by the requirement has been achieved.

43. DOJ shall treat all non-public information obtained during the course of its investigation and during the pendency of this Agreement as confidential pursuant to applicable laws and regulations, and shall not release such information to any person.

#### **F. Independent Reviewer Recommendations and Technical Assistance**

44. The Independent Reviewer may make recommendations to the Parties regarding measures necessary to ensure timely, full, and effective implementation of this Agreement and its underlying objectives. Such recommendations may include a recommendation to change, modify, or amend a provision of the Agreement, a recommendation for additional training in any area related to this Agreement, or a recommendation to seek technical assistance. In addition to such recommendations, the Independent Reviewer may also, at the request of the City or DOJ, provide technical assistance consistent with the Independent Reviewer's responsibilities under this Agreement.

## **G. Comprehensive Re-Assessment**

45. The Independent Reviewer shall conduct a comprehensive assessment one year after the Effective Date to determine whether and to what extent: (1) the outcomes intended by this Agreement have been achieved, and (2) any modifications to the Agreement are necessary for continued achievement in light of changed circumstances or unanticipated impact (or lack of impact) of a requirement. This assessment shall also address areas of greatest achievement and the requirements that appear to have contributed to this success, as well as areas of greatest concern, including strategies for accelerating compliance. Based upon this comprehensive assessment, the Independent Reviewer shall recommend modifications to the Agreement necessary to achieve and sustain intended outcomes. Where the Parties agree with the Independent Reviewer's recommendations, the Parties shall work to adopt mutually acceptable modifications of the Agreement.

## **H. Independent Reviewer Reports**

46. The Independent Reviewer shall provide the City and MPD quarterly written, public reports covering the reporting period that shall include:

- a. A description of the work conducted by the Independent Reviewer during the reporting period;
- b. A listing of each Agreement requirement indicating which requirements have been: (1) incorporated into implemented policy; (2) the subject of adequate and appropriate training for all relevant MPD personnel; (3) reviewed by the Independent Reviewer to determine whether they have been fully implemented in actual practice, including the date of the review; and (4) found by the Independent Reviewer to have been fully implemented in practice;
- c. The methodology and specific findings for each review conducted. An unredacted version shall be provided to the Parties. The underlying data for each review shall not be publicly available but shall be retained by the City for at least three years after the Independent Reviewer's Comprehensive Assessment Report and provided to either or both Parties upon request;
- d. For any requirements that were reviewed and found not to have been fully

implemented in practice, the Independent Reviewer's recommendations regarding necessary steps to achieve compliance;

- e. The methodology and specific findings for each outcome assessment conducted;
- f. A qualitative assessment of MPD's progress in achieving the desired outcomes for each area covered by the Agreement, noting issues of concern or particular achievement; and
- g. A projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the Agreement.

47. The Independent Reviewer shall provide a copy of the reports to the Parties in draft form at least ten business days prior to releasing them publicly to allow the Parties to informally comment on the reports. The Independent Reviewer shall consider the Parties' responses and make appropriate changes before issuing the report.

48. The reports shall be public with the exception of material covered by applicable privacy laws and, to facilitate public access to the reports, the City shall post the reports to the City's public website.

49. The Independent Reviewer will not issue statements or make findings with regard to any act or omission of any Party, or their agents or representatives, except as required by the terms of this Agreement. The Independent Reviewer may testify in any enforcement proceedings regarding provisions of the Agreement and the Parties' compliance. The Independent Reviewer will not testify in any other litigation or proceeding with regard to any act or omission of any Party, or any of their agents, representatives, or employees, related to the Agreement or regarding any matter or subject that the Independent Reviewer may have learned of as a result of his/her performance under the Agreement. This restriction does not apply to any proceeding before a court related to performance of this Agreement.

50. Unless such conflict is waived by the Parties, the Independent Reviewer shall not accept employment or provide consulting services that would present a conflict of interest with the Independent Reviewer's responsibilities under the Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such

litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents, or employees.

**I. Independent Reviewer Budget**

51. Within 30 days of appointment, the Independent Reviewer shall submit to the Parties a proposed budget for year one of this Agreement.
52. The Parties shall raise with the Independent Reviewer any objections they may have to the proposed budget within 10 business days of receipt.
53. Thereafter, the Independent Reviewer shall submit annually a proposed budget to review at least three months prior to expiration of the preceding year's budget, in accordance with the process set forth above.
54. At any time, the Independent Reviewer may submit to the Parties for approval proposed revisions to the budget, along with an explanation of the reasons for the proposed revisions. Such proposed changes may only be made upon written agreement by the Parties.
55. The Independent Reviewer will submit monthly statements to the Parties, detailing all expenses incurred during the prior month. The Parties will review such statements for reasonableness. Upon completion of the Parties' review, but in no case more than 10 business days after submission of the statements by the Independent Reviewer, the Parties will notify the Independent Reviewer of their approval of the statement. The City shall pay the full amount of the statement to the Independent Reviewer within 30 days of the Parties' approval of the statement.

**VII. AGREEMENT IMPLEMENTATION AND ENFORCEMENT**

**A. Modification and Enforcement of the Agreement**

56. At all times, the City shall bear the burden of demonstrating compliance with this Agreement. When DOJ and the Independent Reviewer agree that the City has maintained compliance for one year with any portion of the Agreement, the City's compliance with that portion of the Agreement shall no longer be subject to review by the Independent Reviewer.

57. DOJ reserves its right to seek enforcement of the provisions of this Agreement, through specific performance in the United States District Court for the District of

Montana, if it determines that the City has failed to fully comply with any provision of this Agreement. Prior to initiating any court proceeding, DOJ agrees to provide written notice of the failure to the City. The City shall have 60 days from receipt of such notice to cure the failure. During the 60-day period, the Parties shall meet and confer to resolve any disputes regarding the failure or to otherwise explore a joint resolution. The Independent Reviewer shall assist the Parties in reaching a mutually agreeable resolution to the compliance failure or dispute, including by facilitating discussions and providing relevant factual assessments. If the Parties are not able to reach a mutually agreeable resolution to the compliance failure or dispute within the 60-day period, DOJ may, without further notice to the City, file an action in the United States District Court for the District of Montana (the "Federal Court Action") against other party for breach of contract and may seek specific performance and any other appropriate form of relief.

58. In connection with the Federal Court Action:

- a. The Parties shall stipulate to in personam jurisdiction and venue in the United States District Court for the District of Montana (the "Court").
- b. The City agrees that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the City Attorney, will be deemed good and sufficient service upon the City and MPD.
- c. DOJ agrees that service by hand delivery of documents filed in connection with the Federal Court Action upon the United States Attorney for the District of Montana will be deemed good and sufficient service upon the United States.
- d. The Parties agree to an expedited trial of the Federal Court Action.

59. The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any state, county, or municipal court, the Parties shall seek removal to federal court.

60. If any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, that finding shall not affect the remaining provisions of this Agreement.

61. Should the Independent Reviewer determine that any portion of the Agreement is ineffective at achieving the desired goals, or causing unintended negative consequences, he or she may recommend modifications to the Agreement. Where the Parties agree with the Independent Reviewer's recommendations, the Parties shall modify the Agreement accordingly.
62. This Agreement constitutes the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or other proceeding.
63. The City shall require compliance with this Agreement by the City's respective officers, employees, agencies, assigns, or successors.
64. The Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of the Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under the Agreement.
65. The City agrees to promptly notify the United States if any term of this Agreement becomes subject to collective bargaining consultation and to consult with the United States in a timely manner regarding the position the City takes in any collective bargaining consultation connected with this Agreement.
66. All Parties agree that, as of the date of entry of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described in this Agreement. To the extent that either Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in this Agreement, the Party is no longer required to maintain such a litigation hold.

### **VIII. TERMINATION OF THE AGREEMENT**

67. The Parties anticipate that the City and MPD will have complied with all provisions of the Agreement within two years of the Effective Date.
68. The Agreement shall remain in effect for two years following the Effective Date, unless any of the following occur:
  - a. The Parties jointly agree, in writing, to terminate the Agreement before two years

of the Effective Date, on the grounds that the City has complied with this Agreement and maintained compliance for one year; or

b. the United States disputes that the City is in compliance with the Agreement within two years of the Effective Date and has maintained compliance for one year. Such a dispute will be addressed through negotiation between the Parties or, if the Parties are unable to reach a mutually agreeable resolution, through civil enforcement proceedings, as described in the above ¶ 57.

69. "Compliance" shall be defined to require both sustained compliance with all material requirements of this Agreement and sustained and continuing improvement in the response to and investigation of reports of sexual assault, as demonstrated pursuant to the outcome measures determined by the Independent Reviewer. Compliance shall be achieved where any violations of the Agreement are minor or incidental and not systemic. Noncompliance with mere technicalities, or temporary or isolated failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain full and effective compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute compliance.

Respectfully submitted, this 15th day of May, 2013,

For the UNITED STATES OF AMERICA:



MICHAEL W. COTTER  
United States Attorney  
District of Montana



THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

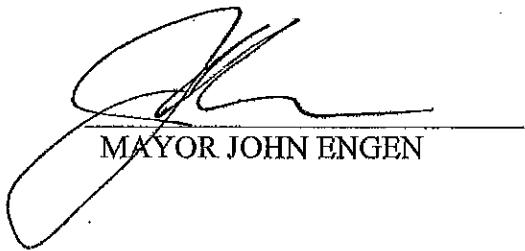
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For the CITY OF MISSOULA:



MAYOR JOHN ENGEN