

**MEMORANDUM OF UNDERSTANDING BETWEEN, THE MONTANA ATTORNEY
GENERAL, THE MISSOULA COUNTY ATTORNEY'S OFFICE, MISSOULA COUNTY,
AND
THE UNITED STATES DEPARTMENT OF JUSTICE**

- A. This Memorandum of Understanding ("MOU") is entered into by the Missoula County Attorney's Office ("the MCAO"), Missoula County ("Missoula County" or "County"), the Montana Attorney General's Office ("Montana Attorney General"), and the United States Department of Justice ("United States" or "USDOJ") (collectively, "the Parties"). This MOU is intended to resolve USDOJ's investigation of the MCAO, initiated pursuant to 42 U.S.C. § 14141 and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d.
- B. The purpose of this MOU is to provide for a cooperative effort by the parties, to ensure that the MCAO responds to sexual assault in a nondiscriminatory manner that complies with the Constitutions and laws of Montana and the United States; improves the safety and security of victims of sexual assault in Missoula County; and increases the Missoula County community's confidence in the MCAO's response to sexual assault. Entry of this MOU is in the public interest since it provides for expeditious changes to improve public safety and adherence to state and federal law.
- C. The United States investigated claims of gender discrimination by the MCAO in its handling of reports of sexual assault, and on February 14, 2014, provided a letter to the MCAO regarding that investigation. The MCAO enters into this MOU expressly denying any claims of constitutional or statutory violations.
- D. The United States asserts that it has jurisdiction both to investigate and to bring suit against the MCAO pursuant to 42 U.S.C. § 14141 and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d. The MCAO, the County, and the Montana Attorney General expressly deny that the USDOJ has any authority over locally elected county attorneys who fall under the statutory supervisory control of the Montana Attorney General pursuant to Mont. Code Ann. Section 2-15-501(5). Nothing in this MOU constitutes any admission, concession, or agreement by the MCAO, the County, or the Montana Attorney General that the United States has such jurisdiction or authority to investigate or seek remedy against the MCAO regarding its handling of sexual assault cases, nor a concession by the United States that it does not have such jurisdiction or authority.
- E. Nonetheless, prior to entering into this MOU, the MCAO had begun working to improve the MCAO's handling of reports of sexual assault, and, through this MOU, agrees to make further

changes to improve the MCAO's practices in this regard. In addition, the Montana Attorney General is working with the MCAO to improve the MCAO's handling of sexual assault cases.

F. As part of the consideration for this MOU and the agreements contained herein, the MCAO and the Montana Attorney General agree to execute the "Agreement" attached as Exhibit 1 by and between the MCAO and the Montana Attorney General. The Agreement between the MCAO and the Montana Attorney General (Exhibit 1) is not intended to create legal rights or obligations except as between the MCAO and the Montana Attorney General. Under no circumstances does Exhibit 1 subject the MCAO or the Montana Attorney General to any liability, claim or action by the United States, including, without limitation, civil rights claims or claims for breach of contract or for specific performance.

G. As further consideration for this MOU and the agreements contained herein, subject to the limitations in paragraph F, above, the Montana Attorney General agrees to:

1. Consult with USDOJ on the following items related to the implementation of the Agreement (Exhibit 1) between the MCAO and the Montana Attorney General:
 - a. The Montana Attorney General's selection of a Technical Advisor and the Montana Attorney General's contract with the Technical Advisor;
 - b. The Montana Attorney General's review and approval of MCAO's policies and guidelines for handling of sexual assault cases; and
 - c. The Montana Attorney General's review and approval of MCAO's sexual assault training program for its prosecutors, supervisors, and in-house victim advocate.

After consulting with USDOJ, the Montana Attorney General shall have sole authority and discretion to make any and all final decisions concerning paragraphs G.1.a. through G.1.c., above.

2. Except as prohibited by applicable privacy laws including the Montana Confidential Criminal Justice Information Act, obtain and provide the following information to USDOJ on a semi-annual basis for a period of two (2) years after the date of this MOU:
 - a. Copies of sexual assault policies implemented pursuant to the Agreement between MCAO and the Montana Attorney General (Exhibit 1).
 - b. Copies of MOUs executed between the MCAO and other local law enforcement agencies with respect to sexual assault crimes.

- c. Copies of all materials used by MCAO for training prosecutors on sexual assault cases pursuant to the Agreement between the MCAO and the Montana Attorney General (Exhibit 1).
- d. Copies of all written recommendations and/or conclusions made to the Montana Attorney General by the Technical Advisor pursuant to the Agreement between the MCAO and the Montana Attorney General (Exhibit 1) will be provided to USDOJ by the Montana Attorney General within 30 days of receipt.
- e. Data on the following:
 - i. The number of sexual assault cases referred for review by local law enforcement to MCAO.
 - ii. The number of sexual assault cases charged by MCAO.
 - iii. The disposition of charged sexual assault cases.
 - iv. The number of sexual assault cases in which additional investigation was requested of local law enforcement.
 - v. The number of victims of sexual assault who have utilized the services of the in-house victim witness-coordinator provided for in the Agreement between the MCAO and the Montana Attorney General (Exhibit 1).
- H. The Montana Attorney General has begun to implement a state-wide training program and is developing a state-wide policy guidance with respect to the handling of sexual assault cases by county attorneys, law enforcement, victim advocates, and the state and local court systems. In support of these initiatives and in support of the MCAO's efforts, subject to the limitations in paragraph F, above, the Montana Attorney General will utilize the services and work product of a Technical Advisor as provided for in Exhibit 1 to this MOU.
- I. The Parties acknowledge that this MOU is intended to ensure the success of MCAO's efforts to improve its response to sexual assault. Nothing in this MOU will be construed as an acknowledgement, an admission, or evidence of liability of Missoula County or the MCAO for any violation of state or federal law, violation of the State or Federal Constitution, or for any alleged gender bias or discrimination in the performance of sexual assault prosecution duties.
- J. Upon execution and implementation of this MOU, the United States agrees to forego the filing of any claims or actions against the MCAO and Missoula County with regard to the handling of sexual assault cases in the past, including, without limitation, any and all civil rights claims. The MCAO, in turn, agrees to dismiss its pending Complaint for Declaratory Judgment against the

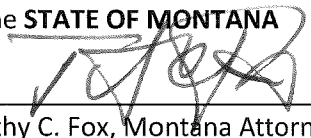
USDOJ. The Parties acknowledge that nothing in this MOU precludes USDOJ from filing any other claims against the MCAO for any future conduct, including claims under 42 U.S.C. §14141, subject, however, to any and all defenses that the MCAO and the Montana Attorney General now have, or may have in the future.

This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

///

Dated this 10 day of June, 2014.

For the **STATE OF MONTANA**



Timothy C. Fox, Montana Attorney General

///

Dated this 10th day of June, 2014.

For the **MISSOULA COUNTY ATTORNEY'S OFFICE**



Fred Van Valkenburg, Missoula County Attorney

Dated this 10 day of June 2014.

For **MISSOULA COUNTY**



Jean Curtiss, Chair



Bill Carey, Commissioner



Michele Landquist, Commissioner

Dated this 10 day of June, 2014.

For the UNITED STATES OF AMERICA:



MICHAEL W. COTTER
United States Attorney
District of Montana

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

MARK KAPPELHOFF
Deputy Assistant Attorney General
Civil Rights Division



JONATHAN M. SMITH
Section Chief
Special Litigation Section

CHRISTY E. LOPEZ
Deputy Chief
Special Litigation Section

JENNIFER L. MONDINO
JEFF BLUMBERG
Trial Attorneys
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Tel. (202) 514-6255
Fax. (202) 514-4883

EXHIBIT 1
AGREEMENT BETWEEN THE MONTANA ATTORNEY GENERAL AND
THE MISSOULA COUNTY ATTORNEY'S OFFICE

The Montana Attorney General and the Missoula County Attorney's Office (MCAO) enter into this Agreement because the Montana Attorney General and MCAO are committed to ensuring that allegations of sexual assault are handled appropriately, that victims are treated with compassion and respect, and that the criminal justice system operates without gender bias.

Purpose. The purpose of this Agreement is to promote public confidence in the criminal justice system through agreement and cooperation between the MCAO and the Montana Attorney General by improving policies and practices related to sexual assault prosecutions in Missoula County. For purposes of this Agreement, the term "sexual assault" means sexual contact without consent as defined in Mont. Code Ann. Sections 45-5-502, 503, exclusive of sexual assault cases involving victims under the age of 16.

Authority. Pursuant to Mont. Code Ann. Section 2-15-501(5), the Attorney General of the State of Montana has the sole authority to supervise the MCAO in the handling of any specific case. Only the Montana Attorney General shall have the authority to provide input on the MCAO's decision to exercise its prosecutorial discretion with respect to any individual case, specifically whether to charge a case that has been declined; investigate or direct further investigation of a referred sexual assault case; or take, or refrain from taking, any actions related to the prosecution of charged cases.

Technical Advisor. The Montana Attorney General agrees to enter into contract with Anne Munch Consulting, Inc. (hereafter the "Technical Advisor") for a total amount including fees, costs and expenses not to exceed \$150,000. The Technical Advisor shall assist with training attorneys in the Montana Department of Justice Prosecution Services Bureau and the MCAO's supervisors to standards acceptable to the Montana Attorney General regarding the proper handling of sexual assault cases, and to assist the Montana Attorney General with the assessment of the MCAO's performance under this Agreement.

The Technical Advisor will only have the contractual duties and responsibilities conferred by the Montana Attorney General as may be needed to facilitate the MCAO's performance under this Agreement. The maximum amount of compensation, including costs and expenses, payable to the Technical Advisor will be specified in the contract with the Technical Advisor and shall not exceed that amount.

The Technical Advisor shall not have any authority with respect to the MCAO's prosecutorial discretion; specifically she shall not have the authority to direct the MCAO to charge a case that has been declined; investigate or direct further investigation of a referred sexual assault case; take or refrain from taking, any actions related to the prosecution of charged cases; or related to proposing or accepting plea agreements.

The Technical Advisor will be hired for a period of not less than one year, but may have her contract extended at the Montana Attorney General's sole discretion. The MCAO has agreed to seek funding for the fees and costs of the Technical Advisor from the Missoula County Board of Commissioners for a maximum period of two years from the date this Agreement is executed by the Montana Attorney

General. The Montana Attorney General will work with the Technical Advisor to reach a mutually agreed upon fees and costs arrangement based on a contract amount that will not be exceeded.

Development of policies and guidelines for sexual assault cases. Within 90 days of execution of the contract with the Technical Advisor, the MCAO agrees to develop written policies and guidelines for handling of sexual assault cases. The MCAO agrees these policies and guidelines will be consistent where appropriate, with guidance of the National District Attorneys Association (NDAA) regarding sexual assault prosecutions and will include the following standard topics relevant to sexual assault prosecutions: plea guidelines, internal timelines for handling sexual assault cases, including charging decisions, coordination with law enforcement and community partners, communication with victim advocates and complaining witnesses, response to stranger and non-stranger sexual assault, response to drug- or alcohol-facilitated sexual assault, and supervisory review of case handling and charging decisions. The Montana Attorney General, in consultation with the Technical Advisor, shall have sole authority and discretion to review and approve the MCAO's written policies and guidelines. Following their approval by the Montana Attorney General, the MCAO's written policies and guidelines shall be published on the MCAO's website.

Training for county attorney supervisors and prosecutors in response to sexual assault. Within the first year of the agreement and every year thereafter for the life of this Agreement, the MCAO agrees to provide prosecutors, supervisors and the in-house victim advocate initial and on-going training in handling sexual assault cases to ensure they are fully equipped to handle these matters. The training will be consistent with the guidelines of the NDAA and will be approved by the Montana Attorney General in consultation with the Technical Advisor. The training will include, but is not limited to: methods of proving non-stranger, drug- or alcohol-facilitated sexual assault, sexual assault where consent is a defense, the body of scientific knowledge commonly accepted as necessary for prosecuting sexual assault cases, effective techniques for interviewing sexual assault victims, and addressing misinformation about bias and sexual assault victimology, including misinformation about victim response to sexual assault. The MCAO agrees, at its own expense, to ensure that deputy county attorneys handling sexual assault cases participate in any sexual assault prosecution training offered by the Montana Attorney General.

Assurances as to on-going practices within the Missoula County Attorney's Office. The MCAO agrees to implement or continue the following on-going practices with respect to its response to sexual assault allegations, which the Attorney General shall have sole authority and discretion to review and approve in consultation with the Technical Advisor:

- **In-person meetings with complaining witnesses:** Prosecutors will make every reasonable effort to conduct in-person meetings with the detectives and complaining witnesses prior to making a determination whether to file charges in sexual assault cases referred and recommended for prosecution. Consistent with Montana law, advocates will be invited and encouraged to participate in such meetings between prosecutors and complaining witnesses.
- **Case related communication with victims and victim advocates:** Subject to the cooperation and availability of victims, prosecutors will communicate key substantive information and decisions about cases and the underlying rationale directly to victims or their victim advocates as required by Montana law.

- Victim Advocates: The MCAO agrees to seek funding from the Missoula County Board of Commissioners for a full-time in-house victim-coordinator for the MCAO, in order to provide improved notification, support, and referral services to victims and to provide victims with information not available to the Missoula Crime Victim Advocate Office or external advocates.
- Utilization of specialized sexual assault prosecution expertise: Within 60 days of the execution of this Agreement, the MCAO agrees to designate an appropriate number of attorneys, based on caseload, to be primarily responsible for sexual assault cases. The attorneys will be selected based on their demonstrated skills and interest and will be required to attend periodic sexual assault-specific training. Nothing in this Agreement prohibits the MCAO from pairing less-experienced county attorneys with county attorneys who specialize in sexual assault cases to develop skills, provided the deputy county attorney who specializes in sexual assault cases has primary responsibilities in the prosecution. In addition, the MCAO will utilize the services of specialized prosecution expertise within the Montana Department of Justice Prosecution Services Bureau whenever the necessary expertise for a particular sexual assault prosecution is not available within the MCAO or, because of caseload demands, is unreasonably delayed.
- Utilization of specialized sexual assault investigation expertise: The parties acknowledge the MCAO does not employ internal investigators, but rather relies upon the investigatory expertise of cooperating law enforcement agencies. However, in evaluating cases and preparing prosecutions for trial, the MCAO does review and evaluate investigations and may request further investigatory efforts when necessary to making a charging decision or in preparing a case for trial. The MCAO will enter into a Memorandum of Understanding (MOU) with local law enforcement agencies to formalize past practices and ensure that appropriate and adequate investigative services are available to prosecutors for the handling of sexual assault cases from referral through trial. The MOU will include the provision that if, after case referral to the MCAO, further investigation is necessary, the MCAO will request further investigation from law enforcement or the Montana Department of Justice Division of Criminal Investigation (DCI). The MCAO agrees to utilize the services of specialized investigative expertise within the DCI whenever the necessary expertise for a particular sexual assault investigation is not available within local law enforcement offices. In addition, such expertise shall be requested whenever a conflict of interest would prevent an objective investigation or caseload demands on local law enforcement would unreasonably delay an investigation.

Nothing herein shall be construed to, or is intended to infer, that the MCAO has supervisory authority over, or control of, the investigatory functions of law enforcement.

- Computer Tracking System: Unless extended by mutual agreement of the parties, the MCAO will, within 120 days of the date of this Agreement and at MCAO's cost, design and implement a computer tracking system for victim advocates and victims to track the status of their cases. Subject to privacy limitations imposed by state and federal laws, the information in this tracking system will be accessible by in-house and external victim advocates.

- Supervisor Review: The MCAO agrees to continue enhanced supervision of prosecuting attorneys responsible for prosecuting sexual assault cases.

Supervisors will closely evaluate sexual assault investigations and prosecutions and ensure that such prosecutions are not undermined by lack of knowledge or impermissible bias and are conducted with the same level of attention and quality as prosecutions of other crimes.

Supervisors will review and approve decisions to decline prosecutions in sexual assault cases. This review will include an evaluation to assess whether the declination decision was made for any inappropriate reason. Supervisors will document their review.

The MCAO will conduct a periodic examination of supervisory review data in all sexual assault cases, including closed cases, declined cases and cases where the complaining witness declined to participate in the prosecution of such cases in an effort to identify any systemic problems, including deficiencies or delays in the investigation, charging decision, and prosecution of sexual assault cases, and indications, if any, of gender bias. The review will include information gathered from a review of case files and feedback from victims and victim advocates.

Improved communication and coordination with law enforcement and community partners. The MCAO agrees to implement measures to improve communication and coordination to effectively handle sexual assault cases. The Montana Attorney General, in consultation with the Technical Advisor, shall have sole authority and discretion to approve such measures, which will include:

- Cooperation with law enforcement and community partners: The MCAO agrees to increase and improve its communication, coordination and cooperation with community and law enforcement partners, including the Missoula Police Department (MPD), Missoula County Sheriff's Office (MCSO), University of Montana Police Department (UMPD), Crime Victim Advocate Office, and community advocates, including, without limitation, the Missoula YWCA, JUST Response, and the University of Montana SARC program. These efforts will be aimed at increasing the willingness and ability of sexual assault victims to participate in prosecutions of meritorious cases, facilitating the collection and analysis of relevant evidence, and minimizing the additional hardship that this participation can cause for sexual assault victims. These efforts will include:
 - Adherence to all agreed responsibilities set out in the Memorandum of Understanding between the MCAO and the MPD dated December 13, 2013 (a copy of which is attached hereto as Exhibit "A") and which shall also be applicable to any cases submitted to the MCAO by MCSO or UMPD. Exhibit A will be amended to 1) ensure that supervisors in the MCAO assess the quality of sexual assault investigations, provide written feedback to the Missoula Police; and 2) provide more guidance about the responsibilities of the MCAO for cases referred for review.
 - Entering into an MOU with the MCSO with substantially the same terms as the MOU with the MPD.

- Working with stakeholders to clarify, in writing, the roles and responsibilities of the MCAO, crime victim advocates and community advocates related to supporting and communicating with victims of sexual assault.
- Agreeing to participate in and support the City of Missoula's efforts to organize and lead a sexual assault safety and accountability audit.
- The MCAO agrees to provide training to the MPD and the MCSO detectives on the requirements of successful sexual assault prosecutions to facilitate effective investigations and minimize the influence of impermissible bias.
- Public education and outreach: In the interest of transparency and improved communication with its community and law enforcement partners, the MCAO agrees to provide the public with information about the criminal justice process, including basic information about the roles of prosecutors and law enforcement in responding to sexual assault, the types of charges available in cases of sexual assault, and the policies applicable to plea negotiation. Such information will be disseminated in a manner designed to reach the greatest number of victims of sexual assault and the law enforcement and community partners that interact with the victims of sexual assault in Missoula County, including through publication on the MCAO's website. This outreach will include outreach focused on communities at particular risk of perpetrating or being victimized by sexual assault. In collaboration with law enforcement and community partners, the Montana Attorney General and the MCAO agree also to conduct outreach to communities at particular risk for perpetrating or being victimized by sexual assault. The community outreach efforts will be funded at a level approved by, and paid by, the Montana Attorney General's Office.
- Data collection: To identify shortcomings and assess improvement, the MCAO agrees to collect specific information about decisions related to sexual assault referrals, initial meetings with victims, charging decisions, plea offers, case dispositions, and sentences, including, but not limited to, the dates and periods of time between each of these steps in the MCAO's handling of a sexual assault case. Except as to confidential criminal justice information, the MCAO agrees to collect and disseminate on a quarterly basis aggregate data on sexual assault cases to the Montana Attorney General and the public.
- Victim and advocate survey: The MCAO agrees to participate in the victim survey program currently underway through the University of Montana to obtain feedback from victims and advocates to help the MCAO continue to improve its handling of sexual assault cases. The MCAO will work cooperatively with the Missoula Police Department and the University of Montana to ensure that the sexual assault victim survey includes questions about the experience of sexual assault victims with the MCAO, including those victims who decline to participate in an investigation. The MCAO will seek to include questions asking whether and when victims meet with prosecutors; whether and how prosecutors prepare victims for proceedings related to the prosecution of their cases, including motions hearings, trials, and sentencing; whether and how prosecutors describe the prosecution process to victims; and whether and how prosecutors inform victims about their rights during the investigative or pretrial phases, during trial, and after trial and sentencing.

Expert Witness Expenses. In order to facilitate and support prosecution of sexual assault cases, the MCAO will seek additional funding from the Missoula County Board of Commissioners in the amount of \$10,000 a year for the next two fiscal years for the purpose of paying expert witnesses who may be needed to provide additional evidence in such cases. In addition, the Montana Attorney General will seek funding from the Montana Legislature to assist county attorneys for such purpose in the next session of the legislature. This funding is in addition to other sources of funding for experts and is not a limit on the ability of the MCAO to hire such experts as are necessary to pursue cases.

Assessment of this Agreement and Review of Cases by the Montana Attorney General. The Montana Attorney General, in consultation with the Technical Advisor, agrees to establish an appropriate plan to monitor compliance with the terms of this Agreement.

- **Monitoring:** The monitoring duties of the Montana Attorney General will include: the development and implementation of policies and training, and assessing implementation of other provisions of this Agreement, including, for example, the duty to evaluate supervision of sexual assault cases, coordination with law enforcement partners, and data collection. The Montana Attorney General will also provide technical assistance to the MCAO, as appropriate pursuant to the Agreement. Unless extended by agreement of the parties, an appropriate monitoring and compliance plan will be developed within 60 days of entering into a contract with the Technical Advisor. Following development of the monitoring and compliance plan, in consultation with the Technical Advisor, the Montana Attorney General will monitor compliance with this Agreement for a period of one (1) year.
- **Review of Cases:** For a period of one (1) year following execution of this Agreement by the Montana Attorney General, the Montana Attorney General will review all sexual assault cases where the MCAO has declined prosecution.

Reporting. The Montana Attorney General, in consultation with the Technical Advisor, will provide public quarterly reports regarding whether the requirements of this Agreement have been implemented, including an analysis of collected data from the MCAO and a report on all measurable improvements in the response to allegations of sexual assault. In the interest of transparency and improved communication with its community and law enforcement partners, the Montana Attorney General's quarterly reports and all recommendations and/or conclusions of the Technical Advisor shall be public with the exception of material covered by applicable privacy laws including the Montana Confidential Criminal Justice Information Act.

No Third-Party Rights. This Agreement does not create or give rise to any third-party rights, claims, damages, or causes of action. No person or entity is intended to be a third-party beneficiary of any provision of this 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 this Agreement.

Enforcement. This Agreement is not intended to create legal rights or obligations except as between the MCAO and the Montana Attorney General. Under no circumstances does this Agreement subject the MCAO or the Montana Attorney General to any liability, claim or action by the United States, including, without limitation claims by the United States alleging violations of civil rights or claims for breach of contract or specific performance.

The Montana Attorney General will exercise continuing supervisory authority over the MCAO to ensure compliance with this Agreement. If a question arises regarding the MCAO's performance or compliance with this Agreement, the Montana Attorney General shall give the MCAO notice of the issue and the parties will attempt to resolve the issue promptly by mutual Agreement. In the absence of a mutually acceptable agreement to resolve the issue, the Montana Attorney General shall have the sole authority and discretion under Mont. Code Ann. Section 2-15-501(5), to determine appropriate supervisory measures to obtain compliance with this Agreement.


Interpretation of this Agreement relating to the U.S. Department of Justice (USDOJ). The MCAO and the Montana Attorney General expressly deny that the USDOJ has any authority over locally elected county attorneys who fall under the statutory supervisory control of the Montana Attorney General pursuant to Mont. Code Ann. Section 2-15-501(5). Therefore, nothing in this Agreement constitutes any admission or agreement by the MCAO or the Montana Attorney General that the USDOJ has jurisdiction or authority to investigate or seek a remedy against the MCAO regarding its handling of sexual assault cases.

The MCAO expressly denies any claims of bias or statutory/constitutional violations. Consequently, nothing in this Agreement shall be construed as an acknowledgment, an admission, or evidence of liability of the MCAO for any violation of State or Federal law, violation of the State or Federal Constitution, or for any alleged gender bias by the MCAO. By entering into this Agreement, the MCAO does not imply that there is validity to any allegations alleged by the USDOJ.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

Dated this 10th day of June, 2014.


STATE OF MONTANA



Timothy C. Fox, Montana Attorney General

Dated this 10th day of June, 2014.

MISSOULA COUNTY ATTORNEY'S OFFICE



Fred Van Valkenburg, Missoula County Attorney

Memorandum of Understanding
Between
Office of the Missoula County Attorney and the City of Missoula Police Department
December 13, 2013

This Memorandum of Understanding (MOU), dated December 13th, 2013 is an Agreement by and between the Missoula County Attorney's Office (hereinafter MCAO) and the City of Missoula Police Department (hereinafter MPD), referenced collectively as "the Parties".

Purpose

The purpose of this Agreement is to enhance the Parties collaboration and communication in the investigation and prosecution of reported criminal sex offenses, seeking to attain positive outcomes in keeping with the best interest of justice. The Parties are committed to working together with community partners to provide victims with timely investigations and prosecution decisions and to improve the experience of victims in the criminal justice system to whatever degree possible.

The MCAO understands that the MPD is operating under an agreement entered into with the United States Department of Justice (DOJ) on 5/15/2013 and desires to support MPD efforts in complying with that agreement. The MCAO is the criminal justice agency responsible for prosecuting felony sex offenses that occur within the jurisdiction of the MPD, when reports have been sufficiently investigated and submitted for a charging decision.

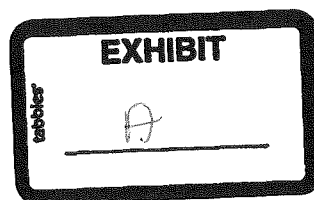
The Parties acknowledge that nothing in the DOJ/MPD agreement of 5/15/2013 or this Agreement is construed to restrict the MCAO's legal authority to conduct its responsibilities under Montana laws, the rules of criminal procedure and the Montana Rules of Professional Conduct applicable to attorneys.

Agreements of the Parties

Missoula Police Department

The MPD has separately and prior to this MOU entered into an agreement with DOJ which requires the MPD to improve and increase its communication, coordination and collaboration with community and law enforcement partners for the improvement of sexual assault investigations. MPD has adopted changes to improve policies, training, and investigations using victim-centered, offender-focused techniques.

To fulfill its responsibilities in this agreement with the MCAO, MPD agrees to conduct thorough investigations of all reported sex offenses in a timely, comprehensive and unbiased manner. Victim advocacy services will be sought for every victim, although victims will have the ability to decline those services. Consultation with prosecutors during the investigation phase is also encouraged to increase collaboration and assist in identifying priority cases for MCAO assistance.



Memorandum of Understanding
Between
Office of the Missoula County Attorney and the City of Missoula Police Department
December 13, 2013

Completed felony sex offense investigations will be referred to the MCAO as a request for either:

1. **REVIEW** - Referred for Prosecutor Review Only
These referrals are cases where, in the eyes of the MPD detective, the investigation has not developed probable cause necessary for arrest and prosecution.

2. **CHARGING DECISION** - Referred for Prosecution Charging Decision
This category of referral will include cases where a custodial arrest has already taken place for a specific charge and/or where in the opinion of the MPD detective there is probable cause sufficient to charge an offender with a felony offense.

All MPD submissions will include all written reports, statements or detailed statement summaries, identified evidence and a recommendation of specified charges the investigator believes are supported by facts found in those materials. The materials will be accompanied by a referral form to enable consistent documentation of the decisions reached in the process.

Office of the Missoula County Attorney

The MCAO is committed to helping MPD efforts to improve the experience of sex assault victims in the criminal justice system and thereby agrees to:

1. **Make assignments of cases referred for a charging decision a priority for its prosecutors.**
 - a. Sex assault cases referred for a charging decision are to be given high priority in the interest of achieving timely review and charging decisions. It is understood a charging decision should not be made in haste. To achieve improved communication and collaboration the prosecutor should make contact with the investigator within two weeks of referral. Charging decisions or requests for additional investigation should be reflected in writing upon the referral form and returned in a timely fashion. Regardless, MCAO reserves the right to decide when charges will be filed, what charges will be filed, whether to seek an arrest warrant for an alleged offender, what bail, if any, to seek with respect to alleged offenders and other such matters that are solely within the appropriate discretion of the prosecuting attorney.

Memorandum of Understanding
Between
Office of the Missoula County Attorney and the City of Missoula Police Department
December 13, 2013

- b. In instances of declination of prosecution, will provide a detailed written explanation as to the reason the case will not be prosecuted, i.e. – why the evidence is insufficient to obtain conviction, or prosecution is not in the best interest of justice, etc.
- c. Prosecutors will make a reasonable effort to review any sex assault case referred for review only within one month or provide explanation for delay. After review MCAO prosecutors will provide written guidance as to concurrence or suggested alternatives, including a request for additional investigation.

2. Consult with MPD investigative supervisors to discuss cases before closure.

- a. The MCAO will be responsive to efforts of MPD investigative supervisors to meet and discuss whether sexual assault cases were appropriately investigated and/or whether additional investigation could be useful prior to MPD closing the case.

3. Participate in face-to-face meetings with victims, advocates and the case investigators.

- a. The MCAO agrees that it can be helpful to victims to hear a unified message about the outcome of their criminal complaint and agrees to participate in joint victim meetings during the process as appropriate for the circumstances. When a referral for prosecution is made and results in a declination of charges, the prosecutor will be responsible for arranging for a joint meeting.

4. Commit to participation in the MPD-led Community Safety and Accountability Audit planned for 2014.

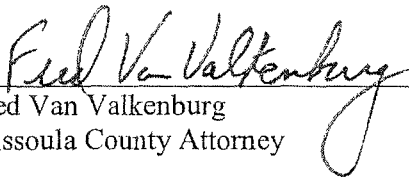
- a. The City of Missoula is responsible for organizing and leading a sexual assault safety and accountability audit during the term of the MPD agreement with DOJ. The MCAO agrees to be an engaged and collaborative participant in the audit alongside MPD, the University of Montana - Office of Public Safety and other community partners involved in responding to reports of Sexual assault in the Missoula community.


Memorandum of Understanding
Between
Office of the Missoula County Attorney and the City of Missoula Police Department
December 13, 2013

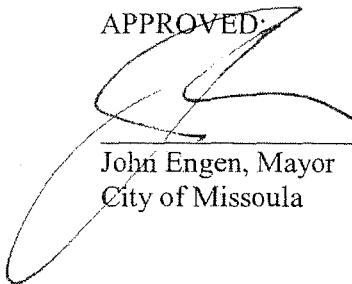
Term of Agreement

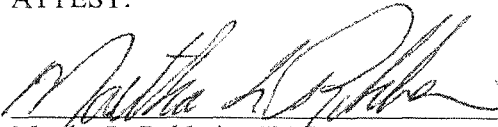
This Agreement shall remain in full force and effect from this date until modification by mutual agreement of both Parties, or until rescinded by either party after reasonable attempts to attain necessary modifications.

This Agreement entered into this 13th day of December, 2013 in Missoula County, MT.


Fred Van Valkenburg
Missoula County Attorney


Mark Muir, Chief of Police
Missoula Police Department

APPROVED:

John Engen, Mayor
City of Missoula

ATTEST:

Martha L. Rehbein, CMC
City Clerk

