

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES  
DEPARTMENT OF JUSTICE AND THE UNIVERSITY OF MONTANA  
REGARDING THE UNIVERSITY OF MONTANA OFFICE OF PUBLIC  
SAFETY'S RESPONSE TO SEXUAL ASSAULT**

## I. RECITALS

The United States Department of Justice initiated a public investigation of the University of Montana's Office of Public Safety ("OPS"), pursuant to its authority under the Violent Crime and Control Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), on May 1, 2012. The United States has provided the University of Montana (the "University") with preliminary feedback indicating areas of concern. The University has engaged with the United States in open dialogue about concerns raised by the United States regarding OPS' response to sexual assault.

The University of Montana and the United States (collectively, the "Parties") acknowledge that by entering into this Agreement, the University does not admit to the truth or validity of any claim made against it by the United States. DOJ agrees to forego the filing of any claim relating to OPS' response to sexual assault under Section 14141. The Parties acknowledge that nothing in this Agreement shall preclude DOJ from filing any other claims, including claims under Section 14141.

The Parties recognize that the University's Office of Public Safety ("OPS") plays an integral part in the University response to reports of sexual assault as well as in the overall Missoula community response to reports of sexual assault. The Parties recognize that public safety, even-handed and well-trained policing, and the community's trust in law enforcement are interdependent. The Parties recognize that OPS must respond to reports of sexual assault in accordance with applicable non-discrimination laws and University policies. The Parties' mutual intent is to ensure adherence to the Constitution and laws of the United States; improve the safety and security of victims of sexual assault on the University of Montana's campus and in Missoula; and increase public confidence in OPS's response to sexual assault.

The United States acknowledges that, by already taking proactive steps to help effectuate the intent of this Agreement, the University and OPS have demonstrated their commitment to improving OPS' response to reports of sexual assault within OPS' jurisdiction. The Parties intend that OPS 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. The Parties recognize the benefit of collecting and analyzing data regarding the incidence and outcomes of reports of sexual assault; of working

with an Independent Reviewer, community-based organizations, and other stakeholders to develop and implement the improvements described in this Agreement; and of evaluating the effect of OPS' efforts described in this Agreement.

The Parties acknowledge that this Agreement is intended to ensure the success of the University's efforts to improve its response to sexual assault, and that entry of this Agreement does not constitute an admission that the University has committed any wrongdoing.

Based on the intent described in the above Recitals, the University of Montana agrees to undertake the measures set forth below.

## **II. DEFINITIONS AND ABBREVIATIONS**

1. The following terms and definitions shall apply to this Agreement:
  - a) "OPS" means the University of Montana's Office of Public Safety and its agents, officers, detectives, supervisors, command staff, employees (both sworn and unsworn), and contractors.
  - b) "DOJ" means the United States Department of Justice's Civil Rights Division and its agents and employees.
  - c) "Effective Date" means the day the parties sign this agreement.
  - d) "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.
  - e) "Include" or "including" means "include or including, but not limited to."
  - f) "Independent Reviewer" means a person or team of people, independent from the University, who shall be selected to assess and report on the University's implementation of this Agreement.
  - g) "MCAO" means the Missoula County Attorney's Office.
  - h) "MPD" means the Missoula Police Department.
  - i) "MOU" means the Memorandum of Understanding currently in effect between OPS and MPD addressing the transfer of certain felony criminal investigations from OPS to MPD, and any future similar agreement.
  - j) "On campus" means anywhere that OPS officers have jurisdiction to investigate an alleged crime, as defined by Montana state law and/or any private agreements between

law enforcement agencies entered into consistent with state law;

- k) “OPS personnel” or “OPS employee” means all OPS employees, contractors, and volunteers, including command staff, supervisors, officers, detectives, and civilian employees.
- l) “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 OPS personnel, and providing specific direction in how to fulfill those duties, functions, or obligations.
- m) “Sexual assault,” for the purposes of this Agreement, means both rape and other types of 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.
- n) “Shall” means that the provision imposes a mandatory duty.
- o) “Supervisor” means a sworn OPS employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for OPS personnel.
- p) “University” and “UM” mean the University of Montana.

### **III. IMPROVING OPS’ RESPONSE TO SEXUAL ASSAULT**

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

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

2. In consultation with an expert in police response to sexual assault, OPS shall develop a detailed and victim-centered sexual assault response policy that incorporates the requirements of this Agreement and comports with best practices and current professional standards. OPS’ sexual assault policy should include guidance on responding to sexual assault and incorporate the requirements of the International Association of Chiefs of Police Model Policy (see Attachment A) 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. OPS shall provide initial and ongoing annual in-service training to all OPS officers and detectives, and recruits about law enforcement response to sexual assault. This initial and annual in-service training shall ensure that all OPS 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 shall address also any training needs identified throughout the previous year. The initial and in-service training shall be of sufficient length and scope to include the following topics:

- a. OPS' new 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; drug and alcohol-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. Crime scene preservation;
- f. Taking statements from individuals reporting sexual assault;
- 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, if available, or presentations which adequately convey victims' experiences and shall include 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. OPS shall provide additional in-depth training in sexual assault investigations to all OPS 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. OPS personnel who provide direct supervision of officers who respond to reports of sexual assault and 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 shall also include testing and/or writings that indicate that OPS 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 OPS policy, and

all applicable OPS officers and employees shall be trained on how to meet the requirements of this Agreement. OPS 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. OPS will seek to address all reasonable concerns raised by the Independent Reviewer or DOJ. If these concerns cannot be resolved, either Party may seek resolution by the Court. Upon resolution, OPS shall publish and/or implement the policies, protocols, and/or curricula within 30 days.

9. OPS' sexual assault related policies shall be publicly available.

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

10. OPS shall enhance and improve policy, training, and oversight to ensure that officers :  
1) recognize the prevalence of non-stranger and alcohol- or drug-facilitated sexual assault, and the relative infrequency of false reporting, and 2) accordingly take all appropriate investigative steps when investigating non-stranger sexual assault, sexual assault facilitated by alcohol or drugs, 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. OPS 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 considerate to the victim, wherever 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 or obtaining appropriate transport for 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. OPS shall establish and implement measures to ensure close supervision and internal oversight of all sexual assault investigations. These measures shall include:

- a. Developing and implementing 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 OPS officers;
- c. Non-stranger and alcohol or drug-facilitated sexual assault investigations shall be assigned only to those officers with the demonstrated skills, interest, and training to conduct those investigations effectively and without bias.
- d. Supervisors shall approve in writing the decision not to refer for prosecution any sexual assault investigation conducted by OPS;
- e. A supervisor shall review all sexual assault reports within 24 hours of the report being taken to ensure consistency with OPS policy for initial officer response and documentation;
- f. A supervisor shall review all sexual assault investigations undertaken by OPS to ensure that a comprehensive investigation has been conducted and all indicated follow up has been completed or the case has been referred to MPD, as appropriate, before they are closed or referred to the prosecutor; and
- g. OPS 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, OPS shall increase and improve its communication, coordination, and collaboration with community and law enforcement partners, including the University, MPD, prosecutors, and University, community, and systems advocates. OPS shall:

- a. Take affirmative steps to clarify, through policies, procedures, and/or training, the respective roles and responsibilities of MPD and OPS pursuant to the MOU between those two agencies. These steps shall clarify OPS' responsibilities between the time a sexual assault report is received and the time MPD assumes responsibility for a referred sexual assault investigation.
- b. Take affirmative steps to ensure effective communication and coordination between OPS and UM and MPD;
- c. Increase coordination and communication with medical staff and forensic examiners interacting with individuals reporting sexual assault to improve sexual assault investigations and reduce unnecessary burdens on individuals reporting sexual assault.

Increased coordination shall include:

- i. briefing the medical staff about the reported assault prior to the exam;
  - ii. where OPS remains the investigative agency, receiving a briefing following the exam from the medical staff regarding their findings, including the results of the forensic examination; and
  - iii. where OPS remains the investigative agency, including a summary of the findings of the forensic examinations, including findings related to all injuries, in the case report; and
- d. Further strengthen the partnership and improve the cooperation between OPS 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 the University's response to sexual assault, OPS shall enhance its data collection, analysis, and reporting. Data collection shall include the following:

- a. Collect and record information about rates of reports of sexual assault on campus and track reports of sexual assault received by OPS through their outcomes in the court system, where applicable. OPS shall collect and record the number of cases reported to OPS; the number of cases referred by OPS to MPD; and the number of cases in which OPS assisted in transporting or obtaining transport for a victim to a medical facility equipped to perform a medical forensic exam. To the extent that OPS can reasonably obtain this information, it shall collect and record the number of reported sexual assaults on campus, regardless of the entity to whom the sexual assault was reported; and the number of cases referred to OPS by Missoula 911 or the YWCA Rape Crisis Hotline.
- b. To the extent permissible by applicable law, OPS 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; and
- c. 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, legal 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 OPS, and all investigations of those reports opened by OPS, since the Effective Date. Thereafter, this external review group shall

review all reports of sexual assault received by OPS and investigations of those reports opened by OPS, since the external review group's last such review.

16. The external review group shall, in conjunction with OPS, 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, where they exist, and to review feedback collected by OPS 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. This protocol shall be approved by DOJ and the Independent Reviewer.

17. OPS shall develop a protocol to ensure that feedback and recommendations from this external review group are shared with OPS 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. The University shall participate in and cooperate with any effort by the City of Missoula to organize and lead a sexual assault safety and accountability audit ("Audit") designed to assess how Missoula City, Missoula County, and the University of Montana respond to and collaborate to address sexual assault, with a focus on enhancing victim safety, support, and participation in the law enforcement process.

**VI. INDEPENDENT OVERSIGHT**

**A. Selection of the Independent Reviewer**

19. The parties have jointly selected Thomas R. Tremblay to serve as the Independent Reviewer to oversee the terms of this Agreement.

20. The Independent Reviewer shall continue in the role as described in this Agreement until the University demonstrates compliance with the entire Agreement. The Parties anticipate that compliance can be demonstrated no later than June 30, 2015.

21. The University shall bear all fees and costs of the Independent Reviewer. In selecting

the Independent Reviewer, DOJ and the University recognize the importance of ensuring that the fees and costs borne by the University are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Independent Reviewer. In the event that any dispute arises regarding the reasonableness or payment of the Independent Reviewer's fees and costs, the University, DOJ, and the Independent Reviewer shall attempt to resolve such dispute cooperatively.

22. The University 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**

23. During the term of this Agreement, the Independent Reviewer shall not have duties, responsibilities, or authority for either Party other than those conferred by this Agreement.

24. 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 OPS' response to, and investigation of, reports of sexual assault.

25. 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.

26. If the Independent Reviewer ends his or her position as Independent Reviewer, the former Independent Reviewer may not enter into any contract with DOJ or the University 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**

27. The Independent Reviewer shall conduct compliance reviews to determine whether OPS has implemented and continues to comply with the material requirements of this Agreement. Compliance with a material requirement of this Agreement requires that OPS 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.

28. In addition to compliance reviews, the Independent Reviewer shall conduct periodic outcome assessments with the intent of determining whether OPS' implementation of this Agreement is having its intended effect, and whether the implementation of this Agreement has had any unintended negative impacts. Individual 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 OPS;
- b. Rate of victim participation in OPS sexual assault investigations;
- c. Sexual assault victims' experience with OPS, including those victims who declined to participate in an investigation;
- d. OPS 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 OPS can reasonably obtain such information, prosecutors' stated reasons for declining to charge sexual assault cases referred by UM/OPS for prosecution;
- g. To the extent that OPS can reasonably obtain such information, rate of declination of sexual assault cases referred by UM/OPS for prosecution;
- h. First Step multi-disciplinary team experience with OPS;
- i. UM's Student Assault Resource Center's experience with OPS;
- j. UM'S Title IX Coordinator's experience with OPS;
- k. Residence Life Assistants' experience with OPS;
- l. Outcome measures developed by the external review group and/or any resulting from any Missoula City Safety and Accountability Audit.

29. In conducting these compliance reviews and outcome assessments, the Independent Reviewer may use any relevant data collected and maintained by the University that the Independent Reviewer and DOJ deem reliable and sufficiently complete.

**D. Access and Confidentiality**

30. 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, the Independent Reviewer reasonably deems necessary to carry out the duties assigned to the Independent Reviewer by the Agreement. To facilitate his or her work, the Independent Reviewer may conduct on-site visits and assessments without prior notice to the University. The Independent Reviewer will cooperate with the University 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.

31. DOJ and its consultants, experts, and agents will have full and direct access to all University staff, employees, facilities, data, and documents, including both open and closed sexual assault investigative files, reasonably necessary to review OPS' compliance with and enforce this Agreement. DOJ and its consultants, experts, and agents will cooperate with the University 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**

32. Within 45 days of the Independent Reviewer's appointment, the Independent Reviewer will develop a review plan, including proposed interim deadlines for OPS' implementation of the requirements of this Agreement. The review 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.

33. At least 45 days prior to the initiation of any outcome measure 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 s/he is not modifying the methodology as proposed.

34. 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.

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

35. 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 University or DOJ, provide technical assistance consistent with the Independent Reviewer's responsibilities under this Agreement.

#### **G. Comprehensive Assessment**

36. Upon the Independent Reviewer's determination that the University has attained compliance with this Agreement, the Independent Reviewer shall conduct a comprehensive assessment to determine whether and to what extent: (1) the outcomes intended by this Agreement have been achieved, and (2) any modifications to the strategies set forth in this 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 maintaining achievement. Based upon this comprehensive assessment, the Independent Reviewer shall make recommendations for achieving and sustaining intended outcomes.

## **H. Independent Reviewer Reports**

37. The Independent Reviewer shall produce 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 OPS 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 of the report shall be provided to the Parties. The underlying data for each review shall not be publicly available but shall be retained by the University 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 OPS' 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.

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

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

40. 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 contracts or subcontracts for Independent Review of the Agreement.

41. 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 University or its departments, officers, agents, or employees.

#### **I. Independent Reviewer Budget**

42. Within 30 days of appointment, the Independent Reviewer shall submit to the Parties a proposed budget for University Fiscal Year 2014. Using the proposed budget for University Fiscal Year 2014, the Independent Reviewer shall also propose an equivalent amount prorated through the remainder of the University Fiscal Year 2013.

43. The Parties shall raise with the Independent Reveiwer any objections they may have to the proposed budget within 10 business days of receipt.

44. Thereafter, the Independent Reviewer shall submit annually a proposed budget to the Parties for their review by April 1 in accordance with the process set forth above.

45. 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.

46. The Independent Reviewer will submit monthly statements to the Parties, detailing all expenses the Independent Reviewer 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 days after submission of the statements by the Independent Reviewer, the Parties will notify the Independent Reviewer of their approval of the statement. The University 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**

47. 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 University 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 University. The University shall have 30 days from receipt of such notice to cure the failure. During the 30-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 30-day period, DOJ may, without further notice to the University, file an action in the United States District Court for the District of Montana (the "Federal Court Action") against the University for breach of contract and may seek specific performance and any other appropriate form of relief.

48. In connection with the Federal Court Action:

- a. The University shall stipulate to in personam jurisdiction and venue in the United States District Court for the District of Montana (the "Court").
- b. The University 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 Legal Counsel for the University, with a copy to OPS, will be deemed good and sufficient service upon the University;
- c. The Parties agree to an expedited trial of the Federal Court Action.

49. In the event the Court finds that the University has engaged in a material breach of the Agreement, the parties hereby stipulate that they will move jointly for the Court to enter the

Agreement and any modifications as an order of the Court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement.

50. Should the Independent Reviewer determine that any portion of the Agreement is ineffective at achieving the desired outcomes, 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.

51. 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.

52. 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.

53. 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.

54. The University shall require compliance with this Agreement by the University's respective officers, employees, agencies, assigns, or successors.

55. 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.

56. Nothing in this Agreement shall be construed as an acknowledgement, an admission, or evidence of liability for violations of any legal responsibility by the University, and this Agreement may not be used as evidence of liability in this or any other civil or criminal proceeding.

57. The University agrees to promptly notify DOJ if any term of this Agreement becomes subject to collective bargaining consultation and to consult with DOJ in a timely manner regarding the position the University and OPS take in any collective bargaining consultation connected with this Agreement.

58. 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**

59. The Parties anticipate that the University will have complied with all provisions of this Agreement by June 30, 2015.

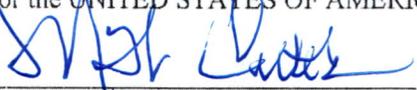
60. The Agreement shall remain in effect until June 30, 2015 unless any of the following occur:

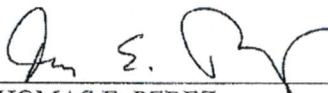
- a. The Parties jointly agree, in writing, to terminate the Agreement before June 30, 2015, on the grounds that the University has complied with this Agreement and maintained compliance for one year; or
- b. The United States disputes that the University is in compliance with the Agreement by June 30, 2015 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 above ¶ 47.

61. “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 compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute compliance.

Respectfully submitted, this 9th 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

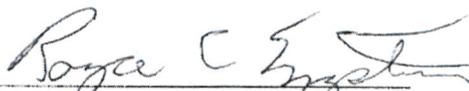
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Special Litigation Section

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For the UNIVERSITY OF MONTANA

  
PRESIDENT ROYCE C. ENGSTROM