Memorandum of Understanding

Between

The U.S. Equal Employment Opportunity Commission

and

The U.S. Department of Justice - Civil Rights Division

Regarding

Title VII Employment Discrimination Charges Against State and Local Governments

The purpose of this Memorandum of Understanding (MOU or Agreement) is to further the objectives of Congress under Title VII of the Civil Rights Act of 1964, as amended (Title VII), with respect to employment discrimination charges filed against state and local governments. This MOU broadly promotes interagency coordination and seeks to maximize effort, promote efficiency, and eliminate duplication and inconsistency in the enforcement of the federal employment discrimination laws. It includes provisions for coordination of the investigation of charges of discrimination on the basis of any characteristic protected by Title VII. Further, the MOU includes provisions for sharing information as appropriate and to the extent allowable under law.

This MOU does not supersede the May 12, 2011, Memorandum of Understanding between the Equal Employment Opportunity Commission (EEOC) and the Department of Justice Civil Rights Division (CRT) relating to the sharing of Employer Information Report (EEO-1) data or the existing MOU between EEOC and the Office of Special Counsel for Immigration Related Unfair Employment Practices. In addition, this MOU applies only to coordination efforts and charges involving bases covered by Title VII.

EEOC and CRT share authority for the enforcement of Title VII with respect to state and local governmental employers.

As set forth in Title VII, EEOC receives and investigates charges of discrimination against state and local governmental employers and, if it finds cause to believe that a Title VII violation has occurred, attempts to conciliate those charges. However, under the statute, the Department of Justice is the sole federal entity that has the authority to sue such employers for Title VII violations. That authority has been delegated to CRT. Therefore, if EEOC's efforts to conciliate a Title VII charge against a state or local government are unsuccessful, EEOC refers the charge and its investigative file to the Employment Litigation Section (ELS) of CRT.

Following a charge referral from EEOC, CRT makes a determination whether to bring a lawsuit based on the charge. In making this determination, CRT relies on the information obtained by EEOC in its investigation, as well as the results of any supplemental investigation that CRT may

conduct. If CRT decides not to bring a lawsuit, it issues to the charging party a notice of right to sue.

In addition, both EEOC and CRT have authority to initiate Title VII investigations of the employment practices of state and local governmental employers. EEOC Commissioners have the authority to file a Commissioner Charge alleging that such an employer is engaged in discrimination in violation of Title VII. EEOC processes Commission Charges in the same way it processes other charges under Title VII. If EEOC's efforts to conciliate a Commissioner Charge against a state or local government are unsuccessful, EEOC refers the charge to CRT, and CRT has the authority to bring a lawsuit based on the charge. CRT also has the authority to initiate an investigation of the employment practices of a state or local governmental employer to determine whether the employer is engaged in a pattern or practice of discrimination in violation of Title VII. CRT then may bring a lawsuit under Title VII against the employer whenever it has reason to believe that the employer is engaged in such a pattern or practice.

There are other areas in which CRT's and EEOC's enforcement may overlap. For example, while CRT is the only federal entity to which Title VII gives authority to bring suits against state and local governmental employers, Title VII gives EEOC the authority to sue labor organizations that represent the employees of such employers and employment agencies that refer workers to such employers. Furthermore, while CRT has the authority to bring suits against state and local government employers, only EEOC has the authority to issue subpoenas during EEOC investigations and petition district courts to enforce those subpoenas. In addition, while CRT has the authority under Title VII to sue state and local governmental employers who engage in wage discrimination on the basis of sex, EEOC has the authority under the Equal Pay Act to sue such employers for paying unequal wages to men and women who perform substantially equal jobs. Finally, when a state or local governmental employer discriminates against an individual or group in violation of Title VII and the Age Discrimination in Employment Act (ADEA), CRT has the authority to sue the employer under Title VII but not the ADEA, and EEOC has the authority to sue the employer under the ADEA but not Title VII.

Given their shared and overlapping responsibilities, EEOC and CRT have a common interest in ensuring that enforcement of Title VII is consistent, effective, and not duplicative. With respect to particular charges, EEOC and CRT share a common interest in ensuring that allegations of discrimination in violation of Title VII are effectively investigated and, where a violation is found, appropriate remedies are obtained. EEOC and CRT enter into this Agreement recognizing that effective coordination and cooperation is important to further the public interest in eliminating and remedying unlawful employment discrimination.

The Agreement is intended to authorize collaboration between the agencies to the fullest extent desired by the parties and permitted by law, including with regard to investigation, resolution, and litigation of charges; development of policy guidance; engaging in outreach and public education; training of each agency's staff; and sharing of resources, as may be appropriate to further the purposes of this Agreement. Nothing in this Agreement, however, affects or changes EEOC's enforcement priorities, including those set forth in its Strategic Enforcement Plan or the

District Complement Plans, and CRT acknowledges and accepts that allocation of EEOC staff and other resources will be governed by those priorities.

The parties to this MOU agree as follows:

1. Sharing of Information

(a) EEOC and CRT shall share any information that supports each agency's enforcement of Title VII. Such information shall include, but is not limited to: complaints; charges; investigative files; reports filed or data produced by employers; data, reports, and other information regarding employment tests or other selection devices; and statistical analyses or summaries.

(b) Requests for information under this section can be made by the following individuals:

(i) For EEOC

- The Chair
- A Commissioner
- The General Counsel
- The Deputy General Counsel
- The Director, Office of Field Programs
- The Director, Field Management Programs
- Any EEOC District Director, the Director Washington Field Office, or their designees
- Any EEOC Regional Attorney or his/her designee
- The EEOC MOU Coordinator

(i) For CRT

- The Assistant Attorney General, Civil Rights Division
- Any Deputy Assistant Attorney General, Civil Rights Division or their respective designees
- The Chief of ELS
- The DOJ MOU Coordinator

(c) Requests for information under this section should be directed to the following individuals:

(i) EEOC requests for information should be directed to any of the individuals listed in (b)(ii) with the exception of the Assistant Attorney General, Civil Rights Division.

(ii) CRT requests for information should usually be directed to the District Director, the Washington Field Office Director, or the Regional Attorney where CRT believes that the information is located. CRT requesting officials may also direct their requests for information to any of the EEOC officials listed in (b)(i) with the exception of the Chair, a Commissioner, or the General Counsel.

(d) EEOC and CRT responses to requests for information under this section shall be made to the official who requested the information. The responding agency will provide copies of the requested documents or make the requested documents available to the requesting agency for inspection and copying and/or loan within ten days of receipt of the request, or as soon as practicable thereafter consistent with the availability of the responding agency's staff and other resources and the responding agency's own priorities.

(e) Any transfer of information under this MOU shall only be made where not otherwise prohibited by law and in accordance with paragraphs 2 and 3 of this Agreement. Information transferred between EEOC and CRT under this Agreement shall not be used by the receiving agency for purposes other than the enforcement of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act.

(f) This Agreement does not prohibit the sharing of information between EEOC and CRT by any means other than those identified in this section to the extent that such means are agreed to by both agencies and not prohibited by law.

(g) Sections (b) and (c) of this paragraph do not apply to the sharing of information related to a particular charge of discrimination that occurs when:

(i) the charge is referred to ELS after EEOC's efforts to conciliate the charge have failed; or

(ii) EEOC and ELS work collaboratively during the EEOC's processing of the charge prior to such a referral.

2. Disclosure of Information to Third Parties

(a) All requests by non-parties to this Agreement, including charging parties, respondents, and their attorneys, that are received by EEOC and request disclosure of information that was initially compiled, collected, or created by

CRT or was provided by CRT pursuant to section 1 of this Agreement, shall be coordinated with CRT. The decision of CRT regarding disclosure of such information shall be honored by EEOC. To facilitate coordination, EEOC shall segregate and maintain information relating to a charge of discrimination that was initially compiled, collected, or created by CRT in a separate file or tab in its investigative file relating to the charge.

(b) All requests by non-parties to this Agreement, including charging parties, respondents, and their attorneys, that are received by CRT and request disclosure of information that was initially compiled, collected, or created by EEOC or was provided by EEOC pursuant to section 1 of this Agreement, shall be coordinated with EEOC. The decision of EEOC regarding disclosure of such information shall be honored by CRT. To facilitate coordination, CRT shall segregate and maintain in a separate file information relating to a charge of discrimination that (1) is not included in the EEOC investigative file for the charge and (2) was initially compiled, collected, or created by EEOC.

(c) Under this MOU, EEOC may send information that was initially compiled, collected, or created by CRT to a State or Local Fair Employment Practice Agency (FEPA) with which EEOC has a current charge resolution contract and work sharing agreement containing provisions required by Section 706 and 709 of Title VII under conditions agreed to by EEOC and CRT.

(d) Before producing as part of initial disclosures under the Federal Rules of Civil Procedure documents from an EEOC investigative file that disclose the impressions, analysis, or other confidential communications of an EEOC attorney or investigator, whether among EEOC employees or between EEOC and ELS employees, and before responding to a discovery request seeking such documents, ELS attorneys will conduct an initial review of the EEOC file and prepare and provide to the EEOC legal unit a draft privilege log along with a copy of any documents contained in the EEOC file that, based on its initial review, ELS intends to produce.

(e) Before producing as part of initial disclosures under the Federal Rules of Civil Procedure documents from an EEOC investigative file that disclose the impressions, analysis, or other confidential communications of an ELS attorney or other employee, whether among ELS employees or between EEOC and ELS employees, and before responding to a discovery request seeking such documents, EEOC attorneys will conduct an initial review of the EEOC file and prepare and provide to ELS a draft privilege log along with a copy of any documents contained in the EEOC file that, based on its initial review, EEOC intends to produce.

3. Confidentiality

(a) Information shared under section 1 of this Agreement, as well as information shared between EEOC and CRT related to a particular charge of discrimination which EEOC has referred to ELS following a conciliation failure or when the two agencies have worked together prior to such a referral, shall be considered confidential. The sharing of information under these circumstances shall not constitute a waiver of any otherwise applicable privilege or protection from discovery or other disclosure. Otherwise applicable confidentiality requirements of Sections 706(b) and 709(e) of Title VII apply to such information and documents, and CRT shall treat such information as if the confidentiality requirements of Sections 706(b) and 709(e) of Title VII applied to officers and employees of CRT to the same extent that they apply to officers and employees of EEOC. In addition, EEOC and CRT will observe any confidentiality requirements imposed by the Privacy Act on such information.

(b) When CRT receives, from a source independent of EEOC, the same information that is subject to subparagraph (a) of this section, this section does not preclude making public the information received from the independent source. However, CRT will observe any confidentiality requirements that otherwise would apply to such information, including any confidentiality requirements imposed by the Privacy Act, and will inform EEOC before disclosing the information from the independent source.

(c) When EEOC receives, from a source independent of CRT, the same information that is subject to subparagraph (a) of this section, this section does not preclude making public the information received from the independent source. However, EEOC will observe any confidentiality requirements that otherwise would apply to such information, including any confidentiality requirements imposed by Sections 706(b) and 709(e) of Title VII or the Privacy Act, and will inform CRT before disclosing the information from the independent source.

(d) Any communications between CRT and EEOC relating to a complaint or charge of discrimination or to a CRT or EEOC investigation pursuant to Title VII are and shall be treated as privileged or protected from disclosure as work product to the same extent that the communication would be privileged or protected from disclosure if the communication had been made among CRT officers or employees or among EEOC officers or employees.

(e) Any communications between a CRT attorney and a charging party in the course of an EEOC investigation are and shall be treated as privileged or protected from disclosure to the same extent that the communication would be privileged or protected from disclosure if the communication had been made between an EEOC attorney and the charging party.

4. Notification and Consultation Procedures

EEOC and CRT shall establish procedures for notification and consultation at various stages of their respective investigative and enforcement activities in order to develop potential joint enforcement initiatives, increase efficiency, ensure coordination, and minimize duplication. Such procedures may include, but are not limited to:

(a) Appointment of MOU Coordinators

CRT and EEOC seek to ensure consistent Title VII enforcement procedures and to make the most efficient use of their available resources through coordination and communication. Therefore, within thirty (30) days of the effective date of this MOU, EEOC and CRT shall each appoint an MOU Coordinator who will be available to assist, as necessary, in ensuring a full understanding of and compliance with the terms of this MOU.

(b) Establishment of Field Cooperation Procedures

(i) At least once a year, EEOC's Director of the Office of Field Programs will have the EEOC Office of General Counsel and the Chief of ELS or their respective designees discuss with the EEOC District Directors enforcement priorities and the status of cooperation and coordination between CRT and EEOC's field offices, procedures for enhancing coordination between CRT and EEOC field offices, and any other topic that enhances the agencies' mutual enforcement interests.

(ii) EEOC's District Directors and ELS will establish procedures for consultation and cooperation with ELS staff regarding individual charges against state and local governmental employers prior to a failure of conciliation and referral of a particular charge to CRT. Under these procedures, ELS staff will work through the District Director or his or her designee prior to communicating with individual EEOC investigators, unless otherwise agreed to by the District Director (or designee). Additionally, ELS recognizes that EEOC's efforts under this initiative may be limited by the agency's own priorities and resources. To enhance cooperation and improve enforcement efforts, the procedures developed may include, but not be limited to:

- ELS attorneys consulting periodically with EEOC staff assigned to the charge;
- ELS attorneys reviewing information or documents obtained or created by EEOC in the course of its investigation;
- ELS attorneys identifying any relevant legal issues and conducting appropriate research;

- ELS attorneys providing input to EEOC staff regarding investigative plans, including testimony and documents to be sought;

- ELS attorneys consulting with EEOC regarding issuance of subpoenas, including the testimony and documents to be sought;

- ELS participation in witness interviews conducted by EEOC when such participation may eliminate the need to re-interview a witness in any later supplemental investigation by ELS in the event that the charge is referred to CRT following a cause determination and failure of conciliation.

(iii) Cases Requiring Prompt Judicial Action During the Pendency of the EEOC Investigation. Section 706(f)(2) of Title VII authorizes the EEOC, or the Attorney General in a matter involving a government, governmental agency or political subdivision, to bring an action for appropriate temporary or preliminary relief pending final disposition of a charge, whenever the EEOC concludes, based on a preliminary investigation, that prompt judicial action is necessary to carry out the purposes of Title VII. Accordingly, the EEOC and CRT agree on the following procedures for coordinating the process of obtaining preliminary relief under Title VII for cases involving a government, governmental agency, or political subdivision.

a. Charges Involving Harassment. In a matter involving a government, governmental agency or political subdivision, the EEOC will promptly notify [DOJ CONTACT] when its preliminary investigation of a charge alleging harassment under Title VII, including sexual harassment, reveals credible evidence that prompt judicial action is necessary to carry out the purposes of Title VII. The [DOJ CONTACT] will then promptly determine whether to utilize Section 706(f)(2) of Title VII to seek temporary or preliminary relief pending final disposition of the charge.

To facilitate and expedite Section 706(f)(2) procedures, if the EEOC identifies a charge of discrimination alleging harassment against a government, governmental agency or a political subdivision that the EEOC determines is appropriate for temporary or preliminary relief under Section 706(f)(2), it will provide to CRT those documents relating to the charge that the EEOC determines will facilitate such determination, subject to the confidentiality requirements of Section 3 herein. Other terms of

cooperation are to be agreed upon by the EEOC and CRT, to the extent they are not stated in this MOU.

b. Other Cases Requiring Prompt Judicial Action. The procedures for harassment cases stated in Section 4(b)(iii)(a) shall apply to all charges alleging other forms of discrimination against a government, governmental agency or political subdivision under Title VII that are identified by the EEOC as appropriate for Section 706(f)(2) relief.

(iv) EEOC and CRT will exchange information obtained in the course of their respective enforcement activities relating to potential systemic or pattern or practice discrimination by state and local governmental employers. Such information shall be provided to the receiving agency's MOU Coordinator or the MOU Coordinator's designee and shall include, but not be limited to, the following:

- EEOC will provide to ELS a copy of any Commissioner Charge alleging systemic discrimination by a state or local governmental employer as soon as practicable after the charge is filed.

- EEOC will provide to ELS a copy of any charge that alleges that a state or local governmental employer is engaged in a pattern or practice of discrimination as soon as practicable after the charge is filed.

- ELS will notify EEOC of each pattern or practice investigation opened by ELS as soon as practicable after notice of the investigation is given to the relevant employer.

(v) In developing procedures under this MOU, EEOC and CRT are guided by the following principles:

- EEOC is responsible for making an independent determination regarding the existence of reasonable cause to believe that a violation of Title VII has occurred, for formulating conciliation proposals, for approving conciliation agreements, and for determining whether and when conciliation has failed.

- EEOC is responsible for making an independent determination regarding the appropriate resources to be allocated to the investigation of charges of discrimination filed against state or local government employers. EEOC and ELS shall work collaboratively to ensure that ELS recommendations regarding

investigations do not operate to the detriment of the resource needs and overall enforcement priorities of EEOC.

- In working collaboratively on the investigation of a charge of discrimination, ELS and EEOC will communicate regularly regarding the status of the investigation, respond to inquiries and provide feedback as promptly as possible, and otherwise avoid creating delay in the EEOC's processing of the charge.

- The standards that apply to CRT's determination of whether to bring a lawsuit based on a charge are not necessarily identical to those that apply to EEOC's cause determination, and CRT's litigation decisions may be based on factors that include, but are not limited to, the merits of the charge or the strength of the factual record compiled by EEOC.

- EEOC's Legal Unit (i.e., the Regional Attorney and/or EEOC legal staff responsible for a matter) shall be included in any subpoena-related consultation and the final determination whether to petition the U.S. District Court to enforce the subpoena rests with the Legal Unit.

- EEOC's Legal Unit and ELS shall consult with each other in any matter in which there is the possibility of dual EEOC/CRT legal enforcement, for example, matters involving allegations under both Title VII and the ADEA by the same employees against the same or related employers.

- ELS attorneys shall assert a privilege when a state or local government employer attempts to secure from CRT the impressions, analysis, or other confidential communications of an EEOC investigator or attorney, whether among EEOC employees or between EEOC and ELS employees.

- EEOC attorneys shall assert a privilege when a state or local government employer attempts to secure from EEOC the impressions, analysis, or other confidential communications of an ELS attorney, whether among ELS employees or between EEOC and ELS employees.

- Until the Assistant Attorney General for Civil Rights has authorized a lawsuit, neither EEOC nor CRT staff can represent that CRT will or will not file a lawsuit on a particular charge.

(c) Coordination with Other Agencies

To the extent that information from, or coordination with, other agencies will support CRT's enforcement of Title VII, EEOC will as practicable facilitate communication between CRT and such other agencies, including but not limited to any state or local agency with which EEOC contracts.

(d) Sharing of Staff Resources

In support of the joint enforcement of Title VII with respect to state and local governmental employers, and consistent with their respective enforcement authorities, the EEOC and CRT will share staff resources if available and based on each agency's own priorities.

(e) Other Coordination Procedures

Representatives from CRT and the EEOC shall meet as necessary to discuss topics of mutual interest to both agencies that further the purposes of this Agreement and, when appropriate, establish procedures for coordination of efforts related to such topics. The topics may include, but not be limited to:

(i) Access to and exchanges of electronically stored information and databases;

(ii) Procedures for coordinated collection, sharing, and analysis of data;

(iii) Analytical approaches to identifying and remedying employment discrimination;

(iv) Training programs and materials;

(v) Detailing or temporarily assigning employees between the agencies to increase collaboration;

(vi) Outreach; and

(vii) Policy statements and guidance, as appropriate, to further the purposes of this Agreement.

5. Review and Modification

EEOC and CRT shall conduct periodic reviews of the implementation of this Agreement on an ongoing basis. The Assistant Attorney General for the Civil Rights Division and the Chair of the Equal Employment Opportunity Commission will each keep the other informed, either directly or through designees, of any new program, activity, or project that may be initiated or of any augmentation or revision of an existing program, activity, or project that affects the implementation of this Agreement.

The provisions of this MOU may be reviewed and jointly modified as appropriate when it is determined by CRT and EEOC that such review and modification is in the interest of their respective enforcement responsibilities.

6. Effect of Agreement

This Agreement is an internal Government agreement. It is not intended to, and does not, confer upon any private person, or employer, or other entity any rights against the United States or any of its agencies or officers.

Nothing in this Agreement shall be interpreted as limiting, superseding or otherwise affecting either party's normal operations or decisions in carrying out its statutory or regulatory duties. This Agreement does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

This Agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates the parties to expend appropriations or enter into any contract or other obligation.

7. Effective Date

This MOU will take effect immediately once signed by both parties and shall continue in force indefinitely. It may be terminated by either party upon 90 days written notice to the other agency. Except as expressly provided in this Agreement, this MOU constitutes the entire agreement between CRT and EEOC with respect to the matters set forth herein.

8. Signatures

Signed at Washington, DC, this 21st day of December of 2018

FOR THE U.S. DEPARTMENT OF JUSTICE

Eric S. Dreiband

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FOR THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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