

MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES AND THE
CITY OF VILLA RICA, GEORGIA

December 23, 2003

A. DEFINITIONS

1. The term "City" means the City of Villa Rica, Georgia including its agents, officers and employees.
2. The term "complaint" means an allegation (excluding any criminal investigation) from any source, of any action or inaction by VRPD personnel, which the source considers or is reasonably interpreted to be contrary to law or proper procedure.
3. The term "DOJ" means the United States Department of Justice and its agents and employees.
4. The term "ICE Team" means any VRPD officers assigned to the VRPD's highway interdiction unit or engaging in highway interdiction efforts.
5. The term "Hit Rate" means the percentage of searches that yield contraband. It is calculated by dividing the total number of searches by the number of searches that yield contraband.
6. The term "VRPD" means the Villa Rica Police Department, including its agents and its employees (both sworn and unsworn).

B. GENERAL PROVISIONS

1. This Agreement is effectuated pursuant to the authority granted DOJ under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141") and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c)(3) ("the Safe Streets Act"), to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprives individuals of rights, privileges or immunities secured by the Constitution or federal law.
2. On January 27, 2003, DOJ notified the City of the commencement of an investigation into whether the ICE Team was engaging in a pattern or practice of discriminatory law enforcement and improper searches and seizures.
3. DOJ's investigation, conducted with the full cooperation of the City, included interviews with City and VRPD officials, and VRPD officers. With the cooperation of the City, DOJ

reviewed policies, incident reports, stop logs and other relevant documents.

4. Throughout the investigation, DOJ provided the City with technical assistance recommendations for changes in the VRPD's policies and procedures. These recommendations were provided to the City in writing at the close of the investigation.
5. At the close of the investigation, DOJ concluded that there was sufficient evidence to institute a lawsuit alleging that the ICE Team engages in a pattern or practice of discriminatory law enforcement.
6. As a result of the City's and the VRPD's high level of voluntary cooperation and willingness to implement meaningful change without need for litigation, the parties believe this Agreement, rather than contested litigation, represents the best opportunity to address DOJ's concerns. Neither the City's entry into this Agreement, nor its decision to implement changes to VRPD policies and procedures is an admission by the City, the VRPD or any officer or employee of either, that they have engaged in any unconstitutional, illegal or otherwise improper activities or conduct.
7. Nothing in this Agreement is intended to alter the lawful authority of the VRPD to undertake drug interdiction efforts, conduct motor vehicle stops, use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, or otherwise fulfill its law enforcement obligations in a manner consistent with the requirements of the Constitutions and laws of the United States and the State of Georgia.
8. This Agreement constitutes the entire integrated agreement of the parties. With the exception of the correspondence described in paragraph (B) (4), no prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.
9. This Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. This

Agreement is enforceable only by the parties. No person or entity is intended to be a third-party beneficiary of the provisions 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. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the City or its officials, employees or agents for their conduct or the conduct of VRPD officers; accordingly, it does not alter legal standards governing any such claims, including those under Georgia law. This Agreement does not authorize, nor will it be construed to authorize, access to any City, VRPD or DOJ documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, and the Monitor.

C. HIGHWAY INTERDICTION OPERATIONS

1. The VRPD shall ensure that its officers strictly adhere to its racial profiling policy. This racial profiling policy shall not be modified in any manner that allows the improper consideration of race or ethnicity in conducting law enforcement activities. Any proposed changes to this policy shall be subject to the review and approval of the DOJ. The VRPD shall meet this requirement upon the execution of this Agreement.
2. The VRPD shall develop and effectively implement policies and procedures for the ICE Team that ensure that the criteria used by the ICE Team in carrying out its interdiction operations comports with the VRPD's racial profiling policy and the requirements of (C)(1) above. These policies and procedures shall identify the specific indicators ICE Team members are to use in targeting subjects for law enforcement activities, and shall explicitly prohibit discriminatory practices. These policies and procedures shall be subject to the review and approval of the DOJ. The VRPD shall develop these policies and procedures by June 1, 2004, and implement them by September 1, 2004.
3. The VRPD shall expand the information contained in its stop logs. For each stop, the log shall record:

- a. the date;
- b. the time;
- c. the location;
- d. the name of the driver;
- e. the vehicle tag number;
- f. the race of the driver, if readily discernible;
- g. the violation that led to the stop;
- h. the action taken in regard to the violation (i.e., citation, warning, arrest, etc.);
- i. whether the driver or any passenger was searched, patted down or frisked; and
- j. if a search, pat down or frisk was conducted (whether of the driver or a passenger) the category of the search (e.g., consent, visible contraband, etc.), and the result of the search.

The VRPD shall meet this requirement by March 1, 2004.

4. The VRPD shall develop and implement an adequate written policy or policies:
 - a. mandating that all traffic stops are recorded in their entirety; and
 - b. providing for the secure storage and appropriate retention of videotapes.

The VRPD shall meet this requirement by March 1, 2004.

5. The VRPD shall require that the ICE Team comply with all VRPD policies and procedures, including, but not limited to, calling in motor vehicle stops and videotaping all searches. The VRPD shall meet this requirement immediately upon execution of this Agreement.
6. The VRPD shall ensure that the ICE Team has a direct supervisor who provides sufficient day-to-day oversight of the Team's activities to ensure compliance with all applicable policies and procedures. The VRPD shall meet this requirement by May 1, 2004.

D. COMPLAINT SYSTEM

1. The VRPD shall accept complaints in writing or verbally, in person or by mail, telephone, facsimile or electronic mail. The VRPD shall accept complaints made on behalf of another person or persons. All verbal complaints shall be reduced

to writing by the VRPD. Upon receipt, each complaint shall be logged in, tracked, and fully investigated. The VRPD shall meet this requirement by March 1, 2004.

2. All complaints that can reasonably be interpreted as alleging a violation of the VRPD's racial profiling policy shall be handled by the VRPD's internal affairs department rather than the officer's direct supervisor. The VRPD shall meet this requirement by March 1, 2004.
3. The VRPD shall develop and implement an appropriate policy to inform the complainant regarding the complaint process and the ultimate resolution of the complaint. This policy shall require the VRPD to initially notify the complainant, in writing, that his/her complaint has been logged into the system and that an investigation is proceeding. The policy shall also require that the VRPD inform the complainant of the completion of the complaint investigation, and the ultimate result. The VRPD shall meet this requirement by March 1, 2004.
4. The VRPD shall develop and implement an appropriate policy setting reasonable time frames for each stage of the complaint investigation process. The VRPD shall meet this requirement by March 1, 2004.

E. TRAINING

1. The VRPD shall provide all recruits and current officers with adequate training on its policies and procedures. At the completion of all such training, the VRPD shall conduct competency testing to ensure that its officers have mastered the material, and shall provide any required remedial instruction. The VRPD shall meet this requirement by March 1, 2004.
2. The VRPD shall provide all recruits with adequate training on applicable legal standards, search and seizure, discriminatory policing and conducting professional traffic stops. Appropriate in-service training on these same subjects shall be provided annually to all officers. The VRPD shall meet this requirement by June 1, 2004.
3. The VRPD shall provide all officer training pursuant to adequate curricula and lesson plans, and shall keep accurate

records regarding the training each officer has received. The VRPD shall meet this requirement by June 1, 2004.

4. The VRPD shall provide all supervisors with responsibility for the ICE Team with appropriate drug interdiction training. The VRPD shall meet this requirement by June 1, 2004.
5. The VRPD shall provide adequate training on conducting investigations to all officers who may be assigned a complaint investigation. The VRPD shall meet this requirement by June 1, 2004.

F. MANAGEMENT AND SUPERVISION

1. The VRPD shall develop and fully implement an appropriate policy or procedure that provides for the auditing of the stop logs described in paragraph (C) (3) above using other documentation regarding motor vehicle stops (e.g., incident reports, warnings, etc.). The VRPD shall meet this requirement by May 1, 2004.
2. The VRPD shall develop and fully implement an appropriate policy or procedure that uses the data collected in the stop logs described in paragraph (C) (3) above as a management tool to track trends and patterns and identify potential areas of concern. This data analysis policy/procedure shall be targeted towards improving operations, preventing departures from VRPD policy, and ensuring compliance with the Constitution and federal law. The policy/procedure developed pursuant to this paragraph shall be subject to the review and approval of DOJ. The VRPD shall develop this policy or procedure by June 1, 2004, and implement it by September 1, 2004.
3. The VRPD shall conduct quarterly random audits of video tapes involving motor vehicle stops to ensure that officers are using video equipment as required by VRPD policy. This audit shall be used to identify training issues and alert VRPD command staff to any inappropriate law enforcement practices. The VRPD shall meet this requirement by May 1, 2004.
4. The VRPD shall develop and implement fully an effective quality assurance mechanism to ensure that officers are

complying with its complaint policy. The VRPD shall meet this requirement by June 1, 2004.

5. The VRPD shall develop a formal system to monitor officer conduct. This system shall include information on investigations, complaints (including civil lawsuits), uses of force, training histories, supervisory reviews, and disciplinary and other corrective actions. The VRPD's system need not be computerized, but shall contain triggers set to detect behavior which raises concerns and requires supervisory review. The VRPD shall require supervisors to review the data regarding officers under their command on a regular basis, and should establish guidelines regarding the specific events that require additional supervisory review and consideration of corrective action. The VRPD shall meet this requirement by August 1, 2004.

G. IMPLEMENTATION

1. In regard to any provision that provides for DOJ "review and approval," approval will be granted in a timely fashion provided that the VRPD action reasonably satisfies the requirements and standards set forth in the relevant provision(s).
2. The Agreement will terminate 3 years after the effective date of the Agreement or earlier if the parties agree that the VRPD and the City are in substantial compliance with each of the provisions of this Agreement, and have maintained substantial compliance for at least one year. The burden will be on the City to demonstrate this level of compliance. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute substantial compliance.
3. The parties agree to defend the provisions of this Agreement. The parties will notify each other of any court or administrative challenge to this Agreement.
4. This Agreement is enforceable through specific performance in Federal Court. Failure by any of the parties to enforce this entire Agreement or any provision thereof with respect

to any deadline or any other provision herein will not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.

5. In the event the VRPD or the City fail to fulfill any obligation under this Agreement, DOJ will, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to the City. The City will have 60 days from receipt of such notice to cure the failure. At the end of the 60-day period, in the event DOJ determines that the failure has not been cured, DOJ may, without further notice to the City, file an action in the United States District Court for the Northern District of Georgia (the "Federal Court Action") against the City for breach of contract and any other appropriate causes of action and may seek specific performance and any other appropriate form of relief.
6. In connection with the Federal Court Action, the VRPD and the City agree as follows:
 - a. The City and the VRPD will stipulate to subject matter and in personam jurisdiction and to venue.
 - b. The City and the VRPD agree that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the City's attorney will be deemed good and sufficient service upon the City and the VRPD.
 - c. The City and the VRPD hereby waive the right to file, and agree not to file or otherwise assert, any motion to dismiss (except for failure to state a claim or failure to meet the service requirements of paragraph (G)(6)(b)), to stay or otherwise defer, a Federal Court Action alleging a failure to fulfill any obligation under this Agreement.
 - d. The City and the VRPD agree to a trial of the Federal Court Action alleging a failure to fulfill any obligation under this Agreement commencing:
 - i) 120 days after service of the summons and complaint as set forth above, or
 - ii) the Court's earliest availability, whichever is later. The parties agree that discovery in the Federal Court Action alleging a failure to fulfill any obligation under this Agreement may begin within 15 days after service of the summons

and complaint. The parties agree to submit all discovery requests and to schedule all depositions within 75 days after the service of the summons and complaint.

7. In the event the Court finds that the City or the VRPD has engaged in a material breach of any provision of this 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.
8. Nothing in this Agreement will preclude DOJ, after complying with paragraph (G) (5), from filing an action under Section 14141 or the Safe Streets Act alleging a pattern or practice of discriminatory policing in addition to or in lieu of the Federal Court Action described above. In the event that any such action is filed, the City and the VRPD hereby waive, and agree not to assert, any defense to that action based on statute of limitations, laches, estoppel or any objection relating to the timeliness of the filing of such action. Nothing in this Agreement will preclude DOJ from filing an action under Section 14141 alleging a pattern or practice of unlawful conduct other than discriminatory policing. Nothing in this Agreement will preclude DOJ from filing an action under any other provision of law.
9. This Agreement will be posted on the web site of the Special Litigation Section of the Civil Rights Division of DOJ.
10. The City and the VRPD agree that they will not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.
11. The parties may jointly agree, in writing, to modify this Agreement.

H. MONITORING

1. By February 1, 2004, or earlier if possible, the parties shall jointly select a person(s) to serve as an Independent Monitor to assess the City's compliance with this settlement

agreement.

2. The Monitor may only be terminated for good cause. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings or recommendations.
3. The Monitor shall have a budget and staff sufficient to carry out the Monitor's responsibilities under the settlement agreement. The City will bear all reasonable fees and costs of the Monitor.
4. The Monitor will only have the duties, responsibilities, and authority conferred by this Agreement. The Monitor will not, and is not intended to, replace or take over the role and duties of any City or VRPD employee. The Monitor may not modify, amend, diminish, or expand this Agreement.
5. The Monitor will not issue statements or make findings with regard to any act or omission of the City, the VRPD, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any case brought by any party to this Agreement regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement. The Monitor will not testify in any other litigation or proceeding with regard to any act or omission of the City, the VRPD, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the parties, the Monitor will not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees. The Monitor will not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement. Provided, however, that this paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

6. The City and the VRPD will provide the Monitor and DOJ with full and unrestricted access to all VRPD and City staff, facilities, and documents (including databases). The Monitor and DOJ will retain any non-public information in a confidential manner and will not disclose any non-public information to any person or entity absent written notice to the City and either written consent by the City or a court order authorizing disclosure. In monitoring the implementation of this Agreement, the Monitor will maintain regular contact with the parties.
7. In order to monitor and report on the City and the VRPD's implementation of each substantive provision of this Agreement, the Monitor will conduct the reviews specified in this Agreement and such additional reviews as the Monitor deems appropriate. The Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of this Agreement.
8. By July 1, 2004, and every three months thereafter while this Agreement is in effect, the Monitor will issue a public report assessing the City's compliance with each and every provision of the Agreement. Drafts of all status reports will be provided to DOJ and the City at least 10 days prior to publication to afford the parties an opportunity to identify factual errors.
9. By May 1, 2004, and within every three months thereafter (so long as this Agreement remains in effect), the City shall provide the DOJ and the Monitor with a status report regarding its compliance with this Agreement. Each status report shall provide:
 - a. a description of the City's status in complying with each and every provision of this Agreement and the steps taken to achieve compliance with each and every provision of this Agreement during the period since the last status report; and
 - b. all relevant documents that demonstrate the City's compliance with this Agreement, including, but not limited to, policies, procedures, protocols, and training materials.
10. Within 30 days of receipt of written questions from the DOJ

concerning its compliance with this Agreement, the City shall provide the DOJ with written answers and any requested documents regarding the City's compliance with the requirements of this Agreement.

11. The City shall maintain sufficient records to document its compliance with all of the requirements of this Agreement. The City shall also maintain (so long as the agreement remains in effect) any and all records required by or developed under this Agreement.

FOR THE UNITED STATES:

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