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December 21, 2021

SPECIAL ATTACHMENT FOR AGENDA OF:

RECOMMENDED BY: Chief of Police

SUBMITTED BY: Mayor's Office

A brief synopsis and explanation of the following:

An Ordinance, pursuant to Alabama Act 1969-916, authorizing the Mayor and/or the Chief of Police to execute an Interlocal Cooperation Agreement, for a period not to exceed three (3) years, between the City of Birmingham and the UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT ("ICE"), for the purpose of cooperation and coordination for the effective enforcement of the laws relating to ICE's HOMELAND SECURITY INVESTIGATIONS ("HSI") jurisdiction, by designating certain Officers of the Birmingham Police Department ("BPD") as Customs Officers authorized to enforce the full range of federal criminal offenses. The City will be eligible for possible distribution of some seized money and assets. The assigned BPD Officers will not be responsible for enforcing civil violations of immigration law, including civil detention or deportation. And further authorizing The Mayor and/or the Chief of Police, and any designated BPD Officer who successfully completes the HSI Task Force Officer cross-designation Training Course, to execute any additional documents necessary to accomplish the purposes of the Agreement.

Resolution	Ordinance	X	Other
PUBLICATION REQUIRED:	YES	<input checked="" type="checkbox"/>	NO <input type="checkbox"/>

IF YES, NOTE ALL PUBLICATION INSTRUCTIONS/REQUIREMENTS:

Publication after passage of Ordinance of General and Permanent Nature, is required.

Funding Source: N/A

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RECOMMENDED BY: CHIEF OF POLICE

SUBMITTED BY: MAYOR'S OFFICE

ORDINANCE NO. _____

**TO AUTHORIZE
AN INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF BIRMINGHAM, ALABAMA AND
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS**

WHEREAS, The **CITY OF BIRMINGHAM, ALABAMA** (the “City”) is a municipal corporation established pursuant the laws of the State of Alabama; and

WHEREAS, the **UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (“ICE”) HOMELAND SECURITY INVESTIGATIONS (“HSI”)**, is a federal agency; and

WHEREAS, **ICE HSI** and the **City** desire to contract for the purpose of cooperation and coordination for the effective enforcement of laws relating to **ICE HSI** jurisdiction, by designating certain officers of the **Birmingham Police Department (“BPD”)** as **Customs Officers** authorized to enforce the full range of federal offenses, excluding administrative violations of immigration law; and

WHEREAS, **ICE HSI** is authorized to designate **Customs Officers** pursuant to **Titles 19 U.S.C. § 1401(i)** and **19 U.S.C. § 1589a**; and

WHEREAS, **Act 1969-916** of the Acts of Alabama (the “Act”) authorizes **Jefferson County** and the municipalities, other governmental subdivisions and public corporations in **Jefferson County** to make the most efficient use of their powers by enabling them to cooperate with the state, the federal government and with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and developments of the county and municipalities and other governmental units and agencies therein; and

WHEREAS, **BPD** values its relationship with **HSI** and has assigned **Officers and Detectives** as **Task Force Officers** to work with **HSI** to investigate crimes that impact the public safety and well-being of our community; and

WHEREAS, HSI is the principle investigative arm of the U.S. Department of Homeland Security with broad law enforcement authority to investigate all federal crime and with primary jurisdiction over 400 federal crimes; and

WHEREAS, HSI's primary mission is to investigate transnational criminal organizations and other networks whose actions threaten to exploit public safety and national security; and

WHEREAS, BPD employees assigned to **HSI** as Task Force Officers, will not, by virtue of the cooperative agreement/memorandum of understanding and this ordinance, participate in any immigration enforcement activities and the authorities granted to sworn Task Force Officers do not grant them the authority to act as immigration officers as defined under 8 U.S.C. 1101(a)(18); and

WHEREAS, BPD employees assigned to **HSI** as Task Force Officers will only investigate criminal activity as defined under federal and Alabama state law as they relate to the mission of **HSI** to include such crimes as; human trafficking, child exploitation, and other forms of human exploitation; drug trafficking; financial crimes, such as money laundering; firearms offenses and violent crime; illicit trade; and other such offenses that directly impact the public's safety and well-being;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Birmingham, Alabama as follows:

SECTION 1. The Mayor and/or the Chief of Police of the City of Birmingham, Alabama is hereby authorized, in accordance with the provisions of Act 1969-916, to enter into the attached Interlocal Cooperation Agreement between the City of Birmingham and the **UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT ("ICE")**, for the purpose of cooperation and coordination for the effective enforcement of the laws relating to **ICE's HOMELAND SECURITY INVESTIGATIONS ("HSI")** jurisdiction, by designating certain officers of the **Birmingham Police Department ("BPD")** as Customs Officers authorized to enforce the full range of federal offenses, excluding administrative violations of immigration law. The assigned **BPD** Officers will complete the appropriate **HSI** Task Force Officer cross-designation Training Course prior to being designated as Customs Officer (Excepted). The City will be eligible for possible distribution of some seized money and assets. Neither party shall assume any risk or future liability, or any future responsibility for any of the property of the other party or for the actions of any employee or officer of the other party. No party to the contract shall have any power to incur any debt which shall become the responsibility of any other contracting party. The Term of the Agreement shall not exceed a period of three (3) years from its effective date. The Mayor and/or the Chief of Police, and any designated **BPD** Officer who successfully completes the **HSI** Task Force Officer cross-designation Training Course, is further authorized to execute any additional documents necessary to accomplish the purposes of the Agreement.

SECTION 2. The provisions of this Ordinance are hereby declared to be severable. If any of these sections, provisions, sentences, clauses phrases, or parts is held to be unconstitutional or void, the remainder shall continue in full force and effect.

SECTION 3. This Ordinance shall become effective upon publication or as otherwise required by law.

ADOPTED AND APPROVED THIS ____ the day of _____ 2021.

ATTEST:

CITY OF BIRMINGHAM, ALABAMA

City Clerk

By: _____
Mayor

MEMORANDUM OF UNDERSTANDING

between

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS

and

Birmingham Police Department

regarding

THE DESIGNATION OF Birmingham Police Department EMPLOYEES
AS CUSTOMS OFFICERS (EXCEPTED)

1. **PARTIES.** The Parties to this Memorandum of Understanding (MOU) are U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and Birmingham Police Department
2. **AUTHORITY.** Title 19, United States Code (U.S.C.), Section 1401(i); 19 U.S.C. § 1589a. This MOU is also authorized under the provisions of Birmingham Police Department.
3. **PURPOSE.** The Parties agree that effective enforcement of the laws relating to HSI jurisdiction requires close cooperation and coordination between the two Parties. The Parties have therefore entered into this MOU to govern the use of HSI designations by certain employees of Birmingham Police Department

Pursuant to section 401(i), Tariff Act of 1930, as amended (19 U.S.C. § 1401(i)), the Secretary of Homeland Security is authorized to designate persons as Customs Officers (Excepted) to perform the duties of a Customs Officer. Within ICE, this authority has been delegated to the HSI Special Agents in Charge. Pursuant to 19 U.S.C. § 1589a, customs officers are authorized to enforce the full range of federal offenses. However, in designating Customs Officers (Excepted), HSI is not conveying the authority to enforce administrative violations of immigration law.

There may be instances when HSI determines that it is desirable for certain sworn law enforcement employees of Birmingham Police Department to perform certain HSI duties. This MOU sets forth the agreement and relationship between the Parties with respect to this determination.

4. RESPONSIBILITIES.

The Parties agree as follows:

HSI agrees to:

- a. Designate certain employees of Birmingham Police Department as Customs Officers (Excepted), without additional compensation, to perform the duties as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). This form is attached and is hereby made part of this MOU;
- b. Issue a "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) to each qualified and designated employee;
- c. Provide appropriate training in laws, policies, and procedures to each designated employee;

- d. Advise the designated Customs Officers (Excepted) about court proceedings concerning seizures or arrests made by them in accordance with the authorities granted by HSI contemplated under this MOU; and
- e. Process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to the designated Customs Officers (Excepted) while such individuals are acting pursuant to this MOU, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. § 8101, et seq.).

Birmingham Police Department agrees:

- a. That only sworn law enforcement officers of Birmingham Police Department who successfully complete the appropriate HSI Task Force Officer cross-designation Training Course and receive an approved "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001) will be designated as Customs Officers (Excepted);
- b. That each law enforcement officer will be bound by the Authorities Granted and the Endorsements and Restrictions as noted on the "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001);
- c. To advise HSI of each court proceeding in which the validity of a Customs Officer (Excepted)'s enforcement authority becomes an issue, and allow HSI to provide legal memoranda or other assistance as deemed necessary by HSI;
- d. That agency employees designated as Customs Officers (Excepted) will follow HSI directives and instructions when utilizing enforcement authority conveyed by HSI;
- e. To provide to HSI, before designation of each officer and on an ongoing basis, any derogatory information, or information that may call into question the officer's truthfulness or ability to testify in court; and
- f. To return all HSI-issued equipment and identification when a cross-designated officer terminates employment or when his or her cross-designation expires.

Both Parties agree:

- a. That any abuse of HSI cross-designation authority may lead to the revocation of such cross-designations by HSI; and
 - b. To schedule periodic meetings to review this MOU, as required.
5. **REPORTING AND DOCUMENTATION.** HSI SAC offices will maintain the original signed "Designation, Customs Officer (Excepted) – Title 19 Task Force Officer" (ICE Form 73-001). Copies of this form will be held by the Contraband Smuggling Unit at HSI Headquarters, the designated Customs Officer (Excepted), and Birmingham Police Department.

If applicable, the HSI office will maintain documentation of designated Customs Officers (Excepted) approved to use HSI vehicles and certification that the designated Customs Officers (Excepted) have completed the ICE Fleet Card Training in Virtual University and any other fleet related training.

6. POINTS OF CONTACT.

HSI Office: HSI Atlanta
Name: Susan Swihert
Title: TFO Coordinator
Address: 107 Frankfurt Circle
Birmingham, AL 35211
Telephone Number: +1 (205) 256-1240
Fax Number: +1 (205) 917-8523
E-mail Address: Susan.C.Swihert@ice.dhs.gov

Birmingham Police Depart :
Name: Patrick D. Smith
Title: Chief of Police
Address: 1710 1st Avenue North
Birmingham, AL 35203
Telephone Number: +1 (205) 254-1700
Fax Number:
E-mail Address: Patrick.Smith@birminghamal.g

7. OTHER PROVISIONS. This MOU is an internal agreement between the Parties and does not confer any rights, privileges, or benefits to any other party or the public.

Nothing in this MOU is intended to conflict with current laws, regulations, or policies of either Party. If a term of this MOU is inconsistent with such authority, that term shall be invalid but the remaining terms and conditions of this MOU shall remain in full force and effect.

Nothing in this MOU is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

The forms and authorities referenced herein may be renamed or replaced by HSI without prejudice to this MOU.

- 8. EFFECTIVE DATE. The terms of this MOU will become effective on the date the last Party signs the MOU. The Designation Form of each Customs Officer (Excepted) is effective per the date on that document.
- 9. MODIFICATION. This MOU may be amended by the written concurrence of both Parties.
- 10. TERMINATION. This MOU may be terminated by either Party upon a 30-day written notification to the other Party.

APPROVED BY:

Katrina W. Berger
Name of HSI Official
Special Agent in Charge
Title of HSI Official
Homeland Security Investigations
U.S. Immigration and Customs Enforcement

Patrick D. Smith
Name of Birmingham's Official
Chief
Title of Birmingham's Official
Name of Birmingham's Agency

Date: _____

Date: _____

Attest

City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT.

[Signature]
Assistant City Attorney

18 October 2021
Date