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## DHS / UTB Agreement - Civil Action No. B-08-56

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**AGREEMENT**

The United States Department of Homeland Security (“DHS”) and the University of Texas at Brownsville/Texas Southmost College (“UTB/TSC”) (collectively, “the parties”), in consideration of the promises and undertakings set forth herein, the sufficiency of which are hereby acknowledged, agree as follows:

1. The following terms and abbreviations shall be used in this document:
  - a. “UTB/TSC” refers to the University of Texas at Brownsville/Texas Southmost College, including all officers, employees, representatives, and agents thereof;
  - b. “DHS” refers to the United States Department of Homeland Security, including all officers, employees, representatives, and agents thereof;
  - c. “CBP” refers to U.S. Customs and Border Protection, including all officers, employees, representatives, and agents thereof. CBP is a subsidiary entity of DHS. Unless otherwise stated, references in this agreement to CBP do not include entities, assets, or personnel of DHS not within CBP;
  - d. “USBP” refers to the United States Border Patrol, including all officers, employees, representatives, and agents thereof. USBP is a subsidiary entity of CBP. Unless otherwise stated, references in this agreement to USBP do not include entities, assets, or personnel of CBP or DHS not within USBP;
  - e. “RGV” refers to the Rio Grande Valley Border Patrol Sector of USBP, including all officers, employees, representatives, and agents thereof. RGV is a subsidiary entity of USBP. Unless otherwise stated, references in this

agreement to RGV do not include entities, assets, or personnel of USBP, CBP, or DHS not within RGV;

- f. "SBI" refers to the DHS Secure Border Initiative;
- g. "PF 225" refers to the SBI initiative to install 225 miles of pedestrian fence in the vicinity of the southwest border of the United States along mileage identified by DHS as being priority for purposes of deterring smugglers and aliens attempting to gain illegal entry into the United States;
- h. "Persistent Impedance" means the effective and consistent preclusion of the free flow or movement of people or vehicles in a specified area.

2. UTB/TSC and RGV will cooperate in efforts to study options for achieving border security. UTB/TSC and RGV will evaluate and analyze the relative effectiveness of different border security components, including technological alternatives to physical barriers. UTB/TSC and RGV will plan and conduct laboratory and field tests of electronic detection and communication systems and other border security technologies and methods, in order to develop an effective mix of technology, infrastructure, manpower, and/or methods for achieving border security. UTB/TSC and RGV will also make reasonable efforts to minimize the impact of any such systems on the natural environment as well as the educational and other legitimate uses of the UTB/TSC campus area. UTB/TSC will provide research and administration space for the studies, and will invite and encourage participation in the endeavor by other University of Texas System institutions. RGV's contribution of funding and/or personnel is subject to available appropriations and any such contribution cannot impair RGV's operational obligations.

3. UTB/TSC will, at its own expense, improve and/or install a pedestrian fencing system by December 31, 2008 along the alignment represented in Addendum A to this Agreement that meets the requirements set forth in this Agreement (hereinafter, the "UTB/TSC pedestrian fencing system").
4. UTB/TSC will select the design specifications for the UTB/TSC pedestrian fencing system, subject to approval by RGV. UTB/TSC will request and obtain RGV's approval of the design specifications prior to UTB/TSC issuing the request for proposals referenced in Paragraph 8 of this Agreement. As time is of the essence, RGV shall promptly review and respond to UTB/TSC's request for design approval so as to enable UTB/TSC to timely issue the request for proposals.
5. The UTB/TSC pedestrian fencing system shall:
  - a. be at least ten (10) feet in height;
  - b. incorporate anti-climb, anti-tunnel, and anti-perching features, as well as convey an image of impenetrability;
  - c. have installed concrete at-grade footing along the entire footprint of the fence at a width of approximately eight (8) inches and a depth of approximately eighteen (18) inches;
  - d. be constructed with the same grade of material and equivalent mesh-style design as the perimeter fencing at USBP's Fort Brown Station in Brownsville, Texas, although UTB/TSC may choose a more elaborate design subject to USBP's approval;

- e. incorporate early detection technology, such as in-fence sensors utilizing a fiber optic wiring system and ground sensors south of the fence footprint, and information from all such technology will be provided in real-time to RGV;
  - f. include three (3) cameras that provide maximum visual coverage of the UTB/TSC fence, including visual coverage along the area of the UTB/TSC parking lot south of University Boulevard and the access road to the Fort Brown Memorial Golf Course, and real-time video feed from all such cameras shall be provided to RGV;
  - g. satisfactorily contribute to USBP's border security requirements, including the requirement of persistent impedence; and
  - h. be constructed consistent with quality assurance and quality control standards pertaining to UTB/TSC and University of Texas System construction projects.
6. UTB/TSC shall maintain an approximately four (4) foot pathway north of the fence for maintenance and USBP access.
7. UTB/TSC may further enhance the fencing or add architectural or aesthetic elements to the fencing, provided that any such enhancements shall not impair the operational effectiveness of the UTB/TSC pedestrian fencing system as determined by USBP or otherwise violate any of the provisions of this Agreement.
8. UTB/TSC will:
- a. issue request(s) for proposals by August 15, 2008;
  - b. award all contract(s) by September 15, 2008;
  - c. execute all contract(s) by October 1, 2008;

- d. issue all notice(s) to proceed within five (5) calendar days after contract(s) executed;
  - e. commence construction within ten (10) calendar days after notice(s) to proceed issued; and
  - f. complete construction within eight weeks after commencement of construction but no later than December 31, 2008.
9. UTB/TSC represents and warrants that:
- a. it has a preliminary budget for the project, and that it has all necessary funding to complete the UTB/TSC pedestrian fencing system by December 31, 2008, and
  - b. it has secured or will secure any necessary governmental approval(s) for the construction of the pedestrian fencing system.
10. RGV may observe construction of the fence, and RGV and UTB/TSC will, at the request of either party, confer on matters related to fence construction, including, without limitation, design specifications and compliance with the construction timetable in Paragraph 8.
11. To facilitate the parties' ability to measure the effectiveness of the UTB/TSC pedestrian fencing system (both physical infrastructure and security technology) in the UTB/TSC campus area, the parties will exchange information as follows:
- a. USBP/RGV will compile statistics of: (i) arrests; (ii) seizures; (iii) incident reports; (iv) known entries; (v) estimated "turn backs"; (vi) deployment levels; and (vii) other crime statistics related to illegal cross-border activity or

assaults on Border Patrol agents. RGV will share this data with approved designated UTB/TSC representatives;

- b. UTB/TSC will compile crime statistics for the UTB/TSC campus and share that information with approved designated USBP/RGV representatives;
- c. RGV supervisory agents will meet with approved designated representatives of UTB/TSC to brief them of specific events, changes in threat conditions, changing operational requirements, and other law enforcement operational information on an as-needed basis.

12. The parties will collaborate in good faith to assess whether the UTB/TSC pedestrian fencing system (including both physical infrastructure and security technology) satisfies USBP's border security operational requirements, including the requirement of persistent impedance.

13. If USBP requests enhancements to the UTB/TSC pedestrian fencing system to satisfy its border security operational requirements, including the requirement of persistent impedance, the parties shall endeavor to agree upon any such enhancements. If, after such efforts, the parties are unable to agree upon the need for enhancements or the nature of the enhancements to be made, USBP retains the ultimate discretion to determine whether the UTB/TSC pedestrian fencing system is satisfying USBP's border security operational requirements. USBP's maximum staff increase to achieve the persistent impedance requirement in the area of the UTB/TSC campus will be five (5) percent above current levels and is dependent upon the availability of appropriations. Upon breach of this Agreement, USBP retains all its legal rights to

effect border security operational requirements, including the requirement of persistent impedance.

14. UTB/TSC will maintain the UTB/TSC pedestrian fencing system, including all associated technological elements such as cameras and sensors originally installed at UTB/TSC expense, in effective operating condition. Any significant operational impairments to the UTB/TSC pedestrian fencing system, such as a breach in the infrastructure or malfunction of the technological elements, must be repaired immediately upon UTB/TSC learning of the impairment.
15. USBP may supplement the technological elements of the UTB/TSC pedestrian fencing system by installing additional cameras, sensors, radar, or other technology in the vicinity of the UTB/TSC pedestrian fencing system. Any such additional technology shall be installed and maintained at USBP expense and will be controlled by USBP. UTB/TSC agrees to provide USBP reasonable access to UTB/TSC property for purposes of installing such additional technology. Nothing in this paragraph grants USBP an easement or other legal interest in UTB/TSC property.
16. RGV and UTB/TSC shall cooperate to improve coordination between RGV and the UTB/TSC Police with respect to USBP's border security operations, including, but not limited to:
  - a. Increased integration of communication systems and greater sharing of real-time law enforcement information;
  - b. Coordination of operational deployments and real-time law enforcement responses, as needed; and



- c. Independently making appropriate adjustments to enforcement tactics, efforts, staffing, and/or utilization of technology and infrastructure, as needed.
17. DHS agrees to not proceed with condemnation of UTB/TSC property or construct any pedestrian fencing within the vicinity of the UTB/TSC pedestrian fencing system that would lie between the western- and eastern-most terminuses of the fencing segment described in Paragraph 3 and depicted in Addendum A for the purpose of the PF 225 initiative, unless UTB/TSC fails to meet its obligations in this Agreement and fails to cure the default after ten (10) calendar days' written notice. Nothing in this paragraph grants a party an easement or other legal interest in property not presently owned by that party.
18. In the event that performance of obligations by either party under the terms of this Agreement shall be interrupted or delayed by acts of nature (including fire, flood, earthquake, storm, hurricane, or other natural disaster), or by acts of war, terrorism, riot, or civil commotion, that party shall be excused from such performance for such period of time as is reasonably necessary after such occurrence abates for the effects thereof to have dissipated.
19. This Agreement shall become effective upon execution by all signatories listed below.
20. This Agreement shall terminate upon any of the following events:
  - a. Mutual agreement of the parties;
  - b. Failure of either party to satisfy a term of the Agreement, provided that the Agreement will terminate only at the option of the non-breaching party and

where the breaching party fails to cure the default after ten (10) calendar days' written notice from the non-breaching party.

21. Either party may, in writing, waive or acquiesce in a breach or failure to satisfy an obligation of the Agreement by the other party, provided, however, that any such waiver or acquiescence with respect to one provision of the Agreement does not constitute a waiver or acquiescence with respect to any other provision of this Agreement.
22. This Agreement fully resolves any pending relief requested by either party in the litigation captioned *United States v. 37.52 Acres of Land, et al.*, Civil Action No. B-08-056 (S.D. Tex.), including the "Motion for Relief" filed on June 19, 2008, and the parties agree to dismissal of that action with prejudice with each side to bear its own fees and costs.
23. All communication required by this Agreement, including any notice that a party is in breach of a provision of this Agreement or otherwise has failed to satisfy an obligation set forth herein, shall be transmitted by U.S. Mail and electronic mail to following designated representatives:

For UTB/TSC:

Daniel Rentfro, Jr., Esq.  
The Rentfro Faulk Law Firm, L.L.P.  
185 E. Ruben M. Torres Sr. Boulevard  
Brownsville, Texas 78520-9163  
drentfro@rentfrofaulk.com

cc:

Dr. Juliet V. Garcia  
President  
University of Texas at Brownsville/Texas Southmost College  
80 Fort Brown  
Brownsville, Texas 78520  
julietv.garcia@utb.edu

For DHS:

Daniel David Hu, Esq.  
United States Attorney's Office  
Southern District of Texas  
P.O. Box 61129  
Houston, Texas 77208-1129  
Daniel.Hu@usdoj.gov

cc:

Nicholas D. Gray, Esq.  
Assistant General Counsel for Litigation  
U.S. Department of Homeland Security  
Mail Stop 3650  
Washington, D.C. 20528  
nicholas.gray@dhs.gov

The parties may alter or specify additional representatives designated to receive notification under this Agreement, provided that any such changes shall be promptly communicated to counsel of record and all designated representatives in effect at the time of the change.

24. This Agreement constitutes the entire agreement among the parties, and supersedes all prior agreements, representations, warranties, statements, promises, covenants, and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.
25. This is an integrated agreement and may not be altered or modified except by a writing signed by all parties in interest at the time of the modification.

26. This Agreement may be executed in a number of identical counterparts, all of which shall constitute one agreement, and such execution may be evidenced by signatures delivered by facsimile transmission.

27. This Agreement shall be binding on all successors, assignees, employees, and officers of the parties.

SIGNED this 5<sup>th</sup> day of August, 2008.

THE UNIVERSITY OF TEXAS AT BROWNSVILLE  
TEXAS SOUTHWEST COLLEGE

By: 

Dr. Juliet V. Garcia  
President

SIGNED this 5<sup>th</sup> day of August, 2008.

THE UNIVERSITY OF TEXAS SYSTEM

By: Scott C. Kelley

Kenneth I. Shine  
Interim Chancellor

Scott C. Kelley, Exec. Vice Chancellor for Business Affairs  
Authorized to sign in the absence of  
Kenneth I. Shine, M.D., Chancellor *ad interim*

SIGNED this 5<sup>th</sup> day of August, 2008.

THE UNIVERSITY OF TEXAS SYSTEM

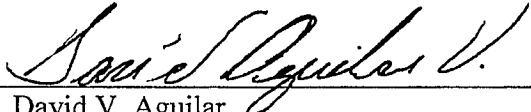
By: Daniel H. Sharporn

Barry D. Burgdorf  
Vice Chancellor and General Counsel

Daniel H. Sharporn, Deputy General Counsel  
Authorized to sign in the absence of  
Barry D. Burgdorf, Vice Chancellor and General Counsel

SIGNED this 5<sup>th</sup> day of August, 2008.




THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY

By:   
David V. Aguilar  
Chief, United States Border Patrol





**Legend**

-  Fence Points
-  UTB Existing Fence
-  Additional UTB Property For Fence

**0-19 = 938,8459 ft**

25.8914025 -97.495242

25.891215 -97.4936393

25.8925244 -97.491112

**0-19 = 1278,25330 ft**

25.8919740 -97.4903506

25.8917465 -97.4893788

25.891869 -97.489979

**0-20 = 207,296237 ft**

25.89037592 -97.48426546

**0-20 = 1766,4046 ft**

Lincoln Park

0.2 Miles





# The Rentfro Faulk Law Firm, L.L.P.

A Registered Limited Liability Partnership

Daniel Rentfro, Jr.  
William A. Faulk, Jr.

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\_\_\_\_\_  
Daniel L. Rentfro (1949-2007)

E-Mail: [drentfro@rentfrofaulk.com](mailto:drentfro@rentfrofaulk.com)

August 5, 2008

Cristina Sustaeta, Case Manager  
United States District Clerk  
600 E. Harrison, Suite 101  
Brownsville, Texas 78520

Re: Civil Action No. B-08-56; United States of America vs. 37.52 Acres of Land, Et Al; In the United States District Court, Southern District of Texas, Brownsville Division.

Dear Ms. Sustaeta,


Accompanying this letter is the Agreement announced to the Court on July 31, 2008. It has been signed by all parties.

I believe the sole remaining business is the Plaintiff's Motion to Dismiss. Mr. Hu asked me to inform you that his Houston office is closed today, because of Tropical Storm Edouard, and that he will be filing that motion as soon as his office re-opens.

Needless to say, we are all at the Court's disposal should the Court feel there are any additional matters to discuss.

Thank you for your assistance.

Very truly yours,



Daniel Rentfro Jr.

Counsel for the University of Texas at Brownsville/Texas Southmost College

DJR/al

xc: Barry Burgdorf  
Daniel Hu  
Dr. Juliet Garcia