

## Solicitation Amendment No. 003

<b>To: Prospective Bidder/Offeror:</b>	<b>Date:</b>
Prospective Proposers	June 23, 2017
<b>Project Title:</b>	<b>Project No.:</b>
Sale of approximately 23.402 acres of land (Westheimer)	IFB 17-45

The Invitation for Bid (Project IFB No. 17-45) is hereby amended as set forth below:

**Change:** The bid due date appearing on pages 1 and 2 has been changed from June 28, 2017 to no later than 2:00 pm (local time) on July 11, 2017.

**Change:** On page 1 of the IFB, the correct telephone number for HCC Procurement, Jennifer Chiu, Senior Buyer is 713-713-5138

**Change:** On page 3 of the IFB, note that HCCS has located surveys for each of the two tracts comprising the Property, the survey for the 21.8525 acre tract conducted by the Teran Group and dated August 5, 2011 (“21 Acre Survey”) and the survey for the 1.550 acre tract being conducted by Precision Surveying, Inc. and dated November 6, 2013 (“1.5 Acre Survey”)(collectively, the 21 Acre Survey and the 1.5 Acre Survey are referred to as “Survey” or “Surveys”). The HCCS Broker will provide a copy of the existing Surveys to any prospective buyers upon request.

**Change:** The following language is added to the end of Section 12, item 3 on page 6 and to the end of the second paragraph of Section 4 of Attachment 1 on page 11:

“If the bid offer is accepted and a contract is awarded, HCCS will deposit the check for the Earnest Money to be applied toward the Purchase Price at Closing and will retain the Independent Consideration. If the bid offer is not accepted, HCCS will return the bidder’s check(s) for the Earnest Money and Independent Consideration.”

**Change:** On page 6, Section 12, item 2.c of the IFB is deleted in its entirety and replaced with the following:

<b>Company Name (Bidder/Offeror):</b>	
<b>Signed by:</b>	<b>Date:</b>
<b>Name (Type or Print):</b>	<b>Title:</b>

<b>To: Prospective Bidder/Offeror:</b>	<b>Date:</b>
Prospective Proposers	June 23, 2017
<b>Project Title:</b>	<b>Project No.:</b>
Sale of approximately 23.402 acres of land (Westheimer)	IFB 17-45

The Invitation for Bid (Project IFB No. 17-45) is hereby amended as set forth below:

“Section 3.2 – the amount of the earnest money is Ten Thousand and no/100 Dollars (\$10,000.00) (“Earnest Money”);”

**Change:** The following language is added as item 2.g to Section 12, item 2, on page 6 of the IFB and is to be inserted in the first paragraph of Section 4 of Attachment 1 – the Bid Response Form:

“Section 1.1(x) – add the name of the title company Buyer elects to use”

**Change:** On page 6, Section 12, item 3 of the IFB is deleted in its entirety and replaced with the following:

“The earnest money check. The bidder must attach to the bid offer (i) the Earnest Money in the amount set forth in Section 12, item 2.c. of this IFB; and (ii) the Independent Consideration in the amount of \$1,000.00, both in good funds and made payable to HCCS. The bidder must be able to close on the date contained in the Contract (unless otherwise agreed by HCCS), and otherwise must be able to perform under the Contract.”

**Change:** On page 7, Sections 13 and 14 of the IFB, both sections are deleted in their entirety and replaced with the following:

**“13. Selection Process; Bid Award; Best and Final Offer; Highest and Best Bid:**

To be eligible to be considered, a bid and response by a bidder must comply with the requirements of this IFB in all materials respects. Bids that do not conform to bid requirements may be disqualified from consideration.

All bids will be reviewed to determine conformity with the bid requirements. Conforming bids will be evaluated and the final sale of the Property under this solicitation will be subject to approval by the HCCS Board of Trustees. No final determination of the winning bid will be made until a thorough review of all bids is conducted and completed.

<b>Company Name (Bidder/Offeror):</b>	
<b>Signed by:</b>	<b>Date:</b>
<b>Name (Type or Print):</b>	<b>Title:</b>

<b>To: Prospective Bidder/Offeror:</b>	<b>Date:</b>
Prospective Proposers	June 23, 2017
<b>Project Title:</b>	<b>Project No.:</b>
Sale of approximately 23.402 acres of land (Westheimer)	IFB 17-45

The Invitation for Bid (Project IFB No. 17-45) is hereby amended as set forth below:

In the event that HCCS elects to request a best and final offer (see Section 17), it will notify the top bidders (up to a maximum of 5 bidders) in writing, request those bidders to submit their best and final offer, and provide a deadline for such offers.

The contract, if awarded, will be made to the bidder with the highest bid whose bid response is in compliance with this IFB and the amount is acceptable to HCCS. In the event that HCCS receives two or more equal bids, HCCS reserves the right to consider other factors in determining best offer including, but not limited to, a calculation of future tax revenues on the Property, the use to which the Buyer will put the Property, and whether the use of the Property will result in the Property benefitting HCCS and the local community.

**14. Intentionally deleted.”**

**Change:** The Attachment 2 to the IFB, Purchase and Sale Contract, has been amended. The form to be used as part of the bidder’s response and to which the bidder will insert the applicable information and sign in accordance with the instructions in this IFB, including Section 12 and Attachment 1, is attached to this Amendment No. 3.

The sections in the Contract that have been amended are Section 1.1(u), 1.1(v), 4.1, 4.3, 7.2, 10.1, 11.1, 11.7, 13.5, and 13.13:

**Amended Attachment 2, Purchase and Sale Contract, is also attached.**

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

<b>Company Name (Bidder/Offeror):</b>	
<b>Signed by:</b>	<b>Date:</b>
<b>Name (Type or Print):</b>	<b>Title:</b>

**AMENDED ATTACHMENT 2**  
**PURCHASE AND SALE CONTRACT**

This Purchase and Sale Contract (this “**Contract**”) is made and entered into by and between **HOUSTON COMMUNITY COLLEGE SYSTEM**, a public community college established under Chapter 130 of the Texas Education Code, an institution of higher education as defined in Section 61.003 of the Texas Education Code, and political subdivision of the State of Texas (“**Seller**”) and \_\_\_\_\_, a \_\_\_\_\_ [individual or type of entity], (“**Buyer**”) dated effective as of the Effective Date (as defined below). Individually, the Seller and Buyer shall be referred to herein as “**Party**” and collectively as “**Parties**.”

**ARTICLE I.**  
**DEFINED TERMS AND EXHIBITS**

1.1 **Definitions.** As used herein, the following terms shall have the meanings respectively indicated:

a. “**Bid Response**” means Buyer's sealed bid offer package containing all the documents required by the Seller’s Invitation for Bid, including, the signed Bid Response Form, a signed counterpart of the Contract, the Earnest Money required under the Contract and the Invitation for Bid, and other forms required by the Invitation for Bid and signed by the Buyer for purchase of the Property.

b. “**Board of Trustees**” means the Board of Trustees of the Houston Community College System.

c. “**Business Day**” or “**Business Days**” mean any day that is (a) not Saturday or Sunday; (b) not a public holiday as defined by Chapter 662 of the Texas Local Government Code; (c) not a day designated as a non-work day by the Board of Education; and (d) both Buyer and Seller are open for business.

d. “**Closing**” means the consummation of the purchase of the Property by Buyer from Seller in accordance with the terms and provisions of this Contract.

e. “**Closing Date**” as defined in Section 11.1 hereof.

f. “**Contract**” is defined the opening paragraph hereof.

g. “**Deed**” is defined in Section 11.3(a) hereof.

h. “**Earnest Money**” is defined in Section 3.2 hereof.

i. “**Effective Date**” means the date that a fully executed copy of this Contract is received by the Title Company.

j. “**Environmental Condition**” means the presence of any Hazardous Material (other than asbestos and lead based paint) that had not been previously disclosed to Buyer, that is

either (i) required to be removed or remediated from the Property by applicable Environmental Law; or (ii) would materially adversely affect the use or value of the Property.

k. **“Environmental Law” or “Environmental Laws”** means any federal, state, or local laws, ordinances, codes, rules, regulations, judicial or administrative orders or judgments including the following acts, as amended: the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9.601 et. seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 18.01 et. seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 69.01 et. seq.); the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; and the Safe Drinking Water Act.

l. **“Hazardous Materials”** means (a) petroleum or petroleum products, fractions, derivatives or additives, natural or synthetic gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls and radon gas; (b) any substances defined as or included in the definition of “hazardous wastes”, “extremely hazardous substances”, “restricted hazardous wastes”, “toxic substances”, “toxic chemicals” or “toxic pollutants”, “contaminants” or “pollutants” or words of similar import under any Environmental Law; (c) radioactive materials, substances and waste and radiation; and, (d) any other substance to which exposure is regulated under any Environmental Law.

m. **“Indemnitees”** is defined in Section 5.3 hereof.

n. **“Independent Consideration”** is defined in Section 3.3 hereof.

o. **“Inspection Period”** means the period commencing with the Effective Date and ending at 5:00 p.m. of the day that is thirty (30) days thereafter in order to perform the due diligence and inspection described in Article V of the Contract.

p. **“Invitation for Bid”** means that certain Invitation for Bids, including all attachments and exhibits, prepared and issued by Seller requesting sealed bid offers for purchase of the Property.

q. **“Law”** means any law, statute, rule, regulation, ordinance or order of any governmental entity (whether federal, state, local or otherwise) having authority over the Property or this Contract, whether or not in effect as of the Effective Date.

r. **“Permitted Exceptions”** means all matters, encumbrances, reservations or exceptions to title to the Property, which are permitted pursuant to the terms of this Contract, including those that are acceptable to Buyer or are otherwise waived as objections by Buyer under Section 4.3 of the Contract.

s. **“Property”** means approximately 23.402 acres located in Tract 73, Abstract 80, J. Wheaton Survey & Reserve ‘A,’ Block 1, Parkway Reserves, Harris County, Texas. The Property is physically located on the North side of Westheimer Road, West of Eldridge Parkway in Houston, Harris County, Texas 77077, as more particularly described by metes and bounds on the attached Exhibit A (“**Land**”), together, but without warranty, the right, title, and interest of Seller, if any, to (i) the improvements located thereon (“**Improvements**”); and (ii) any easements, tenements, hereditaments, privileges and appurtenances benefitting such Land (“**Appurtenances**”). The term Property means the Land, Improvements, and Appurtenances.

t. **“Purchase Price”** is defined in Section 3.1 hereof.

u. **“Survey”** means those certain land title surveys prepared by the Surveyors as more fully described in Section 4.1 of this Contract.

v. **“Surveyor”** means the Surveyors of the two Surveys described in Section 4.1 of this Contract.

w. **“Title Commitment”** means the Commitment for Title Insurance obtained by Buyer pursuant to this Contract.

x. **“Title Company”** means \_\_\_\_\_ Company, located at \_\_\_\_\_ acting by and through its agent \_\_\_\_\_ [name, title, email address, and phone number of escrow agent].

y. **“Title Policy”** means the Owner's Policy of Title Insurance issued by the Title Company in accordance with the terms and provisions of Section 4.4 hereof.

1.2 **Exhibits.** The following Exhibits are attached hereto and incorporated herein for all purposes:

Exhibit “A” – Property Description

Exhibit “B” – Form of Deed

## **ARTICLE II. AGREEMENT OF PURCHASE AND SALE**

2.1 **General.** Upon and subject to the terms and conditions of this Contract, Seller agrees to sell and convey to Buyer the Property and Buyer hereby agrees to buy and take the Property from Seller. The Property will be conveyed at Closing by Seller to Buyer in fee simple, except for Permitted Exceptions.

2.2 **Disclaimer of Representations and Warranties by Seller.** **IT IS UNDERSTOOD AND AGREED THAT SELLER HAS NOT MADE AND IS NOT NOW MAKING, AND SELLER SPECIFICALLY AND EXPRESSLY DISCLAIMS AND BUYER VOLUNTARILY AND WITH KNOWLEDGE WAIVES, ANY WARRANTIES, REPRESENTATIONS, OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, (I) MATTERS OF TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH IN THE WARRANTY DEED TO BE DELIVERED AT CLOSING); (II) THE PRESENCE OF HAZARDOUS SUBSTANCES IN, ON, UNDER, OR IN THE VICINITY OF THE PROPERTY AND ANY OTHER ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF; (III) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER**

AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES AND ANY SEISMIC TESTING; (IV) WHETHER AND THE EXTENT TO WHICH, THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (V) DRAINAGE AND DETENTION REQUIREMENTS; (VI) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORE; (VII) THE EXISTENCE OF VESTED LAND USE, ZONING, OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY AND THE COMPLIANCE WITH ANY ZONING TO WHICH THE PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT AND; (VIII) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS AND ELECTRIC; (IX) USAGES OF ADJOINING PROPERTY; (X) ACCESS TO THE PROPERTY OR ANY PORTION THEREOF; (XI) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY INCOME, INCOME POTENTIAL, FINANCIAL PROSPECTS, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS, OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF; (XII) ANY RESTRICTIONS ENCUMBERING THE PROPERTY AND THE COMPLIANCE WITH ANY RESTRICTIONS ON THE PROPERTY; (XIII) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS, OR LAWS, BUILDING FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (XIV) THE INTEGRITY AND QUALITY OF ANY IMPROVEMENTS, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND WHETHER SUCH IMPROVEMENTS, IF ANY, COMPLY WITH APPLICABLE LAW; (XV) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS; (XVI) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE PROPERTY; (XVII) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY; (XVIII) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO BUYER, INCLUDING, WITHOUT LIMITATION, THE DELIVERABLES AND THE INVITATION FOR BID (AS DEFINED HEREIN); (XIX) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (BUYER AFFIRMING THAT BUYER HAS NOT RELIED ON SELLER'S INFORMATION, SKILL, OR JUDGMENT OR ANY INFORMATION IN THE INVITATION FOR BID TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT SELLER MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE); AND/OR (XX) TAX CONSEQUENCES (INCLUDING, BUT NOT LIMITED TO, THE AMOUNT, USE OR PROVISIONS RELATING TO ANY TAX CREDITS) AND WHETHER THE PROPERTY HAS BEEN GRANTED A SPECIAL ASSESSMENT OR IS SUBJECT TO ANY ROLLBACK TAXES OR MANAGEMENT DISTRICT OR OTHER SPECIAL DISTRICT FEES.

2.3 SALE "AS IS". BUYER IS NOT RELYING UPON, HAS NOT RELIED UPON, AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY

REPRESENTATION OR WARRANTY OF SELLER, INCLUDING WITHOUT LIMITATION, THE INVITATION FOR BID, OR STATEMENTS OF ANY OF SELLER'S AGENTS AND ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE AND NO SUCH RELIANCE WILL HAVE BEEN MADE. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED, AND SOPHISTICATED BUYER AND OWNER OF REAL ESTATE AND REAL ESTATE USED FOR THE PURPOSE FOR WHICH BUYER MAY ELECT TO PUT THE PROPERTY AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER'S CONSULTANTS IN MAKING DECISIONS WITH RESPECT TO AND IN PURCHASING THE PROPERTY. BUYER HAS HAD THE OPPORTUNITY TO AND/OR WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS BUYER DEEMS NECESSARY OR ADVISABLE, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, THE INCOME POTENTIAL OF, AND THE DEGREE TO WHICH THE PROPERTY CONFORMS WITH ANY APPLICABLE LAWS, AND SHALL RELY AND HAS RELIED SOLELY UPON BUYER'S OWN INVESTIGATIONS. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS AND ADVERSE INCOME POTENTIAL, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS AND HEREBY WAIVES ANY CLAIM BUYER MAY HAVE, NOW OR IN THE FUTURE, IN CONNECTION WITH ANY SUCH ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ANY RIGHT OF CONTRIBUTION. BUYER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS", WITH ALL FAULTS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER, ANY AGENT OF SELLER OR ANY THIRD PARTY.

2.4 Survival. THE TERMS AND CONDITIONS OF SECTIONS 2.2 AND 2.3 SHALL EXPRESSLY SURVIVE THE CLOSING, NOT MERGE WITH ANY CLOSING DOCUMENTS AND SHALL BE SET FORTH IN THE WARRANTY DEED. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON, UNLESS THE SAME ARE EXPRESSLY SET FORTH BY TERMS CONTAINED IN THIS CONTRACT. BUYER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE DISCLAIMERS OF SELLER AND THE "AS IS" NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY. BUYER HAS FULLY REVIEWED THE DISCLAIMERS, ASSUMPTIONS AND WAIVERS SET FORTH IN THIS CONTRACT WITH ITS COUNSEL AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS ARTICLE VIII ARE AN INTEGRAL PART OF THIS CONTRACT AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER WITHOUT SUCH PROVISIONS.



**ARTICLE III.  
PURCHASE PRICE**

3.1 The Purchase Price. The "**Purchase Price**" to be paid by Buyer to Seller for the Property shall be \_\_\_\_\_ and \_\_\_/100 Dollars (\$ \_\_\_\_\_) in good funds.

3.2 Earnest Money. Buyer has, in connection with Buyer's submittal of its Bid Response, deposited with Seller a cashier's check for the sum of Ten Thousand and 00/100 Dollars (\$10,000.00), which money was deposited for the purpose of constituting Buyer's earnest money deposit for this Contract (the "**Earnest Money**"). The Earnest Money shall be held by Seller and may be commingled with Seller's other funds and accounts and Seller shall not be required to maintain funds in a separate account or to bear interest of any kind. If the purchase and sale under the Contract is consummated in accordance with the terms and provisions hereof, the Earnest Money or amount of the Earnest Money shall be credited to Seller at Closing as partial payment of the Purchase Price due at the Closing. In the event that the Seller has signed this Contract and the transaction does not proceed to Closing, the Earnest Money shall be non-refundable in all circumstances except as expressly provided in Section 5.1(d), Section 7.1(e), and Section 12.1(b) of this Contract.

3.3 Independent Consideration. As independent consideration for Buyer's right to terminate the Contract during the Inspection Period under the conditions set forth in Section 5.1(d), Buyer shall pay Seller the amount of One Thousand and No/100 Dollars (\$1,000.00) ("**Independent Consideration**"). The Independent Consideration is in addition to and independent of all other consideration provided in this Contract, and is nonrefundable in all events.

**ARTICLE IV.  
TITLE AND SURVEY**

4.1 Title Commitment; Survey(s). The Buyer shall obtain, at Buyer's cost and sole expense, a Title Commitment for the Property within twenty (20) days of the Effective Date of this Contract and provide a copy to the Seller. By executing this Contract, the Buyer acknowledges that prior to Buyer's execution of the Contract, Seller has made available to Buyer for its inspection and review an electronic copy of the survey for the 21.8525 acre tract conducted by the Teran Group and dated August 5, 2011 ("**21 Acre Survey**") and the survey for the 1.550 acre tract being conducted by Precision Surveying, Inc. and dated November 6, 2013 ("**1.5 Acre Survey**") (collectively, the 21 Acre Survey and the 1.5 Acre Survey are referred to as "**Survey**" or "**Surveys**"). Notwithstanding the foregoing, at Buyer's sole cost and expense, the Buyer may obtain a new survey from a surveyor of Buyer's choice ("**New Survey**") or have the Surveys updated and revised. In the event that Buyer obtains a New Survey or has the Surveys updated, Buyer shall require its surveyor or the Surveyor to certify the New Survey (or include a certification on the updated Surveys) to the Buyer, Seller, and Title Company. Additionally, if Buyer elects to obtain a New Survey, for purposes of inspection, Title Objections, and other matters in this Contract, the term "Survey" as used therein shall include and mean the New Survey.

4.2 Review of the Title Commitment and Survey by Buyer; Cure by Seller. Buyer shall have fifteen (15) days from the Effective Date to review the Title Commitment and Survey and to deliver in writing such objections as Buyer may have to anything contained or set forth in the Survey or in the Title Commitment (collectively, the "**Title Objections**"). Any such items to which Buyer

does not object within such fifteen (15) day period, shall be deemed to be Permitted Exceptions. Seller may, but shall not be obligated to, cure the Title Objections. Notwithstanding the foregoing, with respect to any matter shown on Schedule C of the Title Commitment, on or before Closing, Seller agrees to work with the Title Company to cure, release, or remove any mortgages, deeds of trust, judgment liens, mechanic's and materialmen's liens, and other monetary liens created by Seller against the Property ("**Monetary Liens**"). Monetary Liens shall not constitute Permitted Exceptions.

4.3 **Title Policy.** At Closing or shortly thereafter, Buyer, at its sole cost and expense, may obtain a title policy under the Title Commitment. In such case, the Title Policy shall be issued by the Title Company in the amount of the Purchase Price and shall insure good and indefeasible title to the Property in Buyer. The Title Policy shall be subject to the Permitted Exceptions.

## **ARTICLE V. BUYER'S DUE DILIGENCE**

### 5.1 **Inspection of the Property.**

a. **Right of Access and Entry.** During the Inspection Period, subject to the requirements set forth herein, Seller hereby grants Buyer and its designated representatives the continual right to access and enter the Property at reasonable times and upon not less than 24-hour notice to Seller for the purpose of Buyer conducting non-invasive tests, studies, appraisals, or inspections deemed necessary by Buyer to evaluate the condition of the Property. Buyer and Buyer's contractors must comply with any and all reasonable entry rules or requirements that Seller may require and shall not interfere or disrupt any business operations or other activities of Seller. In the event that Buyer has been advised by its contractors or consultants that invasive testing, including taking soil, water, and any other samples or doing soil borings, is required, Buyer will notify the Seller in writing as to the necessity and extent of such testing and will provide documentation evidencing the need for invasive testing. Upon review of the information and documentation provided by Buyer, Seller will determine if such invasive testing may proceed.

b. **Standards and Liability for Entry and Investigations.** All tests and inspections shall be conducted in a good and workmanlike manner, by persons trained, licensed, and experienced in performing such inspections, and in conformity with all applicable governmental and industry standards. Buyer shall be solely responsible for all costs of and liability for all inspections and investigations performed by Buyer or Buyer's contractors on the Property. After completion of such inspection, if Buyer does not purchase the Property under the right to terminate in Section 5.1(d), Buyer shall restore the Property to substantially the same or better condition as before such inspection commenced.

c. **Insurance.** Prior to any entry upon the Property by Buyer or Buyer's agents, employees, consultants, contractors and representatives, Buyer shall deliver to Seller evidence that Buyer and Buyer's agents maintain in force commercial general liability insurance naming Seller as an additional insured with limits of at least One Million Dollars (\$1,000,000.00) for bodily or personal injury or death and property damage.

d. **Notice of Termination During Inspection Period.** In the event that Buyer determines that Seller is unable to use the Property due to its condition (including title under the right of title review in Section 4.3), Buyer may terminate the Contract so long as Buyer provides written notification to Seller (the "**Termination Notice**") on or before 5:00 p.m. of the last day of the

Inspection Period (“**Termination Deadline**”). In the event that Buyer has provided the Termination Notice to Seller on or before the Termination Deadline, Buyer shall be entitled to a return of its Earnest Money (but not the Independent Consideration) and neither Party shall have any further right, obligations or liabilities hereunder, other than those provisions hereof that expressly survive any such termination.

5.2 Results of Due Diligence. Buyer agrees to provide Seller with a copy of any inspection or test report created pursuant to Buyer's inspections or tests under this Section 5.2 within three (3) days after its receipt thereof and prior to the issuance of any final version of such report so that Seller may have an opportunity to object to or dispute any information contained therein.

5.3 Release and Indemnity. **FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, BUYER AGREES TO AND HEREBY DOES (A) ON BEHALF OF ITSELF AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND SUBCONTRACTORS (COLLECTIVELY “BUYER PARTIES”), INDEMNIFY, RELEASE, AND HOLD SELLER AND SELLER’S OFFICERS, MEMBERS OF THE BOARD OF TRUSTEES, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY, THE “INDEMNITEES”) HARMLESS FROM AND AGAINST ANY AND ALL, LIABILITIES, DEBTS, DAMAGES, LOSSES, CLAIMS, CAUSES OF ACTION, SUITS, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, COURT COSTS, ATTORNEYS' FEES AND CLAIMS RELATED TO PERSONAL INJURY, DEATH OR PROPERTY DAMAGE (INDIVIDUALLY AND COLLECTIVELY, “CLAIMS”) INCURRED BY SELLER OR ANY OF THE INDEMNITEES AS A RESULT OF, ARISING OUT OF, OR RELATED TO BUYER'S OR ANY OF THE BUYER PARTIES ENTRY UPON THE PROPERTY OR EXERCISE OF ANY DUE DILIGENCE WITH RESPECT TO THE PROPERTY, WHETHER OR NOT OCCURRING PRIOR OR SUBSEQUENT TO THE EFFECTIVE DATE OF THIS CONTRACT.**

The obligations of Buyer for restoration of the Property under Section 5.1(b), for insurance in Section 5.1(c), the requirement of Buyer to provide Seller with copies of any and all reports under Section 5.2, and the release and indemnification set forth in Section 5.3 shall survive (i) the termination of this Contract by either Buyer or Seller; or (ii) the Closing and shall not be merged into the Deed or any other Closing document.

## **ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF BUYER**

6.1 Buyer's Representations and Warranties. Buyer represents, warrants, covenants and agrees with Seller that as of the Effective Date and as of the Closing Date, (a) Buyer has and shall have the resources necessary and the full right, power and authority to purchase the Property from Seller as provided in this Contract and to carry out its obligations hereunder; (b) all required action necessary to authorize Buyer to enter into this Contract and to carry out its obligations hereunder has been taken; and (c) the execution of this Contract and the consummation of the transactions contemplated hereby and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, any instruments to which Buyer is a party or by which Buyer is bound. Buyer shall give Seller immediate notice upon the occurrence of any event, or receipt of any notice, which might give rise to a breach by Buyer of any of its representations or

warranties set forth in this Section 6.1. Notwithstanding anything herein to the contrary, the representations and warranties of Buyer hereunder shall survive the Closing and shall not be merged into the Deed or any other Closing document.

**ARTICLE VII.  
REPRESENTATIONS AND WARRANTIES OF SELLER**

7.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that:

a. As of the Effective Date, to Seller's knowledge, there is no litigation that has been filed and Seller has not received written notification that condemnation proceedings have been recorded that affect the Property.

b. To Seller's knowledge, as of the Closing Date, except as may be set forth in recorded instruments, no tenants or other third parties shall have any rights of possession of any portion of the Property;

c. To Seller's knowledge, all bills and other payments due from Seller under written contracts with respect to Property will be paid or satisfied in full prior to or at Closing.

d. As of the Effective Date and as of the Closing Date, Seller has and will have obtained from the Board of Trustees the authority to perform under this Contract and to execute and deliver all of the Closing documents specified in Section 11.3 hereof.

e. To Seller's knowledge, it has not received any written notice of condemnation or intent to condemn any portion of the Property from any governmental authority. In the event Seller receives such written notice after the Effective Date, it shall provide Buyer a copy of the notice within five (5) days of receipt. Buyer shall have fifteen (15) days from the receipt thereof (which may extend the Closing Date if necessary) to determine the extent of the proposed condemnation and to determine if the proposed condemnation interferes with its intended use. In the event Buyer reasonably determines that the condemnation will interfere with its intended use of the Property, it may notify Seller of its election to terminate the Contract on or before the end of the fifteen (15) day period provided in this Section 7.1(e), in which event the Earnest Money shall be returned to Buyer and neither Buyer or Seller shall have any further right, obligations or liabilities hereunder, other than those provisions hereof that expressly survive any such termination.

7.2 Buyer acknowledges that with regard to the representations and warranties set forth above, Seller has made no special investigation of and has no duty to investigate the matters set forth therein. For purposes of the representations contained in Section 7.1, the term "Seller" shall mean Dr. Teri Zamora, MA, Senior Vice Chancellor, Finance & Administration, Houston Community College System and the term "knowledge" means the actual (and not imputed or constructive) knowledge of Dr. Teri Zamora without a duty to investigate or inquire. Seller shall give Buyer notice upon the occurrence of any event, or receipt of any notice, which might give rise to a breach by Seller of any of its representations or warranties set forth in this Section 7.1. Seller's warranties and representations shall survive for a period of two (2) months from the Closing Date and shall not be merged into the Deed or any other Closing document.

**ARTICLE VIII.  
EXPRESS COVENANTS OF SELLER; "AS-IS" SALE**

8.1. Covenants of Seller. Between the Effective Date and the Closing, Seller expressly covenants and agrees that:

a. Seller shall give Buyer written notice of the institution of or receipt of written notice of any litigation or threatened litigation affecting the Property which would in any way constitute or have the effect of presently or in the future creating a lien, claim or obligation of any kind against the Property.

b. Other than in Seller's ordinary course of business, Seller shall not impose upon the Property any new or additional encumbrances to title (except for any encumbrances created by a governmental entity) and shall discharge, or cause to be discharged, any claims of lien or liens imposed upon the Property following the Effective Date arising by, through or under Seller.

**ARTICLE IX.  
CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE**

9.1 Conditions to Buyer Closing. INTENTIONALLY DELETED

9.2 Closing Documents. Seller shall have provided to Buyer at Closing, each of the documents required pursuant to Section 11.3 hereof; and

9.3 Title Commitment. Seller shall have satisfied the Title Company's requirements of Seller contained in Schedule C of the Title Commitment or otherwise cause the Title Company to agree to waive such requirement(s); and

9.4 No Default. Seller is not in default hereunder.

**ARTICLE X.  
CONDITION PRECEDENT TO SELLER'S PERFORMANCE**

10.1 Conditions to Seller Closing. Seller shall not be obligated to perform under this Contract unless:

a. Payment of Purchase Price. Buyer shall have delivered the Purchase Price to the Title Company on or before the Closing Date in good funds (wired funds or cashier's check);

b. Closing Documents. Buyer shall have provided to Seller at Closing each of the documents required pursuant to Section 11.4 hereof;

c. Buyer's Warranties, Representations and Covenants. Each of Buyer's warranties and representations set forth in Article VI hereof shall be true and correct as of the Effective Date and as of the Closing;

d. No Default. Buyer has complied with the terms and conditions of this Contract, performed all of its obligations under this Contract, and is not in default hereunder; and

e. Board Approval. On or before Closing, Seller shall have obtained approval from the Board of Trustees to close this transaction.

## **ARTICLE XI. CLOSING**

11.1 Date and Place of Closing. The Closing hereunder shall take place on or before thirty (30) days from the end of the Inspection Period, in the offices of the Title Company, or at such other place or on such earlier date as Seller and Buyer may mutually agree upon (the "**Closing Date**"). Notwithstanding the foregoing, the Closing Date may be adjusted by mutual agreement of the Parties or due to the date of the meeting at which the Board of Trustees authorizes the resolution and order for sale of the Property.

11.2 Items to be Delivered at the Closing.

11.3 Seller. At the Closing, Seller shall deliver to the Buyer through the Title Company each of the following items:

a. A special warranty deed in the form attached hereto as Exhibit B executed and acknowledged by Seller (the "**Deed**");

b. A closing statement setting forth the Purchase Price and all closing credits and adjustments for both Parties that are expressly provided for in this Contract ("**Closing Statement**") executed by Seller;

c. A certificate executed by Seller in the form acceptable to the Title Company evidencing that Buyer will not be required to withhold any tax and that no withholding liability exists as of the Closing under Section 1445 of the Internal Revenue Code (and the implementing regulations); and

d. Any and all additional documents and instruments the Title Company may require in order to issue the Title Policy or which Buyer's counsel and Seller's counsel may mutually and reasonably determine are necessary to the proper consummation of this transaction.

11.4 Buyer. At the Closing, Buyer shall deliver to the Title Company each of the following items:

a. The total Purchase Price, after deducting therefrom the Earnest Money and any other credits to which Buyer may be entitled at Closing pursuant to the terms of this Contract;

b. A counterpart of the Deed signed by Buyer;

c. The Closing Statement executed by Buyer;

d. Documentation required by the Title Company reflecting the authorization of Buyer to close this transaction and execute all of the documents required in connection therewith; and

e. Any and all additional documents and instruments the Title Company may require in order to issue the Title Policy or which Buyer's counsel and Seller's counsel may mutually and reasonably determine are necessary to the proper consummation of this transaction.

11.5 Property Taxes. Seller represents to Buyer that it is exempt from ad valorem taxes. Any real estate (ad valorem) taxes that may be assessed on or against the Property for any period of time after the Closing Date shall be the responsibility of and paid for by Buyer. Seller shall have no responsibility for any of the ad valorem taxes related to the Property. The obligations of Buyer under this Section 11.5 shall survive the Closing and shall not be merged into the Deed or any other Closing document.

11.6 Possession. Possession of the Property shall be delivered to Buyer by Seller on the Closing Date.

11.7 Seller's Costs of Closing. Seller agrees to pay:

- a. All charges for tax certificates;
- b. Seller's attorney fees (outside of Closing);
- c. One-half (½) of any escrow fees charged by the Title Company (in an amount not to exceed \$250);
- d. Brokerage Commissions as set forth in Section 13.13; and
- e. Charges incurred by Seller for the procurement, preparation, and recording of any releases, waivers or other instruments required to clear any monetary liens that were created by the Seller and shown on Schedule C of the Title Commitment.

11.8 Buyer's Cost of Closing. Buyer agrees to pay:

- a. The premium for issuance of the Title Policy described under Section 4.4, including any premium for any deletion, modification or endorsement;
- b. the Survey;
- c. Buyer's attorneys' fees;
- d. One-half (½) of any escrow fees;
- e. Recording fees for the Deed or other closing documents;
- f. All fees related to any financing obtained by Buyer (including, but not limited to, any recording fees); and

- g. The costs of any inspections or due diligence conducted by Buyer.

All other costs, fees, penalties and other expenses incurred at the Closing shall be paid by Seller and/or Buyer as is customarily done in connection with a closing in Harris County, Texas of the type of transaction contemplated by this Contract.

## **ARTICLE XII. DEFAULTS AND REMEDIES**

### 12.1 Seller's Defaults; Buyer's Remedies.

a. Seller's Defaults. Subject to the terms of this Contract and provided Buyer is not in default hereunder, Seller shall be deemed to be in default of this Contract if (i) any representation or warranty of Seller under Section 7.1 hereof shall be false or incorrect in any material respect at the time such representation is made unless subsequently amended or corrected; (ii) Seller shall fail to perform any covenant required to be performed on its part under Section 8.1 hereof; or (iii) Seller shall fail to convey the Property pursuant to the terms of this Contract other than as expressly provided herein.

b. Buyer's Remedies. In the event of default of the Seller as set forth in Section 12.1(a), Buyer's sole and exclusive remedy in the event of a default or breach by Seller will be to terminate this Contract, whereupon Buyer shall be entitled to a refund of the Earnest Money. BUYER HEREBY WAIVES ANY RIGHT TO BRING A SUIT FOR DAMAGES OR TO PURSUE ANY OTHER RIGHT AVAILABLE AT LAW OR IN EQUITY.

### 12.2 Buyer's Defaults; Seller's Remedies.

a. Buyer's Default. Subject to the terms of this Contract and provided Seller is not in default hereunder, Buyer shall be deemed to be in default of this Contract if (i) any representation or warranty of Buyer under Section 6.1 hereof shall be false or incorrect in any material respect at the time such representation is made unless subsequently amended or corrected; or (ii) fail to meet, comply with, or perform any covenant, agreement, obligation, or requirement on its part required under this Contract, including, but not limited to, payment of the Purchase Price or the failure to close on the Closing Date.

b. Seller's Remedy. In the event Buyer shall be deemed to be in default hereunder, Seller may, in its sole and absolute discretion, either (i) terminate this Contract whereupon Seller shall be entitled to retain the Earnest Money as liquidated damages for a default of Buyer hereunder because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default; or (ii) any other remedy available at law or equity. It is further agreed that the liquidated damages provided for herein represent a reasonable forecast of Seller's damages, considering all the circumstances existing as of the date of this Contract and is not a penalty. Additionally, in the event Buyer shall be deemed to be in default under Section 5.1(b), Section 5.1(c), Section 5.2, and Section 5.3 or of any other provision of this Contract that is expressly provided to survive the Closing, Seller may pursue all remedies available to it at law or in equity in connection with such default by Buyer.



**ARTICLE XIII.  
MISCELLANEOUS**

13.1 References. All references to “Article”, “Articles”, “Section”, or “Sections” contained herein are, unless specifically indicated otherwise, references to articles and sections/paragraphs of this Contract.

13.2 Exhibits. All references to “Exhibits” contained herein are references to exhibits attached hereto, all of which are made a part of this Contract for all purposes.

13.3 Captions. The captions, headings and arrangements used in this Contract are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions hereof.

13.4 Number and Gender of Words. Whenever the singular number is used herein, the same shall include the plural where appropriate and words of any gender shall include each other gender where appropriate.

13.5 Notices. All notices, demands and requests and other communications required or permitted hereunder shall be in writing and shall be sent by (a) prepaid postage, registered or certified mail, return receipt requested; (b) by nationally recognized overnight courier with receipt confirmation or tracking services; (c) by hand delivery; or (d) by facsimile or other electronic transmission (including electronic mail) and shall be deemed to be delivered (i) three (3) Business Days after being deposited in a domestic postal depository of the United States Postal if sent by prepaid postage as provided above; (ii) the next Business Day after deposit with a nationally recognized overnight courier (with receipt confirmation or tracking services) prior to such courier's overnight delivery deadline for the day of deposit (and the next Business Day after the day following the day of deposit if deposited after such courier's overnight delivery deadline for the day of deposit); (iii) the same day of being sent by facsimile or electronic mail; or (iv) when delivered with evidence of delivery, if sent by hand delivery. Buyer's and Seller's respective addresses for purposes of this Contract, and to which all notices required hereunder shall be sent, are as follows:

If to Seller:     Houston Community College System  
                          Attn: Teri Zamora  
                          Sr. Vice Chancellor of Finance and Administration, CFO  
                          Houston Community College System  
                          3100 Main Street  
                          Houston, Texas 77004  
                          Telephone:     713-718-5059  
                          Facsimile:     713-718-8583  
                          Email: [Teri.Zamora@hccs.edu](mailto:Teri.Zamora@hccs.edu)

With a copy to: Mr. Ashley Smith  
General Counsel  
Houston Community College System  
3100 Main Street, Mail Code 1106  
Houston, Texas 77002  
Telephone: 713-718-5207  
Facsimile: 713-718-7585  
Email: [Edgar.Smith2@hccs.edu](mailto:Edgar.Smith2@hccs.edu)

With copy to: Thompson & Horton LLP  
Attn: Maureen R.M. Singleton  
Phoenix Tower, Suite 2000  
3200 Southwest Freeway  
Houston, Texas 77027  
Facsimile: (713) 583-7909  
Telephone: (713) 554-6750  
Email: [msingleton@thompsonhorton.com](mailto:msingleton@thompsonhorton.com)

If to Buyer:

Facsimile:  
Telephone:  
Email:

With a copy to:

Facsimile:  
Telephone:  
Email:

Either Party hereto may change its address for notice by giving three (3) Business Days prior written notice thereof to the other Party.

13.6 Governing Law; Venue. This Contract is being executed and delivered and is intended to be performed in the State of Texas, and the laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Contract, without regard to principles of conflicts of law. This Contract is performable in Houston, Harris County, Texas, and any claim, action or proceeding against a party arising out of or relating to this Contract or any transaction contemplated hereby or any judgment entered by any court in respect thereof may be brought in any federal or state court located in Houston, Harris County, Texas, and each Party hereby submits to the nonexclusive jurisdiction of such courts for the purpose of any such action or proceeding. Each Party agrees not to bring any action, suit or proceeding against the other Party arising out of or relating to this Contract or any transaction contemplated hereby except in, and each Party irrevocably agrees to the venue of, the federal or state courts located in Houston, Harris County, Texas.

13.7 Assignment of Contract. This Contract may not be assigned by Buyer without the prior written consent of Seller, and any assignment or transfer of Buyer's rights hereunder, without

such consent, shall be null and void and shall constitute a default by Buyer hereunder. In the event that Seller consents to an assignment of this Contract by Buyer, (i) the Buyer and assignee must execute a written assignment and assumption agreement in a form acceptable to Seller (with Seller's acknowledgement of approval on the assignment and assumption agreement) pursuant to which the assignee assumes all of Buyer's obligations and liabilities under this Contract; (ii) a copy of the approved, fully executed assignment and assumption agreement is delivered to Seller and the Title Company prior to the Closing Date; and (iii) Buyer continues to remain primarily liable to Seller for all Buyer's obligations and liabilities under this Contract.

13.8 Entirety and Amendments. This Contract embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the Property, including, but not limited to, the Invitation for Bid and the Bidder's Bid Response, and may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought.

13.9 Invalid Provisions. If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future Laws, such provisions shall be fully severable the same as if such invalid or unenforceable provisions had never comprised a part of the Contract; and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Contract. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be automatically substituted as a part of this Contract, a provision as similar in terms and intent to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

13.10 Multiple Counterparts; Electronic Signatures. This Contract may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Contract, it shall not be necessary to produce or account for more than one such counterpart. Any signatures required under this Contract may be attached in electronic form and any such electronic signatures shall be deemed valid and enforceable. A copy of this Contract signed by the Parties and other documents required under this Contract may be transmitted by, and the Parties agree to receive the executed Contract and other documents, via electronic mail.

13.11 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by Seller to Buyer, Seller and Buyer agree to reasonably cooperate with each other to perform, execute and deliver or cause to be performed, executed and delivered at the Closing or thereafter any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby, but neither Party shall have any obligation to expend any funds in accomplishing same.

13.12 Time of the Essence. It is expressly agreed by the Parties hereto that time is of the essence with respect to this Contract. If the final day of any period of any date of performance under this Contract falls on a day other than a Business Day, then the final day of said period or the date of performance shall be extended to the next business day thereafter.

13.13 Real Estate Brokerage; Disclosure. Seller represents that except for its agreement with Pollan Hausman Real Estate Services, LLC, a licensed real estate broker in the State of Texas ("**Seller's Broker**"), it has not entered into any other agreement for real estate brokerage services relating to this transaction. Buyer represents to Seller that Buyer has entered into an agreement with

\_\_\_\_\_, a licensed real estate broker in the State of Texas, ("**Buyer's Broker**") to represent Buyer in the purchase of the Property. At and conditioned upon Closing, Seller shall pay a real estate commission to Seller's Broker in the amount agreed upon between Seller and Seller's Broker under a separate agreement ("Seller Brokerage Commissions"). If Buyer is represented by Buyer's Broker in this transaction, at and conditioned upon Closing, Seller will pay to Buyer's Broker the following commission: two percent (2%) of the Purchase Price for a Purchase Price between \$2,000,000.00 and \$14,999,999.99; and one percent (1%) of the Purchase Price for a Purchase Price of \$15,000,000.00 or more ("**Buyer Brokerage Commissions**") (collectively, Seller Brokerage Commissions and Buyer Brokerage Commissions are referred to herein as "Brokerage Commissions"). Seller shall have no liability for commissions or otherwise to any agent or broker of Buyer except as set forth herein. **BUYER AGREES TO AND HEREBY DOES INDEMNIFY AND HOLD HARMLESS SELLER FROM AND AGAINST ANY AND ALL CLAIMS OF ANY AGENTS, BROKERS, FINDERS OR SUCH OTHER PARTIES CLAIMING BY, THROUGH OR UNDER BUYER, WHICH INDEMNITY SHALL EXPRESSLY SURVIVE CLOSING OR ANY TERMINATION OF THIS CONTRACT.**

13.14 Survival. Notwithstanding anything herein to the contrary, all covenants and agreements contained herein and intended to be performed subsequent to any Closing hereunder shall survive the execution and delivery of the Deed and other closing documents required hereby and shall specifically not be deemed to be merged into or waived by any instrument of Closing, but shall expressly survive and be binding upon Seller and Buyer.

**13.15 WAIVER OF CONSUMER RIGHTS. BY EXECUTING THIS CONTRACT, BUYER HEREBY WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES- CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF MY OWN SELECTION, AND BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.**

*[Signatures appear on the following page]*

*[Signature page for Purchase and Sale Contract for a Parcel of Land containing approximately 23.402 Acres]*

EXECUTED by the Parties below:

**Seller:**

**HOUSTON COMMUNITY COLLEGE SYSTEM**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Dr. Cesar Maldonado  
Chancellor

APPROVED AS TO FORM:

By: \_\_\_\_\_

**BUYER:**

**[TO BE INSERTED]**

By:\_\_\_\_ Date signed:\_\_\_\_\_

TITLE COMPANY RECEIPT

The undersigned Title Company acknowledges receipt of an original executed copy of this Purchase and Sale Contract on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_ **TITLE COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A TO PURCHASE AND SALE CONTRACT**

*Property Description*

[To come from surveyor's field notes]

**EXHIBIT B TO PURCHASE AND SALE CONTRACT**

*Form of Special Warranty Deed*

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

THE STATE OF TEXAS       §  
  §   KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF HARRIS       §

That, **HOUSTON COMMUNITY COLLEGE SYSTEM**, a public community college established under Chapter 130 of the Texas Education Code, an institution of higher education as defined in Section 61.003 of the Texas Education Code, and political subdivision of the State of Texas, ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, acting herein pursuant to the authorization of the Board of Trustees of Grantor granted at the regular board meeting held on \_\_\_\_\_, has GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGAIN, SELL AND CONVEY unto \_\_\_\_\_, ("**Grantee**") a tract of land containing approximately 23.402 acres, as more particularly described on the attached Exhibit A (the "**Land**") and also, but without warranty, Grantor grants to Grantee Grantor's right, title, and interest, if any, to (i) improvements located on the Land ("**Improvements**"); and (ii) any easements, tenements, hereditaments, privileges and appurtenances benefitting such Land ("**Appurtenances**"), such conveyance of Land, Improvements, and Appurtenances being subject to the exceptions restrictions, and Permitted Exceptions set forth herein. As used herein, the term "Property" shall mean the Land, Improvements, and Appurtenances.

Exceptions

This conveyance is made by Grantor and accepted by Grantee subject to (i) all matters identified on Exhibit B attached hereto and incorporated herein for all purposes; (ii) any encumbrances or other matters of record; (iii) ad valorem taxes on or relating to the Property, including, but not limited to, all such taxes for the year of \_\_\_\_\_ and subsequent years, and for any "roll back" taxes arising from a change in usage or ownership of the Property from the date hereof; and (iii) the "**AS-IS**", "**WHERE IS**", **WITH ALL FAULTS and disclaimer set forth in this Deed** (all of the foregoing clauses (i) through (iii) being collectively referred to as the "**Permitted Exceptions**").



Disclaimer and "As Is" Conveyance

**EXCEPT FOR THE LIMITED WARRANTY OF TITLE TO THE LAND AS EXPRESSLY SET FORTH IN THIS DEED, IT IS UNDERSTOOD AND AGREED THAT GRANTOR HAS NOT MADE AND IS NOT NOW MAKING, AND GRANTOR SPECIFICALLY AND EXPRESSLY DISCLAIMS AND GRANTEE VOLUNTARILY AND WITH KNOWLEDGE WAIVES, ANY WARRANTIES, REPRESENTATIONS, OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, (I) MATTERS OF TITLE (OTHER THAN GRANTOR'S WARRANTY OF TITLE SET FORTH IN THE WARRANTY DEED TO BE DELIVERED AT CLOSING); (II) THE PRESENCE OF HAZARDOUS SUBSTANCES IN, ON, UNDER, OR IN THE VICINITY OF THE PROPERTY AND ANY OTHER ENVIRONMENTAL MATTERS RELATING TO THE PROPERTY OR ANY PORTION THEREOF; (III) GEOLOGICAL CONDITIONS, INCLUDING, WITHOUT LIMITATION, SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND WATER RESERVOIRS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER AND EARTHQUAKE FAULTS AND THE RESULTING DAMAGE OF PAST AND/OR FUTURE EARTHQUAKES AND ANY SEISMIC TESTING; (IV) WHETHER AND THE EXTENT TO WHICH, THE PROPERTY OR ANY PORTION THEREOF IS AFFECTED BY ANY STREAM (SURFACE OR UNDERGROUND), BODY OF WATER, FLOOD PRONE AREA, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARD; (V) DRAINAGE AND DETENTION REQUIREMENTS; (VI) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, PAST SOIL REPAIRS, SOIL ADDITIONS OR CONDITIONS OF SOIL FILL, OR SUSCEPTIBILITY TO LANDSLIDES, OR THE SUFFICIENCY OF ANY UNDERSHORING; (VII) THE EXISTENCE OF VESTED LAND USE, ZONING, OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY AND THE COMPLIANCE WITH ANY ZONING TO WHICH THE PROPERTY OR ANY PORTION THEREOF MAY BE SUBJECT AND; (VIII) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS AND ELECTRIC; (IX) USAGES OF ADJOINING PROPERTY; (X) ACCESS TO THE PROPERTY OR ANY PORTION THEREOF; (XI) THE VALUE, COMPLIANCE WITH THE PLANS AND SPECIFICATIONS, SIZE, LOCATION, AGE, USE, DESIGN, QUALITY, DESCRIPTION, SUITABILITY, STRUCTURAL INTEGRITY, OPERATION, TITLE TO, OR PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY INCOME, INCOME POTENTIAL, FINANCIAL PROSPECTS, EXPENSES, CHARGES, LIENS, ENCUMBRANCES, RIGHTS, OR CLAIMS ON OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF; (XII) ANY RESTRICTIONS ENCUMBERING THE PROPERTY AND THE COMPLIANCE WITH ANY RESTRICTIONS ON THE PROPERTY; (XIII) THE CONDITION OR USE OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY OR ALL PAST, PRESENT OR FUTURE FEDERAL, STATE OR LOCAL ORDINANCES, RULES, REGULATIONS, OR LAWS, BUILDING FIRE OR ZONING ORDINANCES, CODES OR OTHER SIMILAR LAWS; (XIV) THE INTEGRITY AND QUALITY OF ANY IMPROVEMENTS, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND WHETHER SUCH IMPROVEMENTS, IF ANY, COMPLY WITH APPLICABLE LAW; (XV) THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS;**

Exhibit B to Purchase and Sale Contract

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(XVI) ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE PROPERTY; (XVII) THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY; (XVIII) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO GRANTEE, INCLUDING, WITHOUT LIMITATION, THE DELIVERABLES AND THE INVITATION FOR BID ISSUED BY THE GRANTOR FOR SALE OF THE PROPERTY (“INVITATION FOR BID”); (XIX) THE MERCHANTABILITY OF THE PROPERTY OR FITNESS OF THE PROPERTY FOR ANY PARTICULAR PURPOSE (GRANTEE AFFIRMING THAT GRANTEE HAS NOT RELIED ON GRANTOR'S INFORMATION, SKILL, OR JUDGMENT OR ANY INFORMATION IN THE INVITATION FOR BID TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT GRANTOR MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE); AND/OR (XX) TAX CONSEQUENCES (INCLUDING, BUT NOT LIMITED TO, THE AMOUNT, USE OR PROVISIONS RELATING TO ANY TAX CREDITS) AND WHETHER THE PROPERTY HAS BEEN GRANTED A SPECIAL ASSESSMENT OR IS SUBJECT TO ANY ROLLBACK TAXES OR MANAGEMENT DISTRICT OR OTHER SPECIAL DISTRICT FEES..

GRANTEE IS NOT RELYING UPON, HAS NOT RELIED UPON, AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF GRANTOR OR ANY OF ITS AGENTS, INCLUDING, WITHOUT LIMITATION, THE INVITATION FOR BID ISSUED BY GRANTOR FOR THE SALE OF THE PROPERTY, AND GRANTEE ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE AND NO SUCH RELIANCE HAS BEEN MADE. GRANTEE REPRESENTS AND WARRANTS THAT IT IS A KNOWLEDGEABLE, EXPERIENCED, AND SOPHISTICATED BUYER OF REAL ESTATE AND OF REAL ESTATE USED FOR THE PURPOSE FOR WHICH GRANTEE MAY ELECT TO PUT THE PROPERTY AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF GRANTEE'S CONSULTANTS IN MAKING DECISIONS WITH RESPECT TO AND IN PURCHASING THE PROPERTY. GRANTEE HAS CONDUCTED SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS GRANTEE HAS DEEMED NECESSARY OR ADVISABLE, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, THE INCOME POTENTIAL OF, AND THE DEGREE TO WHICH THE PROPERTY CONFORMS WITH ANY APPLICABLE LAWS, AND HAS RELIED AND IS RELYING SOLELY UPON GRANTEE'S OWN INVESTIGATIONS. GRANTEE ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS AND ADVERSE INCOME POTENTIAL, MAY NOT HAVE BEEN REVEALED BY GRANTEE'S INSPECTIONS AND INVESTIGATIONS AND HEREBY WAIVES ANY CLAIM GRANTEE MAY HAVE, NOW OR IN THE FUTURE, IN CONNECTION WITH ANY SUCH ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, ANY RIGHT OF CONTRIBUTION. GRANTEE ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING CONVEYED TO GRANTEE AND GRANTEE HEREBY ACCEPTS THE PROPERTY “AS IS, WHERE IS”, WITH ALL FAULTS. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY GRANTOR, ANY AGENT OF GRANTOR OR ANY THIRD PARTY.

**GRANTOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON. GRANTEE ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE DISCLAIMERS OF GRANTOR AND THE "AS IS" NATURE OF THIS CONVEYANCE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY. GRANTEE HAS FULLY REVIEWED THE DISCLAIMERS, ASSUMPTIONS AND WAIVERS SET FORTH IN THIS DEED AND THE CONTRACT WITH ITS COUNSEL AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND "AS IS" PROVISIONS ARE AN INTEGRAL PART OF THIS TRANSACTION AND THAT GRANTOR WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO GRANTEE FOR THE PURCHASE PRICE WITHOUT SUCH PROVISIONS.**

TO HAVE AND TO HOLD the Land, subject to the Permitted Exceptions, and other matters set forth in and under this deed, Grantor does by these presents bind itself to WARRANT and FOREVER DEFEND, all and singular, the Land, with no warranty as to any Improvements or Appurtenances, unto Grantee, its successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor but not otherwise.

*[Signatures appear on the following page]*

[Signature Page for Deed to 23.402 acres]

EXECUTED to be effective for all purposes as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**Grantor:**

**HOUSTON COMMUNITY COLLEGE SYSTEM**  
[DO NOT SIGN-FORM PURPOSES ONLY]

By: \_\_\_\_\_  
President, Board of Trustees

**GRANTEE:**

[INSERT NAME]

[DO NOT SIGN-FORM PURPOSES ONLY]

By: \_\_\_\_\_

**GRANTEE'S ADDRESS:**

COUNTY OF HARRIS           §  
  §  
THE STATE OF TEXAS       §

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, President of the Board of Trustees of HOUSTON COMMUNITY COLLEGE SYSTEM on behalf of said entity.

\_\_\_\_\_  
Notary Public in and for  
The State of TEXAS  
Name:  
\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

COUNTY OF HARRIS           §  
  §  
THE STATE OF TEXAS       §

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_  
Notary Public in and for  
The State of TEXAS  
Name:  
\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A  
TO SPECIAL WARRANTY DEED**

**[Attach legal description from surveyor]**

**EXHIBIT B  
TO SPECIAL WARRANTY DEED**

*Permitted Exceptions*

1. [Insert matters shown on final title commitment]