

**REQUEST FOR PROPOSALS (“RFP”)  
Purchase of Real Property  
Suitable for Use as a Public Library  
Town of Upton, Massachusetts**

**Statement of Purpose**

The Town of Upton, Massachusetts (“Town”) is seeking Proposals for the purchase of a parcel of land, or parcels of land, within the Town suitable for the construction of a new public library and Proposals for the purchase of parcel(s) of land with an existing building, suitable for renovation for use as a public library. The Town will also consider Proposals for the donation or lease (minimum term of 99 years) of property.

The property being offered must be suitable for the Town’s intended use and meet the specifications contained herein; it must be located in the Town and of a suitable size for a public library; must have good and clear record and marketable title satisfactory to the Town; must have title insurable, for the benefit of the Town, by a title insurance company acceptable to the Town, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use; must be free of liens and encumbrances; may not have easements, restrictions, or reservations of record that interfere with use of or access to the property for the Town’s intended purposes; and, must have real estate taxes paid to date of sale.

*The successful owner of property offered for sale must be prepared to enter into a purchase and sale agreement within thirty (30) days from the award of this Proposal.*

**There is no appropriation from Town Meeting for the construction of a public library or for the purchase of land for a public library. The Town intends to apply for a Massachusetts Public Library Construction Program (“MPLCP”) construction grant to assist in the financing of a new public library; however, the Town has not yet applied. Any award of a purchase and sale agreement for property as a result of this RFP will be subject to Town Meeting authorization through a debt exclusion and appropriation, the award of the MPLCP construction grant, and the other contingencies stated herein.**

It is estimated that the award of the MPLCP construction grant, and Town Meeting authorization and appropriation, will occur no earlier than June 2017.

Information and Proposal requirements are available at the Upton Board of Selectmen’s office, 1 Main Street, Upton, MA 01568, between the hours of 8:00 am and 4:00 pm, Monday, Wednesday and Thursday, 9:00 am through 6:30 pm on Tuesday, and 8:00 am through 12:00 pm on Friday.

**I. SPECIFICATIONS**

**A. The Property**

1. The Town requires parcel(s) of land, located within the Town, suitable for the construction of a new public library, or parcel(s) of land with an existing building that can be renovated for use as a public library.

2. The property must contain enough land suitable for a public library. It is estimated that about two buildable acres are needed if water and sewer connections exist at the property boundary, and about three buildable acres, if on-site water and sewer are needed. Somewhat smaller amounts of land will be considered, but may not be as desirable.
3. The Proposal should include a copy of the latest deed for the property or properties and, if available, a site plan or survey of the property or properties.
4. The property must comply with the Town of Upton's zoning bylaws and regulations.
5. Title to the property cannot contain any restrictions that will interfere with the Town's intended use.
6. Easements, right-of-way privileges, or liens encumbering the property must be clearly stated on the Information Form or an attachment thereto. Easements or right-of-way privileges cannot interfere with access to or use of the property for the Town's intended purpose.
7. The property may be within a 100-year Flood Boundary, as shown on the National Flood Insurance Program FIRM Flood Insurance Rate Map for Upton. If property is within such flood boundary more information may be required prior to purchase.
8. The property should have access to Town Water at the property's boundary or demonstrate how hookup to Town Water will be accomplished or that a sufficient supply of on-site water is available.
9. The property should have access to Town Sewer at the property's boundary or, if the property does not have access to Town Sewer, the property must be able to be served by a septic system in compliance with Title 5 of the State Environmental Code, 310 CMR 15.000 et. seq.
10. The property must have commercial grade electrical, telephone and cable utilities at the property boundary or demonstrate how hook-up to commercial grade electrical, telephone and cable utilities will be accomplished.

## **II. PRICE**

This RFP is issued pursuant to M.G.L. Chapter 30B, Section 16. The Town is interested in securing the purchased premises at the lowest responsible price. However, the Town reserves the right to award the purchase to the Proposer offering the most advantageous combination of land characteristics and purchase price, and shall not be required to award the Proposer offering the lowest price. The Town reserves the right to negotiate the purchase price with the selected Proposer.

## **III. GENERAL CONDITIONS**

1. The successful Proposer shall comply with all applicable federal, state, and local laws and regulations related to real estate transactions.

2. The Town does not have a real estate broker representing it, and the Proposer must agree to defend, indemnify the Town against, and hold the Town harmless from any claim, loss, damage, costs, or liabilities for any brokerage commission or fee, which may be asserted against the Town by any broker in connection with this transaction.
3. Proposer must be able to transfer the real estate to the Town or its assignee or nominee, by a good and sufficient quitclaim deed conveying good and clear record and marketable title, free from encumbrances that interfere with the Town's intended use of the property.
4. All real estate purchases by the Town are exempt from deed stamp taxes pursuant to M.G.L. Chapter 64D, Section 1 and Proposal prices must exclude any taxes.
5. **Selection of a preferred offer will be contingent on Town Meeting authorizing the Board of Selectmen to purchase the property and appropriating funds therefore through a debt exclusion, and the award of a MPLCP construction grant.**
6. All Proposals submitted to the Town must include all forms included within the contents of the RFP and they must all be filled out and properly executed. Failure to submit all forms properly filled out and executed may be grounds for rejection of the Proposal.
7. All signatures must be handwritten and in ink by the person(s) authorized to sell the property. All other words and figures submitted on the Proposal shall be neatly written in ink or typed. Proposals that are conditional, obscure, or which contain additions not called for in the specifications, erasures, alteration, or irregularities may be rejected.
8. The Town reserves the right to reject any or all Proposals, waive technicalities, advertise for new Proposals, and make awards as may be deemed to be in the best interests of the Town.
9. All Proposals become the property of the Town. The Town has the right to disclose information contained in the Proposals.
10. The Town reserves the right to make an award to a Proposer that offers other than the lowest price. The Town will consider the overall value of the offer, including both price and non-price considerations.
11. Proposer must be current with all real estate taxes, water bills, and sewer charges at the time of the sale. Property that does not meet this specification may require more information.
12. No Proposer may withdraw his Proposal for a period of one hundred and eighty (180) days after the date and time set for the opening of the Proposals.
13. The selection of the Proposer shall be made without regard to race, color, sex, age, religion, political affiliation, or national origin.
14. The Town reserves the right to conduct site visits to verify the information provided in the Proposals and to perform detailed evaluations of the property proposed prior to award, including but not limited to hazardous waste evaluation and sub-surface soil conditions. The

Proposer's failure to cooperate with the Town in this regard may result in rejection of the Proposal.

15. The Town reserves the right to request additional information from any and all Proposers, if it is deemed necessary in order to identify the most advantageous Proposal.
16. Prior to opening of the Proposals, any person wishing to make changes, to correct, modify, or withdraw a Proposal that has already been submitted, must submit a request in writing to retrieve their Proposal.
17. Any questions concerning this RFP may be submitted in writing, addressed to the Board of Selectmen at the Office of the Board of Selectmen, Upton Town Hall, 1 Main Street, Box 1, Upton, MA 01568. Questions must be received **at least seven (7) days before the deadline for submission of Proposals.**
18. The successful property owner(s) must be prepared to enter into a Purchase & Sale Agreement within **thirty (30)** days from the award of this Proposal substantially similar to that in Exhibit A. The closing shall occur within ninety (90) days from the date on which Town Meeting has authorized the acquisition and appropriated funds therefor.
19. The Library Feasibility Committee will recommend the most advantageous Proposal to the Board of Library Trustees and the Board of Selectmen shall be the awarding authority.

#### **IV. EVALUATION CRITERIA**

Proposals will be evaluated based upon Minimum and Comparative Criteria. The Town will offer to acquire the property from the Proposer who submits the most advantageous Proposal, based on consideration of specified Minimum and Comparative Criteria.

##### **1. Minimum Criteria:**

Each Proposal must meet all of the following criteria in order to be considered for further evaluation.

- Proposer must meet all of the Specifications as outlined herein to the greatest extent possible;
- Proposer must have good clear record and marketable title and be able to transfer same to the Town;
- Proposer must submit all required forms properly filled out and executed;
- Proposer must submit all required explanations and documentation.

##### **2. Comparative Criteria:**

The Town is seeking one or more properties, with or without a building suitable for renovation for use as a public library, for purchase, lease or acquisition by gift, deemed to be advantageous for the construction of a new public library at a reasonable cost. Although price is an important

factor, it will not be in and of itself determinative. Proposals that meet the minimum criteria will be evaluated based on the following criteria:

- Location: Any features relating to the location of the property including, but not limited to, proximity to the center of town, proximity to public amenities and business establishments, proximity to public utilities, proximity to abutters, traffic impact, and whether on a primary or secondary road.
- Size: Any features relating to the size of the property including, but not limited to, buildable/useable area, area for recreation, and area for expansion or other Town use.
- Site Conditions: Any features relating to site conditions including, but not limited to, slope, ledge, water supply, suitability for a septic system, hazardous materials, wetlands, existing buildings/structures, priority habitat, and rights of way or easements.
- Building Conditions: Any features relating to the condition of a building suitable for renovation/addition including, but not limited to, size, age, and overall condition.
- Anticipated Costs of Acquisition and Construction: Costs including, but not limited to, the purchase price, due diligence and closing costs, and demolition, remediation, construction and other costs associated with rendering the property suitable for use for a public library.
- **Any other factor that a reasonable business person or a reasonable fiduciary representing the Town of Upton might consider important in evaluating the advantageousness to the Town of Upton of the contemplated acquisition.**

If the property is offered as a gift for no consideration, the Town may accept such a gift without the need for a competitive process and may decide to acquire the gift property outside of the requirements and process of this RFP.

## **VI. SUBMISSION REQUIREMENTS**

Proposals shall be submitted to the Upton Board of Selectmen's office. If mailed, the address is: 1 Main Street, Box 1, Upton, MA 01568; if delivered in person, the address is: 1 Main Street, Upton, MA 01568. Proposals must be received ***no later than 2:00 p.m. on May 19, 2016***, and will be publicly opened and read at 2:00 p.m. of that same day.

A Proposal shall be submitted in a sealed envelope clearly marked "Proposal for Purchase of Land for Suitable for Use as a Public Library for the Town of Upton" and containing the following:

1. Information Form (form attached, 2 pages), properly completed and executed, along with all attachments where required (**required**).
2. Price Proposal (form attached) properly completed and executed (**required**).

3. Copy of the Assessor's Map showing placement of the property and the Assessor's Property Record Card(s) for the property.
4. Copy of current deeds to the property with the Registry of Deeds Book and Page references. Include, if possible, Registry of Deeds references or Probate Dockets of two prior property transfers of the property.
5. Site plan or survey plan.
6. Environmental reports or studies related to the property.
7. Tax Compliance/Non-Collusion Forms (forms attached), properly completed and executed **(required)**.
8. Disclosure Statement for Transaction with a Public Agency Concerning Real Property (form attached), fully executed **(required)**.
9. Certificate of Authority (form attached), fully executed, if owner is an entity **(required)**.
10. If submitting a Proposal that includes a building to be renovated, the following must be included:
  - a. Detailed floor plans of all interior spaces, including square footage of each room;
  - b. Handicapped-accessible square footage available within the building;
  - c. Age of construction;
  - d. Type of construction.

**One (1) original and ten (10) complete copies** of the Proposal must be submitted, containing the information required herein.

**REQUEST FOR PROPOSALS TO SELL REAL PROPERTY  
TO THE TOWN OF UPTON FOR A PUBLIC LIBRARY**

*INFORMATION FORM*

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1. Property Location: \_\_\_\_\_
2. Total Acres:    \_           Buildable acres: \_\_\_\_\_\_Unbuildable acres: \_\_\_\_\_
3. a. Feet of Frontage \_ \_\_\_\_\_ on \_\_\_\_\_ [name of town-accepted roadway]  
  
b. OR Describe valid easement rights over private way(s) leading to a public way, including distance from property to public way and width of easement. Include deed references in description: \_\_\_\_\_  
  
\_\_\_\_\_
4. Tax Map, Lot, and Block Number: Map\_\_\_\_Lot\_\_\_\_Block  
  
Tax Map, Lot, and Block Number: Map\_\_\_\_Lot\_\_\_\_Block  
  
Submit a copy of the tax map(s) showing placement of the parcel(s) and a copy of the Assessor's property record card(s) for that parcel(s).
5. A copy of the current deed(s) with the Registry of Deeds Book and Page reference is to be attached. Include Registry of Deeds reference or Probate Docket of at least two prior property transfers of the parcel(s), if possible.
6. List utilities already adjacent to the parcel or explanation included on how this will be accomplished: (state if included or not)  
  

	(Yes or No)
Town Water/Well	_____
Town Sewer/ Title V	_____
Electrical Power	_____
Telephone Lines	_____
Cable Access	
7. How is the property zoned? \_\_\_\_\_
8. Are there any structures on the property? \_\_\_\_\_
9. Is the property within the 100-year Flood Boundary? \_\_\_\_\_  
Include a copy of the Flood Map showing parcel location.  
If property is within such flood boundary, attach an explanation.
10. Does the property meet all Upton by-laws and regulations? \_\_\_\_\_

**REQUEST FOR PROPOSALS TO SELL REAL PROPERTY TO THE TOWN  
OF UPTON FOR A PUBLIC LIBRARY**

*INFORMATION FORM*

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11. Are there any right-of-way privileges or easements benefiting the property? \_\_\_\_\_  
If yes, please attach detailed explanation.
12. Are there any right-of-way privileges or easements burdening the property? \_\_\_\_\_  
If yes, please attach detailed explanation.
13. Are there any deed restrictions? \_\_\_\_\_  
If yes, please attach detailed explanation.
14. Is the parcel buildable and ready for construction? If not, explain. \_\_\_\_\_
15. Include a Site Plan or Survey Plan, if available.
16. Attach a description of the current and past uses of the property, including any history of the release or disposal of any oil or other hazardous materials on the property.
17. Is the property bounded by survey monuments? \_\_\_\_\_
18. Has the property been surveyed? \_\_\_\_\_ Date of survey: \_\_\_\_\_
19. Is a Plan(s) of the property attached? \_\_\_\_\_
20. Current Owner(s) name(s): \_\_\_\_\_  
Mailing address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email address: \_\_\_\_\_
21. List any liens or mortgages of record, with Registry Book and Page references: \_\_\_\_\_  
\_\_\_\_\_
22. Proposal includes addenda(s) numbered \_\_\_\_\_
- Signed: \_\_\_\_\_ Date: \_\_\_\_\_
- Printed Name of Above: \_\_\_\_\_

**(Note: This form must be included in the Proposal submission)**

**REQUEST FOR PROPOSALS TO SELL REAL PROPERTY  
TO THE TOWN OF UPTON FOR A PUBLIC LIBRARY**

**Price Proposal – May 19, 2016, 2:00 P.M.**

*The property previously described on the Information Form is offered for sale to the Town of Upton for \_\_\_\_\_ Dollars (\$\_\_\_\_\_).*

This price includes the parcel(s) and all amenities required by this Proposal.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Above: \_\_\_\_\_

**(Note: This form must be included in the Proposal submission)**

**REQUEST FOR PROPOSALS TO SELL REAL PROPERTY  
TO THE TOWN OF UPTON FOR A PUBLIC LIBRARY**

**Tax Compliance and Non-Collusion Statements**

Any person or corporation that fails to date, sign with original signature, and submit the following statements shall not be awarded this contract.

**Tax Compliance**

Pursuant to M.G.L. Ch. 62C, Sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

\_\_\_\_\_  
Authorized Official's Signature

\_\_\_\_\_  
Title of Person Signing

\_\_\_\_\_  
Typed or Printed Name of Person Signing

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Address

Date: \_\_\_\_\_

**Certificate of Non-Collusion**

The undersigned certifies under penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, entity, or group of individuals.

\_\_\_\_\_  
(Signature of person signing bid and/or Proposal)

By: \_\_\_\_\_  
(Name of Business)

Date: \_\_\_\_\_

**(Note: This form must be included in the Proposal submission)**

**DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) Real Property:

(2) Type of Transaction, Agreement, or Document:

(3) Public Agency Participating in Transaction:

(4) Disclosing Party's Name and Type of Entity (if not an individual):

(5) Role of Disclosing Party (Check appropriate role):

\_\_\_\_ Lessor/Landlord \_\_\_\_ Lessee/Tenant

\_\_\_\_ Seller/Grantor \_\_\_\_ Buyer/Grantee

\_\_\_\_ Other (Please describe): \_\_\_\_\_

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME

RESIDENCE

(7) None of the above-named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):

**DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

(8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

*No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.*

*Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.*

*The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.*

(9) This Disclosure Statement is hereby signed under penalties of perjury.

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Print Name of Disclosing Party (from Section 4, above)

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Authorized Signature of Disclosing Party

---

Date (mm / dd / yyyy)

---

Print Name & Title of Authorized Signer

**REQUEST FOR PROPOSALS TO SELL REAL PROPERTY  
TO THE TOWN OF UPTON FOR A PUBLIC LIBRARY**

**Certificate of Authority**

Give full names and residences of all persons and parties interested in the foregoing Proposal:

(Notice: Give first and last name in full; in case of Corporation give names of President, Treasurer and Manager; and in case of Firms give names of the individual members.)

NAMES	ADDRESSES	ZIP CODE
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Kindly furnish the following information regarding the Proposer:**

(1) If a Proprietorship:

Name of Owner: \_\_\_\_\_

ADDRESS \_\_\_\_\_ ZIP CODE \_\_\_\_\_ TEL. # \_\_\_\_\_

Business: \_\_\_\_\_

Home: \_\_\_\_\_

(2) If a Partnership:

Full names and address of all partners:

NAMES	ADDRESSES	ZIP CODE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

BUSINESS ADDRESS \_\_\_\_\_ ZIP CODE \_\_\_\_\_ TEL. # \_\_\_\_\_

\_\_\_\_\_

(3) If a Corporation:

Full Legal Name:

\_\_\_\_\_

State of Incorporation:

\_\_\_\_\_

Principal Place of Business: \_\_\_\_\_ ZIP \_\_\_\_\_

Qualified in Massachusetts: Yes \_\_\_\_\_ No \_\_\_\_\_  
Place of Business in Massachusetts: ZIP CODE \_\_\_\_\_ TEL. # \_\_\_\_\_

Authorized Signature of Proponent: \_\_\_\_\_

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

Date: \_\_\_\_\_

**(Note: This form must be included in the Proposal submission)**

**EXHIBIT A**  
**PURCHASE AND SALE AGREEMENT**

**SECTION 1 -- INFORMATION AND DEFINITIONS**

1.1 DATE OF THIS AGREEMENT: \_\_\_\_\_, 20\_\_

1.2 PREMISES:

Street Address: \_\_\_\_\_

Deed Reference: \_\_\_\_\_

Assessor's Map Reference: \_\_\_\_\_

1.3 SELLER:

Address: \_\_\_\_\_

Seller's Attorney: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

1.4 BUYER: Town of Upton

Address: 1 Main Street, Box 1, Upton, MA 01568

Buyer's Attorney: Katharine Klein, Esq.

Address: Kopelman and Paige, P.C., 101 Arch St. Boston, MA 02110  
Phone: (617) 556-0007 Fax: (617) 654-1735

1.5 PURCHASE PRICE: Total Sum of \_\_\_\_\_ Dollars  
(\$\_\_\_\_\_), paid at the time of delivery of the  
Deed (the "Closing") by certified or bank check or municipal  
treasurer's check

1.6 CLOSING DATE: Within ninety (90) days of the Town Meeting vote  
appropriating funds for and authorizing the purchase and  
approval at a town election of the related debt exclusion.

- PLACE: Upton Town Hall  
1 Main Street, Box 1, Upton, MA 01568
- 1.7 TITLE: Quitclaim Deed
- 1.8 BROKER: None
- 1.9 WARRANTIES

Except as set forth otherwise in this Agreement, the following representations and warranties are made by Seller as of the Date of this Agreement and also as of the time of the delivery of the deed (modify as appropriate):

None

UNLESS OTHERWISE NOTED, THE FOLLOWING PROVISIONS SHALL APPLY:

SECTION 2 -- GENERAL PROVISIONS

2.1 Covenant. Seller agrees to sell and Buyer agrees to buy the Premises upon the terms hereinafter set forth.

2.2 Buildings, Structures, Improvements, Fixtures. Included in the sale as a part of said Premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to SELLER and used in connection therewith.

2.3 Title Deed. Said Premises are to be conveyed by a good and sufficient quitclaim deed running to BUYER, or to the assignee or nominee designated by BUYER, by written notice to SELLER at least seven calendar days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls that are not the subject of written agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this Agreement; and
- (e) Easements, restrictions, and reservations of record, if any, provided the same do not interfere with use of and access to the Premises for general municipal purposes, including, without limitation, for public library purposes.

2.4 Deed and Plans. SELLER shall be responsible for drafting the deed. If said Deed refers to a plan necessary to be recorded therewith, SELLER shall deliver such plan with the Deed in a form adequate for recording or registration.

2.5 Registered Title. In addition to the foregoing, if the Title to said Premises is registered, said deed shall be in a form sufficient to entitle BUYER to a Certificate of Title of said Premises, and SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

2.6 Possession and Control of Premises. Full possession of said Premises, free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in clause 2.3 hereof. BUYER shall be entitled personally to inspect said Premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

2.7 Extension to Perfect Title or Make Premises Conform. If SELLER shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, and thereupon the time for performance hereof shall be extended for a period of thirty (30) calendar days.

2.8 Failure to Perfect Title or Make Premises Conform. If at the expiration of the extended time SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

2.9 Buyer's Election to Accept Title. BUYER shall have the election, at either the original or any extended time for performance, to accept such title as SELLER can deliver to the said Premises in their then condition and to pay therefore the purchase price, without deduction, in which case SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Premises shall have been damaged by fire or casualty insured against, then SELLER shall, unless SELLER has previously restored the Premises to their former condition, either

- (a) pay over or assign to BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by SELLER for any partial restoration, or
- (b) if a holder of a mortgage on said Premises shall not permit the insurance proceeds or a part thereof to be used to restore the said Premises to their former condition or to be so paid over or assigned, give to BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amount reasonably expended by SELLER for any partial restoration.

2.10 Acceptance of Deed. The acceptance of a deed by BUYER, or its assignee or nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

2.11 Use of Money to Clear Title. To enable SELLER to make conveyance as herein provided, SELLER may, at the time of delivery of this deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded in accordance with customary conveyancing practices.

2.12 Adjustments. Outstanding water and sewer charges shall be apportioned as of the date of closing and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by BUYER at the closing. Taxes for the then current fiscal year shall be adjusted in accordance with G.L. c. 59, § 72A. Any taxes paid by SELLER prior to the closing shall not be refunded. If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year.

2.13 Brokers. BUYER and SELLER each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. BUYER and SELLER agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this paragraph shall survive delivery of the deed.

2.14 Contingencies. BUYER'S performance hereunder is, at BUYER'S option, expressly subject to the following conditions:

- (a) BUYER obtaining a favorable vote of Town Meeting in the Town of Upton authorizing the BUYER to acquire the Premises for the consideration stated herein and upon the terms set forth in this offer and appropriating the funds therefor, and approval at a Town Election of a debt exclusion pursuant to G.L. c. 59, § 21C, so-called proposition 2 ½, for this purpose;
- (b) The approval of the public library project and appropriation of funds for said project by Town Meeting;
- (c) To the extent applicable, the Town shall have obtained any permits and approvals from any federal, state, or local authorities to construct a public library on the Premises and/or use the Premises for the purposes stated herein;
- (d) BUYER shall have complied with the provisions of G.L. c.30B (the Uniform Procurement Act) for acquisition of real property;

- (e) SELLER shall have complied with the disclosure provisions of G.L. c.38, §7C, and SELLER and BUYER agree to diligently pursue full compliance with said statute. SELLER hereby agrees to execute a "Disclosure of Beneficial Interests in Real Property Transaction" certificate as required by G.L.c. 38, §7C;
- (f) SELLER shall have obtained written waivers of any right to claim relocation benefits under the provisions of M.G.L. c.79A and 760 CMR 27.03 from all occupants of the Premises and SELLER shall represent and warrant at closing that all such waivers have been provided as to all occupants. SELLER hereby agrees to waive any rights SELLER may have to relocation benefits under the provisions of M.G.L. c. 79A;
- (g) BUYER shall have inspected the Premises and be satisfied with the condition thereof, as set forth in Section 2.20, 2.23, 2.24 and other provisions of this Agreement; and
- (h) Any other requirements of the Massachusetts General or Special Laws relative to the acquisition of property by BUYER.

Provided, however, that if any of the foregoing conditions are not satisfied by July 1, 2017, BUYER shall have the option of extending the closing date until such conditions are satisfied, and further provided that the closing date shall not be extended beyond January 1, 2019 provided that BUYER shall give SELLER three days written notice of its exercise of this option and shall give SELLER ten days written notice of the new closing date.

2.15 Title to Premises. Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to Title unless:

- (a) no building, structure or improvement of any kind belonging to any person or entity encroaches upon or under the Premises from other premises;
- (b) title to the Premises is insurable, for the benefit of BUYER, by a title insurance company acceptable to BUYER, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use;
- (c) all structures and improvements and all means of access to the Premises shall not encroach upon or under any property not within the lot lines of the Premises;
- (d) the Premises abut a public way, duly laid out or accepted as such by the municipality in which the Premises are located.

2.16 Affidavits, etc. Simultaneously with the delivery of the deed, SELLER shall execute and deliver: (a) Affidavits and indemnities with respect to due authority, parties in possession and mechanic's liens to induce BUYER'S title insurance company to issue lender's and owner's policies of title insurance without exception for those matters; (b) An affidavit, satisfying the requirements

of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, SELLER'S United States taxpayer identification number, that SELLER is not a foreign person, and SELLER'S address (the "1445 Affidavit"); (c) Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER'S tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating Seller is not subject to back-up withholding; and (d) such additional and further instruments and documents as may be consistent with this Agreement and customarily and reasonably required by BUYER and/or the BUYER'S title insurance company to complete the transactions described in this Agreement.

2.17 Title Standards. Any matter or practice arising under or relating to this Agreement that is the subject of a title standard or a practice standard of the Real Estate Bar Association at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

2.18 Hazardous Materials. SELLER shall provide BUYER with information of any past or current release or threat of release, or the presence of "hazardous materials" and "oil" on the Premises, as such terms are defined in G.L. c. 21E, and copies of all environmental tests, studies, and assessments relating to the Premises and copies of all notices of noncompliance or responsibility received from the Department of Environmental Protection or any other federal, state, or local governmental body. The provisions of this paragraph shall survive the delivery of the deed.

2.19 Representations and Warranties. SELLER represents and warrants to BUYER, effective as of the date of this Agreement and also effective as of the date of closing, that:

- a. To the best of Seller's knowledge, SELLER holds good and clear record and marketable title to the Premises in fee simple (with the exception of encumbrances of record, so long as such encumbrances do not prevent SELLER from delivering good and clear record and marketable title to the Premises);
- b. To the best of SELLER'S knowledge, no options, rights of first refusal, or other contracts have been granted or entered into which give any other party a right to purchase or acquire any interest in the Premises;
- c. There are no leases, licenses, or other occupancy agreements in effect with respect to any part of the Premises (other than those set forth in Section 2.14(f));
- d. SELLER has no present knowledge of and will disclose and deliver all received written notices of, any planned or threatened condemnation or eminent domain proceedings with respect to the Premises;
- e. This Agreement has been duly authorized by all requisite action and to the best of SELLER'S knowledge, is not in contravention of any law or organizational documents and this Agreement has been duly executed by a duly authorized officer of SELLER;

- f. To the best of SELLER'S knowledge, SELLER'S execution of this Agreement does not violate any other contracts, agreements, or any other arrangements of any nature whatsoever that SELLER has with third parties.
- g. To the best of SELLER'S knowledge, (i) no hazardous materials or oil have been used, generated, stored, or disposed of at, from, or near the Premises (as used in this Agreement, the terms "hazardous materials" and "oil" shall have the meaning given to them in M.G.L.c.21E), (ii) there are no underground storage tanks or other subsurface facilities holding petroleum or oil products currently in use or previously abandoned on the Premises, and (iii) chlordane has not been used as a pesticide on the Premises.

SELLER will not cause nor, to the best of SELLER'S ability, permit any action to be taken which would cause any of SELLER'S representations or warranties to be false as of closing, and in any event shall notify BUYER of any change in these representations and warranties. SELLER'S representations and warranties shall survive the closing and the delivery of the deed.

2.20 Inspection Rights. BUYER or BUYER'S agent(s) shall have the right, upon at least twenty-four (24) hours prior notice to SELLER, which notice may be oral notice, to enter the Premises from time to time at BUYER'S own risk for the purposes of conducting surveys, inspections, and tests, including environmental site assessments. BUYER, to the extent permitted by law, shall hold SELLER harmless against any claim by BUYER of any harm to BUYER arising from said entry and shall restore the Premises to substantially the same condition as prior to such entry, if the closing does not occur. BUYER'S performance hereunder is expressly conditional, at BUYER'S option, upon BUYER being satisfied, at its sole discretion, with the condition of the Premises and on not having found on the Premises any oil, hazardous waste, hazardous material, or other materials hazardous to health and safety. In the event hazardous waste, hazardous material, or other hazardous substance is found, or BUYER is not satisfied with the condition of the Premises, BUYER shall have the right, to be exercised in its sole and absolute discretion, to (a) terminate this Agreement without recourse, whereupon all the rights and obligations of the parties shall cease, or (b) provide SELLER with the option, to be exercised in SELLER'S sole discretion, to repair the condition of the Premises and/or remediate such hazardous condition, with SELLER paying all of the costs of repair/remediation. If BUYER requests SELLER to repair the Premises and/or remediate the hazardous condition, and SELLER elects to undertake the same, BUYER shall perform under the terms of this Agreement, provided, however, that SELLER repairs the Premises to BUYER'S reasonable satisfaction and/or remediates the hazardous condition within a reasonable time and in full compliance with all applicable laws, rules, and regulations; otherwise this Agreement shall be null and void and of no further effect between the parties. Nothing herein shall affect BUYER'S rights under this Agreement to walk through and inspect the Premises at any time prior to the delivery of the deed.

2.21 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given: (a) when delivered by hand, or (b) when sent by Federal Express or other similar courier service, or (c) when mailed by certified mail, return receipt requested, or (d) upon electronically confirmed receipt of facsimile delivery (provided that such facsimile delivery is promptly followed

by one of the other permitted forms of notice contained herein), to the party with a copy to the party's attorney at the addresses set forth in Section 1.

2.22 Closing. The deed and other documents required by this Agreement are to be delivered and the Purchase Price paid at the date and time of closing and at the place of closing. All documents and funds are to be delivered in escrow, subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. SELLER'S proceeds may be in the form of a Town Treasurer's check, and the check shall be held in escrow by SELLER'S attorney, who shall release the check to SELLER only following the recording of the deed, which recording shall not be unreasonably delayed beyond customary conveyancing practices.

2.23 Condition of Premises at Closing. SELLER agrees to deliver the Premises at the time of delivery of SELLER'S deed in a condition substantially similar to its condition at the time of the signing of this Agreement, removing all of SELLER'S personal property therefrom that is not being sold to BUYER or left for its benefit, as consented to by it.

2.24 Release by Husband or Wife. SELLER'S spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said Premises.

2.25 Liability of Trustee, Shareholder, Fiduciary, etc. If SELLER or BUYER executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

2.26 Extensions. BUYER and SELLER hereby authorize their respective attorneys to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

2.27 Cooperation. SELLER, at BUYER'S cost and expense, shall cooperate fully with BUYER (including the prompt signing of applications or petitions) in obtaining any and all permits, licenses, easements, and other authorizations required for the purchase, use, and operation of the Premises for the purposes stated herein.

2.28 Construction of Agreement. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors, and assigns, and may be canceled, modified, or amended only by a written instrument executed by both SELLER and BUYER. If two or more persons are named herein as BUYER, their obligations hereunder shall be joint and several.

2.29 Captions. The captions and headings throughout this Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit,

explain, modify, amplify, or add to the interpretation, construction, or meaning of any provisions of, or the scope or intent, of this Agreement, nor in any way affect this Agreement, and shall have no legal effect.

[signature page follows]

In Witness whereof, the parties hereto sign this Agreement under seal as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**Seller:**

**Buyer: Town of Upton,**  
By its Board of Selectmen

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type name

\_\_\_\_\_  
Type name