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## Municipality of Cumberland Policy 17-05

### Procurement Policy

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#### Title

1. This Policy is entitled the "Procurement Policy".

#### PART 1 - INTRODUCTORY

#### Interpretation

2. In this Policy:
  - (1) "alternative procurement practice" means the purchase of goods or services without a public tender or other competitive process, in the circumstances described at section 19 of this Policy;
  - (2) "best value" means evaluating bids not only on purchase price and life cycle cost considerations, but also taking into account items such as environmental and social considerations, delivery, servicing and the capacity of the supplier to meet other criteria as stated in tender documents;
  - (3) "CAO" means the Chief Administrative Officer of the Municipality of the County of Cumberland or his or her designate;
  - (4) "environmental considerations" means factors associated with the purchase, manufacture, operation or disposal of a product or asset that affect the environment, such as the degree to which the product or asset uses recycled materials, is energy efficient, or produces or reduces greenhouse gas emissions;
  - (5) "life cycle cost" means the total costs associated with a product or asset over its life span, including the cost of maintenance, repair, operation and disposal;
  - (6) "local business" means businesses whose main office or operations are physically located within the boundaries of the County of Cumberland;
  - (7) "Municipality" means the Municipality of the County of Cumberland;
  - (8) "public tender" means publicly advertising the Municipality's intended procurement of certain goods or services and inviting responses from interested suppliers. Public tenders include traditional tenders, requests for proposals, two phase bids and requests for qualifications and are described further in sections 14 to 18 of this Policy;

- (9) "request for proposals" means a formal invitation to suppliers to describe how their services, methods, equipment or products can address and/or meet the needs of the Municipality. Requests for proposals are described at section 16 of this Policy;
- (10) "request for quotations" means informally obtaining price quotations from a number of different suppliers. Requests for quotations are described at section 13 of this Policy;
- (11) "social considerations" means factors associated with the purchase or manufacture of a product or asset that relate to the rights or interests of the workers involved, such as working conditions, fair wages, and compliance with human rights legislation and conventions;
- (12) "standing offer" means a source of supply available to the Municipality either through a standing price agreement with a supplier or as a member of a larger group of purchasers. Standing offers are described at section 12 of this Policy;
- (13) "traditional tender" means a formal invitation to suppliers to submit a bid to supply specified goods or services. Traditional tenders are described at section 15 of this Policy;
- (14) "two phase bid" means a two stage process in which suppliers submit proposals for evaluation, and separately submit prices. Two phase bids are described at section 17 of this Policy.
- (15) "request for qualification" means a formal invitation to suppliers of goods, services and construction and shall be used for the purpose of selecting qualified bidders if the nature of the work or services to be performed requires ascertainable minimum standards.

### **Application of this Policy**

- 3. This Policy applies to the procurement by the Municipality of all goods and services, including construction and facilities, by purchase or lease, but does not apply to procurements:
  - (1) by the Municipality from organizations owned or controlled by the Municipality;
  - (2) where a construction project is managed by a third party on behalf of the Municipality, in which case the procurement for the project must be in accordance with the contract between the Municipality and the third party, and in accordance with the principles identified in section 4.
- 4. This Policy also applies to registered Volunteer Fire Departments within the Municipality and non- profit organizations that receive Municipal Capital Grants.

### **Procurement Policy principles**

5. All procurement carried out by the Municipality must be carried out with a view to:
  - (1) ensuring an equitable, open and transparent process for the acquisition of goods and services by the Municipality;
  - (2) avoiding dishonesty, corruption or favouritism in the procurement of goods and services;
  - (3) encouraging competitive bidding wherever possible and, in any event, minimizing the Municipality's cost of acquiring goods and services while obtaining best value;
  - (4) utilizing suppliers who can be expected to provide satisfactory performance
  - (5) taking into account environmental considerations in all procurement decisions and selecting environmentally beneficial goods and services where practical;
  - (6) complying with applicable regional, national, and international trade agreements, including the Agreement on Internal Trade and the Atlantic Procurement Agreement;
  - (7) complying with the *Public Procurement Act*, S.N.S. 2011, c. 12 and Regulations made pursuant to the *Public Procurement Act*.
  
6. Pursuant to s. 15(1) of the *Public Procurement Act*, all employees involved in procurement on behalf of the Municipality must:
  - (1) ensure their procurement activities are conducted according to this Policy, provincial and federal legislation, trade agreements and ethical business practices;
  - (2) encourage and support collaborative procurement amongst other municipalities and public sector entities such as hospitals and school boards;
  - (3) follow leading procurement practices;
  - (4) in good faith, conduct business with current and prospective suppliers and be fair in all business dealings;
  - (5) strive to obtain the best value for each expenditure;
  - (6) require suppliers provide accurate representations of goods, services and construction;
  - (7) encourage suppliers to consider integrating environmental, economic and social considerations in their product or service offerings;

- (8) encourage the negotiation of an equitable and mutually acceptable settlement when a dispute arises; and
- (9) request removal from a procurement process when a personal conflict of interest is perceived.

## **PART 2 – NORMAL PROCUREMENT PRACTICES**

- 7. In addition to adhering to the principles in sections 4 and 5, normal purchasing practices must be as described below in sections 7 to 10.
- 8. For goods and services having a value of less than \$3,000:
  - (1) The procurement decision must be made by the applicable Director OR Supervisor or by an employee designated by one of those persons.
  - (2) Goods and services must be procured under a standing offer if one exists for the goods or **services required, and if doing so will provide best value.**
  - (3) If the goods or services cannot be procured under subsection (2), they may be purchased from any supplier, unless municipal staff have reason to believe that:
    - (a) purchasing the goods or services from that supplier would not provide best value; or
    - (b) acquiring the goods and services from that supplier would otherwise not conform with the procurement principles in section 4.
- 9. For goods and services having a value between \$3,000 and \$15,000:
  - (1) The procurement decision must be made by the applicable Director.
  - (2) Goods and services must be procured under a standing offer if one exists for the goods or services required, and if doing so will provide best value.
  - (3) If the goods or services cannot be procured under subsection (2), the goods or services must be procured by a request for quotations.
- 10. For goods and services having a value between \$15,000 and \$30,000:
  - (1) The procurement decision must be made by the CAO.
  - (2) Goods and services must be procured under a standing offer if one exists for the goods or services required, and if doing so will provide best value.
  - (3) If the goods or services cannot be procured under subsection (2), the CAO must decide whether the goods or services must be procured by a request for quotations or by public tender.

(4) If the goods or services are procured by a request for quotations, in addition to any other requirements for the request for quotations process, the following requirements must be met:

(a) all quotations must be obtained in writing;

(b) the request for quotations must be placed on the Municipality's web page.

**11. For goods and services having a value of more than \$30,000**

(1) The procurement decision must be made by Council, unless Council has expressly authorized the CAO to make the decision;

(2) Goods and services must be procured by public tender, which may be preceded by a request for qualifications or request for expressions of interest.

**12. Municipal staff or Council (whoever has authority to award the contract under this Policy) may approve exceptions to the normal purchasing practices outlined in sections 7 to 10 of this Policy:**

(1) when a more competitive process normally used for goods and services of higher value, is used; or

(2) when, in accordance with the criteria described in the "alternative procurement practices" provisions at section 18 of this Policy, it is necessary or appropriate that the goods or services be purchased in accordance with that section.

### **PART 3 – GUIDELINES FOR PROCUREMENT PROCEDURES**

**13. Standing offers:**

(1) A standing offer is a source of supply available to the Municipality either through a standing price agreement with a supplier or as a member of a larger group of purchasers, and includes:

(a) a standing agreement between the Municipality and a supplier in which the supplier commits to providing specified goods or services at a specific price for a specific period of time. Such standing agreements should themselves be the subject of a competitive tender process;

(b) equipment leasing programs through the Government of Nova Scotia;

(c) Nova Scotia Provincial "standing offers" administered by the Nova Scotia Government;

(d) supplies and services available from the Nova Scotia Government;

- (e) a procurement program administered by the Union of Nova Scotia Municipalities or the Association of Municipal Administrators;
- (f) any other program available to several municipal units and other public sector entities such as hospitals and school boards, provided that municipal staff is satisfied that such program has been developed and conforms with the principles set out in section 4.

**14. Request for quotations:**

- (1) A request for quotations process involves informally obtaining price quotations from a number of different suppliers.
- (2) Requests for quotations are generally used when the cost of the goods or services does not warrant the time, effort and expense required for a formal public tender process.
- (3) Quotations must normally be sought from at least three suppliers but fewer suppliers may be used when three suppliers are not available within a reasonable distance, having regard to the value of the goods and services, the shipping or travel cost and the amount of time available before the goods and services are required to be available. If it is decided to obtain fewer than three quotations, the person responsible for that decision must document their reasons for doing so.
- (4) Quotations must normally be obtained in writing, but when time does not permit the obtaining of written quotations, the quotations may be obtained verbally, except when this Policy stipulates otherwise. If a quotation is obtained verbally, the person obtaining it must document the quotation, including the time, date, supplier, price and description of the goods and services, the person from whom the quotation was obtained and the name of the municipal staff obtaining the quotation.

**15. Public tender:**

- (1) Public tender means publicly advertising the Municipality's intended procurement of certain goods or services and inviting responses from interested suppliers.
- (2) Public tenders are used for higher value procurements, when the cost of the goods or services warrants the time, effort and expense required for a public tender process.
- (3) Public tenders can be in the form of traditional tenders (see section 15), requests for proposals (see section 16), two phase bids (see section 17), Request for Qualification (section 18).

**16. Traditional tender:**

- (1) A traditional tender is a formal invitation to suppliers to submit a bid to supply specified goods or services.
- (2) A traditional tender should be used when the procurement requirements of the Municipality can be clearly and completely specified.
- (3) Traditional tenders do not have to be opened in public, but if they are not, the name of each bidder and the amount of their bid must be made available to each bidder after the tenders are opened.
- (4) The Municipality must not negotiate with any bidders, but must award the procurement contract to the bidder that meets the tender requirements and provides best value.

**17. Request for proposals:**

- (1) A request for proposals is a formal invitation to suppliers to describe how their services, methods, equipment or products can address and/or meet the needs of the Municipality.
- (2) A request for proposals may be used when the Municipality is unable to clearly or completely specify the goods or services required, and suppliers are therefore asked to provide a solution to the problem, requirement or objective. Requests for proposals may also be used for professional and consulting services.
- (3) In order to preserve confidentiality of sensitive commercial information contained in a proposal, proposals submitted in response to a request for a proposal need not be opened in public, but must be opened in the presence of at least two representatives of the Municipality, and after the proposals are opened a list of the proponents must be available to the public and the proponents upon request.
- (4) Negotiations may be conducted with a proponent after proposals have been opened, subject to complying with the terms of the request for proposals which must be drafted to avoid unfair "bid- shopping" by the Municipality (that is, to avoid using the bids submitted as a negotiating tool to obtain a better price or other benefit).
- (5) The Municipality must award the procurement contract to the supplier whose proposal is determined to provide best value to the Municipality based upon the evaluation criteria set out in the request for proposals and equitably applied to all proposals.

## **18. Two phase bids:**

- (1) A two phase bid process invites suppliers to submit bids as follows:
  - (a) Phase One: one or more steps in which bidders submit proposals for evaluation, either with or without prices in a separate submission;
  - (b) Phase Two: Only those bidders whose proposals were determined to be acceptable will be entitled to submit priced bids for consideration or, where prices are submitted separately in Phase One, the prices are opened.
- (2) A two phase bid process may be used when detailed specifications are not available or it is impractical to prepare a specification based on price
- (3) The Phase One submissions need not be opened in public, but must be opened in the presence of at least two representatives of the Municipality and a list of the proponents will be available to the public and the proponents upon request. Phase Two bids must be opened in public.
- (4) The Municipality must not negotiate with any bidders, and must award the procurement contract to the supplier whose proposal is determined to provide best value to the Municipality based upon the evaluation criteria set out in the Phase One request for submissions equitably applied to all proposals, and the prices in Phase Two.

## **19. Request for Qualification**

- (1) A Request for Qualification is a formal invitation to suppliers of goods, services and construction and shall be used for the purpose of selecting qualified bidders if the nature of the work or services to be performed requires ascertainable minimum standards.

## **20. Alternative procurement practices**

- (1) In certain circumstances, described in this section, the Municipality may purchase goods or services without using one of the options set out above. An alternative procurement purchase may occur only:
  - (a) Where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
  - (b) Where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
  - (c) Where compliance with the open tendering provisions set out in this Policy would interfere with the Municipality's ability to maintain security or order or to protect human, animal or plant life or health;
  - (d) In the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender;
  - (e)



- (f) To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
  - (g) Where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
  - (h) For the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
  - (i) For the purchase of goods on a commodity market;
  - (j) For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
  - (k) For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
  - (l) For the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
  - (m) For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
  - (n) For the procurement of original works of art;
  - (o) For the procurement of subscriptions to newspapers, magazines or other periodicals;
  - (p) For the procurement of real property;
  - (q) For the procurement of goods intended for resale to the public;
  - (r) For procurement from philanthropic institutions, prison labour, persons with disabilities, sheltered workshop programs or through employment equity programs;
  - (s) For procurement from a public body or a non-profit organization; or
  - (t) For the procurement of services of expert witnesses, specifically in anticipation of litigation or for the purpose of conducting litigation.
- (2) When an alternative procurement purchase occurs, the reason for doing so must be documented.

#### **PART 4 – REQUIREMENTS FOR ALL PUBLIC TENDERS**

**21.** The following requirements apply to all public tenders, whether traditional tenders, requests for proposals, or two phase bids:

- (1) The Municipality must provide reasonable notice and opportunity to respond to public tenders, and must post or place notices of public tenders as follows:
  - (a) on the public website maintained and operated by the government of Nova Scotia;
  - (b) on the Municipality's website;
  - (c) in other media, as directed by the CAO, when the CAO determines that the cost and nature of the procurement warrants the expense of doing so.

- (2) Every public tender must include or have attached the terms and conditions that govern the tender.
  - (3) The terms and conditions of every notice of public tender must be consistent with:
    - (a) the Atlantic Procurement Agreement in effect at the time of procurement;
    - (b) the Province of Nova Scotia Construction Contract Guidelines in effect at the time of the procurement.
  - (4) Public tenders should normally include specifications or terms as follows:
    - (a) expressly or by implication outlining the issues or criteria that will be used for selection of a successful bidder or proponent;
    - (b) a privilege clause stating that the lowest or any bid or proposal will not necessarily be accepted;
    - (c) the location for delivery of bids or proposals;
    - (d) the means of delivery of bids or proposals, e.g., whether faxes or e-mails are acceptable in addition to "hard copy" submissions;
    - (e) the time and date of closing;
    - (f) a warning that tender documents and bids will be open to the public, except to the extent otherwise stated in a call for tenders or a request for proposals, in which event there must be included a warning that proposals or bids are subject to the Freedom of Information and Protection of Privacy provisions of the *Municipal Government Act*; and
    - (g) for design or architectural services, a statement that the Municipality will own the copyright in the design, plans and other intellectual property produced for the Municipality.
  - (5) Public tenders should also include a form of contract that the successful bidder will be required to enter into with the Municipality or should direct that bidders or proponents must provide the form of contract with their bid or proposal.
  - (6) For each public tender that is awarded, the Municipality must post the name of the successful supplier and the contract amount on the public website maintained and operated by the government of Nova Scotia.
  - (7) The terms and conditions of every public tender must state the criteria that the Municipality will use in evaluating responses. Those criteria are not limited to purchase price and life cycle cost considerations, but may also include items such as environmental and social considerations, delivery, servicing and the capacity of the supplier.
- 22.** Upon the request of a supplier who is an unsuccessful bidder in a public tender, the Municipality must conduct a debriefing with that supplier to provide feedback on the evaluation of the public tender. The debriefing must be conducted as follows:

- (1) the CAO or the individuals who evaluated the public tender must conduct the debriefing;
- (2) the debriefing must provide reasons for the disqualification of the supplier, or in the case where evaluation scoring was used, provide an overview of the supplier's score in each category and reasons for that score;
- (3) the debriefing must also provide information to the supplier on how to improve future submissions;
- (4) the debriefing must not disclose any information regarding other bidders or their submissions.

### **PART 5 – AWARD OF CONTRACTS**

**23.** The Chief Administrative Officer (CAO) may authorize the procurement of goods, services and construction:

1. that are \$250,000 or less and are included within the approved operating and capital budgets; Awards over the value of \$250,000 will be submitted to Council for approval.
2. that exceed the approved budget by 25% or \$50,000, whichever is less. This will be done when it is reasonable to do so and when options to achieve project completion or item procurement are limited.
3. that are an emergency situation. In these cases, the CAO is authorized to make reasonable and informed procurement decisions (operating and capital) which are determined by him/her to be necessary. Among other things such decisions may be deemed by the CAO to be necessary to protect the legal interests or satisfy legal obligations of the Municipality, or involve a situation where failure to act could reasonably be expected to compromise Municipality confidentiality, cause economic disruption, or would otherwise be contrary to the public interest. Authorizations for ~~such expenditures are considered to be over and above the other authorities given~~ under this policy to exceed approved budget amounts.
4. where the purchase was made in accordance with this policy and falls within the thresholds established within the Atlantic Procurement Agreement and all subsequent amendments thereto.
5. Where the purchase was the result of a public purchasing process conforming to the Municipality's procurement policy and The Atlantic Procurement Agreement.
6. Where the purchase is awarded to the supplier providing best value and meeting specifications.

7. Where the award of a Request for Proposal is made to the highest scoring qualified proponent based upon evaluation criteria within the Request for Proposal.
8. Where there is no legislative requirement to obtain Council approval.
24. All bids are subject to evaluation after opening and before award of contract. The bid request documents must clearly identify the requirements of the procurement, the evaluation method, evaluation criteria based on the purpose and objectives of this policy, and the weights assigned to each criterion.
25. Where award is over the limits established in the Atlantic Procurement Agreement for the purchase of goods, services and construction, award amount and company name is to be posted on the Provincial Procurement Web Portal.
26. A monthly report to Council of awards of contracts under the value of \$250,000 approved by the CAO or designate shall be made available to Council and shall show the name of the contract, the name of the successful bidder, the amount of the award, any person or company to whom a single or sole source has awarded, and the budgetary provision.
27. At the discretion of the CAO, any award of goods, services or construction may be referred to Council for approval.

## **PART 6 – LOCAL PREFERENCE AND SUSTAINABILITY CONSIDERATIONS**

### **Local preference**

28. Municipal staff or Council (whoever has the authority to award the contract under this Policy) may give preference to purchasing goods and services from local businesses in accordance with the following:
  - (1) In evaluating which goods or services offer best value to the Municipality, the Municipality must apply a preference of 5% to the price offered by a local business as compared with non-local businesses, such that the price offered by the local business is adjusted lower by 5% for the purposes of evaluating which goods or services offer best value.
  - (2) All requests for quotations and notices of public tender must state that local preference applies to the procurement.
  - (3) In accordance with the Atlantic Procurement Agreement, the local preference described above does not apply to the following procurements:
    - (a) goods that have a value of \$25,000 or greater;
    - (b) services that have a value of \$50,000 or greater; and
    - (c) construction that has a value of \$100,000 or greater.

## **Sustainability considerations**

29. Pursuant to the *Public Procurement Act*, in evaluating which goods or services offer best value to the Municipality, the Municipality may consider sustainability criteria, meaning environmental considerations, social considerations and economic considerations.
30. All requests for quotations and notices of public tender must list the sustainability criteria that apply to the procurement.

## **PART 7 – SPECIAL SERVICES**

### **Licensed Professionals**

#### **31. Legal Services**

- (1) Legal Services shall be acquired by staff based upon work requirements from a roster of lawyers selected through a Request for Qualification based upon qualifications, experience, services offered, past performance, proposed fees and other relevant considerations. The selection of the lawyer from the roster in an individual case shall be based upon the particular expertise required for that case.
- (2) Legal services having a value of less than \$15,000 may be procured by the applicable Director.
- (3) Legal services having a value of \$15,000 or more shall be awarded by the CAO (or designate).
- (4) A Request for Qualification for legal services shall be issued, at a minimum, every three (3) years.

#### **32. Professional Services (i.e. Architectural, Engineering, Communications, IT, Human Resources)**

- (1) When these services are less than \$50,000, they shall be procured by the CAO from a roster of consultants selected through a Request for Qualification as identified in each Request for Qualification.
- (2) Consultants shall be selected, by project, based upon qualifications, experience, services offered, past performance, proposed fees, and other relevant considerations as outlined in the Request for Qualification.
- (3) A Request for Qualification for these services shall be issued, at a minimum, every two (2) years with an update annually.
- (4) A Request for Proposal shall be issued for required services over the value of \$50,000.
- (5) Rosters offered by the Province of Nova Scotia or other public sector entities may be used under the constraints within this policy where it is in the best interest of the Municipality.

## **Financial Services**

### **33. Banking Services**

- (1) General Banking services shall be acquired by public solicitation at intervals not greater than every five years. These services shall be contracted on a one year term to be renewed on an annual basis up to a five year maximum on terms satisfactory to the Municipality.

### **34. Auditing Services**

- (1) Services of External Auditors shall be acquired by public tender at intervals not greater than every five years. These services may be contracted on a one year term to be renewed on an annual basis up to a five year maximum on terms satisfactory to the Municipality.
- (2) Selection of an auditor shall be completed by the Audit Committee of Council who shall recommend the selection of an External Auditor to Council. Annual renewal of the contract for External Audit services shall be made by the Audit Committee.

## **PART 8 - GENERAL**

### **Conflicts of interest**

29. If a staff member otherwise authorized to award a contract has a conflict of interest (that is, he or she stands to gain or lose financially from a contract award), the award must be made by the person to whom the conflicted staff member normally reports and the conflicted staff member must not participate in the procurement process related to the contract in any manner. Where Council is awarding a contract, the *Municipal Conflict of Interest Act* applies.

### **Duration of contracts**

30. Contracts for goods and services, other than those identified in Section VI, that are required to be procured by public tender under this Policy, including price agreements, must be re-tendered at least once every five years but may be re-tendered more frequently at the direction of Council.

### **Lease arrangements**

31. Lease arrangements are subject to the provisions of this Policy, save and except that Council's authority must be obtained for any leases required by the *Municipal Government Act* to be authorized by Council.

### **Approval of form of tender**

32. Public tendering documents are to be reviewed by the CAO prior to issuance to ensure consistency of tendering documents and practices.

**Expenditures**

33. Expenditures for goods and services made pursuant to this Policy must be made in compliance with the Municipality's Expenditures Policy.

**Estimating the value of goods and services**

34. In determining the cost of the goods or services for the purpose of deciding which of sections 7, 8, 9 or 10 apply to a purchase, staff must reasonably estimate the cost of the goods or services.

**Posting on Municipal website**

35. A copy of this Policy must be posted on the Municipality's website.

**Compliance with Policy**

36. All staff and Councillors must act in good faith to comply with this Policy, but failure to comply with this Policy does not invalidate any procurement decision or act of the Municipality, nor is the Municipality liable to any supplier or prospective supplier for failing to comply with this Policy.

37. This Policy is effective upon adoption and replaces any previous Procurement Policies.

**Clerk's Annotation for Official Policy Book**

Date of Notice to Council of Intent to consider (7 days minimum): April 5, 2017

Date of Passage by Council: April 19, 2017

Date of Notice to Council of Intent to Consider Amendment (Part 5): July 20, 2022

Date of Passage by Council of Amended Policy: July 27, 2022

I certify that this Policy was adopted by Council as indicated above.

  
Municipal Clerk

  
Date