

# Governance Board Bylaw Review

## Draft Amendments

### Recommendation:

That the LRT Governance Board recommend to City Council:

That Administration prepare a bylaw to establish Valley Line Stage 1 project governance making the LRT Governance Board the approving authority for the LRT Project Request for Proposals as outlined in the June 19, 2014, Transportation Services report CR\_1022rev.

### Report Summary

**This report seeks LRT Governance Board direction on project governance for the Valley Line Stage 1 Project procurement.**

### Previous Council/Committee Action

At the April 17, 2014, LRT Governance Board meeting, the following motion was passed:

That the April 17, 2014, Transportation Services report CR\_1022, be referred back to Administration to return to the June 19, 2014, LRT Governance Board meeting or a special meeting to be called by the Chair at an earlier date.

### Report

#### Background

The LRT Governance Board (the Board) was established on February 29, 2012, by Bylaw 15659. The Board was given delegated authority to ensure that best practices were undertaken to determine the best construction method, select contractors, control expenditures within approved budgets, community consultation, public communications, permit applications, utility coordination, and approve scope changes. The Board was also given limited approving authorities in relation to sole source agreements, land transactions and tender calls that exceeded the City Manager's authority.

Council determined the route and made some budgetary allocations prior to the time the Board was established. Council approved a Public Private Partnership (P3) delivery model for Valley Line Stage 1 after the Board was established. There are no specific authorities in Bylaw 15659 addressing the P3 delivery model requirements.

Under the direction and in consultation with the Board, Administration has selected legal, financial and technical advisors to provide advice and services relating to the P3 delivery model procurement. A Fairness Monitor has been appointed for the project as well. The Board has received numerous information reports and provided feedback to City Administration during its meetings. It approved the Request for Qualifications and evaluation process to determine proponents that will be invited to submit proposals.

Following Council's approval of funding, the Request for Qualifications was issued on April 23, 2014. The Request for Proposal is scheduled to be issued in September of 2014. The Request for Proposal and its associated processes and approvals need to be developed in a confidential manner to protect the integrity of the procurement. The proposed form of P3 agreement will form part of the Request for Proposal when issued.

### Project Decision Makers

There are four different decision making bodies involved with Project Governance for the Valley Line Stage 1:

1. **Council:** Council makes decisions with respect to budget (and funding plans), City Policy, and statutory decisions (expropriation, transportation bylaws).
2. **Standing Committee:** Standing Committees of Council make decisions with respect to public engagement and contract authority (that exceeds City Manager authority).
3. **LRT Governance Board:** Considering the expertise of the members of the Board, it is best positioned to provide expert due diligence regarding finance, transportation planning, civil engineering and legal issues in large scale infrastructure projects. An expert Board would not normally undertake detailed review of the financial, legal, engineering or planning aspects of a project but it would review the process undertaken in each of these disciplines to be satisfied that the Project is being undertaken in a prudent and diligent manner.
4. **City Manager (and City Administration):** The City Manager has assembled a Project Team which includes personnel from LRT Design & Construction, Transit, Transportation Operations, Roads Design & Construction, Transportation Planning, Drainage Services, Finance, Law, Materials Management, Corporate Communications, Urban Planning & Environment, and Neighbourhood, Parks & Community Recreation. This Project Team has been enhanced with the retention of technical, legal, process and financial advisors with P3 experience. The Project Team has the necessary City technical, legal and commercial expertise and P3 technical, legal and commercial expertise to undertake the Project and is well positioned to make technical, legal and commercial decisions for the Project.

At this stage in the Valley Line Stage 1 Project, many decisions have already been made by various decisions makers. Attachment 1 summarizes the decisions, their type and who made those decisions.

As the Valley Line Stage 1 Project enters the procurement stage, the types of decisions that need to be made are primarily technical, legal, commercial and due diligence although some further policy and budget decisions may be required depending on the results of the procurement. Attachment 2 summarizes the decisions, their type and the decision making body who will make those decisions.

### Options for P3 Project Governance

Under the current bylaw, the Board is a Council committee with a mandate and approval authorities that do not fit with a P3 delivery model. The governance structures and process options for a P3 delivery model include:

1. **Board as an Approving Authority:** Board would remain a Council committee receiving reports from Administration and acting as the approving authority for the procurement.
2. **Board as Project Auditor:** Board as a Council committee acting as the auditor for decisions made by Administration (as purely an oversight body).
3. **Board as Advisor to Administration:** Board as an Administrative committee working with Administration to develop the terms of procurement and the agreement form, with regular reporting to Standing Committee and/or Council.
4. **Transportation Committee as Approving Authority:** Transportation Committee acting as the approving authority for the procurement and award of P3 Agreement.
5. **Administration as Approving Authority:** Administration with or without an Administrative committee, using experts to develop the terms of the procurement, and approving the award of the P3 Agreement.

Given the complexity of inter-related conditions of the Request for Proposal required to obtain the best P3 Agreement for the City to design, build, operate and maintain the Valley Line Stage 1 Project, need for technical, commercial and legal expertise, project timelines, and need for confidentiality, ordinary Council and committee report processes for approval of a Request for Proposal would not be sufficiently nimble to develop the Request for Proposal within the timelines for the project. Attachment 3 outlines the above options, along with advantages and disadvantages and additional considerations for each option.

Given the advantages and disadvantages of each option and the types of decisions that need to be made with respect to the Project as procurement is commenced, Administration recommends the option that would provide the Board with the authority to approve the terms of the procurement upon which the City Manager will award the P3 Agreement (Option 1 in Attachment 3).

### Proposed Governance Option – Bylaw 16766 – LRT Governance Board Bylaw

Attachment 4 provides a draft bylaw for review. The bylaw addresses several issues that were noted in Transportation Services report CR\_894, named Governance Board Bylaw Review, and considered by the Board at its February 4, 2014, meeting.

1. **Project Description:** The LRT Project is defined as the southeast to downtown portion of the Valley Line.
2. **Mandate:** The Board's mandate is clarified to establish it as the approving body for the Request for Proposal for the LRT Project.

3. **Board Reporting to Council:** The Board will provide a semi annual report to Council on the status of the LRT Project. Other reports will be at the discretion of the Board and Council.
4. **Board Authority:** The Board's authority is clarified to include the approval of the procurement process including the Request for Qualifications and Request for Proposals pursuant to which the City Manager will award the P3 Agreement for the LRT Project. In exercising this authority, the Board must consider Council approved budgets and financial commitments and City Manager advice with respect to budgets and expenditures for the LRT Project.
5. **Procedures:** The Board and members are required to maintain confidentiality regarding the procurement process and close its meetings as permitted by the *Municipal Government Act*.
6. **General:** The Bylaw and Board created under the Bylaw will terminate 90 days after the P3 agreement has been signed.

Pursuant to this governance model, Administration would develop the terms of the procurement based on the City and P3 technical, legal and commercial expertise of the Project Team. The Board would review and approve the terms of procurement if the Board determines that Administration developed them in a prudent and diligent manner. If the Board is not satisfied that the Project is being undertaken in a prudent and diligent manner, the Board would require that Administration reconsider the terms of procurement. The award of the P3 Agreement will be done by the City Manager pursuant to the results of the procurement process which is approved by the Board.

### Corporate Outcomes

Review of the mandate and composition of this Council's Committee to create a well managed City.

### Legal Implications

The Board's bylaw needs to be revised to clarify its mandate with respect to the P3 delivery model.

### Justification of Recommendation

Revisions to the LRT Governance Board Bylaw would clarify the mandate and authority of the Board and the reporting requirements for Council consistent with a well managed City.

### Attachments

1. Decisions made for the Project
2. Decisions to be made for the Project
3. Valley Line Project Governance Options
4. ~~Bylaw 16766 – Draft LRT Governance Board Bylaw~~

**Others Reviewing this Report**

- K. Rozmahel, General Manager, Corporate Services
- L. Rosen, Chief Financial Officer and Treasurer

**Decisions made for the Project:**

Decision	Decision Type			Decision Maker
	Budget Policy Statutory	Expert Due Diligence	Technical Legal Commercial	
Budget – Capital	X			Council May 2, 1012 April 15, 2014
P3 Delivery Model	X			Council May 2, 2012 August 29, 2012
LRT Route (Transportation System Bylaw)	X			Council Ongoing
Bylaw 7188, North Saskatchewan River Valley Area Redevelopment Plan Approvals	X			Council September 18, 2013
Expropriations	X			Council Ongoing
RFQ Document		X	X	LRT Governance Board February 4, 2014
RFQ Issuance		X	X	LRT Governance Board February 4, 2014
RFQ Evaluation Process		X	X	LRT Governance Board April 17, 2014
Initiate Procurement – release RFQ and RFP			X	Council April 15, 2014

**Decisions to be made for the Project:**

Decision	Decision Type			Decision Maker	
	Budget Policy Statutory	Expert Due Diligence	Technical Legal Comm.	Current	Recommended Option
Public Engagement	X			Standing Committee	
Selection of qualified Respondents from RFQ			X	To be determined	LRT Governance Board
RFP Document (including P3 Agreement and technical performance requirements)		X	X	To be determined	LRT Governance Board
RFP Issuance to selected Respondents		X	X	To be determined	Administration
RFP Evaluation Process		X	X	To be determined	LRT Governance Board
RFP Evaluators			X	To be determined	Administration
Budget – Operating (Funding Plan)	X			Council	
Changes to Budget - Capital	X			Council	
Changes to Budget – Operation (Funding Plan)	X			Council	
Changes to P3 Delivery Model	X			Council	
Changes to Route	X			Council	
Bylaw 7188, North Saskatchewan River Valley Area Redevelopment Plan Approvals Changes	X			Council	
Award of P3 Agreement to Successful Proponent		X	X	To be determined	Administration
Final Execution of P3 Agreement and related documents			X	Administration	

## VALLEY LINE PROJECT GOVERNANCE OPTIONS

OPTIONS	KEY ELEMENTS	ADVANTAGES	DISADVANTAGES	DIFFERENCES FROM CURRENT MODEL & BOARD COMMENTS
<p><b>OPTION 1</b></p> <p><b>Board as Approving Body</b></p>	<ul style="list-style-type: none"> <li>• Board would receive and consider all project reports relating to procurement</li> <li>• Board would need to consider most of these reports in private in order not to prejudice the procurement process although it could only pass a motion to give direction or approvals in public</li> <li>• The primary motions which would be required relate to the approval of the procurement process elements – RFP Document (including draft P3 agreement and technical performance requirements), and RFP Evaluation Process.</li> <li>• The Board’s bylaw would be amended to clearly provide this authority, establish regular reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Decision making will be independent of administration and political process providing confidence to the private sector proponents that award will be made in an objective manner free from bias or political interference</li> <li>• Members are experts in the fields of finance, transportation planning, civil engineering, and legal issues in large scale infrastructure projects</li> <li>• Administration has retained experts to provide services and detailed advice for the development and implementation of the procurement.</li> <li>• Administration has considerable experience in public procurement and is</li> </ul>	<ul style="list-style-type: none"> <li>• The formal Council committee procedures may inhibit the free flow of communications needed by the Board and Administration in order for the Board to be comfortable with approving the elements of the procurement process</li> <li>• The need for timely approvals of procurement elements is inhibited by the requirement to develop formal agendas and reports</li> </ul>	<p><b>Differences</b></p> <ul style="list-style-type: none"> <li>• Authority for approval of the procurement process elements (RFP Document (including draft P3 agreement and technical performance requirements), and RFP Evaluation Process and reporting structures will be clear</li> <li>• Formal project reporting from Board to Council</li> </ul> <p><b>Board Comments</b></p> <ul style="list-style-type: none"> <li>• Board is comfortable with an approving role</li> </ul>



	<ul style="list-style-type: none"> <li>The Board will cease after the P3 agreement is signed</li> </ul>	<ul style="list-style-type: none"> <li>Combined expertise with Board members would facilitate a further level of diligence in the procurement</li> </ul>		
<p><b>OPTION 2</b></p> <p><b>Board as Project Auditor</b></p>	<ul style="list-style-type: none"> <li>Like the City Auditor, the Board would review and evaluate the efficacy of business decisions made by Administration and report to Council</li> <li>Audit would be initiated by the Board on procurement matters as it progresses</li> <li>Board would report to Council on issues arising in the procurement – necessarily reporting in private to protect the integrity of the procurement</li> </ul>	<ul style="list-style-type: none"> <li>Council would have the opportunity to have review and reporting performed by experts</li> </ul>	<ul style="list-style-type: none"> <li>Administration would still present information reports to the Board but the Board would not have a decision making role. It would not be appropriate for the Board to approve a decision and audit it</li> <li>This may be a redundant body because of the roles of the Fairness Monitor and the City Auditor. A Fairness Monitor has been retained for the project to monitor and report on the fairness of the procurement. The City Auditor already has an audit role.</li> </ul>	<p><b>Differences</b></p> <ul style="list-style-type: none"> <li>Board authority with respect to approvals would be removed.</li> <li>Board audit function would be outlined.</li> </ul> <p><b>Board Comments</b></p> <ul style="list-style-type: none"> <li>Board wishes to have a meaningful role in the Project and was recruited for decision making capacity</li> </ul>
<p><b>OPTION 3</b></p>	<ul style="list-style-type: none"> <li>Board would be reconstituted as an administrative committee that would work with</li> </ul>	<ul style="list-style-type: none"> <li>No requirement to publish a formal meeting schedule, prepare council style reports or meet in public.</li> </ul>	<ul style="list-style-type: none"> <li>Greater meeting frequency than monthly may be required during the procurement process.</li> </ul>	<p><b>Differences</b></p> <ul style="list-style-type: none"> <li>Board would</li> </ul>

<p><b>Board as Advisor to Administration</b></p>	<ul style="list-style-type: none"> <li>Board and Administration would report to Council or Committee on project status on a regular basis</li> </ul>	<ul style="list-style-type: none"> <li>Board members would be able to apply their expertise in developing and implementing the procurement</li> <li>Administration has retained experts to provide services and detailed advice for the development and implementation of the procurement.</li> <li>Combined expertise with Board members would facilitate a further level of diligence in the procurement</li> </ul>		<p><b>Board Comments</b></p> <ul style="list-style-type: none"> <li>Board wishes to have a meaningful role in the Project and was recruited for decision making capacity</li> <li>Board members were recruited with a lower expectation of time than this would require</li> </ul>
<p><b>OPTION 4</b></p> <p><b>Transportation Committee as Approving Authority</b></p>	<ul style="list-style-type: none"> <li>Transportation Committee would approve the procurement process elements – RFP Document (including draft P3 agreement and technical performance requirements), RFP Evaluation Process, evaluators, final execution of P3 agreement and related documents.</li> </ul>	<ul style="list-style-type: none"> <li>This is the ordinary process for a tender or RFP which exceeds the City Manager’s decision making authority of \$20 million or 10 years</li> </ul>	<ul style="list-style-type: none"> <li>The formal Council committee procedures may inhibit the timely approvals of procurement elements and lead to delays in the procurement and Project timelines</li> <li>One of the reasons for the establishment of the Board was to streamline the process to meet project</li> </ul>	<p><b>Differences</b></p> <ul style="list-style-type: none"> <li>There would be no formal role for the Board members</li> </ul> <p><b>Board Comments</b></p> <ul style="list-style-type: none"> <li>Board members are willing to provide their</li> </ul>

	<ul style="list-style-type: none"> <li>• Transportation Committee would need to consider most of these reports in private in order not to prejudice the procurement process although it could only pass a motion to give direction or approvals in public</li> </ul>		<ul style="list-style-type: none"> <li>• Value of Board member expert input will be lost</li> </ul>	
<p><b>OPTION 5</b></p> <p><b>Administration as Approving Authority</b></p>	<ul style="list-style-type: none"> <li>• Administration would develop the procurement process elements – RFP Document (including draft P3 agreement and technical performance requirements), RFP Evaluation Process, evaluators, final execution of P3 agreement and related documents.</li> <li>• Administration would develop and implement the procurement in accordance with City public policy requirements and input from experts retained for the project (P3 Advisors including financial, process and legal).</li> <li>• Administrative committees can be established as required</li> <li>• Administration would provide progress to Council through its</li> </ul>	<ul style="list-style-type: none"> <li>• Administration has considerable experience in public procurement and is guided by well documented procedures and rules</li> <li>• Expert input would be leveraged to provide a better product</li> <li>• Procurement would progress in a timely manner as issues are addressed through internal mechanisms</li> <li>• The Fairness Monitor would provide oversight and report with Administration to Council through its Standing Committee</li> <li>• Less political process in keeping with large volume of technical, commercial and legal decisions to be made</li> <li>• Ottawa developed its LRT</li> </ul>	<ul style="list-style-type: none"> <li>• Greater use of internal processes may cause transparency concerns but this is necessary for the integrity of the procurement regardless of which model is used</li> </ul>	<p><b>Differences</b></p> <ul style="list-style-type: none"> <li>• A separate delegation Bylaw would be prepared to outline the authority to be provided to the City Manager with respect to the procurement.</li> <li>• There would be no formal role for the Board members</li> </ul> <p><b>Board Comments</b></p> <ul style="list-style-type: none"> <li>• Board members are willing to provide their expertise for the Project at Council's direction</li> </ul>

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