

Proposed Text of a Bylaw to Establish the Green Line Board

WHEREAS, after considering revised Report GC2020-0583, Council approved the Green Line Stage 1 Program on June 16, 2020;

AND WHEREAS, Council has considered the governance structure required for the Green Line Stage 1 Program as described in Report GC2020-0772;

AND WHEREAS, Section 203 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 provides that Council may by bylaw delegate its powers, duties or functions to a council committee which may include a board;

AND WHEREAS, by this Bylaw Council establishes the Green Line Board as a committee of Council to govern and oversee the Green Line Stage 1 Program as more specifically set forth in this Bylaw including the attached terms of reference;

AND WHEREAS, pursuant to this Bylaw and attached terms of reference, the Green Line Board is granted authority to make decisions and approve actions within its mandate.

SHORT TITLE

1. This Bylaw may be cited as the "Green Line Board Bylaw".

PURPOSE

2. The Purpose of this Bylaw is to establish the Green Line Board as a committee of Council.

DEFINITIONS

3. (1) In this Bylaw,
 - (a) "*Administrative Leadership Team*" means The City's administrative leadership team as constituted by the City Manager which, for purposes of this Bylaw shall include The City's Director of Supply Management and Director of Calgary Transit;
 - (b) "*Affordability*" means the sum of all capital costs compared to the sum of all available funding with respect to the Program, as approved by Council;
 - (c) "*Board*" means the Green Line Board established by this Bylaw;
 - (d) "*City Manager*" means the individual appointed by Council as its chief administrative officer pursuant to Bylaw 8M2001;
 - (e) "*Confidential Information*" means information, whether oral, written or in electronic form and includes information that pertains to design, approvals, land acquisition, procurement, and construction, that is

identified as confidential or would reasonably be considered as confidential but excluding any information:

- i. possessed by a Board member prior to receipt from The City;
 - ii. published or available to the general public other than through a breach of this Bylaw;
 - iii. obtained from a third party with a valid right to disclose it, provided that the third party is not under a confidentiality obligation, directly, or indirectly, to The City;
 - iv. independently developed by a Board member who had no knowledge of or access to Confidential Information;
 - v. disclosed by a Board member with the prior written approval of The City;
 - vi. required, in the reasonable opinion of the City Solicitor and General Counsel, to be disclosed by operation of law or requirement of a court, governmental agency, or administrative tribunal; or
 - vii. information disclosed by The City pursuant to a request to access records under Part 1 of FOIP;
- (f) “*Council*” means the municipal council of The City;
- (g) “*Delivery*” means the design-development, procurement, construction and commissioning of the Program.
- (h) “*FOIP*” means the *Freedom of Information and Protection of Privacy Act*, RSA 2000 c F-25, as amended or any statute enacted in its place;
- (i) “*Funding Agreements*” means agreements between The City and the federal and/or provincial governments that set out the terms and conditions of funding of the Program;
- (j) “*Green Line Program Team*” means the team of individuals required to complete the Program;
- (k) “*LRV Purchase*” means the purchase of low-floor light rail transit vehicles for the Program;
- (l) “*Program*” means the Green Line Stage 1 Program extending from 126th Avenue Southeast to 16th Avenue North as approved by Council (which may be divided into Segments 1, 2A, and 2B), but excluding Bus Rapid Transit improvements.

- (m) “*Project Agreements*” means the contracts entered into between Project Cos and The City in respect of the Program, and the contract for the LRV Purchase;
 - (n) “*Project Co*” means a special purpose vehicle that enters into a Project Agreement with The City;
 - (o) “*Substantial Completion*” shall have the same meaning as defined in the Project Agreement(s); and
 - (p) “*The City*” means the municipal corporation of The City of Calgary.
- (2) Any schedules attached to this Bylaw form part of the Bylaw.
 - (3) If this Bylaw refers to any statute, regulation or bylaw, the reference is to the statute, regulation or bylaw as amended, whether amended before or after the commencement of this Bylaw, and includes reference to any statute, regulation or bylaw that may be substituted in its place.

ESTABLISHMENT AND TERM

- 4. The Board is hereby established as a committee of Council. The Board shall exist until such time as this Bylaw is repealed by Council.

MANDATE

- 5. The mandate of the Board is to use its collective expertise to govern and oversee the successful Delivery of the Program, and to carry out Council direction provided to administration and to the Board related to Delivery of the Program.

COMPOSITION OF THE BOARD

- 6. The Board shall consist of a minimum of three and a maximum of nine members.
- 7. The Board members shall have a range of expertise in areas such as governance, leadership, procurement, engineering design, construction, project management, urban design, and P3 transactions in respect of projects comparable to the Program.
- 8. Board members shall not be subject to the recruitment and appointment process specified in Council Policy CP2016-03 titled, “Governance and Appointments of Boards, Commissions and Committees”. Board members do not have to be residents of Calgary. Notwithstanding the Procedure Bylaw 35M2017, Board membership shall not be reviewed annually at The City’s Organizational Meeting.
- 9. The City Manager shall be a member of the Board at all times.
- 10. Notwithstanding section 154(2) of the *Municipal Government Act*, neither the Mayor nor any member of Council shall be a member of the Board.

11. No member of the administration of The City, other than the City Manager, shall be a member of the Board.
12. Three members of the Board shall serve for an initial term of three years and the remaining Board members shall serve for an initial term of four years. Board members may be reappointed after serving their initial terms for additional terms of four years.
13. Initial members of the Board shall be recommended by the City Manager and appointed by Council, and subsequent Board members shall be recommended by the Board Chair and City Manager and appointed by Council. Initial Board members shall be appointed not later than 120 days after Council passes this Bylaw and, thereafter, Board members shall be recommended and appointed no later than 90 days after a Board member vacancy comes into effect.
14. The Chair of the Board shall be recommended by the City Manager and appointed by Council. The Board shall appoint the Vice-Chair on an annual basis from among the Board members. The initial Board Chair shall serve for a period ending no later than December 31, 2020.
15. A Board member may resign at any time by notice in writing to the Chair, and the Chair may resign at any time by notice in writing to the City Manager. The City Manager shall report Board member resignations to Council.
16. Prior to appointment as a Board member, each individual must sign an acknowledgement that the individual will adhere to the standards described in the Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees (CC045). Board members shall be required to execute a confidentiality agreement for the Program.
17. Board members are subject to the Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees (CC045) except as otherwise provided in this Bylaw, or where the Code of Conduct conflicts with this Bylaw in which case this Bylaw shall prevail.
18. Notwithstanding the provisions of the Code of Conduct for Citizen Members Appointed to Council Established Boards, Commissions and Committees (CC045), Board members shall have an obligation to keep all Confidential Information strictly confidential and not disclose Confidential Information outside of The City. Board members may share Confidential Information with Council and administration of The City as appropriate and in furtherance of the Board's mandate and duties.
19. Board members shall use due diligence and reasonable efforts to carry out the Board's duties and mandate as specified in this Bylaw.
20. Council may revoke the appointment of a Board member without cause.
21. Members of Council and of the administration of The City may attend closed sessions of Board meetings only on invitation from the Board Chair.

INDEMNIFICATION OF BOARD MEMBERS

22. The City shall indemnify citizen members of the Board pursuant to the Indemnification of Council Citizen Appointments to Council Established Municipal Boards, Commissions, Authorities and Committees (CC040) and, at the discretion of the City Manager and the City Solicitor and General Counsel, The City may enter into indemnification agreements with, and provide supplemental insurance for, citizen members of the Board to address liability that may arise from their service as Board members.

ALLOCATION OF PROGRAM FUNDS

23. The Board shall approve the allocation of Program funds made available by Council pursuant to the Program budget approved by Council.

DUTIES AND AUTHORITIES

Green Line Program Team and Senior Executive

24. Notwithstanding Bylaw 8M2001 (the bylaw establishing the position of the City Manager), the Board shall review and approve:
- a. the recruitment, hiring, compensation, supervision, management, and terms of employment of the Program's most senior executive responsible for managing the Program and Green Line Program Team; and
 - b. the structure and composition of the Green Line Program Team,
- and may establish a compensation structure, evaluation criteria, recruitment process, and related policies, specific to the Green Line Program Team that may be separate from comparable City compensation structures and policies, and, as appropriate, to recruit and/or retain skilled staff for the Program.

Execution of Contracts

25. The Board shall approve the final Project Agreements and shall recommend execution of the Project Agreements to the City Manager if the funds required for the execution of the Project Agreements are included in an approved budget of Council for the Program. Notwithstanding the Execution of Contracts Bylaw 43M99, the Project Agreements shall be properly executed if signed by the City Manager and the City Clerk. Amended or additional Funding Agreements negotiated and agreed to by The City shall be properly executed if signed by the City Manager and the City Clerk.
26. Other than the Project Agreements and Funding Agreements, contracts required for implementation and completion of the Program shall be executed in accordance with a delegation of authority approved by the City Manager under Execution of Contracts Bylaw 43M99 for the Program, if the funds required for the execution of the contracts is included in an approved budget of Council.

27. The Board may approve the entering into contracts to retain the services of any individual or corporation, other than legal counsel, for purposes related to the Program provided that the required funds are included in an approved budget of Council.

CONTRACTS AUTHORIZED BY THE BOARD

28. All contracts, including any amended or additional Funding Agreements, the Project Agreements approved and recommended for execution by the Board and executed by the City Manager and the City Clerk, and any other contracts executed in accordance with the delegation of authority approved by the City Manager under Execution of Contracts Bylaw 43M99 for the Program, are valid and binding on The City.

REMUNERATION

29. The City Manager shall set the remuneration for the Board Chair and Board members.

FOIP

30. The City Clerk, or a delegate of the City Clerk, will act as the FOIP Head of the Board, and shall support the Board in responding to FOIP requests for records and compliance with FOIP.
31. The City's FOIP fee schedule will apply to FOIP requests for records of the Board in the custody or control of the Board.
32. Nothing in this Bylaw shall be interpreted as precluding The City from disclosing information that The City may be required or ordered to disclose under FOIP.

TERMS OF REFERENCE

33. The Terms of Reference for the Board shall be as set out in Schedule A to this Bylaw.

COMING INTO FORCE

34. This Bylaw comes into force on the date it is passed.

SCHEDULE A

Green Line Board Terms of Reference

DEFINITIONS

1. The definitions set forth in the Green Line Board Bylaw shall apply to this Terms of Reference.

DUTIES AND AUTHORITY

Program Implementation

2. In delivering the Program, the Board shall not do anything, or fail to do anything, that would result in The City being in breach of any contracts or agreements associated with the Program.
3. The Board shall oversee and ensure best practices are implemented by the Green Line Program Team with respect to matters including:
 - a. the development of all procurement documents, including the approval of modifications to the procurement documents, and coordination with business units of The City;
 - b. the construction and implementation of the Program in a manner consistent with estimates, budgets and plans approved by Council;
 - c. the management and execution of obligations arising under contracts associated with the Program, including Funding Agreements;
 - d. the protection of the integrity of the Program procurement processes in accordance with the applicable law and trade agreements to ensure a fair, open, and transparent competitive procurement process, including the avoidance of conflict of interest;
 - e. the receipt and review of reports of an independent procurement fairness monitor;
 - f. the evaluation of submissions in response to the Requests for Qualifications and the Requests for Proposals issued for the Program, including development of the evaluation process and the recommended "short-list";
 - g. the management of scope changes to the Program as requested by The City, the Project Cos or contractors;

- h. the management and oversight of the implementation of the Program and of The City's contractual obligations with regard to the Program;
 - i. the management of interfaces between The City and each Project Co;
 - j. the receipt, review, clarification and approval of invoices in respect of the Program;
 - k. the management of all delays and the project schedule of the Program;
 - l. the assessment of whether Substantial Completion(s) under the Project Agreement(s) have been achieved;
 - m. the assessment of whether Program contracts are being performed in accordance with the applicable contractual terms;
 - n. the management of communications and public relations (including as required by the Funding Agreements);
 - o. the Green Line Program Team's reporting relationship to the Administrative Leadership Team; and
 - p. the acquisition or disposition of land required for the Program.
4. The Board may approve any recommended "short-list" and shall be responsible for the award of the work to proponents or bidders that are successful in the competitive procurement processes.
5. The Board will receive reports from the Technical and Risk Committee.

Affordability of the Program

6. The Board shall monitor the Affordability of the Program and advise Council if material changes to the scope, schedule, or funding are required.

Frequency of Reporting

7. The Board shall report on the Program to the Priorities and Finance Committee on a quarterly basis, and more frequently as required by extraordinary circumstances or at the discretion of the Board.

Information Technology

8. The Board shall oversee the implementation of information technology, project management and document management systems for the Program that are compatible with City systems and meet City requirements.

Legal Matters

9. The Board shall not have authority to settle actions, claims, litigation or demands by or against The City related to the Program, but may make recommendations regarding these issues to the City Manager and the City Solicitor and General Counsel for their consideration where funds that would be paid as part of any settlement would be drawn against a Program budget, and such funds are included in a Program budget approved by Council.
10. The Board shall advise the City Solicitor and General Counsel and The City's Manager of Litigation of any litigation or potential litigation related to the Program.
11. The Board shall not have the authority to retain external legal counsel but may make recommendations to the City Solicitor and General Counsel for the retention of external legal counsel to assist with disputes related to the Program and to otherwise support the Program. External counsel shall be retained by, and report to, the City Solicitor and General Counsel.

POLICIES AND DIRECTIVES

12. The Board shall review and comply with all relevant Council policies.
13. The City Manager may exercise discretion to determine the application and interpretation of administrative policies as these apply to the Program.

BOARD MEETINGS

Regular Board Meetings

14. At its first meeting, the Board shall establish a schedule for meetings to include at least eight meetings for the first year of Board meetings. The Chair, in consultation with the City Clerk, shall establish the date and time of the first Board meeting.
15. At the last regular meeting of each calendar year, the Board shall adopt an annual schedule for the following year to include at least four meetings and the Board shall file the schedule with the City Clerk.
16. The Board may conduct meetings by means of telephone, electronic or other communication facilities according to procedures adopted by the Board and the Board shall file the schedule and communication procedures with the City Clerk.
17. The Board may implement procedural rules and processes for the Board, provided such rules and processes do not contravene this Bylaw.
18. The City Clerk, or a delegate of the City Clerk, shall deliver copies of the Board agenda and reports to Board members for regularly scheduled Board meetings at least three days before each regular Board meeting.

Special Board Meetings

19. The Board Chair may call additional meetings of the Board, change the time, date or location of any meeting, or cancel previously scheduled meetings of the Board by giving 14 days prior written notice to Board members.

20. The Board Chair may call additional meetings of the Board in accordance with Section 22.
21. The Board Chair shall call a special meeting of the Board if a majority of Board members request a special meeting, in writing.
22. Board meetings held in accordance with Section 20 or 21 shall be scheduled in accordance with the following:
 - a. The notice of the meeting shall include a description of the purpose of the meeting;
 - b. A special meeting requested by Board members shall be held no later than 14 calendar days after the request is received by the Board Chair;
 - c. If a matter is not specified in the notice of the special Board meeting, that matter shall not be dealt with unless all Board members are present and the Board passes a motion, by majority vote, to deal with the matter; and
 - d. Notice of the meeting and notice of cancellation of a previously scheduled meeting shall be filed with the City Clerk a minimum of 48 hours prior to the meeting and shall:
 - i. be issued a minimum of 48 hours prior to the meeting date;
 - ii. be in writing and specify the time, date, location and purpose of the meeting; and
 - iii. be delivered, emailed, or faxed to each Board member.

QUORUM AND PROCEEDINGS

23. The quorum for a Board meeting shall be a majority of existing appointed Board members.
24. As soon as there is quorum after the time for commencement of a meeting:
 - a. the Chair shall call the meeting to order; or
 - b. if the Chair is absent, the Vice-Chair shall be the presiding officer; or
 - c. if both the Chair and Vice-Chair are absent, the Board members must elect a Board member to be the presiding officer for that meeting.
25. If there is no quorum within half an hour after the time set for the meeting, the City Clerk shall record the names of the Board members present and the meeting shall be adjourned to the time of the next regular meeting. The agenda for the adjourned meeting shall be dealt with at the beginning of the next regular meeting, unless a special meeting is called before or after the next regular meeting to deal with the business of the adjourned meeting.

26. The Board shall follow the procedural rules for Committees of Council under the Procedure Bylaw, except as may be modified by this Bylaw. The Board may suspend the procedures for regular and special board meetings contained in this Bylaw or the Procedure Bylaw (35M2017).

PUBLIC MEETINGS

27. With respect to meetings of the Board, the following shall apply:
 - a. Meetings of the Board shall be open to the public. The Board may, but is not required to, permit members of the public to speak to specific items on the Board's agenda. The Chair of the Board shall determine, prior to the publication of the agenda, which agenda items, if any, require public participation. The City Clerk will note this Board Chair determination in the public agenda. The Board may, by majority vote, require an item to have public participation at a following Board meeting.
 - b. The Board shall have the authority to close portions of the meetings at its own motion in accordance with the provisions of section 197 of the *Municipal Government Act*.

INSPECTION OF RECORDS

28. During normal office hours, the Board shall allow the City Manager or City Auditor, external auditor, funding auditor, or their respective designates, access to all books, records and accounts held by the Board.
29. The Board shall assist The City officials referred to in Section 28 to obtain and inspect any books, records, accounts or other financial information pertaining to the Board that are held by the Board.