



Item Number  
7

# Report to the BOARD OF AIRPORT COMMISSIONERS

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 Approver: Jacob Adams (Feb 27, 2023 08:16 PST)  
 Jake Adams, Deputy Executive Director  
 Landside Access Modernization Program

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Justin Erbacci (Feb 27, 2023 08:31 PST)  
 Justin Erbacci, Chief Executive Officer

<u>Meeting Date</u>			
3/2/2023			
Needs Council Approval: <input checked="" type="checkbox"/> Y			
<u>Reviewed for/by</u>	<u>Date</u>	<u>Approval Status</u>	<u>By</u>
Finance	2/23/2023	<input checked="" type="checkbox"/> Y <input type="checkbox"/> NA	JS
CEQA	2/23/2023	<input checked="" type="checkbox"/> Y	bms
Procurement	2/23/2023	<input checked="" type="checkbox"/> Y <input type="checkbox"/> Cond	LK
Guest Experience	2/22/2023	<input checked="" type="checkbox"/> Y	TB
Strategic Planning	2/23/2023	<input checked="" type="checkbox"/> Y	BNZ

## SUBJECT

Request to approve a change order to Contract DA-5277 with LAX Integrated Express Solutions, LLC for the Landside Access Modernization Program's Automated People Mover Project at Los Angeles International Airport, to settle all delay-related Relief Event Claims through December 8, 2022, and direct costs for various Relief Event Claims, pursuant to the terms outlined in this report.

## RECOMMENDATIONS

Management RECOMMENDS that the Board of Airport Commissioners:

- ADOPT the Staff Report.
- DETERMINE that this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Article II, Section 2.i of the Los Angeles City CEQA Guidelines.
- APPROVE a change order to Contract DA-5277 with LAX Integrated Express Solutions, LLC to settle all delays through December 8, 2022, and direct costs for various Relief Event Claims, pursuant to the terms outlined in this report.
- AUTHORIZE the Chief Executive Officer, or designee, to execute a change order with LAX Integrated Express Solutions in the amount of \$101,671,746.
- APPROPRIATE funds in the amount of \$101,671,746.

## DISCUSSION

### 1. Purpose

LAX Integrated Express Solutions, LLC is the developer (“Developer”) under the Design-Build-Finance-Operate-Maintain (DBFOM) Agreement for the Landside Access Modernization Program’s Automated People Mover (APM) project. The Developer has submitted various Relief Events claims where Los Angeles World Airports (LAWA) and the Developer have disagreed on the merit of these claims. The parties have been negotiating in good faith toward resolution of these claims and have recently reached agreement on terms for a settlement. Approval of a change order is requested to finalize the agreement reached between the parties.

### 2. Prior Related Actions/History of Board Actions

- **April 16, 2015 – Resolution No. 25681**  
The Board of Airport Commissioners (Board) requested that the Los Angeles City Council consider and approve an ordinance to allow use of Alternate Project Delivery Methods and Competitive Sealed Proposal Selection Process (CSPSP) for Design-Build, Design-Build-Operate-Maintain, and Construction Manager at Risk contracts for delivery of select Capital Improvement Projects related to the Landside Access Modernization Program (LAMP) at Los Angeles International Airport (LAX). On May 26, 2015, the City Council approved Ordinance No. 183585 authorizing the use of alternate project delivery methods as requested (Council File 14-0987).
- **March 17, 2016 – Resolution No. 25909**  
The Board authorized the release of the APM Operating System Supplier Eligibility Determination for the APM Project at LAX.
- **February 16, 2017 – Resolution No. 26177**  
The Board submitted a recommendation for the City Council to approve an ordinance amending the Los Angeles Administrative Code and otherwise authorizing the Board to allow use of certain requirements and procedures for procurements and contracts related to LAMP at LAX under Ordinance No. 183585 and clarifying the intent of said ordinance with regard to contractor-provided project financing.
- **April 20, 2017 – Resolution No. 26220**  
The Board authorized LAWA to enter into Proposal Agreements with short-listed proposers for the LAMP APM Project at LAX. Such an agreement includes the terms and conditions by which LAWA may purchase and use the work product from said short-listed proposers.
- **July 13, 2017 – Resolution No. 26301**  
The Board authorized staff to release a Request for Proposals to qualified short-listed firms to submit proposals to design, build, finance, operate, and maintain an APM for LAMP at LAX.

- **February 15, 2018 – Resolution No. 26431 (DA-5270)**  
 The Board authorized LAWA to enter into an Early Works Agreement with LINXS, the Recommended Developer of the LAMP APM Project at LAX, to allow the recommended developer to commence pre-construction activities in advance of final execution of the APM DBFOM Agreement and allocate funds for APM Early Works in the not-to-exceed amount of \$42,000,000.
- **April 5, 2018 – Resolution Nos. 26450 and 26451 (DA-5277)**  
 The Board authorized the execution of a 30-year DBFOM Agreement with LINXS for the LAMP APM at LAX, in a not-to-exceed amount of \$4,895,750,000.
- **September 20, 2018 – Resolution No. 26601 (DA-5277)**  
 The Board approved an appropriation of funds under the DBFOM Agreement Contract DA-5277 to change the Guideway Alignment in the lump sum amounts of \$950,000 for design and \$13,000,000 for construction to accommodate a potential additional station.
- **March 18, 2021 – Resolution No. 27229 (DA-5277)**  
 The Board approved a change order in the amount of \$97,000,000 to Contract DA-5277 with LINXS for the LAMP APM Project at LAX to settle Relief Event No. 5 APM Station Design Criteria and Relief Event No. 13 Electrical Duct Bank Conflict at East Intermodal Transportation Facility – Bent 91.
- **November 4, 2021 – Resolution No. 27372 (DA-5277)**  
 The Board approved an appropriation of funds under the DBFOM Agreement Contract DA-5277 to provide landscape, streetscape, and public realm scope in the amount of \$15,996,512, to cover the necessary remaining work that exceeded the original allowance.
- **November 18, 2021 – Resolution No. 27383 (DA-5277)**  
 The Board approved an appropriation of funds under the DBFOM Agreement Contract DA-5277 to modify and install additional flight information displays for the LAMP APM Project at LAX, in an amount not to exceed \$5,623,931, to provide information for both operating control rooms and passengers.
- **August 18, 2022 – Resolution No. 27383 (DA-5277)**  
 The Board approved a change order in the amount of \$5,150,063.77 to Contract DA 5277 with LINXS for the LAMP APM Project at LAX to settle Relief Event No. 10 Central Terminal Area Electrical Relocation and Relief Event No. 39 Unknown Geotechnical Condition at the Los Angeles Department of Water and Power New Manhole 180.

### 3. Background

In April 2018, the Board approved a 30-year Design-Build-Finance-Operate-Maintain Agreement with LAX Integrated Express Solutions, LLC for the Automated People Mover (APM) project at Los Angeles International Airport. This agreement and the agreement for the Consolidated Rent-A-Car Facility project were the first major Public Private Partnership (PPP) infrastructure projects for LAWA and some of the largest contracts ever awarded in Los Angeles. The proposed design and construction cost for the APM project alone was approximately \$2.1 billion.

The Automated People Mover is an extremely complex project that required excavation, deep foundation drilling, column and superstructure construction throughout the 2.25 mile guideway alignment running through the Central Terminal Area at LAX, over Sepulveda Blvd and Century Blvd, over Metro's LAX/Crenshaw light rail line and out to the ConRAC station near the 405 Freeway. A significant portion of the APM is located in areas not owned by LAWA where limited existing underground utility information was available and when available was often inaccurate. This presented numerous challenges in regard to underground utility conflicts that had to be overcome at over 200 locations for the guideway support columns. Complex interfaces with numerous stakeholders as well as the necessity for design and permit approvals from several different municipalities added complexity to this project.

At the time, the use of the PPP delivery model was thought to have the ability to reduce much of LAWA's delivery risk and thus very low project contingencies were budgeted for these projects. The project contingency for the APM project was established at only 7% (approximately \$145 million) instead of a more typical 15% contingency (approximately \$315 million) usually allocated to projects of similar size and complexity. As the project progressed, it became apparent that the PPP model did not insulate LAWA from much of the design and construction risk, especially the risk of delays caused by authorities having jurisdiction including the City of Los Angeles and others.

The Developer has submitted numerous Relief Event Claims claiming both delay and direct cost impacts due to unknown underground utilities, overly stringent design parameters and betterments requested by authorities having jurisdiction (permitting agencies, e.g., Bureau of Engineering, Building and Safety, etc.), and delays in obtaining permits. Three of the more significant claims submitted by the Developer are discussed in detail below.

The Developer submitted its combined Unknown Underground Utilities Claim in August 2021, claiming certain underground utilities were not identified within the Utility Information and could not have been reasonably inferred by the Developer prior to the Setting Date (October 9, 2017). The Claim combines 23 Relief Events where the Developer's asserted claim for incurred and future direct costs was \$34,623,447. The Developer's claim of \$4,499,455 in incurred costs for eight of the Unknown Underground Utilities, was previously settled by Change Order No. 61 for \$2,605,000, leaving the remaining balance of the Developer's claim at \$30,124,002. The Developer also claimed 218 compensable days of delay.

The Developer also submitted its Guideway Segment 3GW2 Claim in October 2022, claiming certain APM guideway segment work was driving the critical path of the construction of the APM from November 2020 through July 2021. Accordingly, the Developer asserted that, during this timeframe, the Guideway Segment 3GW2 work was impacted by six separate Relief Events. Los Angeles World Airports and the Developer disagreed on the merits of the Relief Events in the Guideway Segment 3GW2 Claim and the matter was referred by the Developer to the Project Neutral, per the dispute resolution terms of the DBFOM Agreement. The original claim amount asserted by the Developer was approximately \$21,203,619 for direct costs and \$49,816,262 for 129 days of delay. The delay component of the Developer's claim was based primarily on alleged late/preferential comments from authorities having jurisdiction regarding the Developer's means and methods and traffic control plans in the vicinity of the 3GW2 guideway segment. Los Angeles World Airports maintained its rejection of the Guideway Segment 3GW2 Claim based on the Developer's contractual obligation to secure all governmental approvals and

various other obligations. After submitting written position papers and making presentations at a Project Neutral hearing, the Project Neutral agreed in large part with the Developer and issued recommendations that adopted the Developer's arguments, recommending that the Developer's claimed direct costs and 96 days of compensable delay be granted by LAWA.

The Developer also submitted its updated combined claim for Roadway-Related Relief Events in November 2022, claiming the roadway packages suffered from various impacts such as an unapproved tract map, multiple design reviews, and unforeseen comments from authorities having jurisdiction. The claim combines 43 Relief Events. The value of the Developer's claim was \$106,032,787 for incurred and future direct costs and \$227,219,944 for 322 days of associated delay costs.

After receiving the Project Neutral's recommendations on 3GW2, LAWA and the Developer continued to negotiate in good faith with the aim of settling the above disputes and all time-related delays to-date, including the delay component of the Roadway-Related Relief Events.

#### **4. Current Action/Rationale**

At this time, LAWA and the Developer have agreed on terms for a settlement and staff requests approval of a change order to settle all delay-related Relief Event Claims through December 8, 2022, and direct costs for Guideway Segment 3GW2 Claim and the combined Unknown Underground Utilities Claim, per the terms of the settlement discussed below. The negotiation between the parties resulted in a significantly lower negotiated amount than the damages originally claimed and a reduction in compensable delay days claimed from 322 days to 200 days.

Staff believes that the settlement, based partially on the Project Neutral recommendations, is reasonable and that settlement of these Relief Events now is in the best interest of the project. Staff also believes that by resolving these issues now, we can avoid further delays and potentially higher costs should these claims continue unresolved. Furthermore, the unresolved delays can give the lending agencies the ability to stop the financing to the PPP Developer, which could result in further delays and additional costs to establish new financing to complete construction, and all in an environment where financing is significantly more expensive due to higher interest rates. Moreover, the terms of the DBFOM Agreement and the Project Neutral's recommendation indicate significant potential exposure for LAWA that could result in an unfavorable outcome should these issues proceed to litigation.

##### The Settlement

- **Time Extension**  
Los Angeles World Airports grants the Developer a time extension of 292 days beyond the revised Planned Early Passenger Service Availability Date of September 12, 2023, resulting in a revised Planned Early Passenger Service Availability Date of June 30, 2024. Of these 292 days, the Parties agree that LAWA will pay the Developer for 200 days of compensable delay. The Developer has committed to achieving Passenger Service Availability by June 30, 2024, and completing Aviation Boulevard Work by July 30, 2024.
- **Delay Payment Compensation**

Los Angeles World Airports will pay Delay Costs to the Developer in the provisional amount of \$81,671,745.70, which represents the Developer's daily rates of \$386,172.57 for 96 days of the compensable delay and \$428,838.26 for the remaining 104 days of the compensable delay. The Developer's Delay Costs are subject to audit by LAWA in accordance with the Design-Build-Finance-Operate-Maintain Agreement. Any reconciliation of amounts owed by either party will be memorialized by a change order.

Los Angeles World Airports will pay Milestone Payment 6 on or before September 15, 2024, as currently scheduled. The Developer will, in turn, pay the Equity Contribution to avoid refinancing of the Design-Build Loan Facility as defined in the Credit Agreement.

Los Angeles World Airports will pay, on a monthly basis, Delayed Payment Compensation of \$190,238.59 per day to compensate the Developer for financing costs associated with missed Availability Payments. Availability Payments consist of pre-established, maximum periodic payments to be made by Los Angeles World Airports to the Developer once the Automated People Mover Project achieves Passenger Service Availability, covering unpaid Design and Construction costs (roughly 40% of Design and Construction costs are paid over time through Availability Payments), financing costs, operations and maintenance expenses, and return on equity. Los Angeles World Airports will make payments for Delayed Payment Compensation from September 13, 2023, and continue through the earlier of (i) June 30, 2024; (ii) the date of which Passenger Service commences on the APM System; or (iii) the Passenger Service Availability Date. Repayment of financing costs were contemplated as a part of the original cost of the project and therefore no additional funds are required for payment of Delayed Payment Compensation. Los Angeles World Airports will pay full Availability Payments when Passenger Service commences on the APM System or on the Passenger Service Availability Date, whichever occurs first.

- **Fully Operational**  
The Developer proposes to deliver a "Fully Operational" APM System on or before April 1, 2024, after which the Independent Engineer and LAWA will conduct the inspections provided for in the Design-Build-Finance-Operate-Maintain Agreement with the objective of having Passenger Service of the APM System commence on or before April 28, 2024. "Fully Operational" means that the Developer has satisfied all Conditions to Passenger Service Availability as set out in the Design-Build-Finance-Operate-Maintain Agreement, including, but not limited to, Section 7.10.2.4, but excluding the Aviation Boulevard roadway work.
- **Completion of Aviation Boulevard Past Passenger Service Availability**  
The Parties propose to obtain permission from the applicable Authority(ies) Having Jurisdiction to allow for Passenger Service on the APM System while Aviation Boulevard remains under construction. If the applicable Authority(ies) Having Jurisdiction will allow Passenger Service on the APM System without completion of Aviation Boulevard and the Developer does not commence Passenger Service on the APM System by April 28, 2024, the Developer will pay LAWA liquidated damages of \$48,000 per day, capped at a maximum of \$3,000,000, covering the period between April 29 and June 30, 2024. Los Angeles World Airports will deduct any

liquidated damages payable pursuant to this paragraph from amounts otherwise paid by LAWA to the Developer.

- **Direct Costs**  
Los Angeles World Airports will pay the Developer Incremental Direct Costs in the amount of \$20,000,000 to resolve all Claims for Extra Work associated with: (i) Underground Utilities included in Developer's Certified Claim dated August 21, 2021, for Underground Utilities (including site investigation costs for all Underground Utilities through December 8, 2022), excepting the previously settled Underground Utilities as set forth in Change Order No. 61; and (ii) Guideway Segment 3GW2-related Relief Events. Los Angeles World Airports will pay this amount in a single lump sum payment within 30 days after submission by the Developer to LAWA of an invoice in a form acceptable to LAWA.
- **Roadways**  
The Parties agree to resolve the Incremental Direct Costs associated with the Global Roadway Claim submitted to LAWA on November 18, 2022, within 60 days of the execution date of this change order.

Los Angeles World Airports agrees to pay these Incremental Direct Costs, which are currently being finalized, and will return to the Board at a future date for appropriation of funds and an amendment to Contract DA-5277. Payment of these costs will be subject to the Developer submitting proof of actual and eligible incremental direct costs related to the delay in construction.

- **Escalation**  
The Parties agree to resolve all delay-related escalation costs related to (i) all claimed delay-related escalation costs incurred from the effective date of the Design-Build-Finance-Operate-Maintain Agreement through March 30, 2024; (ii) any work required to meet the Fully Operational date of April 28, 2024; and (iii) any Aviation Boulevard roadway work required to meet the agreed June 30, 2024 Planned Early Passenger Service Availability Date. The Parties will develop a formula to calculate escalation costs, based on actual, eligible costs and agreed escalation indices, within 30 days of the execution date of this change order.

Los Angeles World Airports agrees to pay these escalation costs, which are currently being finalized, and will return to the Board at a future date for appropriation of funds and an amendment to Contract DA-5277.

## **5. Fiscal Impact**

The APM is programmed in LAWA's 2018 CIP, with a direct project budget of \$2,548,322,483, which includes hard costs, direct soft costs, project contingency, and developer-funded improvements. As this item exceeds the previously budgeted project contingency, adoption of this report would result in the inclusion of \$101,671,746 for the settlement in LAWA's 2022 CIP.

The partial Availability Payments are already within the total amount of \$4,895,750,000 authorized by the Board in 2018. No additional Availability Payments are required as the Operations and Maintenance period is not extended by virtue of the extension of time to the

Design and Construction period. Therefore, partial Availability Payments will have no impact on the CIP budget.

## 6. Alternatives Considered

- **Take No Action**

Taking no action is not recommended as LAWA believes the proposed settlement to be a fair resolution of disputed claims and wants to continue to work in good faith with the Developer through to completion of the APM.

- **Deferral of Work**

Not applicable.

## APPROPRIATIONS

Staff requests capital funds in the amount of \$101,671,746 to be appropriated and allocated from the LAX Revenue Fund to WBS Element 1.15.08A-700 (LAMP – Automated People Mover).

## STANDARD PROVISIONS

1. Any activity (approval of bids, execution of contracts, allocation of funds, etc.) for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of the California Environmental Quality Act (CEQA) is exempt from further review pursuant to Article II, Section 2.i of the Los Angeles City CEQA Guidelines. The Landside Access Modernization Program Environmental Impact Report (EIR) was certified by the Board of Airport Commissioners for this project on March 2, 2017 (Resolution 26185)..
2. The underlying contract was approved as to form by the City Attorney.
3. Actions taken on this item by the Board of Airport Commissioners will become final pursuant to the provisions of Los Angeles City Charter Section 373.
4. LINXS will comply with the applicable provisions of the Living Wage Ordinance and the Labor Code of the State of California (Prevailing Wage).
5. Procurement Services has reviewed this action (File No. 10042939):

For the Design Phase LINXS pledged: 22% for the SBE goal, 8% for the LBE goal, 3% and 3% for the DVBE goal. To date LINXS has achieved: 20.31% SBE, 58.13% LBE, 9.92% LSBE, and 2.67% DVBE.

For the Construction Phase LINXS pledged: 18% for the SBE goal, 7% for the LBE goal, 5% for the LSBE goal, and 3% for the DVBE goal. To date LINXS has achieved: 28.9% SBE, 29.93% LBE, 15.36% LSBE, and 10.86% DVBE.

For the Operation and Maintenance Phase LINXS pledged: 17% for the SBE, 10% for the LBE goal, 5% for the LSBE goal, and 3% for the DVBE goal.

6. LINXS will comply with the provisions of the Affirmative Action Program.

7. LINXS has been assigned Business Tax Registration Certificate No. 0003042771-0001-0.
8. LINXS will comply with the provisions of the Child Support Obligations Ordinance.
9. LINXS has approved insurance documents, in the terms and amounts required, on file with Los Angeles World Airports.
10. Pursuant to Charter Section 1022, staff determined the work specified on the proposed contract can be performed more feasibly or economically by an Independent Contractor than by City employees.
11. LINXS has submitted the Contractor Responsibility Program Questionnaire and Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.
12. Pursuant to Charter Section 1022, staff determined the work specified on the proposed contract can be performed more feasibly or economically by an Independent Contractor than by City employees.
13. LINXS is required to comply with the provisions of the First Source Hiring Program for all non-trade Airport jobs.
14. LINXS has submitted the Bidder Contributions CEC Form 55 and will comply with its Provisions.
15. LINXS has submitted the Municipal Lobbying Ordinance CEC Form 50 and will comply with its provisions.