



Report to the BOARD OF AIRPORT COMMISSIONERS

Approver:


Jacob Adams (Feb 27, 2023 08:14 PST)

Jake Adams, Deputy Executive Director
Landside Access Modernization Program

Reviewer:



Brian C. Ostler, City Attorney


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

Justin Erbacci, Chief Executive Officer

Meeting Date

3/2/2023

Needs Council Approval: ☒ Y

Reviewed for/by	Date	Approval Status	By
Finance	2/23/2023	☒ Y ☐ NA	JS
CEQA	2/22/2023	☒ Y	bms
Procurement	2/24/2023	☒ Y ☐ Cond	SGL
Guest Experience	2/22/2023	☒ Y	TB
Strategic Planning	2/22/2023	☒ Y	BNZ

SUBJECT

Request to approve a Settlement Agreement, including a First Amendment to Contract DA-5322 with LA Gateway Partners, for the Landside Access Modernization Program's Consolidated Rent-A-Car Facility Project, and associated change orders, to settle various Relief Event Claims pursuant to the terms outlined in this report.

RECOMMENDATIONS

Management RECOMMENDS that the Board of Airport Commissioners:

1. ADOPT the Staff Report.
2. 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.
3. APPROVE a Settlement Agreement, including the First Amendment to Contract DA-5322 with LA Gateway Partners and related change orders, in the total not-to-exceed amount of \$50,869,000, to settle various Relief Event Claims.
4. FURTHER APPROVE an allowance to Contract DA-5322 with LA Gateway Partners in the not-to-exceed amount of \$900,000 for extended warranties associated with the Settlement Agreement.

5. APPROPRIATE funds to Contract DA-5322 with LA Gateway Partners in the not-to-exceed amount of \$32,000,000 to partially fund the change orders and allowance associated with the Settlement Agreement.
6. AUTHORIZE the Chief Executive Officer, or designee, to execute the Settlement Agreement, First Amendment to Contract DA-5322, and associated change orders with LA Gateway Partners to settle various Relief Event Claims.

DISCUSSION

1. Purpose

LA Gateway Partners is the developer under the Design-Build-Finance-Operate-Maintain (DBFOM) Agreement for the Landside Access Modernization Program's Consolidated Rent-A-Car (ConRAC) Facility Project. LA Gateway Partners has submitted various Relief Event Claims where Los Angeles World Airports (LAWA) and LA Gateway Partners 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 the Settlement Agreement, including a contract amendment and associated change orders, is requested.

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 the use of Alternate Project Delivery Methods and Competitive Sealed Proposal Selection Process for Design-Build, Design-Build-Operate-Maintain, and Construction Manager at Risk Contracts for the 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 alternative project delivery methods as requested (Council File 14-0987).

- **February 16, 2017 – Resolution No. 26177**

The Board recommended City Council approve an ordinance amending the Los Angeles Administrative Code and otherwise authorizing the Board to allow the use of specific requirements and procedures for procurements and contracts related to LAMP at LAX under Ordinance No. 183585, and clarified the intent of said ordinance concerning contractor-provided project financing.

- **April 19, 2018 – Resolution No. 26481**

The Board authorized the release of a Request for Proposals to qualified short-listed firms to submit proposals to design, build, finance, operate, and maintain a ConRAC Facility for LAMP at LAX.

- **August 16, 2018 – Resolution No. 26583**

The Board approved the award of individual concession and lease agreements to Avis Budget Rental car, LLC; Enterprise Rent-A-Car Company of Los Angeles; the Hertz Corporation; Fox Rent A Car; Advantage Opco, LLC dba Advantage Rent A Car; DR Car Rental, Inc.; and Sixt Rent a Car LLC, covering the operation of rental car concessions

and lease of specific space in the ConRAC Facility at LAX and appropriated up to \$30,000,000 for tenant improvements.

- **September 6, 2018 – Resolution No. 26597 (DA-5320)**
The Board approved authorization to enter into an Early Works Agreement with the Recommended Developer, Los Angeles Gateway Partners, in the not-to-exceed amount of \$5,000,000.
- **October 18, 2018 – Resolution No. 26617 and 26618 (DA-5322)**
The Board approved authorization to execute a 28-year Design-Build-Finance-Operate-Maintain Agreement and related ancillary agreement with Los Angeles Gateway Partners in the not-to-exceed amount of \$2,028,302,301.
- **January 17, 2019 – Resolution No. 26684 (DA-5322)**
The Board approved a change order for modifications to the column support system to improve customer service, customer and employee safety, and overall facility operations in the amount of \$38,000,000 for the ConRAC Facility at LAX.
- **October 7, 2021 – Resolution No. 27352 (DA-5322)**
The Board approved a change order to Contract No. DA-5232 with LA Gateway Partners to settle Relief Event No. 2 and Relief Event No. 3 in the not-to-exceed amount of \$7,500,000 with no extension of time.
- **February 3, 2022 – Resolution No. 27423 (DA-5322)**
The Board approved appropriation of funds in the not-to-exceed amount of \$37,826,092.

3. Background

In October 2018, the Board approved a 28-year Design-Build-Finance-Operate-Maintain Agreement with LA Gateway Partners for the Consolidated Rent-A-Car Facility (ConRAC) project at Los Angeles International Airport. This agreement and the agreement for the Automated People Mover project were the first major Public Private Partnership (PPP) infrastructure projects for LAWA and are some of the largest contracts ever awarded in Los Angeles. The proposed design and construction cost for the ConRAC alone was approximately \$1.1 billion.

At the time, 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 ConRAC project was established at only 8% (approximately \$92 million) instead of a more typical 15% contingency (approximately \$165 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.

Per the agreement, both the ConRAC facility (buildings and grounds), which constitutes the operation and maintenance portion of the project, and the roadway and utility work, which constitutes the non-operational and non-maintained components, had an Operational Readiness date of March 31, 2023. The ConRAC facility construction work has since remained on schedule, while the roadway and utility work has been delayed.

LA Gateway Partners has submitted various Relief Event Claims associated with roadway and utility work claiming impacts due to unforeseen underground conditions and delays in obtaining approvals from authorities having jurisdiction (permitting agencies, e.g., Bureau of Engineering, Department of Building and Safety, etc.).

One of the more significant Relief Event Claims was submitted by LA Gateway Partners in June 2021 claiming that betterments from authorities having jurisdiction extended the duration of the design period and delayed construction of a critical 12" water line, thereby impacting completion of a roadway adjacent to the ConRAC facility. LAWA disagreed on the merits of this claim and it was referred to the Project Neutral, per the dispute resolution terms of the DBFOM agreement. The Project Neutral's non-binding recommendation, issued in May 2022, found that LAWA was responsible for permitting delays where City of Los Angeles agencies are the authorities having jurisdiction and that LAWA should be responsible for 170 days out of the 223 days of claimed delay for the waterline impacts during design and construction.

LA Gateway Partners also claimed that authorities having jurisdiction required overly stringent design criteria and betterments such as the use of higher traffic indexes than those recommended by LA Gateway Partners' engineer of record, thereby resulting in thicker pavement sections, use of more costly pavement mixes, and re-design of roadway profiles to interface with adjacent roadways and to achieve suitable storm drainage. LA Gateway Partners further claimed that it faced challenges and delays in design coordination to satisfy different authorities having jurisdiction due to different and sometimes conflicting requirements for the same roadway. These and other Relief Event Claims submitted by LA Gateway Partners requested compensation for an additional 465 days of delay to the roadway improvements. Los Angeles World Airports also disagreed with the merits of these claims.

Subsequent to the Project Neutral determination for the Relief Event Claim associated with the 12" water line, LAWA and LA Gateway Partners continued to negotiate in good faith with the goal of resolving all roadway and utility work related claims and ensuring the successful completion and start of operation of the ConRAC facility as soon as practicable.

4. Current Action/Rationale

At this time, LAWA and LA Gateway Partners have agreed on the terms of a Settlement Agreement for the various Relief Event Claims discussed above, as well as Relief Event Claims associated with incurred overtime costs by major subcontractors due to COVID-19 related impact and restrictions. Staff is therefore requesting approval of the Settlement Agreement, including the associated contract amendment and change orders.

The negotiation between the parties resulted in a significantly lower negotiated amount than the damages originally claimed and a reduction in delay days claimed from over 600 days to 366 days. The Settlement Agreement also creates an opportunity for the ConRAC facility to begin tenant operations prior to final completion of the roadway and utility work.

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 Project Neutral's recommendation did indicate exposure to risk for LAWA that could result in an unfavorable outcome should these issues proceed to litigation.

The Settlement

Time Extension

As shown in Figure 1 below, LAWA will acknowledge LA Gateway Partners' entitlement to a time extension to complete roadway work beyond the Operational Readiness date of March 31, 2023, and provides an extension of 214 days to substantially complete roadway work necessary to begin operation of the facility on October 31, 2023, and an additional 152 days to complete the balance of roadway work by March 31, 2024. The total compensable time extension settled with LA Gateway Partners is 366 days. An additional 110 days are provided for the completion of all administrative and contractually-required obligations to occur by July 19, 2024, for close-out of all design and construction work.

Direct and Delay Costs

Los Angeles World Airports will pay direct costs, construction-related delays costs, and interim operations and maintenance costs associated with Relief Event Claims 009, 013, 014, 019, 025, 026, and 027 in the not-to-exceed amount of \$50,869,000. Los Angeles World Airports also will pay future-incurred costs for extended warranties through an allowance in the not-to-exceed amount of \$900,000.

Milestone Payments

Milestone Payments are contractually-established payments that LAWA is obligated to pay to LA Gateway Partners for a portion of their incurred costs during the design and construction period. Per the Settlement Agreement, LAWA will pay the final milestone payment of \$36,488,853 (subject to adjustments due to financial modeling requirements), as scheduled, on or around June 30, 2023, subject to the terms of the DBFOM Agreement as adjusted in the Settlement Agreement to exclude roadways. Two new payment milestones to account for delayed roadway delivery are created as part of the Settlement Agreement as follows:

- 1) After substantial completion of roadway work required to start operations on or around October 31, 2023 – Payment of \$1,000,000.
- 2) After substantial completion of all roadway work – Payment of \$1,000,000

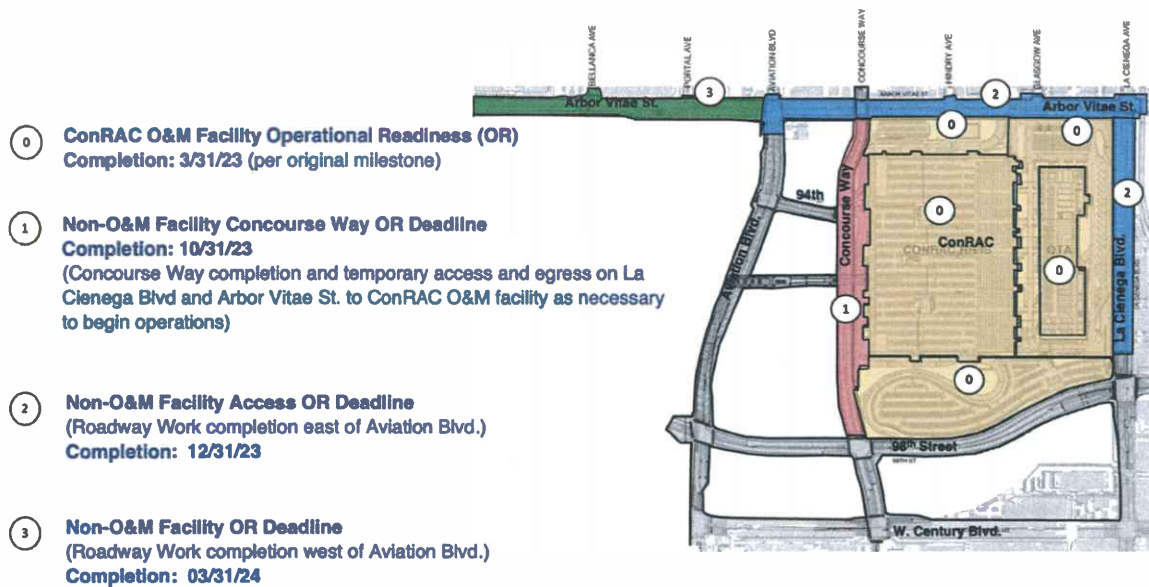


Figure 1 – Proposed New ConRAC Deadlines

5. Fiscal Impact

The ConRAC Facility Project is programmed in LAWA's 2018 Capital Improvement Plan (CIP) with a direct project budget of \$1,426,589,850, which includes hard costs, soft costs, project contingency, and developer-funded improvements. As a portion of the total settlement is being funded out of existing contingency, adoption of this report would result in the inclusion of \$32,000,000 in assigned budget for this settlement in the 2022 CIP.

6. Alternatives Considered

- Take No Action**
 If LAWA does not take any action, the costs associated with delayed payment compensation very likely will continue to increase and further delay the availability of the ConRAC Facility.
- Descoping Roadway Work**
 Los Angeles World Airports has considered the cost and benefit of descoping outstanding roadway work. Due to the additional procurement time and minimal credit that would be returned by the developer, as well as the cost of procurement, contracting, and mobilization of a new contractor based on current market conditions, supply chain risks, and inflationary costs, both cost and completion date of this work would be in excess of the proposed action.

APPROPRIATIONS

Staff requests that additional funds for this project be appropriated and allocated in the not-to-exceed amount of \$32,000,000 from the LAX Revenue Fund to WBS Element 1.15.07A-700 (LAMP – Consolidated Rent-A-Car).

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 proposed document(s) is/are subject to approval 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. LA Gateway Partners 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)

ConRAC Project Requirements:

	Design Phase	Construction Phase	Operations & Maintenance Phase
SBE	18%	22%	20%
LBE	5%	8%	7%
LSBE	3%	5%	5%
DVBE	3%	5%	3%

LA Gateway Partners Pledges:

	Design Phase	Construction Phase	Operations & Maintenance Phase
SBE	18%	22%	20%
LBE	50%	20%	7%
LSBE	10%	5%	5%
DVBE	5%	5%	3%

LA Gateway Partners Achievement:

	Design Phase	Construction Phase	Operations & Maintenance Phase
SBE	13.6%	26.23%	-
LBE	51.37%	38.13%	-
LSBE	8.66%	13.79%	-
DVBE	2.51%	8.68%	-

6. LA Gateway Partners will comply with the provisions of the Affirmative Action Program.

7. LA Gateway Partners must obtain a Business Tax Registration Certificate number prior to submission of first invoice.
8. LA Gateway Partners will comply with the provisions of the Child Support Obligations Ordinance.
9. LA Gateway Partners will have approved insurance documents, in the terms and amounts required, on file with Los Angeles World Airports prior to issuance of a Notice to Proceed.
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. LA Gateway Partners has submitted the Contractor Responsibility Program Questionnaire and Pledge of Compliance and will comply with the provisions of the Contractor Responsibility Program.
12. LA Gateway Partners must be determined by Public Works, Office of Contract Compliance to be in full compliance with the provisions of the Equal Benefits Ordinance prior to execution of the contract.
13. LA Gateway Partners is required to comply with the provisions of the First Source Hiring Program for all non-trade Airport jobs.
14. LA Gateway Partners has submitted the Bidder Contributions CEC Form 55 and will comply with its provisions.
15. LA Gateway Partners has submitted the MLO Bidder Contributions CEC Form 50 and will comply with its provisions.