

EXHIBIT 17

DISPUTE RESOLUTION BOARD

1. GENERAL

1.1 Summary

- (a) This Exhibit 17 (Dispute Resolution Board) sets forth the requirements for the establishment and operation of a Dispute Resolution Board (“**DRB**”). The DRB will assist the Parties Directly Involved by facilitating the timely resolution of disputes relating to the design and construction of the Tunnel Improvements under the Comprehensive Agreement.
- (b) The Department and the Design-Builder shall diligently cooperate with each other and the DRB, and shall perform such acts as may be necessary to obtain the prompt resolution of any dispute relating to the Tunnel Improvements.
- (c) This Exhibit 17 (Dispute Resolution Board) does not supersede or modify any other provision of the Agreement, nor does it reduce or change the respective rights and duties of the Department and the Design-Builder under the Agreement. Rather, the DRB process described herein is intended to supplement normal Project communications and procedures in the event that the Department and the Design-Builder cannot resolve a dispute relating to the Tunnel Improvements on their own.

1.2 Definitions

Capitalized terms and acronyms used in this Exhibit 17 (Dispute Resolution Board) shall have the meanings given in this Section 1.2 (Definitions). Capitalized terms and acronyms used in this Exhibit 17 (Dispute Resolution Board) but not otherwise defined in this Section 1.2 (Definitions) shall have the meanings given in the General Conditions of Contract.

“**Chair**” or “**Chairperson**” means the member of the DRB designated to serve as the chairperson of the DRB in accordance with the terms of this Exhibit 17 (Dispute Resolution Board).

“**DRB**” means the three-member Dispute Resolution Board, each member of which is a signatory to the DRB Agreement. The DRB will consist of three members jointly selected in accordance with Section 2.2 (Establishment of DRB) of this Exhibit 17 (Dispute Resolution Board).

“**DRBF**” means the Dispute Resolution Board Foundation.

“**DRB Agreement**” means the agreement, the form of which is set forth in Attachment 1 to this Exhibit 17 (Dispute Resolution Board), to which the individual DRB members, the Department,

and the Design-Builder are parties, which establishes the DRB for the Tunnel Improvements consistent with the requirements of this Exhibit 17 (Dispute Resolution Board).

“**DRB Hearing**” means a formal hearing before the DRB, initiated by either the Department or the Design-Builder in accordance with this Exhibit 17 (Dispute Resolution Board), to review a dispute eligible for consideration, which shall result in the issuance of a DRB Report by the DRB.

“**DRB Report**” means a non-binding, written recommendation issued by the DRB following a DRB Hearing, as described in this Exhibit 17 (Dispute Resolution Board). A DRB Report shall be admissible in subsequent litigation or other dispute resolution proceedings.

“**Financial Ties**” means any ownership interests, loans, receivables, or payables.

“**Parties Directly Involved**” means the Department and the Design-Builder.

“**Parties Indirectly Involved**” means construction managers, counsel, consultants, or subcontractors and suppliers of all tiers involved with the Project.

2. THE DRB

2.1 Requirements for DRB Membership

- (a) The DRB members shall each individually represent that he/she is qualified and able to perform independently and impartially the duties set forth in the DRB Agreement. It is imperative that DRB members show no partiality to either the Department or the Design-Builder, or have any conflict of interest. The DRB members shall agree to abide by the Canon of Ethics recommended by the DRBF.
- (b) Each DRB member shall have the following professional experience and qualifications:
 - (i) experience with the interpretation and implementation of public works contract documents;
 - (ii) experience in construction matters and the resolution of design and construction disputes relevant to the scope of the Tunnel Improvements; and
 - (iii) experience on major tunneling projects constructed using the bored tunnel construction method.
- (c) The Chairperson shall have administrative and dispute resolution experience and the ability to facilitate the proceedings of the DRB. The Chairperson also shall have substantial experience in construction dispute resolution, adjudication or arbitration, the interpretation of construction contract documents, and the analysis and resolution of construction claims.

- (d) The avoidance of an actual or perceived conflict of interest is central to the effectiveness of the DRB. Consequently, DRB members shall meet the following criteria and limitations:
- (i) **Direct Employment:** Prospective DRB members who are current employees of any of the Parties Directly Involved or Parties Indirectly Involved are prohibited from serving as DRB members. Prospective DRB members who are former employees of one of the Parties Directly Involved must disclose to the Department and the Design-Builder information relating to such prior employment and obtain written permission from the other Party Directly Involved prior to appointment. Prospective DRB members who are former employees of one of the Parties Indirectly Involved must disclose to the Department and the Design-Builder information relating to such prior employment information prior to appointment.
 - (ii) **Consulting Assignments:** Individuals who are employed in a consulting capacity by any of the Parties Directly Involved are prohibited from serving as DRB members. Prospective DRB members who are currently employed as a consultant by one of the Parties Indirectly Involved must obtain written permission from the other Party Directly Involved prior to appointment. Previous employment as a consultant by any Party Directly Involved or Party Indirectly Involved must be disclosed.
 - (iii) **Financial Ties:** Individuals with Financial Ties to any of the Parties Directly Involved are prohibited from serving as DRB members. Prospective DRB members with Financial Ties to one of the Parties Indirectly Involved must obtain written permission from the other Party Directly Involved prior to appointment. Previous Financial Ties with any Party Directly Involved or Party Indirectly Involved must be disclosed.
 - (iv) **Close Personal or Professional Relationships:** All current relationships with a member of any Party Directly Involved or Party Indirectly Involved must be disclosed. All past personal or professional relationships with a key member of one of the Parties Directly Involved or the Parties Indirectly Involved must be disclosed. Individuals with close personal or professional relationships with a key member of any Party Directly Involved are prohibited from service as DRB members.
 - (v) **Service on Other DRBs:** All past and current service as a DRB member or as an arbitrator on projects where any Parties Directly Involved or Parties Indirectly Involved were also involved must be disclosed.
 - (vi) No member shall have had substantial prior involvement in the Project, as determined by the Department and the Design-Builder.

- (vii) Ongoing Responsibilities: While serving as a DRB member on the Project, no member shall participate in any discussion contemplating the creation of an agreement or making an agreement with any Party Directly Involved or Party Indirectly Involved regarding present or future employment or fee-based consulting services, or any other business arrangement after the Work is completed.

2.2 Establishment of the DRB

- (a) The DRB will consist of one member appointed by the Department, one member appointed by the Design-Builder, and a third member, who will act as the chairperson of the DRB, appointed by the first two members and approved by both the Department and the Design-Builder.
- (b) Before their appointments to the DRB are finalized, the nominees selected by the Department and the Design-Builder will prepare statements relating to their qualifications and financial disclosures for review and approval by the Department and the Design-Builder. Such statements will include:
 - (i) a resume showing experience and qualifications as required by this Exhibit 17 (Dispute Resolution Board);
 - (ii) a resume showing participation on dispute resolution boards for other projects, if any (each such assignment shall be listed separately, indicating the name and location of the project, dates of service, name of owner, name of contractors, contract value, name of nominating party (if applicable), and names of the other dispute resolution board members); and
 - (iii) a financial disclosure statement describing past, present, and anticipated relationships, including indirect relationships through the nominee's full-time employer, if any, to the Project, and with all Parties Directly Involved and Parties Indirectly Involved (close professional or personal relationships with key members of all such parties also shall be disclosed).
- (c) Within forty-five (45) days of the Department's issuance of LNTP1, the Department and the Design-Builder will share with each other the names, qualifications, and financial disclosures of their respective nominees. Within ten (10) days of exchanging such information, if either party believes that the other party's nominee does not meet the criteria for DRB membership set forth in Section 2.1 (Requirements for DRB Membership), the party will provide notice (including a reasonably detailed description of such party's concerns) to the other party. Within twenty (20) days following its receipt of such notice, the party whose nominee has been objected to will provide a replacement nominee, along with the statements required pursuant to Section 2.2(b) (Establishment of the DRB) for such replacement nominee. This process will be repeated until each of

the members of the DRB to be selected by the Department and the Design-Builder are finalized.

- (d) No later than ten (10) days following the appointment of the first two (2) members of the DRB, such members will select a nominee to serve as chairperson and provide to the Department and the Design-Builder the name, qualifications, and financial disclosures for such nominee. Such nominee must be mutually acceptable to the Department and the Design-Builder; *provided* the grounds on which the Department and Design-Builder may object to such nominee are limited to whether the nominee meets the criteria for DRB membership set forth in Section 2.1 (Requirements for DRB Membership). In the event the parties cannot agree on the appointment of the chairperson within twenty (20) days following the appointment of the first two (2) members of the DRB, the chairperson will be appointed by the American Arbitration Association upon the request of either party. Each party will be responsible for paying one-half of the costs of retaining the American Arbitration Association to select the chairperson.
- (e) Within fifteen (15) days of completion of the selection process described above, the DRB Agreement shall be executed by the three (3) DRB members, the Department, and the Design-Builder. The DRB Agreement sets forth the terms and conditions that apply to the services to be provided by the members and, if the composition of the DRB changes, shall be amended to reflect such changes. The DRB shall be deemed constituted when the DRB Agreement is fully executed by all signatories.

2.3 Term of the DRB; Termination

- (a) The DRB shall be dissolved upon completion of its deliberations on any disputes pending at Final Completion; except that if the Comprehensive Agreement is terminated, the DRB also shall immediately be dissolved. After the DRB is dissolved as provided herein, it shall have no further authority to process disputes.
- (b) The services of a DRB member may be terminated without cause only by mutual agreement of the Parties Directly Involved. In such event, written notice of the termination, signed by both Parties Directly Involved, will be provided to the DRB members, and the termination will be effective upon the date the notice is signed by both Parties Directly Involved.
- (c) A DRB member may be terminated for cause only as follows:
 - (i) The Department or the Design-Builder may seek removal of a DRB member for unambiguous bias or other improper conduct.
 - (ii) If a Party Directly Involved becomes aware of a conflict of interest for a DRB member, it may, by written notice copied to the other Party Directly Involved and all DRB members, request that the DRB member with a conflict remedy or remove the conflict. If the conflict is not remedied or

removed within twenty-one (21) days of notice, then the Party Directly Involved may seek to terminate the DRB member.

- (iii) Either Party Directly Involved seeking to terminate a DRB member for cause shall first confer with the other Party Directly Involved to determine if such Party Directly Involved agrees with the termination. If there is failure to reach agreement, the Party Directly Involved seeking the termination shall have the right to proceed to a court of competent jurisdiction to effect the termination.

2.4 Operation of the DRB

- (a) The DRB shall only be entitled to hear disputes relating to the design and construction of the Tunnel Improvements. The scope of the DRB's review with respect to any such dispute will be limited to whether the Design-Builder is entitled to an increase in the Contract Price or an extension of the Contract Times. The DRB shall not review or otherwise opine on the amount of any increase to the Contract Price or extension of the Contract Times.
- (b) The DRB shall formulate its own rules of operation. The DRB need not adopt hard and fast rules for every aspect of its operation; the entire procedure shall remain flexible to adapt to changing situations. The DRB's rules of operation shall be consistent with the guidelines for DRB operations as recommended by the DRBF. Any rules of operation that deviate from or are inconsistent with DRBF guidelines shall be subject to the approval of both the Department and the Design-Builder prior to implementation. In addition, during the course of the Project, any modifications to the DRB's existing rules of operation shall be subject to the approval of both the Department and the Design-Builder.
- (c) The DRB shall comply with the Comprehensive Agreement and enforce the terms and conditions thereof as well as appropriate legal precedents. DRB members shall not supplant or otherwise interfere with the respective rights, authorities, duties, and obligations of the Department and the Design-Builder as defined in the Comprehensive Agreement. In making its recommendation, the DRB shall acknowledge the centrality of the Comprehensive Agreement and shall not make a recommendation that ignores, disregards, or undermines the intention, requirements, economic allocation of risk, or work specified in the Comprehensive Agreement.
- (d) In the presence of the Department and the Design-Builder, DRB members shall refrain from giving any advice or consultation and will refrain from expressing opinions on the merits of statements on matters under dispute or potential dispute. Opinions of DRB members expressed in private sessions shall be kept strictly confidential.
- (e) Individual DRB members shall not meet with or discuss issues related to the Comprehensive Agreement or the Project with individual Parties Directly

Involved or Parties Indirectly Involved. Individual DRB members shall not undertake independent investigations of any kind pertaining to disputes or potential disputes, except with the knowledge of both Parties Directly Involved and as expressly directed by the Chairperson.

- (f) All matters discussed with the DRB, during meetings, hearings or otherwise, shall be maintained as confidential and DRB members shall not publicly comment on or discuss the Project issues or disputes brought before the DRB.

2.5 DRB Meetings

- (a) The DRB will visit the Site and meet with representatives of the Parties Directly Involved at periodic intervals and at additional times as requested by the Parties Directly Involved. The Chair shall schedule the regular meetings on a quarterly basis unless the Department, the Design-Builder, and the DRB agree that more frequent or less frequent meetings are appropriate given the scope and duration of the Project. Under no circumstances, however, shall the frequency of regular DRB Meetings be less than two (2) times per year.
- (b) As requested by the DRB, the Design-Builder will provide the DRB and the Department with a current list of pending and rejected Work Orders, as well any other information, document, schedule, or status report in advance of the DRB meetings.
- (c) Each meeting shall consist of an informal discussion and a field observation of the work in progress. The DRB may issue verbal, nonbinding advisory opinions as to current items discussed at the meeting pursuant to Section 2.9 (Advisory Opinions). The discussion and field observation shall be attended by personnel of the Department and the Design-Builder. Any individual discussion or consultation without both Parties Directly Involved present is strictly prohibited.

2.6 Pre-Hearing Procedure

- (a) **Prior Good Faith Negotiation:** The Department and the Design-Builder shall enter into good faith negotiations to resolve their differences before referring a dispute to the DRB. The good faith negotiations shall be founded on the principles of full and timely disclosure of each Party Directly Involved's position to the other Party Directly Involved, including the exchange of pertinent supporting records, analyses, expert reports, and similar documentation, and shall proceed without delay following the inception of the disputed issue. Such good faith negotiations may involve solicitation and rendering of a DRB advisory opinion as described in Section 2.9 (Advisory Opinions).
- (b) **Dispute Referral:** If the Department's Senior Representative and the Design-Builder's Senior Representative are unable to resolve the dispute in accordance with Section 10.2.2 of the General Conditions of Contract, either Party Directly Involved may initiate review of a dispute eligible for consideration by the DRB

by providing written notice of the dispute to the DRB and concurrently providing a copy thereof to the other Party Directly Involved. Only disputes relating to the design and construction of the Tunnel Improvements may be referred to the DRB. The dispute referral shall concisely define the nature and specifics of the dispute that are to be considered by the DRB and the scope of the recommendation requested.

- (c) **Schedule for Hearing:** Within three (3) Business Days of receiving referral of a dispute, the Chair shall confer with the Parties Directly Involved to establish a due date and requirements for delivering pre-hearing submittals, and a date, time, and location for convening the DRB Hearing. Hearings shall be convened within ninety (90) days of the DRB's receipt of the referral, unless the Parties Directly Involved agree to a different date.
- (d) **Pre-Hearing Submittal:** The Department and the Design-Builder shall each prepare a pre-hearing submittal and transmit it to all three (3) members of the DRB and the other Party Directly Involved. The pre-hearing submittal, comprising a position paper with such backup data as is referenced in the position paper, shall be tabbed, indexed, and the pages consecutively numbered. Both position papers shall, at a minimum, contain the following:
 - (i) A brief statement of the dispute and the scope of the desired DRB Report, placed in a prominent location.
 - (ii) A summary of the Party Directly Involved's position and the basis and justification for such position, with reference to Comprehensive Agreement language and other supporting documents for each element of the dispute. Supporting documents include a copy of the proposed Work Order, along with attachments; any expert's report(s) or expert analysis; and relevant supporting documents, including copies of referenced documents, correspondence, meeting minutes, submittals, referenced excerpts from the Contract, and other referenced standards and requirements. The Chair may direct that a common set of documents be prepared to avoid unnecessary duplication and repetition.
 - (iii) When the scope of the hearing includes requests by the Design-Builder for extensions of the Contract Times, it shall include a Schedule Impact Analysis as set forth in Section 8.3 of the General Conditions of Contract, as well as all other information required in such Section 8.3 in support of such request.
 - (iv) The timing, distribution requirements, and other procedural issues associated with the submission of the position statement and supporting documentation shall be established by the DRB and communicated to the Parties Directly Involved.

2.7 DRB Hearing

- (a) The DRB shall consider disputes as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed-to by both Parties Directly Involved, and time periods may be shortened in order to hasten resolution, but in no event shall the DRB consider a dispute without reviewing the relevant Comprehensive Agreement requirements and the facts, documentation, and analysis presented by both sides.
- (b) All DRB members shall be present at the DRB Hearing. Each member may keep his/her own notes; no formal transcript will be prepared. In special cases, when requested by either Party Directly Involved, the DRB may allow preparation of a transcript by a court reporter, at the expense of the requesting Party Directly Involved, who shall provide copies of the transcript to the DRB and the other Party Directly Involved at no charge. Audio or video recordings are not permitted.
- (c) Unless otherwise agreed by the Parties Directly Involved, the DRB will conduct a DRB Hearing at the Site.
- (d) The Department and the Design-Builder shall both limit attendance at the DRB Hearing to individuals directly involved in the dispute and participants in the good faith negotiations that were conducted prior to submittal to the DRB except as noted below.
 - (i) Prior to the date established for the DRB Hearing, each Party Directly Involved shall provide a list of proposed attendees to the DRB and the other Party Directly Involved. In the event of any disagreement as to the number of attendees proposed by a Party Directly Involved, the DRB shall make the final determination as to the number of attendees that each Party Directly Involved may bring to the DRB Hearing.
 - (ii) Except as provided in the following sentence, attorneys shall not participate in the DRB Hearing. Attorneys representing the Parties Directly Involved are permitted to attend the DRB Hearing as observers only, unless the Parties Directly Involved mutually agree that an issue can best be presented through an attorney.
 - (iii) At DRB Hearings regarding claims by a Subcontractor, including pass-through claims by a Sub-Subcontractor or supplier, against the Design-Builder that are actionable by the Design-Builder against the Department, the Design-Builder shall require and ensure that each Subcontractor or Sub-Subcontractor involved in the dispute have present an authorized representative with actual knowledge of the facts underlying the claim(s).
- (e) The DRB shall establish procedures for conducting DRB Hearings generally consistent with the following guidelines:

- (i) The Party Directly Involved who referred the dispute to the DRB shall present its position first, followed by the other Party Directly Involved.
 - (ii) Both Parties Directly Involved shall be allowed successive rebuttals, assuring a full and adequate opportunity to present their position, and to rebut the opposing Party Directly Involved's position until, in the DRB's opinion, all aspects of the dispute have been fully and fairly covered.
 - (iii) The DRB shall be fully prepared to, and may at any time, ask questions, request clarifications, or ask for additional data and/or job records.
 - (iv) Either Party Directly Involved may request that the DRB direct a question to, or request a clarification from the other Party Directly Involved. The DRB shall determine at what point in the proceedings such requests may be made and if they will be granted. In general, the DRB will not allow one Party Directly Involved to be questioned directly by the other Party Directly Involved.
 - (v) In difficult or complex cases, additional hearings may be necessary to facilitate full consideration and understanding of the dispute.
 - (vi) The DRB, in its sole discretion, may allow introduction of arguments, exhibits, handouts, or documentary evidence that were not included in that Party Directly Involved's pre-hearing position paper and have not been previously submitted to the other Party Directly Involved. In such cases, the other Party Directly Involved will be granted time to review and prepare a rebuttal to the new material.
 - (vii) During the DRB Hearing, no DRB member shall express any opinion concerning the merit of any facet of the dispute.
- (f) In the event that either Party Directly Involved fails to deliver a pre-hearing submittal by the date established by the DRB, the DRB shall, at its discretion, determined whether the DRB Hearing shall proceed as originally scheduled, or whether additional time shall be provided and a new date established. On the final date and time established for the DRB Hearing, the DRB shall proceed with the DRB Hearing utilizing the information that has been submitted.
- (g) In the event that some or all of the representatives of either Party Directly Involved fail to appear at the appointed time of a DRB Hearing, the DRB shall proceed with the DRB Hearing. The DRB Hearing shall take place as if all representatives of the Parties Directly Involved were in attendance, and the DRB shall consider all evidence brought before it and hear testimony from those representatives of the Parties Directly Involved that are present.
- (h) Use of Outside Experts by the Department or the Design-Builder:

- (i) A Party Directly Involved intending to offer an outside expert's analysis at a DRB Hearing shall disclose such intention in writing to the other Party Directly Involved and to the DRB not less than thirty (30) days prior to the due date for delivering the pre-hearing submittal, unless a shorter time is approved by the Chair. The expert's name and a general statement of the area of the dispute that will be covered by his or her testimony shall be included in the disclosure.
 - (ii) Upon receipt of the above disclosure, the other Party Directly Involved shall have the opportunity to secure the services of an outside expert to address or respond to those issues that may be raised by the other Party Directly Involved's outside expert. The disclosure requirements shall be the same as those specified above, except the time requirement is ten (10) days prior to the due date for delivering the pre-hearing submittal, unless otherwise provided by the Chair.
 - (iii) The cost for securing outside expert services shall be borne by the Party Directly Involved securing such services.
- (i) Use of Outside Experts by the DRB:
- (i) Prior to arranging for any outside expert, the DRB shall obtain prior approval from the Department and the Design-Builder by providing: (1) a statement explaining why the expert assistance is needed; (2) an estimate of the cost of the expert assistance; (3) a disclosure statement, in accordance with the requirements for DRB membership as provided above; and (4) a confidentiality statement, consistent with the DRB Agreement, executed by the proposed expert. The Parties Directly Involved shall not unreasonably withhold their approval of any requests to engage an outside expert.
 - (ii) The Chair shall include the cost of the outside expert in his or her regular invoice. Invoices shall be in accordance with the requirements for DRB member invoices.
 - (iii) The Department and the Design-Builder shall each bear fifty percent (50%) the cost of the services of the outside expert employed by the DRB.

2.8 DRB Report

- (a) The DRB shall issue recommendations for resolution of a dispute, formalized in a written DRB Report in a format as determined by the DRB and signed by all DRB members. The recommendations in the DRB Report shall be based on the pertinent provisions of the Comprehensive Agreement, the Legal Requirements, and the facts and circumstances involved in the dispute eligible for consideration and shall include an explanation of the DRB's reasoning in reaching the recommendation. The recommendations in the DRB Report must be consistent

with the applicable provisions of the Comprehensive Agreement. The DRB shall reference applicable Comprehensive Agreement provisions in its DRB Report.

- (b) After a DRB Hearing is concluded, the DRB shall meet to formulate its DRB Report. All DRB deliberations shall be conducted in private, with all individual views kept strictly confidential. The DRB may meet in any convenient location or by telephone conference.
- (c) The DRB Report shall be issued as a written report to both Parties Directly Involved within fourteen (14) days of completion of the DRB Hearing, unless the Parties Directly Involved mutually agree otherwise.
- (d) The DRB shall make every effort to reach unanimous recommendation(s). If this proves impossible, the dissenting member shall prepare a minority finding(s) and recommendation(s), which, together with the majority finding(s) and recommendations(s), shall comprise the DRB Report. The DRB Report shall identify the issues of disagreement, along with the reasons for disagreement.
- (e) Either Party Directly Involved may request clarification of a DRB Report within ten (10) days following receipt of the DRB Report. As expeditiously as practicable, the DRB shall provide written clarification to both Parties Directly Involved. Requests for clarification shall be submitted in writing simultaneously to the DRB and to the other Party Directly Involved. Only one request for clarification per dispute from each Party Directly Involved will be allowed.
- (f) Either Party Directly Involved may request reconsideration of a DRB Report within ten (10) days following receipt of the DRB Report when new information is obtained or developed that was not known at the time of the DRB Hearing, or when, in the Party Directly Involved's opinion, the DRB misunderstood or failed to consider pertinent facts of the dispute. As expeditiously as practicable, the DRB shall provide written reconsideration to both Parties Directly Involved. Reconsideration requests are subject to the rules and restrictions set forth below.
 - (i) Requests for reconsideration shall be submitted in writing simultaneously to the DRB and to the other Party Directly Involved.
 - (ii) The DRB will not entertain requests for reconsideration that amount to a renewal of prior argument or additional argument based on facts available at the time of the DRB Hearing.
 - (iii) Only one request for reconsideration per dispute from each Party Directly Involved will be allowed.
- (g) Within fourteen (14) days of receiving the DRB's recommendations, as set out in the DRB Report, the Parties Directly Involved shall determine whether or not they will each accept or reject the DRB's recommendations.

- (i) If the Department and the Design-Builder are able to resolve their dispute with the aid of the DRB's recommendations, the Department shall promptly process the Work Order.
- (ii) If, after consideration of the DRB's recommendations, the Department and the Design-Builder are unable to resolve their dispute, either party shall have the right to submit the dispute or disagreement to the Steering Committee for resolution. The Steering Committee will meet within ten (10) days of written notification by either party of any unresolved dispute. The Steering Committee will have thirty (30) days following such meeting to resolve the dispute. In the absence of complete resolution by the Steering Committee within such thirty (30) -day period, the party seeking relief may file a legal action in accordance with, and subject to the limitations of, Section 10.2.3 and Section 10.2.4 of the General Conditions of Contract.

2.9 Advisory Opinions

- (a) An advisory opinion serves as a method for potentially avoiding a DRB Hearing. It is not intended to replace the dispute resolution process specified herein, but may be implemented as part of the good faith negotiation conducted between the Parties Directly Involved.
- (b) When mutually agreed to and requested by the Department and the Design-Builder, the DRB may, at its discretion, provide an oral advisory opinion on any issue relating to the design and construction of the Tunnel Improvements.
- (c) When the Parties Directly Involved advise the DRB of their agreement to request an oral advisory opinion, the DRB will discuss the issue to be referred with the Parties Directly Involved. This is to help ensure that an advisory opinion is suitable and appropriate for the issue presented and that the Parties Directly Involved have reached an impasse in negotiations on the issue. The DRB may then, at its discretion, provide an oral advisory opinion.
- (d) The written statement required in Section 2.6(d) (Pre-Hearing Procedure) shall be provided, and shall define the issue(s) and set out the submitting Party Directly Involved's position(s) and supporting rationale. The Parties Directly Involved shall submit and exchange their statements by e-mail a minimum of three (3) Business Days prior to the scheduled meeting at which the dispute will be considered by the DRB.
- (e) At the close of the presentations, the DRB members will caucus privately prior to presenting its oral advisory opinion.

ATTACHMENT 1

FORM OF DISPUTE RESOLUTION BOARD AGREEMENT

THIS DISPUTE RESOLUTION BOARD AGREEMENT (this “Agreement”) is made and entered into on [•], 20[•], among the **VIRGINIA DEPARTMENT OF TRANSPORTATION** (the “Department”), [•], a [•] (the “Design-Builder”), and [•], [•] and [•] (collectively, the “DRB Members”), with reference to the following facts:

- A. The Department and the Design-Builder have entered into that certain Comprehensive Agreement dated April 2, 2019 (the “Comprehensive Agreement”). Pursuant to the Comprehensive Agreement, the Design-Builder has agreed, among other things, to design and construct I-64 Hampton Roads Bridge-Tunnel Expansion Project.
- B. Section 10.2.2 of Exhibit 1 (*General Conditions of Contract*) to the Comprehensive Agreement (the “General Conditions of Contract”) provides for the establishment and operation of a Dispute Resolution Board to assist in resolving any dispute that may arise among the Department, the Design-Builder and others in respect to the Tunnel Improvements.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and agreements contained herein, the parties hereto agree as follows:

1. ESTABLISHMENT OF THE DRB

- 1.1 The Dispute Resolution Board (the “DRB”) shall begin operation upon execution of this Agreement by the Department, the Design-Builder and all three DRB Members. The initial DRB Members’ tenure shall terminate in accordance with Section 6.2 below, unless sooner terminated in accordance with this Agreement or the Legal Requirements.
- 1.2 Each member of the DRB represents, warrants and covenants on his/her behalf that he/she complies with the criteria and limitations for membership described in Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement.
- 1.3 All three DRB Members must have submitted and received approval of the required materials described in Section 2.2(b) of Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement.
- 1.4 If during the term of this Agreement, a DRB Member has a discussion regarding employment or enters into any agreement with the Department, the Design-Builder, or an Affiliate of the Design-Builder, the DRB Member shall promptly disclose such discussion or agreement to both the Department and the Design-Builder and the DRB Member shall be disqualified from serving on the DRB.

2. DRB RESPONSIBILITIES

- 2.1 The DRB shall fairly and impartially consider and provide written decisions for resolution of disputes in accordance with Section 10.2.2 of the General Conditions of Contract and Exhibit 17

(*Dispute Resolution Board*) to the Comprehensive Agreement. The DRB Members shall perform the services necessary to participate in the DRB's actions in accordance with this Agreement.

- 2.2 DRB Members will be kept informed of activities and other developments related to the Tunnel Improvements at such times and by such means as the DRB, the Department and the Design-Builder may agree.
- 2.3 All DRB Members are to act independently in the consideration of facts and conditions surrounding any dispute. Seeking the DRB Members' advice or consultation, *ex parte*, is expressly prohibited; *provided however*, that either the Department or the Design-Builder may seek such advice or consultation from the entire DRB, at a DRB meeting, after first giving notice to all interested parties. A DRB Member who has *ex parte* contact with the Department or the Design-Builder or a representative of either party shall be subject to removal from the DRB for cause.
- 2.4 DRB Members may withdraw from the DRB upon delivery of written notice of withdrawal to the Department, the Design-Builder and the other DRB Members, which notice shall specify a withdrawal date at least thirty (30) days following the date of delivery of the notice. In addition, a DRB Member may be terminated by the Department or the Design-Builder if at any time that DRB Member fails to meet the relevant qualifications set out in Section 2.1 or is otherwise terminated pursuant to Section 2.3 of Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement. Should the need arise to appoint a replacement DRB Member, the replacement member shall be appointed in the same manner as provided by the General Conditions of Contract and Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement for appointment of the original member. The selection of a replacement DRB Member shall begin promptly upon notification of the necessity for replacement and shall be completed within thirty (30) days thereafter. The change in DRB membership shall be evidenced by the new member's signature on this Agreement.
- 2.5 The personal services of the DRB Member are a condition to receiving payment hereunder. No DRB Member shall assign any of his or her work pursuant to this Agreement without the prior written consent of both the Department and the Design-Builder.
- 2.6 Each DRB Member will keep matters related to this Agreement confidential.
- 2.7 Each DRB Member, in the performance of his or her duties on the DRB, is acting as an independent contractor and not as an employee of either the Department or the Design-Builder. No DRB Member will be entitled to any employee benefits.

3. HEARING AND DECISIONS

- 3.1 Each dispute relating to the Tunnel Improvements under the Comprehensive Agreement shall be heard and decided by the DRB in accordance with the procedures and timelines established in Section 10.2.2 of the General Conditions of Contract and Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement.
- 3.2 Within the limits set by Section 10.2.2 of the General Conditions of Contract and Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement, the DRB shall have the right to establish its own procedures and time limits, including the right to establish or to waive evidentiary rules and procedures. Each party involved in the dispute shall retain the right to discovery, within the parameters set by the DRB.

4. PROVISION OF DOCUMENTS TO DRB

- 4.1 The Department shall furnish each DRB Member one copy of any document requested by the DRB pursuant to Section 2.5(b) of Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement.
- 4.2 The Design-Builder shall furnish to each DRB Member one copy of any document requested by the DRB pursuant to Section 2.5(b) of Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement.

5. PAYMENT

- 5.1 The DRB Members shall be paid the applicable rates described in Appendix I (attached hereto) for their time spent (a) preparing for and attending (i) any quarterly meetings and (ii) any dispute hearings or (b) otherwise dedicated to the resolution of a dispute pursuant to Section 10.2.2 of the General Conditions of Contract and Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement; *provided* that any preparation for a quarterly meeting in excess of four (4) hours must be approved by the Department and the Design-Builder in order to be eligible for compensation under this Agreement.
- 5.2 Invoices for payment for DRB Member work completed under this Agreement shall be submitted to the Design-Builder (a) on a quarterly basis for all work related to the DRB's quarterly meetings and (b) on a monthly basis for all work related to any dispute hearings and any other dispute resolution undertaken by the DRB. Such invoices shall be in a format approved by the Department and the Design-Builder and accompanied by a general description of activities performed during the relevant period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the DRB Member together with direct, reasonable, non-salary expenses. Billings for expenses shall include an itemized listing supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data.
- 5.3 The Design-Builder shall pay the fees related to the services rendered by each DRB Member within thirty (30) days of its receipt of an invoice that complies with the requirements of Section 5.2 above for such fees from the relevant DRB Member. Following the payment by the Design-Builder of such fees, the Design-Builder will be entitled to request a Work Order for reimbursement for half of such costs from the Department; *provided* the Design-Builder includes as part of its request for Work Order (i) a copy of the invoice submitted by the DRB Member and (ii) documentation establishing that the Design-Builder has paid such invoice.
- 5.4 Each DRB Member shall keep available for inspection, for a period of five years after final payment, the cost records and accounts pertaining to this Agreement.

6. MISCELLANEOUS

- 6.1 This Agreement shall commence upon execution hereof by the Department, the Design-Builder and all three DRB Members. The foregoing is subject to the right of the Department and the Design-Builder to terminate the services of DRB Members as specified herein.
- 6.2 This Agreement shall terminate automatically upon termination of the Comprehensive Agreement.

- 6.3 Capitalized terms used but not defined herein shall have the meanings set out in the General Conditions of Contract.
- 6.4 The parties to this Agreement intend for Section 10.2.2 of the General Conditions of Contract and Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement and other terms of this Agreement to be complementary. Except as otherwise specifically provided herein, in the event of any conflict between this Agreement and said Section 10.2.2 of the General Conditions of Contract and Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement, Section 10.2.2 of the General Conditions of Contract and Exhibit 17 (*Dispute Resolution Board*) to the Comprehensive Agreement shall control.
- 6.5 Notices hereunder shall be sent as provided in Section 12.8 of the General Conditions of Contract. The addresses for the DRB Members are set out on the signature pages hereof.
- 6.6 The parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of this Agreement shall be the Circuit Court for the City of Richmond, Virginia, Division 1. Such court is the most appropriate and convenient court to settle any such dispute, and each of the parties hereto waives objection to such court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.
- 6.7 EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.
- 6.8 The Design-Builder irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier in relation to any proceedings before any court located in the Commonwealth of Virginia. Each of the DRB Members irrevocably appoints the person named below as its respective agent for service of process in any proceedings before any court located in the Commonwealth of Virginia.
- (a) [DRB Member #1] irrevocably appoints _____ as its agent for service of process;
- (b) [DRB Member #2] irrevocably appoints _____ as its agent for service of process;
- (c) [DRB Member #3] irrevocably appoints _____ as its agent for service of process.

This clause does not affect any other method of service allowed by the Legal Requirements.

- 6.9 If any person appointed as process agent is unable for any reason to act as agent for service of process, the Design-Builder or the relevant DRB Member, as the case may be, must promptly appoint another agent on terms acceptable to the Department. Failing this, the Department may appoint another agent for this purpose. The Design-Builder and each of the DRB Members agree that failure by its respective process agent to notify it of any process will not invalidate the relevant proceedings. This clause does not affect any other method of service allowed by law.

6.10 This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Commonwealth of Virginia (excluding any conflict of laws rule or principle that might refer such interpretation to the laws of another jurisdiction).

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DRB Members

MEMBER # 1

Signature

Name/Address

MEMBER # 2

Signature

Name/Address

MEMBER # 3

Signature

Name/Address

DESIGN-BUILDER

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

DEPARTMENT

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

APPENDIX I

Schedule of Rates for DRB Members

[To be completed]