

# Simon J. Santiago

Partner | Washington, DC

ssantiago@nossaman.com

202.887.1472

1401 New York Avenue, NW, Suite 800

Washington, DC 20005



Simon Santiago handles contractual, procurement, development and construction issues for the largest transportation, transit and multi-modal projects in the U.S. Public sector clients seek his guidance in creating successful infrastructure projects through innovative procurement, financing and delivery methods including public-private partnerships (P3s).

Given his broad experience, he often advises industry leaders and policymakers on emerging federal legislative and policy issues involving transportation. At the state level, Simon helped develop P3-enabling legislation, procedures and programs in Maryland, Virginia, North Carolina and Georgia. He also counseled the Pennsylvania Turnpike Commission, the North Carolina Turnpike Authority and Port Authority of New York and New Jersey on state and federal law governing all-electronic toll systems.

Before joining Nossaman in 2006, Simon was a litigator with a construction and government contract law firm in Northern Virginia, where he advised public- and private-sector clients on disputes involving large and complex infrastructure projects. He also served as a judicial clerk with the General Services Board of Contract Appeals, assisting in legal analysis of contract claims and disputes. This collective experience has helped him anticipate potential risks and adjust procurement and contracting strategies accordingly.

## EXPERIENCE

**Maryland Transit Administration and Maryland Department of Transportation – Purple Line Light Rail.** Co-leader of the legal team advising MTA/MDOT on Maryland's first transit P3 project – an approximately \$2 billion (capital cost) light rail system that will significantly facilitate mobility between the Maryland suburbs and Washington, D.C. The Purple Line Light Rail System will run 16.2 miles between Bethesda and New Carrollton with 21 new stations along the route, with much of the alignment street-running. The project, Maryland's largest P3, will provide a direct link to the Metrorail Red, Green and Orange lines and connect to the MARC train, Amtrak and local bus services. In July 2014, MTA issued the final RFP for an availability payment concession to shortlisted teams. Proposals were received in late 2015 and, in March 2016, the agencies selected a consortium led by Fluor and Meridiam. The project reached commercial close in April 2016 and financial close in June 2016. Construction commenced in September 2017 and it is anticipated to open in segments starting in 2022. The Purple Line's financing plan included an \$874 million TIFIA loan, \$313 million in PABs, \$138 million in private equity and approximately \$900 million in anticipated federal New Starts funding. Simon has helped to develop procurement and contract documents for the project, including participation in the pre-RFP industry review process.

**Massachusetts Bay Transportation Authority – Commuter Rail North Side ATC Project.** Key member of the legal team advising on an approximately \$280 million design and installation of an automatic train control overlay of commuter rail lines that are currently undergoing installation of Positive Train Control. Simon is assisting the agency on the commercial terms and conditions of the Project.

**Massachusetts Bay Transportation Authority – Green Line Extension Project.** Key member of the legal team advising on \$2-3 billion 5-mile extensions of the Green Line light rail service from a relocated Lechmere Station in East Cambridge to Union Square in Somerville and College Avenue in Medford. The transportation agency has retained the Firm to examine the deployed construction manager/general contractor (CM/GC) delivery method, consider alternatives and make recommendations on the optimal delivery method going forward. The agency terminated several of its existing contracts in December 2015 and conducted a redefinition process of the project. A procurement for a design-build contract for the completion of the project was conducted, on which we worked with the agency developing its RFQ, RFP, and evaluation processes, along with advising the agency regarding other policy-related issues. The procurement included the use of an affordability limit, as well as the identification of six prioritized additive options for scope that could potentially be included back in the design-build scope. In November 2017, the agency awarded a design-build contract to GLX Constructors that was approximately \$237 million below the affordability limit, and included all six additive options in the design-build contract scope.

**District of Columbia Department of Transportation – South Capitol Street Corridor Project.** Leader of the legal team advising on the procurement of a design-build project that will involve the removal and replacement of the Frederick Douglass Memorial Bridge, construction of bridge approach ovals, reconstruction of adjacent streets and related bridge and interchange infrastructure rebuilding and replacement. The \$441 million contract was awarded in August 2017 to a joint venture comprised of Archer Western Construction and Granite Construction, with AECOM as the lead designer. Construction began in February 2018 and completion is anticipated by the end of 2021. Simon assisted the Department on the development of the procurement and contract documents and monitoring of the procurement process.

**Chesapeake Bay Bridge and Tunnel District – Parallel Thimble Shoal Tunnel.** Co-leader of the legal team advising on a new \$756 million tunnel beneath the Thimble Shoal Channel in Virginia's lower Chesapeake Bay. The second two-lane tunnel will expand capacity and improve safety for travelers utilizing the Chesapeake Bay Bridge-Tunnel, the sole connection between Delmarva Peninsula and the Hampton Roads area. Simon is advising the District on procurement issues and the terms and conditions of the design-build contract. The District awarded the contract in August 2016 to a joint venture of Dragados USA, Inc. and Schiavone Construction Co. LLC. Construction began in October 2017 and the project is scheduled for completion in 2022.

**Virginia Department of Transportation – Coalfields Expressway.** Leader of the legal team advising on a four-lane highway project that will stretch from Beckley, West Virginia to Pound, Virginia, connecting I-77/I-64 to U.S. Route 23. To deliver the project, which sits in mountainous terrain with limited access, the transportation department is taking an innovative approach – utilizing coal mining operations and equipment to provide a rough-grade roadbed, resulting in a substantial reduction in anticipated costs compared with traditional methods. After completion of the rough-grade roadbed, the road will be paved to complete the project. Simon is assisting the department in drafting and negotiating the preliminary engineering and design-build agreements.

**North Carolina Department of Transportation – I-77 Managed Lanes Project.** Co-leader of the legal team advising on North Carolina's first highway P3 – a \$600 million upgrade of a critical business artery in one of the fastest growing states in the U.S. Under the toll concession agreement, a Cintra-led consortium will design, build, toll, operate and maintain 26 miles of high-occupancy managed lanes alongside existing general purpose lanes of the I-77 corridor heading north out of Charlotte. The project, the state's first toll concession, reached commercial close in June 2014 and financial close in May 2015. Completion is anticipated in the first quarter of 2019. Financing includes \$100 million in PABs, a \$189 million TIFIA loan, \$248 million in private equity and \$95 million from the transportation agency. The improvements represent the first hybrid toll concession model to structure a credit support vehicle for lenders in conjunction with a traditional toll revenue risk concession. Simon assisted with the structuring, development, procurement and administration of the P3 and advised the transportation agency on legislative and regulatory changes needed to create a P3 program.

**Virginia Department of Transportation – Midtown Tunnel Project.** Leader of the legal team that advised on a groundbreaking toll concession P3 procurement for a major tunnel and highway project to improve traffic in the Norfolk-Portsmouth region. A key feature of the \$2.1 billion project is a new two-lane tunnel between Norfolk and Portsmouth – the first all-concrete highway tunnel in the U.S. designed to function under deep water. Other improvements include upgrades to the existing Midtown and Downtown tunnels and an extension of the MLK Freeway, with tolling for new and existing portions. A Skanska/Macquarie led-team is developing the 58-year DBFOM project via a \$422 million TIFIA loan, \$663.75 million in PABs, \$310 million from VDOT and up to \$272 million in private equity. The project achieved financial close in April 2012 and the new tunnel opened to traffic in the summer of 2016. In 2012, *Project Finance* magazine honored it as North American Toll Road Deal of the Year and *Infrastructure*

*Journal* awarded it Global Transport Deal of the Year.

**Florida Department of Transportation – I-595 Corridor Improvements.** Key member of the legal team that advised on procurement of this \$1.8 billion P3 aimed at alleviating congestion on the main east-west traffic corridor in Fort Lauderdale. Redevelopment involved resurfacing 10.5 miles of mainline, building additional lanes and adding three reversible lanes in the median to maximize traffic flow. The 35-year DBFOM concession, awarded to a team led by ACS Infrastructure Development, reached financial close in March 2009, making it the first in the U.S. transportation sector to use an availability payment compensation scheme. Project financing included a \$781 million bank loan, \$603 million from TIFIA, and \$208 million in private equity. Simon assisted with procurement and contract documents and the financing structure. Construction finished on schedule in spring 2014. In 2009, the American Road and Transportation Builders Association named the I-595 upgrade "Project of the Year," and Project Finance magazine honored it as "North American Transport Deal of the Year."

**Virginia Department of Rail and Public Transportation – Dulles Corridor Metrorail Project Phase 1.** Co-leader of the legal team that advised on procurement of a \$2.9 billion project to extend the Metrorail from East Falls Church through Tyson's Corner to Wiehle Ave. in Fairfax County. The Department initially awarded a pre-development agreement and subsequently negotiated a design-build contract with the developer. Prior to contract award, the Department transferred management of project development to the Metropolitan Washington Airport Authority. The project, which included 11.7 miles of track and five new stations, was the first phase of the eventual 23-mile Silver Line. MWAA and the selected contractor, a Bechtel-led consortium, entered into a \$1.6 billion design-build contract in 2007 and Phase 1 opened in July 2014. Simon assisted the Department in negotiating the contract.

**Metropolitan Washington Airports Authority – Dulles Corridor Metrorail Project Phase 2.** Key member of the legal team that advised on procurement of a \$2.7 billion Metrorail extension in Fairfax and Loudon counties, including Washington Dulles International Airport. The 11.4-mile, six-station project is the second phase of the eventual 23-mile Silver Line. In 2013, the Authority awarded the design-build contract to a Clark/Kiewit joint venture. Heavy construction began in 2014 and substantial completion is expected in 2019. Simon assisted the Authority in developing the procurement documents and the design-build agreement.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Panelist, "(Don't) Kill All the Lawyers . . . Untangling Risk Issues in P3 Projects," American Road & Transportation Builders Association P3s in Transportation Conference, Washington, DC, 07.19.2019

Panelist, "Innovative P3 Arrangements," American Association of Port Authorities Capital Projects Seminar, Norfolk, VA, 05.09.2018

Speaker, "Technical and Operational Development of Baltimore's LRT," Railway Age Conference, Baltimore, MD, 04.27.2018

Panel Chair, "P3s – What Works – What Doesn't," American Council of Engineering Companies Annual Convention, Washington, DC, 04.16.2018

Panelist, "Partnership Beyond Financial Close," P3 Federal Conference, Washington, D.C., 11.29.2017

Panel Chair, "Emerging P3 Markets: Are We Headed for a Bull Rally," American Road & Transportation Builders Association P3s in Transportation Conference, Washington, DC, 07.14.2016

Panelist, "P3s in Transportation," 56th Annual Transportation Research Forum, Atlanta, GA, 03.12.2015

Panelist, "All Projects are Local: Procurement and Financing Structures," The Bond Buyer's Transportation Finance/P3 Conference, Arlington, VA, 11.16.2014

Panelist, "The Contract Documents: Whose Project is it Anyway?," American Bar Association Fidelity & Surety Law Committee's Mid-Winter Meeting, New York, NY, 01.23.2014

Moderator, "Managing Risk on Complex P3 Agreements," American Road & Transportation Builders Association P3s in Transportation Conference, Washington, DC, 07.26.2013

Speaker, "Public-Private Partnerships: Insights from Industry Experts," 2013 National Forum for Black Public Administrators, Atlanta, GA, 04.22.2013

Speaker, "Innovative Public Procurement in Virginia: The Current State of Design-Build and P3," 33rd Annual Construction and Public Contracts Law Seminar, Charlottesville, VA, 11.03.2012

Speaker, "Successful Teaming: Turning Sticks & Stones into Bricks & Mortar," 2011 Design-Build Conference & Expo, Orlando, FL, 10.21.2011

Panel Chair, "U.S. P3 Transport Finance Investors Forum," U.S. P3 Transport Finance Investors Forum, New York, NY, 03.24.2011

Speaker, "A Legal Perspective of Public-Private Partnerships: Statutory Framework and New Concession Contracts," American Bar Association Fidelity & Surety Law Committee Mid-Winter Meeting, New York, NY, 01.22.2009

## HONORS & RECOGNITIONS

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Chosen by his peers for inclusion in *The Best Lawyers in America*® in the field of Transportation Law, 2020  
Selected to the Super Lawyers list for 2014-2017

## COMMUNITY & PROFESSIONAL

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American Road and Transportation Builders Association, Past President, Public-Private Partnership Division  
District of Columbia Bar Association, Government Contracts and Litigation Section  
George Mason University, P3 Center for Transportation Policy, Advisory Board Member  
Virginia State Bar Association, Construction and Public Contract Law Section  
American Bar Association, Public Law Section, Forum on the Construction Industry  
National Filipino American Lawyers Association, At-Large Representative, DC Chapter

## PRACTICES

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Infrastructure  
Procurement & Contracting  
Legislation & Policy  
Project Financing  
Dispute Resolution  
Regulatory & Compliance Matters  
Construction Law, Claims & Litigation

## INDUSTRIES

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Government & Public Sector  
Transportation

## EDUCATION

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Washington College of Law at American University, J.D., 1996, *magna cum laude*; Notes and Comments Editor, *American University Law Review*  
University of Illinois, B.A., 1993

## ADMISSIONS

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District of Columbia  
Maryland  
Virginia  
U.S. Court of Federal Claims  
U.S. Court of Appeals, Fourth Circuit

U.S. District Court, Eastern District of Virginia