

EXHIBIT 12

REQUIRED INSURANCE

1. Insurance to be Maintained by Design-Builder

A. Insurance Coverages Required for LNTPs

The Design-Builder shall obtain and maintain, with the Department and the HRTAC Parties as additional insureds (except for the coverage required under Section 1.A(i) and (vi) of this Exhibit 12 (Required Insurance)), the following insurance coverages during the performance of the Early Work. Policy coverage limits may be achieved through a combination of insurance policies (e.g., primary and/or excess).

(i) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of at least \$1 million bodily injury by accident, each accident, and \$1 million bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104). Each of the Department and the HRTAC Parties shall be included as an "alternate employer" on the policy.

(ii) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1 million per occurrence and \$2 million annual aggregate applicable on a per project basis. The Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis. Should the Department not issue NTP, the completed operations coverage shall continue to be carried for a period of at least five (5) years after termination of the Comprehensive Agreement.

(iii) **Automobile Liability Insurance** with a limit of at least \$1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(iv) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$10 million per occurrence and in the aggregate. The Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(v) **Contractor's Pollution Liability Insurance** to indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which the Design-Builder, its

employees, its agents, or its Subcontractors are legally obligated to pay arising out of the Early Work, including any transit and/or disposal at non-owned disposal sites. Should the Department not issue NTP, Design-Builder shall ensure that such coverage will remain in full force and effect for the period of the Early Work and a five (5)-year extended reporting period after termination of the Comprehensive Agreement. The Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(vi) **Professional Liability Insurance.** Design-Builder shall provide evidence of professional liability insurance covering the Design-Builder and the Design Consultant for any liability for acts, errors, or omissions arising in connection with the Early Work. Such coverage may be evidenced utilizing so-called “practice” policies and shall be for a minimum limit of \$5 million any one claim and in the aggregate. Should the Department not issue NTP, coverage shall continue on an extended reporting period or other basis for a period of five (5) years after termination of the Comprehensive Agreement. Should the Department issue NTP, the Design-Builder and the Design Consultant shall replace the coverage noted herein with the coverage required in Section 1(B)(xi) of this Exhibit 12 (Required Insurance). Such coverage as is required by Section 1.B. shall be written such that all design activities and other professional services shall be covered under the required project-specific coverage, including any work undertaken during the Early Work period. The Department, the HRTAC Parties, and the U.S. Navy are to be included on any such policies as indemnified parties.

(vii) **Other Insurance.** Should any activities during the Early Work involve marine operations, the Design-Builder and/or any Subcontractors so engaged shall carry Marine Protection and Indemnity Insurance providing protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations, including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$5 million in the aggregate. The Department and the HRTAC Parties shall be included as additional insureds on a primary, noncontributory basis. Additionally, should the Design-Builder take possession of the tunnel boring machine or any other major equipment during the Early Work period, the Design-Builder shall obtain and maintain appropriate Contractor’s Equipment Insurance or equivalent coverage protecting such equipment from loss. Should the Design-Builder undertake preliminary construction work (including excavation and construction of the tunnel boring machine launch pit), the Design-Builder shall also be required to put in place a builder’s risk policy with minimum limits of \$10 million to protect against damage to the permanent or temporary works that are constructed as part of the launch pit.

B. Insurance Coverages Required for NTP

The Design-Builder shall obtain and maintain, with the Department and the HRTAC Parties as additional insureds (except for the coverage required under Section 1.B(i), (v), (vi), (ix), (x), and (xi) of this Exhibit 12 (Required Insurance)), the following insurance coverages during the performance of the Work. Policy coverage limits may be achieved through a combination of insurance policies (e.g., primary and/or excess).

(i) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of at least \$1 million bodily injury by accident, each accident, and \$1 million bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104). Each of the Department and the HRTAC Parties shall be included as an "alternate employer" on the policy.

(ii) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$2 million per occurrence and \$4 million annual aggregate applicable on a per project basis. The Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis. Completed operations coverage shall continue to be carried for a period of at least five (5) years after Final Completion.

(iii) **Automobile Liability Insurance** with a limit of at least \$2 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(iv) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$200 million per occurrence and in the aggregate. The Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(v) **Builder's Risk Insurance** on an "all risks" basis for physical loss, destruction, or physical damage to the Work. The Builder's Risk insurance must be project-specific and will cover the Design-Builder, the Department, and other Subcontractors of all tiers prior to Final Completion; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, as determined by an experienced third-party and subject to the Department's approval of such maximum probable loss analysis. In no event will the limits of such coverage be less than \$350 million. Further, the policy shall include sub-limits as follows: (x) at least \$25 million for off-site storage and transit; (y) at least \$100 million for debris removal and demolition; and (z) at least \$10 million for increased costs of construction, soft costs (including the Department's continuing project administration expenses), professional fees and loss adjustment expenses. The policy also will include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverage will include, but not be limited to, the following (provided that commercially reasonable sublimits will be accepted where typical):

- (1) right to partial occupancy;
- (2) London Engineering Group (LEG) 3 type or equivalent coverage for design error, faulty workmanship, and/or faulty materials;

- (3) earthquake;
- (4) earth movement (including subsidence, sinkhole, and collapse);
- (5) flood;
- (6) windstorm;
- (7) fire and explosion;
- (8) theft, vandalism, and malicious mischief;
- (9) transit;
- (10) temporary and permanent works; and
- (11) expediting expenses.

The Builder's Risk Insurance must be in place, at the latest, by NTP, *provided* that if the Builder's Risk Insurance is not in place on the Agreement Date, Design-Builder shall submit to the Department on or before the Agreement Date: (x) a letter of certification from the Design-Builder or the Design-Builder's insurance broker confirming that Builder's Risk Insurance compliant with the requirements contained herein will be placed prior to NTP; and (y) a specimen Builder's Risk Insurance policy with all appropriate attachments, sub-limits, etc. and any maximum probable loss analysis.

(vi) **Contractor's Equipment** to include "all-risk" insurance covering all risk of physical damage to equipment, including tunnel boring machinery, provided for use at the Project site by the Design-Builder and its Subcontractors, whether leased, rented, borrowed, or used at the Project site, unless covered under the builder's risk policy described above. Such coverage shall have minimum limits equal to the replacement cost of such equipment unless the Department approves lower minimum limits.

(vii) **Contractor's Pollution Liability Insurance** on a project-specific basis to indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which the Design-Builder, its employees, its agents, or its Subcontractors are legally obligated to pay arising out of the Work, any transit and/or disposal at non-owned disposal sites. Such insurance will have minimum limits of \$10 million any one claim and in the aggregate and will remain in full force and effect for the period of the Work and a five (5)-year extended reporting period after Final Completion. The Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis. The Contractor's Pollution Liability Insurance must be in place, at the latest, by NTP, *provided* that if the Contractor's Pollution Liability Insurance is not in place on the Agreement Date, the Design-Builder shall submit to the Department on or before the Agreement Date:

- (1) a letter of certification from the Design-Builder or the Design-Builder's insurance broker confirming that Contractor's Pollution Liability Insurance complies with the requirements contained herein will be placed prior to NTP; and

- (2) a specimen Contractor's Pollution Liability Insurance policy with all appropriate attachments, sub-limits, etc.;

provided further that if Design-Builder intends to conduct any on-site drilling prior to NTP, the Contractor's Pollution Liability Insurance must be in place prior to such on-site drilling. The Design-Builder shall also, if appropriate, provide coverage for marine operations and for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701-2762) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601-9675) either under the Contractor's Pollution Liability Insurance policy required herein or the Marine Protection and Indemnity Insurance required in paragraph (viii) below.

(viii) **Marine Protection and Indemnity Insurance** on a project-specific basis providing protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations, including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$50 million in the aggregate. The Department and the HRTAC Parties shall be included as additional insureds on a primary, noncontributory basis.

(ix) **Ocean Cargo Transit Insurance** if any property, materials or equipment intended to be used in connection with the Work or the Project which are valued in excess of \$500,000 are to be shipped by sea. The Design-Builder shall provide coverage in an amount of not less than the full replacement value per occurrence of the property, materials or equipment being shipped.

(x) **Railroad Protective Liability Insurance**, as may be required by any railroad in connection with Work across, under or adjacent to the railroad's tracks or railroad right-of-way.

(xi) **Professional Liability Insurance** on a project-specific basis covering the Design-Builder's and Design Consultant's liability for acts, errors, or omissions arising in connection with the Work, for not less than \$35 million any one claim and in the aggregate. The insurance may be purchased and maintained by the Design-Consultant or the Design-Builder. Such insurance must provide coverage from the first date any professional services were rendered for the Project and must remain in full force and effect during the performance of the Work, and will include an extended reporting period of five (5) years after Final Completion. The Department, the HRTAC Parties, and the U.S. Navy are to be included on any such policies as indemnified parties.

The Department will consider alternative program structures as compliant (e.g., use of Contractors Protective Professional Insurance in concert with project-specific professional liability insurance) provided the project-specific professional liability insurance component of any such alternative must always have a minimum limit of at least \$20 million and the total limits provided by any alternative structure must be at least \$40 million.

2. Insurance to be Maintained by Subcontractors

A. Insurance Coverages Required for LNTPs

Unless otherwise provided as part of a contractor controlled insurance program maintained by the Design-Builder, the Design-Builder will cause all Subcontractors performing any portion of the Early Work to obtain and maintain the following minimum insurance coverages or be responsible for maintaining such coverages on behalf of each Subcontractor.

(i) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$500,000 bodily injury by accident, each accident, and \$500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(ii) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with the minimum limits \$1 million per occurrence and \$1 million in the aggregate annually. The Design-Builder, the Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(iii) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Design-Builder, the Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(iv) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$1 million per occurrence and in the aggregate. For contracts valued at more than \$1 million, coverage shall be in the amount of \$4 million per occurrence and in the aggregate. The Design-Builder, the Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(v) **Professional Liability Insurance** (applicable only to Subcontractors rendering professional services, including but not limited to architects, engineers, traffic consultants, testing laboratories, accountants, and attorneys) if not already covered by a project-specific policy, with limits of at least \$1 million per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period of three years following completion of such professional services. As an alternative to the extended reporting period, the Subcontractor may elect to maintain in full force and effect professional liability coverage, with prior acts coverage sufficient to cover all services provided during the Early Work period for at least two (2) years following completion of such professional services.

B. Insurance Coverages Required for NTP

Unless otherwise provided as part of a contractor controlled insurance program maintained by the Design-Builder, the Design-Builder will cause all Subcontractors performing any portion of the Work to obtain and maintain the following minimum insurance coverages or be responsible for maintaining such coverages on behalf of each Subcontractor.

(i) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$500,000 bodily injury by accident, each accident, and \$500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(ii) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability. Minimum limits for Subcontractors with contracts valued at less than or equal to \$1 million shall have the minimum limits of no less than \$1 million per occurrence and \$1 million in the aggregate annually. For those Subcontractors with contracts valued at greater than \$1 million, such coverage shall have limits of no less than \$1 million per occurrence and \$2 million in the aggregate annually. The Design-Builder, the Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(iii) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Design-Builder, the Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(iv) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$1 million per occurrence and in the aggregate. For contracts valued at more than \$1 million, coverage shall be in the amount of \$4 million per occurrence and in the aggregate. The Design-Builder, the Department, the HRTAC Parties, and the U.S. Navy are to be included as additional insureds on a primary, non-contributory basis.

(v) **Professional Liability Insurance** (applicable only to Subcontractors rendering professional services, including but not limited to architects, engineers, traffic consultants, testing laboratories, accountants, and attorneys) if not already covered by a project-specific policy, with limits of at least \$1 million per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period of three years following completion of such professional services. As an alternative to the extended reporting period, the Subcontractor may elect to maintain in full force and effect professional liability coverage, with prior acts coverage sufficient to cover all

services provided on the Project for a period of at least two (2) years following completion of such professional services.