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February 20, 2013

**SENT VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

William Most
Briscoe Ivester Bazel LLP
155 Sansome Street, 7th Floor
San Francisco, CA 94104



Re: Policyholder: City of Benicia

Policies: 928950 (04/30/1980 - 03/03/1981)
97 TXU 105380 (03/03/1983 - 03/03/1984)¹

**Claim: Benicia Arsenal vs. United States Department of the Army by
Environmental Protection Agency, CA**

Site: Former Benicia Arsenal, Benicia California

Dear Mr. Most:

This letter is in response to the request for coverage by the City of Benicia (hereinafter "Benicia") in connection with the above-referenced claim (hereinafter "Claim"). Kindly direct all correspondence in this matter to my attention.

The Claim involves allegations that Benicia was notified on or about September 15, 2010 that hazardous substances had been released into the soil and groundwater at the property formally known as the Former Benicia Arsenal in Benicia California (hereinafter "Site"). It is our understanding from information you have provided to us that the U.S. Army owned the Site

¹ In addition, The Hartford has located an auto policy issued to Benicia, No. 57 LGX 15135 (hereinafter "Auto Policy"). As the Claim involves alleged environmental contamination on real property owned by Benicia, the Auto Policy would not be implicated by the Claim based on the information provided to date. If you believe the Claim implicates the Auto Policy, please provide us with an explanation supporting your belief for our consideration. In the meantime, The Hartford reserves all of its rights, positions and defenses as regards the Auto Policy.

until approximately 1964, when it was acquired by the current owner, Benicia. The California Environmental Protection Agency (hereinafter "CAEPA") has issued a Remedial Action Order for the remediation of the Site, and has identified Benicia as being potentially responsible for contamination at the Site. Currently, Benicia does not know the potential costs involved or the level of contamination; nonetheless, you are seeking coverage for the future clean up at the Site.

We have located Special Public Entity Difference in Condition Comprehensive Liability Insurance Policy No. 928950 (04/30/1980-03/03/1981) (hereinafter, "Policy 92850") issued to Benicia by First State Insurance Company, and Umbrella Liability Policy 97TXU105380 (03/03/1983-03/03/1984) (hereinafter, "TXU Policy") issued to Benicia by Twin City Fire Insurance Company. Collectively, First State and Twin City are referred to herein as "The Hartford." As set forth more fully below, The Hartford respectfully advises that at present it has no obligation to participate in the defense and/or indemnification of Benicia in connection with the Claim under Policy 92850 or the TXU Policy.

I. POLICY 92850:

As an initial matter, we note that Policy 92850 provides, in pertinent part, that The Hartford is obligated "to provide coverage for the insured, to the extent set forth in this Policy, not otherwise provided under the Liability Policy(s) scheduled in the application attached." The application attached to the Policy lists the following insurance policies (hereinafter, "Underlying Policies"):

Ambassador Insurance Company	Policy: GLA779219
Allianz Insurance Company	Policy: AUL5100011
Aetna Insurance Company	Policy: H752045
Travelers Insurance Company	Policy: 650235E107 9 IND 79

As of the date of this letter, The Hartford has not been provided with any information to suggest that the Underlying Policies do not provide coverage for the Claim. Accordingly, until such time as we are provided with information indicating that the Underlying Policies do not provide coverage, Hartford has no obligation. Further, until we are provided documentation from which we can determine the extent on the underlying coverage, we cannot complete our coverage analysis as to any potential obligations, if any The Hartford may have with regard to the Claim under Policy 92850. If you believe Hartford's Policy is implicated, please provide us with this information at your earliest convenience, including without limitation, copies of the above-referenced policies on the application, to the extent not already provided, in addition to coverage letters from any other insurer from whom you have sought coverage for the Claim. In the meantime, The Hartford reserves all of its rights, positions and defenses under Policy 92850.

Notwithstanding the foregoing, even if Policy 92850 were implicated as this time, we note that Policy 92850 provides, in pertinent part, as follows:

II. Defense, Settlement, Supplementary Payments

As respects such insurance as is afforded by this policy, the company shall

- (a) *Defend in his name and behalf any suit against the insured claiming such damages, even if such suit is groundless, false or fraudulent, but the company shall have the right to make such investigation, negotiation and settlement of any claim or suit as it deems expedient.*

In addition, Policy 92850 contains an Endorsement that provides, in pertinent part, as follows:

**ENDORSEMENT
SPECIAL PROVISIONS**

APPLICABLE TO CALIFORNIA ONLY

* * *

2. Defense, Settlement, Supplementary Payments are amended to include:
- a. Defend any claim against the named Insured or its employee for damages under Section 3294 of the Civil Code or otherwise for the sake of example or by way of punishment, where such claim arose from an act or omission in the scope of employment.

As the above language from Policy 98950 indicates, with the exception of claims against the named Insured or its employee for damages under Cal. Civil Code 3294 or otherwise for sake of example or by way of punishment, The Hartford has no obligation to pay defense costs under Policy 98950 in the absence of a suit against Benicia. At present, it is The Hartford's understanding that there is no suit pending against Benicia in connection with the Claim, nor has The Hartford been provided with any information from which we can determine that the Claim involves allegations against Benicia for anything other than remediation costs associated with the Site. As such, even assuming that the Underlying Policies do not provide coverage for the Claim, The Hartford has not been provided with information from which we could conclude that the Claim implicates a defense obligation on The Hartford's part under Policy 98950. If a suit has been filed against Benicia in connection with the Claim, or if you believe the Claim involves allegations against Benicia for anything other than remediation costs associated with the Site, please provide that information to us at your earliest convenience.

In addition, we note that Policy 98950 provides, in pertinent part:

10. **Notice of an Occurrence.** Upon the happening of an occurrence, written notice shall be given by or on behalf of the insured to the company or any of its authorized representatives as soon as practicable after an officer or an employee in charge of reporting such losses to insurance companies learns of the occurrence. Such notice shall contain particulars sufficient to identify the insured and also reasonable obtainable information with respect to the time, place and circumstances of the

occurrence, the names and addresses of the injured and of available witness.

11. **Notice of Claim or Suit.** If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

As noted at the outset of this letter, it is The Hartford's understanding that Benicia was notified that it was a potentially responsible party as regards the Site on or about September 15, 2010. However, The Hartford did not receive notice of the Claim from Benicia until July 2012. The Hartford reserves all of its rights under the above-quoted notice provisions from Policy 98950 as regards to the Claim.

II. THE TXU POLICY:

The TXU Policy is an umbrella liability policy, which provides in pertinent part:

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of the policy, agrees with the named insured as follows.

I Coverage

The company will indemnify the insured for ultimate net loss in excess of the underlying limit or the self-insured retention, whichever is the greater, because of

- (a) bodily injury,*
- (b) personal injury,*
- (c) property damage,*
- (d) advertising injury*

To which this insurance applies, caused by an occurrence which takes place anywhere in the world.

The TXU Policy further provides that The Hartford:

.... will defend any claim or suit against the insured seeking damages on account of injury or damage to which this policy applies and which no underlying insurer is obligated to defend

With respect to the TXU Policy, we note that this policy is not impacted by the Claim unless and until the applicable limits of liability and/or self-insured retentions for the underlying insurance have been properly exhausted or the loss is not otherwise covered or being defended

by the underlying insurer.² To date, The Hartford has not been provided with documentation substantiating such. At such time The Hartford is provided with this documentation, we will conduct a full coverage analysis with regard to the TXU Policy.

Please let us know whether any other insurer is defending Benicia in connection with the Claim, and provide copies of any coverage position letters you have received from other insurers as regards the Claim, including without limitation, any such letters you have received from Landmark. In the meantime, The Hartford reserves all of its rights, positions and defenses under the TXU Policy.

In addition to the above, we note that the TXU Policy contains the following pollution hazard exclusion:

Exclusions

This insurance does not apply:

* * *

(b) to bodily injury or property damage included within the . . . pollution hazard:

* * *

V Definitions

“pollution hazard” includes bodily injury and property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants into or upon land the atmosphere or any watercourse or body of water but this hazard dowsse not include such injury or damage if such discharge, dispersal, release or escape is sudden and accidental.

As the Claim involves allegations of pollution at the Site for which Benicia is potentially responsible, The Hartford reserves all of its rights, positions and defenses under the TXU Policy, including without limitation the right to deny coverage for the Claim under the above-quoted pollution exclusion from the TXU Policy.

In addition, we note that the TXU Policy provides, in pertinent part, as follows:

3. Notice of Occurrence

Whenever it appears that an occurrence is likely to involve indemnity under this policy, written notice thereof shall be given to the Company or

² In addition, any obligations The Hartford might owe under the TXU Policy are also subject to all other terms, conditions, endorsements and/or exclusions of the TXU Policy.

any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonable obtainable information respecting the time, place and circumstances of the occurrence, the names and addresses of the injured and of available witnesses.

As noted at the outset of this letter, it is The Hartford's understanding that Benicia was notified that it was a potentially responsible party as regards the Site on or about September 15, 2010. However, The Hartford did not receive notice of the Claim from Benicia until July 2012. The Hartford reserves all of its rights under the above-quoted notice provisions from the TXU Policy as regards the Claim.

II. REQUEST FOR INFORMATION:

In addition, without limiting the foregoing, The Hartford reserves the right to continue to investigate this claim and would request Benicia to please provide the following information:

- A coverage chart detailing all applicable insurance policies and carriers;
- Copies of all underlying insurance policies;
- Copies of coverage letters from any insurer to whom you have sought coverage for the Claim, including without limitation, Ambassador Insurance Company, Allianz Insurance Company, Landmark Insurance and/or National Union Fire Insurance Company;
- Please provide complete copies of all relevant damage information for the Site.

We thank you in advance for your cooperation in this regard.

III. AS TO ALL POLICIES:

This communication is not intended to be and should not be construed as an exhaustive listing of all policy terms and conditions that may apply to this matter. The Hartford reserves all of its rights, positions and defenses in this matter. Neither this communication, nor any prior or subsequent communications, should be construed as a waiver of any The Hartford's rights, positions or defenses.

Please be advised that The Hartford's investigation of this matter is without prejudice and is not intended to waive any rights or obligations of Benicia or those of The Hartford under any policy of insurance that may have been issued to Benicia. The Hartford continues to fully reserve its rights during this investigation of this Claim. Neither this correspondence nor any future communication or investigation, should be deemed or construed as an admission that coverage is available for this Claim, or as a waiver of any right or defense to coverage available to The Hartford (whether under its contracts of insurance, at law or in equity).

If you are aware of any facts that you believe The Hartford should consider, we would appreciate you bringing them to our attention at your earliest opportunity.

In addition, should you have any questions regarding the foregoing and/or should you wish to discuss this matter in general, please do not hesitate to contact me.

Regards,



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