September 21, 2012

Via Certified Mail, Return Receipt
Reliance National Indemnity Company
Four Penn Center Plaza, 19th Floor
Philadelphia, PA 19103

Re: Insured: City of Benicia
Planet Insurance Company
Policy Number KR-670-5928 (March 3, 1985 – March 3, 1986)
Policy Number KZ-074-7508 (March 3, 1986 – March 3, 1987)

Dear Insurance Carrier:

I am a licensed insurance broker and am acting as agent for the City of Benicia in connection with its response to the Draft Imminent and Substantial Endangerment Determination and Remedial Action Order ("Draft Remedial Action Order") from the California Environmental Protection Agency, Department of Toxic Substances Control ("Department").

The City's records indicate that it was insured under the above-referenced policies during the indicated term. This letter constitutes a claim under the Planet Insurance Company policies. Copies of the policies have not been located in the City's files. Please send me copies of the policies.

A copy of the Draft Remedial Action Order is enclosed for your immediate reference. Further information about the Draft Remedial Action Order and developments related to the Order may be found at the following website:

http://www.ci.benicia.ca.us/index.asp?Type=B_BASIC&SEC={EE025B5A-169D-4F4D-87A9-F00C10B15CD5}.

The Draft Remedial Action Order concerns the U.S. Army's (former) Benicia Arsenal. The U.S. Army closed the Arsenal in 1964. It was converted to civilian use and sold to the City of Benicia. The City of Benicia sold certain areas of the Arsenal property and they are privately owned. The City of Benicia still owns the remainder of the Arsenal property.

The Draft Remedial Action Order specifies that hazardous substances have been found on the Arsenal property and there has been a release or threatened release of the hazardous substances. The Draft Remedial Action Order requires a comprehensive remediation plan for the Arsenal property.

The Department has notified the City of Benicia that as the owner of property where hazardous substances exist or may exist, the City of Benicia has responsibility for the remediation regardless it has not been shown that the City of Benicia was responsible for any contamination. The Department's notice to the City of Benicia dated September 15, 2010 also is enclosed for your reference.

We believe the remediation order and the Department's claims that the City of Benicia has responsibility for the remediation gives rise to coverage under the above-referenced insurance policies. This letter is notice of a claim under the policies. Please respond regarding coverage as specified in the California Insurance Regulations, Cal. Code Regs., tit. 10, § 2695.1 et seq. Please also let me know if the insurer requires additional proof of claim forms and if so please send copies of the forms to me.

I also remind you that private owners and businesses at the former Arsenal must not be contacted in connection with your investigation, and the insurer may not instigate any actions against them or tender claims to them for contribution. As the private owners and businesses are not common insureds, Planet Insurance Company has no right of contribution against them. (*Golden Eagle Insurance Co. v. Insurance Co. of the West* (2002) 99 Cal.App.4th 837, 853; *American Continental Insurance Co. v. American Casualty Co.* (2001) 86 Cal.App.4th 929, 938.) If the insurer disagrees and takes the position that the private owners and businesses may be contacted either in connection with its investigation or claims for contribution, we require that the insurer notify me before taking any further action so the issue may be resolved before there is any contact with the owners and businesses.

You are welcome to contact me if you require additional information that I can provide or you otherwise wish to discuss these matters further.

Sincerely,
ERS Corp

Mark O'Brien

Enclosures
cc: Heather McLaughlin, Benicia City Attorney