

# Proposal to Provide Project Management & Legal Services to the City of Benicia

Benicia Arsenal Investigation and Cleanup Project

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## EXECUTIVE SUMMARY

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Hanson Bridgett is a law firm of more than 150 lawyers engaged in a diversified and expanding general practice, with several areas of strong specialization including water rights and transfers, environmental law, and California public agency law. The firm combines the broad capabilities of a general practice firm with the expertise and experience of specialists in selected fields directly relevant to the City's interests. The firm's clients include public agencies, large institutional clients and major nonprofit associations. We also serve many individuals and small businesses.

Public agency law has been a principal specialty of Hanson Bridgett for more than 40 years. We represent, as general counsel, water districts, irrigation districts, reclamation districts, cities, community service districts, fire districts, hospital districts, transportation districts, joint powers authorities, and associations of local governmental agencies. In addition, we serve public agencies on individual assignments (or as on-going counsel in specific areas of the law) on projects involving labor and employment law, municipal finance, litigation, environmental laws, rate setting, real estate and land use, government reorganization and complex procurements and contract negotiations.

Our ongoing representation of local and federal governmental agencies has familiarized us with California hazardous waste and cleanup requirements, federal requirements for cleanup of designated Superfund Priority Sites, U.S. Environmental Protection Agency requirements under the National Contingency Plan, public participation requirements, and Federal Facility Compliance Agreements.

### **About Hanson Bridgett's Environmental Practice Group**

#### Hazardous Waste/CERCLA/RCRA/USEPA/DTSC Experience

Hanson Bridgett's Environmental Practice Group provides unique real-world experience to successfully handling a wide variety of hazardous waste issues. Our attorneys offer practical solutions to waste management issues from first hand knowledge of working in industry. This unique perspective has positioned us to successfully help clients resolve and avoid solid and hazardous waste compliance and permitting issues under the Resource Conservation and Recovery Act (RCRA) and California Department of Toxic Substances Control (DTSC) regulations. We provide full service to our clients including assistance in waste characterization, waste management and disposal, treatment, reduction, transportation, cleanup, closure of waste units, and emergency planning.

**Counseling/Compliance.** The first step to a successful environmental program is to ensure compliance all applicable regulations, while maintaining productivity. Our team has a comprehensive understanding of CERCLA, RCRA and their amendments, the National Contingency Plan regulations, DTSC regulations, and the California Health and Safety Code. Our services include obtaining necessary permits or approvals and identifying regulatory exemptions for industrial processes covering hazardous waste generation, hazardous substance remediation, transportation, and recycling. We also assist clients in performing internal audits for compliance, preparation of reports required as a result of environmental regulations, including reporting for local environmental programs under Certified Unified Program Agencies (CUPAs).

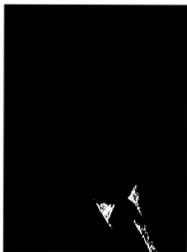
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**Waste Management.** Our experience spans the entire spectrum of waste management issues faced by industry, including implementation of the hazardous waste generator and onsite treatment program, solid waste, chemical and pharmaceutical waste, medical wastes, battery reuse/recycling operations, Underground Storage Tank (UST) operations, Universal wastes, and the DTSC's Restrictions on the use of Certain Hazardous Substances in Electronic Devices. Hanson Bridgett attorneys are also positioned to assist clients with site cleanup issues under the RCRA or DTSC corrective action programs.

**Enforcement Actions.** Hanson Bridgett's Environmental Practice Group has experience under both the RCRA Enforcement Program and DTSC Permitting, inspection, compliance, and corrective action programs. Our goal is to defend our clients interest and reduce the impacts from Notices of Violation (NOVs) and regulatory enforcement actions. This includes, if necessary, experienced litigation attorneys that will effectively defend client interest in administrative and court proceedings related to waste management.

**Sustainability.** Hanson Bridgett has a long history of helping clients implement innovative projects aimed at incorporating sustainability into their socially and environmentally vital missions. Hanson Bridgett itself is one of only a few law firms certified as a "Green Business" by the City and County of San Francisco. The firm's Sustainable Business Practice lawyers help companies with sustainability agendas to succeed without impacting growth and development. We can assist companies in developing new products and services (e.g., product stewardship) and reduce the regulatory burdens on their customers and reduce waste generation. We also can assist clients with RCRA and DTSC programs encouraging source reduction and recycling.

#### Hanson Bridgett's Proposed Team's Environmental Experience



**Michael Van Zandt**, in his 30 year career as an environmental attorney, and in his 13 years as an attorney in federal service, has advised on the preparation of hundreds of environmental documents from the Great Salt Lake Pumping Project, to Hazardous Waste Storage and Treatment Facilities, to Electric Power Plants, to Industrial Wastewater Treatment Plants, to the decommissioning of the Titan II Missile under Strategic Arms Control Treaties. He was the primary advisor to seven facilities in six different states, including California, where hazardous wastes and toxic substances were generated and managed by the facilities. Every one of these complexes had Part A and Part B Hazardous Waste Storage Permits under federal law and the equivalent state permits. The facilities generated millions of pounds of hazardous and toxic substances annually, including heavy metals, solvents, PCBs, and characteristic wastes. Mr. Van Zandt provided the day to day advice on compliance, reporting and permitting issues for these wastes and substances. He also was involved in representing the owner in defense of several lawsuits and administration of consent decrees for these facilities. Five of the seven facilities were designated as Priority Sites under the Comprehensive Environmental Response Compensation and Enforcement Act (CERCLA or Superfund). Mr. Van Zandt was intimately involved with the facility assessments and remedial action studies for these facilities conducted in conjunction

with federal, state and local agencies. In that capacity, he negotiated several Federal Facility Compliance Agreements with states under the Superfund Amendments and Reauthorization Act.



**Rory Campbell** has more than 25 years of experience in helping clients finance, acquire, develop, manage and transfer commercial and industrial real property interests. He has worked on major acquisitions, including rail and transit corridors for public agency clients, port facilities, scrap metal operations, retail and office buildings, hospitality and health care facilities, as well as shopping centers. He advises institutional clients on industrial and commercial lease transactions, escrow and title issues, construction and lien law, and property management. In the environmental arena, Mr. Campbell has guided clients through environmental compliance, regulatory enforcement, and cost recovery proceedings, including enforcement proceedings under state (Hazardous Substances Account Act) and federal (CERCLA) Superfund statutes, RCRA, the federal Clean Water Act, the federal Clean Air Act, Porter-Cologne Water Quality Act and various citizen suit proceedings. He has been lead counsel on environmental due diligence and in negotiating and drafting various agreements for cumulative property transfers of approximately \$500 million. Rory has also litigated in state and federal courts and brings this experience to bear in helping clients pragmatically address risks in structuring business transactions or resolving existing or potential business disputes. Mr. Campbell is a frequent lecturer on real estate and environmental matters.



**Catherine Johnson** has more than 20 years of experience as an environmental lawyer. Her practice includes remediation and development of contaminated properties, brownfields, environmental due diligence, environmental reporting requirements, hazardous waste, postclosure uses of landfills, Proposition 65, OSHA appeals, asbestos notifications, air permits, asbestos premises liability, mold-related counseling and litigation, and environmental litigation to recover cleanup costs. Ms. Johnson represents clients from many industries, including homebuilders, REITs, public agencies, an agricultural cooperative, a scrap metal recycling facility, an international manufacturing facility, retail and commercial property owners and a national recreational vehicle rental company. Catherine has been named as a Northern California "Super Lawyer" in the field of environmental law by the publishers of San Francisco Magazine. Representative of Ms. Johnson's experience are: Remediation and development of contaminated properties into multifamily housing projects and single family housing projects; Securing insurance defense costs for a dry cleaner sued for cleanup; Advising clients on environmental accounting matters, including accounting requirements applicable to public agencies; Securing Coastal Commission approval of an affordable housing project; and Securing cleanup costs for a creditor in bankruptcy proceedings.



**Nathan Metcalf** worked in the hazardous waste disposal industry, prior to becoming an attorney, and in Environmental Health and Safety (EH&S) at biotechnology and medical instrument manufacturing facilities. His work as a chemist/supervisor included, identifying, segregating, packaging, and disposing/recycling of hazardous waste. In his position as EH&S manager he was responsible for manufacturing facility environmental compliance and permitting; including, hazardous

waste, biological waste, radioactive materials, air permitting, waste water discharges, storm water, underground storage tanks, emergency planning, and building code compliance. Since becoming an attorney, Mr. Metcalf has provided environmental due diligence for a cheese manufacturing plant in California's central valley during acquisition proceedings. He has also advised clients on California's Hazardous Substances (RoHS) in Electronic Devices, and developed contracts for recycling of electronic waste.



**Sophia Belloli** is a member of Hanson Bridgett's Public Agency, Litigation, Environmental and Water Practice Groups. Ms. Belloli represents both public entity and private clients, and frequently litigates water rights, water quality, land use and environmental matters in state and federal courts. Ms. Belloli is experienced in water rights disputes and transfers, as well as citizen suits brought under the Clean Water Act and California's Proposition 65, and compliance with state and federal environmental laws. She also counsels government clients with respect to Prop. 218 compliance. Ms. Belloli is currently representing a landowner as plaintiff in a hazardous substance cleanup action against a dozen parties in federal court in Northern California.



**Tim Findley's** practice currently focuses on representing the firm's clients in the Public Agency and Litigation Practice Areas. Mr. Findley represents landowners in water rights and environmental issues. He is currently involved in several Fifth Amendment takings cases, involving land use and federal property. He has researched and analyzed legal issues for several ongoing water rights disputes in state and federal courts, and helped prepare a petition for writ of certiorari submitted to the U.S. Supreme Court.

Examples of cases managed by Hanson Bridgett attorneys include:

**Golden Gate Way v. Steuart, et al.** Catherine Johnson, Michael Van Zandt and Sophia Belloli represent the owner of several facilities where contamination was discovered from dry cleaning operations. The matter is being investigated by the Regional Water Quality Control Board and a compliance order will be issued. Ms. Johnson, Mr. Van Zandt and Ms. Belloli are working to form a Potentially Responsible Party Committee and to resolve the case through mediation and a comprehensive cleanup settlement agreement.

**Golden Gate Bridge, Highway and Transportation District.** The Golden Gate Bridge, Highway and Transportation District (District) has been responding to a multi-million dollar lead removal and remediation program under a Voluntary Cleanup Program (California Health and Safety Code, Chapter 6.8, section 25355.5(a)(1)(C)) with the California Department of Toxic Substances Control (DTSC). The firm has assisted the District in all phases of the Voluntary Cleanup Program, including site evaluation, risk analysis and the environmental response, removal and remediation process. Rory Campbell is providing day to day legal advice to the District for remediation of contamination that occurred over the years from removal of paint from the Golden Gate Bridge that contained heavy metals. In addition, we have defended the District in connection with Clean Water Act claims (including Citizen Suit claims) and are actively assisting it in managing remedial orders affecting multiple sites in Marin County and Sonoma County.

***McClellan Ecological Seepage Situation v. Air Force.*** Michael Van Zandt was the lead agency attorney on this \$1,000,000,000 fines and penalty case brought by a citizens group against the Air Force. The case was venued in federal district court in Sacramento, California before Judge Gonzalez. Among the issues tried in the case were thousands of alleged violations of the NPDES permit and hazardous waste violations. The case was partially defended on summary judgment by asserting that the plaintiff was seeking pre-enforcement review of the Superfund cleanup activities which were already under way at the base. On the issue that went to trial, the defendant prevailed and the decision was upheld on appeal.

***State of Ohio v. Department of Defense.*** This case dealt with solid waste landfills on a large Air Force Base in Ohio. The state alleged that the landfills must be remediated under the Federal Facilities provisions of the Superfund Amendments and Reauthorization Act. Michael Van Zandt negotiated a Federal Facility Compliance Agreement to successfully resolve the issue for the Department of Defense.

***Federal Facility Compliance Agreements.*** As a federal attorney, Michael Van Zandt helped negotiate several Federal Facility Compliance Agreements with the States of California, Texas, Georgia, and Utah. The facilities were all listed as designated Priority Sites under the federal Superfund law. Mr. Van Zandt was responsible for providing legal advice to six major aircraft industrial maintenance facilities to oversee Superfund remedial investigations and actions.

***County of Sonoma v. Mozarella Fresca.*** This case involved solid wastes from a cheese manufacturing plant. Our attorneys successfully obtained the necessary permits under state law for the disposal of the waste and negotiated a unique disposal contract with an adjoining landowner that allowed some of the waste product to be disposed on land.

***Richmond Yacht Harbor v. Department of Toxic Substances Control.*** This case involved action for cleanup of lead contaminated soil caused by boat maintenance at an adjacent facility. This case proceeded under Superfund for cleanup cost recovery against boat maintenance yard. On the administrative side, Hanson Bridgett lawyers worked with DTSC to remediate the lead contaminated soil.

***State of California v. John Alexander Research Company.*** This case involved Superfund cost recovery action filed by the state against a site controlled by defendant. This case was argued to the Ninth Circuit Court of Appeals on various issues regarding cost recovery.

***Solano County v. CST Environmental, Inc.*** This case involved allegations of midnight dumping of asbestos contaminated building material. Michael Van Zandt successfully convinced the District Attorney that CST was not involved in the dumping and the case was dismissed.

***United States v. Basic Foods.*** This case involved dumping of toxic substances in a landfill in barrels marked with defendant's logo. Michael Van Zandt convinced the regulators that the barrels were empty and were used by another entity to dispose of waste.

**United States v. A & W Smelter and Refiners, Inc, et al.** This criminal case was brought by the United States against a smelting and refining company in an eight count indictment accusing defendants of exporting hazardous waste to Mexico without a license, illegal dumping of hazardous waste, mail fraud, and conspiracy. Michael Van Zandt represented A & W Smelter and Refiners, Inc. The case was tried in Federal District Court for the Southern District of California before a jury over a six week period. The jury found unanimously that the defendants were not guilty.

**California Air Resources Board v. Air Force.** This case involved open air testing of aircraft jet engines and alleged violations of particulate loading and other pollutant emissions by jet engines. Michael Van Zandt negotiated an agreement that allowed the continuation of testing and the simultaneous construction of a facility to house the jet engines that would capture the emissions.

**Sierra Club, et al. v. Department of Defense.** This case was brought by environmental groups in Hawaii to halt testing of targets for the Anti-Ballistic Missile Defense System. The case was venued in federal district court in Hawaii before Judge David Ezra. Michael Van Zandt, representing the Office of Secretary of Defense, successfully defended an environmental assessment which had been prepared to support the testing.

**McClellan Air Force Base v. DTSC.** This case involved administrative enforcement action by DTSC to retrieve and cleanup contaminated soil removed from the base by a contractor and deposited as "clean fill" at numerous locations around the city. Michael Van Zandt negotiated the remedial actions to be taken by the base.

**Peninsula Corridor Joint Powers Board (JPB).** Over the last 18 years, our firm has assisted the JPB in all phases of environmental due diligence required to complete the approximately \$250 million acquisition of the right-of-way. Our activities have included working with the DTSC and the Board on behalf of the JPB in developing the newly acquired satellite properties for operational and maintenance facilities (CEMOF/Lenzen Yard), as well as transit-oriented multi-use development projects. The regulatory work included establishing soils management and groundwater remediation plans with the DTSC and the Board for sites impacted by hydrocarbon, heavy metals and solvents.

As noted above, we have been actively involved in numerous projects where significant environmental impairment of property had to be addressed in connection with development of the property. This has been true for the transit-oriented projects in Colma and San Carlos, for the BART SFO Extension project, and for various mass transit corridor projects involving the VTA.

Additionally, our firm has been representing the JPB in connection with an Imminent and Substantial Endangerment Determination and Order (California Health and Safety Code section 25358.3) issued by the DTSC relating to a failed recycling facility previously owned and operated by Gibson Environmental. The DTSC issued the order to force various parties to clean up contamination at this site after Gibson Environmental's business failed and its owners and operators disappeared, leaving very large quantities of unrecycled waste materials. The JPB was obligated to defend Amtrak against the DTSC's cleanup order under an indemnity arrangement with Amtrak for passenger services on Caltrain. Our firm's role included interacting with the DTSC in responding to the obligations of a potentially responsible party, Amtrak, under the DTSC's cleanup order, including helping to establish a cooperative arrangement with other potentially

responsible parties (PRPs) that the response and remediation obligations were administered under a PRP trust. This representation has recently been successfully completed.

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**SUMMARY OF APPROACH**

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Hanson Bridgett is well versed in the oversight and compliance with Cleanup and Abatement Orders associated with contaminated sites. Hanson Bridgett attorneys would provide legal advice and guidance to the City of Benicia on how to comply with the cleanup orders. Hanson Bridgett lawyers would work closely with the environmental consultants to ensure that their written products and deliverables meet all federal and state requirements and are fully compliant with the National Contingency Plan. Hanson Bridgett attorneys would negotiate with the Department of the Army a fully compliant Federal Facility Compliance Agreement, which would guarantee that all remedial objectives are met and that funding commitments by the Army are fulfilled. We recommend that the law firm that is hired to assist the City be totally independent from any project managers or consulting firms. In this way, the law firm has only one client and that is the City. There would be no conflict of interest issue if the law firm is completely independent of the environmental consultants. Hanson Bridgett would track every step of the process ordered by the Department of Toxic Substances Control (DTSC) regarding the Imminent and Substantial Endangerment Determination and Remedial Action Order, and would ensure compliance with every milestone. Hanson Bridgett attorneys would also participate in the public participation and Community Relations Plan phases of the project to ensure the interests of the City are represented, and to guide the discussion and information that is presented to the public.

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**DESCRIPTION OF ORGANIZATION, MANAGEMENT AND TEAM MEMBERS**

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We propose having Michael Van Zandt serve as the overall legal team leader. He will also be the day to day contact for the City. He will be assisted by Rory Campbell, Catherine Johnson, Nathan Metcalf, Sophia Belloli, and Tim Findley. Hanson Bridgett also will use paralegals where their skill levels will be sufficient to accomplish any tasks. Qualifications of the team members are described in the previous section of the Proposal.

The first task is to negotiate a binding agreement with the Department of the Army that protects the interests of the City. Michael Van Zandt will be responsible for this task with assistance from Nathan Metcalf and Sophia Belloli.

The second task to be performed simultaneously with the first is to negotiate a compliance agreement with DTSC that limits the City's exposure and clearly sets forth the responsibilities that the City must fulfill in order to comply with any orders from DTSC that are directed at the City.

The third task is to review any work plans proposed by the Army to ensure that they meet the requirements of the National Contingency Plan and California Health and Safety Code sections 25300 et seq. Michael Van Zandt, Nathan Metcalf and Sophia Belloli will accomplish this task.

As various tasks and documents are generated by the environmental consultants, Hanson Bridgett will review each task for compliance with the orders, regulations and agreements. At various times, Catherine Johnson will review deliverables from the consultants along with Nathan Metcalf and Sophia Belloli. This process will be managed by Michael Van Zandt.

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### **ORGANIZATION QUALIFICATIONS**

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Relevant organizational experience is outlined in the prior section. More specifically, the experience of Mr. Van Zandt regarding Federal Facility Compliance Agreements and the relevant experience he has concerning the NCP process will be used in the project to assist the City to ensure compliance with regulatory requirements. Mr. Van Zandt's work for the Department of Defense and his intimate knowledge of the inner workings of the Department of the Army will enhance his ability to guide the City through the remediation process. Notable among the projects Mr. Van Zandt has worked on are the remediation of McClellan Air Force Base in Sacramento. The cleanup of the base is still ongoing. However, Mr. Van Zandt was instrumental in the early phases of the remediation in guiding the base personnel on the many facets of compliance with the NCP and Federal Facility Compliance processes. Mr. Van Zandt also provided his experience and knowledge to four other Superfund sites across the nation. This experience included Hill Air Force Base, Utah, Warner-Robbins Air Force Base, Georgia, Wright-Patterson Air Force Base, Ohio, and Kelly Air Force Base, Texas. As an indication of Mr. Van Zandt's expertise, after leaving active duty, Mr. Van Zandt was offered the position as Project Manager for the cleanup of McClellan AFB by CH2M Hill, the environmental contractor selected by the Air Force to accomplish the remediation at McClellan AFB.

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### **SCOPE OF WORK**

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Hanson Bridgett proposes to provide legal advice to the City at every phase of the remediation. In addition, Hanson Bridgett will review and provide comments on each deliverable from the environmental consultants, and will provide written opinions on the legal sufficiency of each deliverable. This will start with the RI/FS Workplan that is due within 60 days of the Site Remediation Strategy Meeting. Hanson Bridgett will provide a monthly report on activities and milestones, and comment on the compliance by the environmental consultants with the schedule and with substantive requirements under the NCP, the regulations, the orders, and the agreements. Hanson Bridgett will be providing legal advice on the California Environmental Quality Act process and ensuring that all requirements for the required environmental impact report are met. Hanson Bridgett will make periodic site visits to the site to ensure strict compliance with all applicable remediation and disposal requirements. Where additional permits and approvals are required, Hanson Bridgett will ensure that the consultants obtain them. Moreover, Hanson Bridgett will help ensure that the consultants are in strict compliance with all health and safety plans, as well as all Remedial Action Plans approved by the regulators.

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### **PROPOSED PROJECT SCHEDULE**

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Hanson Bridgett will track the proposed schedule from the environmental consultants to ensure strict compliance with all scheduled tasks. Hanson Bridgett will review all

monthly reports from the consultants to ensure they are reporting progress accurately, and will provide a written report to the City if there are anomalies noted or deviations from plans. Since the RI/FS Workplan will set out the main schedule for activities to track, Hanson Bridgett will follow the approved schedule from DTSC and ensure that the City is updated on progress.

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**PROPOSED BUDGET**

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Hanson Bridgett proposes to charge its time on the project by the hour. Hourly billing rates for partners will be \$350.00 per hour. Associates will bill at \$275 per hour and paralegals at \$190.00 per hour. This reflects a significant discount from our standard rates. Hanson Bridgett will also consider a blended rate of \$300.00 per hour for attorneys. Task billing can be applied to monthly reports, with no report costing more than \$2,500.00 for each report. Costs, such as travel, copying, telephone, and outside costs will be billed at the cost to the firm.

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**REFERENCES, RELATED EXPERIENCE AND EXAMPLES OF WORK**

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Below are our references. Please refer to previous sections for experience and examples of work.

For McClellan AFB work:

Former Staff Judge Advocate McClellan AFB  
Joseph G. Euretig, Esq., Colonel, USAF, Retired  
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For Golden Gate Bridge, Highway and Transportation District work:

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For Peninsula Corridor Joint Powers Board (JPB) work:

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