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Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

6
7 Attorneys for Plaintiff
CITY OF SAN DIEGO
8

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 CITY OF SAN DIEGO, a Charter City and) Case No.
municipal corporation,)
12 Plaintiff,) **PLAINTIFF CITY OF SAN DIEGO'S**
13 v.) **COMPLAINT FOR:**
14 MANCHESTER PACIFIC GATEWAY, LLC;) **1. BREACH OF WRITTEN**
MANCHESTER FINANCIAL GROUP; AMG) **CONTRACT**
15 DEMOLITION & ENVIRONMENTAL) **2. BREACH OF ORAL CONTRACT**
SERVICE, INC.; and DOES 1 through 10,) **3. INDEMNITY/CONTRIBUTION**
16 inclusive,) **4. DECLARATORY RELIEF**
17 Defendants.)
18)
19)

20 **INTRODUCTION**

21 1. This lawsuit seeks recovery for significant expenditures and damages the City of
22 San Diego incurred to abate environmental contamination that defendants caused and were
23 responsible to clean up. The Regional Water Quality Control Board (Regional Board) issued a
24 Notice of Violation to the City requiring the City to take action to clean up contaminated soil that
25 defendants brought to the City's closed Chollas landfill. City seeks to recover the money it
26 expended to remedy the violation and to recover additional monetary damages the City sustained
27 as a result of defendants' actions.

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PARTIES

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2 2. Plaintiff City of San Diego is a Charter City and municipal corporation with all
3 the municipal powers, functions, rights, privileges, and immunities authorized to be granted to
4 municipal corporations by the Constitution and laws of the State of California.

5 3. City is informed and believes, and based thereon, alleges that Defendant
6 Manchester Pacific Gateway, LLC is a Delaware limited liability company registered and doing
7 business in the State of California with a principal place of business in San Diego, California.

8 4. City is informed and believes, and based thereon, alleges that Defendant
9 Manchester Financial Group is the sole member and/or managing member of Defendant
10 Manchester Pacific Gateway, LLC. Both Manchester defendants are referred to collectively in
11 this complaint as MPG.

12 5. City is informed and believes, and based thereon, alleges that MPG is the
13 developer/lessee of a waterfront redevelopment project on the North Embarcadero in the City of
14 San Diego commonly referred to as the Manchester Pacific Gateway-Navy Broadway Complex
15 project (Project).

16 6. City is informed and believes, and based thereon, alleges Defendant AMG
17 Demolition & Environmental Service, Inc. (AMG), is a California corporation with a principal
18 place of business in San Diego, California. Defendant AMG is a contractor, subcontractor,
19 affiliate and/or agent of MPG and was retained to provide demolition and environmental services
20 at the Project site.

21 7. The true names and capacities, whether individual, corporate, associate, or
22 otherwise of the defendants named herein as DOES 1 through 10, inclusive, are unknown to
23 City, who therefore sues said defendants by such fictitious names. City will seek leave to amend
24 this Complaint to state the true names and capacities of the fictitiously named defendants when
25 the same are ascertained. City is informed and believes, and based thereon alleges, that such
26 fictitiously named defendants are in some manner liable for the acts hereafter alleged.

27 8. City is informed and believes, and thereon alleges, that at all times mentioned in
28 this Complaint, Defendants, and each of them, were and are agents, principals, representatives,

1 contractors, subcontractors, affiliates, partners, trustees, associates, employers and employees of
2 each other, all acting within the course and scope of such capacities, within the actual or apparent
3 authority of such capacities.

4 **JURISDICTION AND VENUE**

5 9. Under Article VI, § 10 of the California Constitution, subject matter jurisdiction is
6 proper in the Superior Court of California, County of San Diego, State of California.

7 10. Venue is proper in this Court because certain wrongful acts which gave rise to
8 City's injuries occurred in San Diego, California; Defendants each have a principal place of
9 business in the City of San Diego, County of San Diego and/or do substantial business in San
10 Diego, California at all relevant times.

11 **FACTUAL ALLEGATIONS**

12 City is informed and believes, and based thereon, alleges:

13 11. This lawsuit stems from soil waste generated from defendant MPG's Manchester
14 Pacific Gateway-Navy Broadway Complex project which is located along the waterfront at
15 Broadway and Harbor Drive on the North Embarcadero of the San Diego Bay. The Project is the
16 largest private waterfront development on the West Coast and spans nearly 14 acres. MPG
17 agreed to develop the site pursuant to a 99-year lease agreement with the Navy, which included
18 construction of the Navy's Regional Headquarters building on about 2.5 acres of the overall site.
19 The remainder of the site consists of private development.

20 12. In or around May 2018, MPG's subcontractors and/or agents began showing up at
21 the City's Miramar landfill to dispose of soil that it characterized as "clean native soil" from the
22 Project site. The City did not accept clean soil at the Miramar landfill (except on a limited basis
23 for cover soil) because the City was trying to prolong the capacity at the Miramar landfill, which
24 is presently scheduled to close in 2031. There are typically many other options for disposal of
25 clean soil.

26 13. MPG insisted it was entitled to soil disposal for free pursuant to the 1995 Landfill
27 Ground Lease between the City and the Navy, which allows the Navy to dispose of certain
28 Navy-generated waste from nearby Naval Installations at the Miramar landfill at no expense to

1 the Navy. The City disagreed with MPG’s assertion it was entitled to free clean soil disposal at
2 the Miramar landfill but agreed to take a limited amount of other construction waste from the
3 Project site at the Miramar landfill to accommodate MPG. However, the City insisted that clean
4 soil be disposed of elsewhere.

5 14. For several months, the City negotiated with MPG regarding “clean soil”
6 disposal. Ultimately, the City agreed to allow MPG to deposit 130,000 cubic yards of “clean
7 native soil” or “Waiver-10 soil” at its Chollas landfill. So long as the soil met the requirements
8 for Waiver-10 or clean native soil, it could be used as cover soil at the otherwise inactive Chollas
9 landfill.

10 15. In August 2018, the Regional Board issued a Solid Waste Waiver to MPG for the
11 discharge of Tier 1 inert waste soil generated from its Project site pursuant to the Regional
12 Board’s Waiver-10 Program. The letter instructed the discharger (Manchester Financial Group)
13 that the soil conditions must comply with the Waiver-10 requirements.

14 16. Amongst other requirements, the Waiver-10 program, which was codified in
15 Regional Board Order No. R9-2014-0041, requires the discharger (in this case MPG and AMG)
16 to comply with all local, state, and federal laws and expressly prohibits the discharge of soils
17 containing “free liquids,” meaning liquid that readily separates from the solid portions of the soil.
18 Applicable state laws include Regional Board WDR Order R9-2012-0001 which states that soils
19 stockpiled and used for cover at a closed landfill shall not contain waste and California Code of
20 Regulations Title 27 solid waste regulations which prohibit the deposit of any new waste at a
21 closed landfill.

22 17. On or about November 7, 2018, defendant AMG, a contractor and/or agent for
23 MPG, executed a Right of Entry permit (ROE) with the City to deliver Waiver-10 or clean native
24 soil from the Project site at the Chollas landfill. The City agreed to waive any permit processing
25 fees for the ROE because it believed that accepting clean soil at the closed Chollas landfill for
26 cover soil in lieu of disposal at the Miramar landfill to preserve its future capacity was a public
27 benefit which would justify the City waiving the associated processing fees.

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1 18. Import of the purported Waiver-10 or clean soil from the Project site to the
2 Chollas landfill took place between October 2018 and January 2019. Unfortunately, the soil that
3 AMG brought to the Chollas landfill did not meet Waiver 10 clean soil requirements or comply
4 with Regional Board WDR Order R9-2012-0001. For example, the “clean soil” that defendants
5 caused to be brought to the Chollas landfill contained visible trash and construction debris mixed
6 into the soil that defendants asserted was clean soil. Moreover, to qualify as cover soil at the
7 Chollas landfill, the soil could not contain any free liquids, yet, the soil that defendants brought
8 to the Chollas landfill was so saturated with liquids that it was dripping from the trucks along the
9 route to the landfill and emitted a foul odor after it was deposited.

10 19. The Solid Waste Local Enforcement Agency (LEA) and the Regional Board
11 directed the City to stop import of the soil on several occasions due to the waste and free liquids
12 contained in the soil. Although defendants made some nominal efforts to remove trash and debris
13 from the soil to resume import and appease the regulatory agencies, ultimately, they continued to
14 bring non-compliant soil to the Chollas landfill. Defendants did not bring any further soil to the
15 Chollas landfill after the regulatory agencies complained and the City shut down the import
16 again in January 2019.

17 20. Between February 2019 and May 2019, the regulatory agencies issued five reports
18 identifying violations, including a cease-and-desist order. The City tried to work with defendants
19 to give them the opportunity to correct the violations. Defendants refused to acknowledge the
20 soil did not meet the requirements for cover soil at the Chollas landfill and continued to assure
21 the City that they had only delivered clean soil, despite the regulators’ recurring, documented
22 observations to the contrary.

23 21. In July 2019, the LEA issued a letter that explained that due to waste and physical
24 contaminants observed in the soil imported from the MPG Project and diminished confidence
25 that the Project was adhering to proper soil management protocols, the LEA directed that the
26 following actions be completed to the satisfaction of the LEA: (i) an investigation of the soil
27 imported from MPG’s Project site, submission of a technical report detailing its condition, and

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1 preparation of a workplan and abatement of existing contaminants; or (ii) removal of all Project
2 material and cessation of further soil import.

3 22. Throughout the summer and fall of 2019, the City continued to ask defendants to
4 respond to the LEA's directives and remedy the violations. Although defendants repeatedly
5 assured the City that they would fix the issues, defendants made no further remediation efforts.

6 23. Since defendants failed to take any responsibility for the waste soils they had
7 delivered to Chollas landfill or to respond to the LEA's directives, the City was forced to hire
8 consultants to investigate the soil imported from the MPG's Project site and to provide the soil
9 investigation report the LEA required.

10 24. Following the City's submission of the soil investigation report, the Regional
11 Board issued a Notice of Violation (NOV) to the City on November 12, 2020, requiring the City
12 provide a corrective action plan (CAP) by January 27, 2021.

13 25. The NOV noted that the City's soil investigation report confirmed the existence of
14 physical wastes including debris of wood, concrete asphalt, metal, and plastic in the imported
15 soil. The NOV further stated that failure to comply will lead to formal enforcement action
16 including, but not limited to, issuance of a Cleanup and Abatement Order, assessment of
17 Administrative Liability, and referral to the State Attorney General or the District Attorney for
18 injunctive relief or criminal prosecution.

19 26. The City immediately notified MPG and asked MPG to prepare the CAP, but
20 MPG stalled claiming that they would work with the Regional Board to address the violation.
21 However, MPG did not provide any draft of a CAP to the City or otherwise show that it was
22 addressing the issues, thereby forcing the City to prepare its own CAP to meet the deadline that
23 the Regional Board had set. The City submitted its CAP by the January 27, 2021 due date as
24 required by the Regional Board's order. In compliance with the only feasible option the LEA
25 presented, the CAP proposed removal of all MPG imported soil from the Chollas landfill and
26 regrading and revegetation of the cover soil.

27 27. About three months later, after the Regional Board and the LEA had approved the
28 City's CAP, MPG told the City it intended to propose a different corrective action plan at some

1 unspecified future date. The City requested that MPG provide its plan in writing and in a form
2 acceptable for submission to the regulatory agencies.

3 28. Instead of proposing one of the options directed by the regulatory agencies,
4 MPG's plan proposed to just bring in more "clean soil" to cover over the soil they had already
5 brought in and for which the regulatory agencies had already issued violation notices.

6 29. MPG assured the City the Regional Board would approve of the approach they
7 proposed. Although the City did not believe that MPG's plan addressed the violations, the City
8 reached out to the Regional Board to see if they would consider MPG's plan. On June 4, 2021,
9 the Regional Board sent an email saying MPG's plan was not viable. The City then moved
10 forward to implement the City's already approved CAP.

11 30. Between October 2021 and February 2022, the City had the non-qualifying soil
12 from the Chollas landfill removed and completed site stabilization and hydroseeding. The City
13 had to dispose of the non-qualifying soil at the Miramar landfill at the City's sole expense
14 because defendants refused to implement the approved CAP and/or pay to remedy the violations
15 they caused. The City also had to regrade and revegetate the Chollas landfill cover soil to bring it
16 back into compliance.

17 31. The City submitted a CAP completion report in March 2022. The City sent a
18 demand letter to MPG in May 2022 demanding that it reimburse the City for the expenses it had
19 incurred to prepare and implement the CAP to correct the problems MPG created. MPG did not
20 acknowledge their obligation to reimburse the City.

21 32. In September 2022, the Regional Board notified the City that it considered the
22 violations remedied. The City again demanded that MPG pay for the damages it had caused and
23 which were now certain and had been incurred.

24 33. The parties attempted to negotiate a resolution including via an agreement to
25 participate in a private, pre-litigation mediation. The parties entered into a tolling agreement in
26 March 2023 while they tried to mediate the dispute.

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1 40. The ROE required AMG to comply with all applicable laws, rules, regulations,
2 and directives of governmental authorities at its sole cost and expense.

3 41. The ROE prohibits AMG from allowing the illegal installation or storage of any
4 regulated substances (which includes waste when used for landfill cover as occurred here) in or
5 on the permit area.

6 42. AMG also agreed to protect, defend, indemnify and hold City harmless from any
7 and all claims, costs and expenses related to environmental liabilities resulting from AMG's
8 disposal of soil. AMG's obligations included without limitation, costs of environmental
9 assessments, costs of regulatory remediation oversight, costs of remediation and removal, and
10 any necessary City response costs.

11 43. The ROE required AMG to be responsible for the repair of any damage it caused
12 to the permit area.

13 44. The Regional Board issued a Notice of Violation to the City on November 12,
14 2020, for the violations that occurred because of AMG's disposal of Project soil at the Chollas
15 landfill, demanding a Corrective Action Plan to be submitted on or before January 27, 2021.
16 Despite numerous efforts to obtain AMG's compliance to respond to the Regional Board's
17 Notice of Violation, the City finally had to prepare its own Corrective Action Plan and submit it
18 to the Regional Board for approval. The CAP called for removing the Project soil from the
19 Chollas landfill and disposing of it elsewhere, as well as regrading and revegetating the Chollas
20 landfill.

21 45. The Regional Board approved the City's CAP in February 2021; the LEA
22 approved it in March 2021. The City implemented the CAP between October 2021 and February
23 2022 and submitted its CAP completion report to the regulators in March 2022. The Regional
24 Board notified the City the violations were remedied in September 2022.

25 46. The City sent a demand letter to AMG in May 2022 seeking recovery of its costs
26 and expenses incurred to defend and remediate the violations the Regional Board cited but AMG
27 refused to make any payment whatsoever despite its obligations to do so under the ROE. This
28 constitutes a breach of AMG's obligations under the ROE.

1 the Chollas landfill a public benefit as it would avoid impacting the capacity of the Miramar
2 landfill.

3 53. But for MPG's representations and promises that the soil qualified as clean native
4 soil and/or Waiver-10 soil, the City would not have allowed the soil to be deposited at the closed
5 Chollas landfill. Indeed, only clean native soil and/or Waiver-10 soil could be deposited at the
6 otherwise inactive Chollas landfill.

7 54. Once the City and MPG had reached an agreement on where to take the soil,
8 MPG had defendant AMG carry out the soil exportation to the Chollas landfill.

9 55. MPG applied for and was enrolled into the Regional Board's Waiver-10 program
10 which provided further justified reliance on MPG's promises that the soil was appropriate to use
11 as cover soil at the inactive Chollas landfill.

12 56. MPG breached its agreement with the City by failing to take corrective measures
13 after the Regional Board issued a Notice of Violation and by failing to reimburse the City for its
14 expenses incurred in correcting the violation. MPG caused soil that did not meet the Waiver-10
15 requirements to be deposited at the Chollas landfill and failed to remedy the violations after the
16 Regional Board issued a Notice of Violation to the City. Even though the City gave MPG
17 several opportunities to do so, MPG never remedied the violation and the City had no choice but
18 to take corrective action after the Regional Board issued its Notice of Violation. The City
19 appropriately demanded reimbursement once the Regional Board confirmed that the violation
20 was corrected and MPG breached its agreement with the City by failing to reimburse the City for
21 the expenses the City incurred to fix the problem that was solely created by MPG and its
22 subcontractors.

23 57. City was damaged because it was forced to prepare a CAP and implement it to
24 correct the violations MPG and AMG caused at the taxpayers' expense. City incurred over
25 \$1,000,000 in out-of-pocket expenses to remedy the violations; the exact amount of which will
26 be proven at trial. MPG's actions/inactions and promises were a substantial factor causing City's
27 damages.

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- 4. For all costs of suit incurred herein; and
- 5. For any other relief that the Court deems just and proper.

Dated: February 22, 2024

MARA W. ELLIOTT, City Attorney

By Jenny K Goodman
Jenny K. Goodman
Lead Deputy City Attorney

Attorneys for Plaintiff City of San Diego