

DEPARTMENT OF INDUSTRIAL RELATIONS

**Katrina S. Hagen, Director**

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November 10, 2021

Alex Navarro  
City of San Diego  
Contract Compliance Officer  
1200 3rd Ave., Suite 200  
San Diego, California 92101

Re: Public Works Case No. 2017-034  
Puretec Industrial Water Tanks Replacement and Related Services  
City of San Diego

Dear Mr. Navarro:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to California Labor Code section 1773.5<sup>1</sup> and California Code of Regulations, title 8, section 16001, subdivision (a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the Puretec Industrial Water Tanks Replacement and Related Services for the City of San Diego (City) are subject to prevailing wage requirements.

### Facts

#### **A. The City's Water Treatment System.**

The City's Environmental Monitoring & Technical Services' Division (EMTS) has several water treatment facilities. Some facilities require deionized (DI) water systems to obtain highly pure water, which is critical for various types of laboratory testing, including drinking water testing, and for testing samples of marine water, storm water, and wastewater.

The City meets its needs for DI water via a water treatment system, which is affixed to its buildings. The DI water treatment system begins when tap water is deionized by passing through carbon and resin tanks and filters. Bacteria is removed by filtration or UV disinfection. In order to remove organics, the water passes through a 5 micron filter then travels by hose to activated carbon tanks. The water continues by hose through several DI resin tanks, and then to the final 0.2 micron filter before it travels directly to the

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the California Labor Code.

laboratory for use or to a holding tank. These filters are 20 inches in height and are changed twice a year. Changing the filters merely requires unscrewing the lid of the container, which holds the filter. The City estimates that it takes several minutes for each filter to be replaced.

In addition to removable filters, other removable components of the water system are the carbon and resin tanks, which measure 14 inches in diameter and 48 inches in height. These tanks are connected to each other through hoses and to the building water line through pipes. They can be removed with the aid of a pipe wrench. Once the contents of the tanks have been exhausted, the tanks are replaced with new ones.

Aside from DI water, the City's Naval Training Center Harbor Drive (NTC Harbor) Lab requires a soft water system to supply soft water to the autoclaves—i.e. equipment that is used to sterilize media, reagents, buffers and lab-ware. This process is necessary to complete microbiological analysis, as well as to sterilize biohazardous waste.

#### **B. Puretec's Services Under the Contract.**

The City's contract called for Puretec to supply both soft water and resin and carbon tanks, to change water filters, sleeves, UV lamps, and sanitizing distribution loops, and to perform quality control checks for leaks on the water treatment system. Contract documents characterized the work as "rental and maintenance service of high quality DI and soft water tanks." Puretec itself referred to its proposal for these services as "preventative maintenance" proposals. Prevailing wage requirements were incorporated into the contract.

Besides changing the removable filters and the carbon and resin tanks, Puretec was required to perform "total chlorine tests," as well as hardness tests on the soft water system. The City estimates that completing the "total chlorine tests" took approximately 15 minutes. Puretec performed the "total chlorine tests" and replacement of the removable filters and tanks during the same visit to the City's facilities. Specifically at the NTC Harbor location, the DI System required inspection and data recording on a monthly basis. Puretec recorded numerical measurements (conductivity) as well as recorded any noteworthy observations, such as whether an indicator light appeared on any of the tanks. This data was read from the control panel, gauges or indicator lights attached to the tanks provided by Puretec. According to invoices provided by Puretec for services at the NTC Harbor location, Puretec estimated that it spent .25 hours per month for "maintenance." Puretec estimated that for each service visit to various facilities, its technicians generally spend 17 to 32 minutes.

As discussed, Puretec also inspected for leaks, but only on the tanks it provided. If Puretec happened to discover a leak on the permanently affixed equipment, Puretec notified the City. Puretec did not perform any repairs to the leaks. The City occasionally called Puretec on a non-scheduled delivery date to replace tanks when the tanks were depleted earlier than expected. On an annual basis at the NTC Harbor location, Puretec was also responsible for replacing a UV quartz sleeve and a UV lamp.

### Discussion

All workers employed on public works projects must be paid at least the prevailing wage rates applicable to their work. (§ 1771.) The standard and most common definition of “public works” is construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. (§ 1720, subd. (a)(1).)

Maintenance work is also a type of public work, and the prevailing wage law expressly applies to “contracts let for maintenance work.” (§ 1771; *Reliable Tree Experts v. Baker* (2011) 200 Cal.App.4th 785, 795-796 (*Reliable Tree*).) A regulation defines “maintenance” to include:

(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

Exception:1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.

Exception:2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

(3) Landscape maintenance. See Public Contract Code Section 21002.

Exception: Landscape maintenance work by "sheltered workshops" is excluded.

(Cal. Code Regs., tit. 8, § 16000 (hereafter Regulation 16000).)

There is no dispute that the industrial water tanks replacement work at issue is done under contract and paid for out of public funds. The issue is whether the water tank work constitutes maintenance or installation under the prevailing wage law.

#### **A. Filter, Sleeve, and Lamp Replacement Work is Routine and Recurring Work that Keeps Public Facilities in a Safe and Continually Usable Condition.**

The UV quartz sleeve and UV lamp are replaced every year, while the “micron” pre and post filters are replaced twice a year. Replacing those components is considered routine and recurring work and is performed directly on the water treatment system. A

worker unscrews the filters, UV quartz sleeve, and UV lamp set using hand tools and then reattaches new ones. The process is not unlike replacing a component in a plumbing system, such as a gasket or a cartridge in a plumbing fixture. While the work can be quickly performed with skilled hands, the work would nonetheless properly be considered a type of craft work. (See Cal. Code Regs., tit. 16, § 832.26 [describing work for which a C-36 Plumbing Contractor license is required].) Since 1988, Puretec has possessed a C-36 Plumbing Contractor license from the Contractors State License Board.

Additionally, these items were needed for the “keeping” of the City’s water treatment systems, which were intended to provide pure and/or ultra pure water in order for the City to conduct its testing and sterilize its laboratory equipment. Since the purpose of these replacements is for the City to keep its water treatment systems in the conditions for which they had been designed for – to provide pure and ultra pure water – this work constitutes maintenance as defined in Regulation 16000 either under the first definition as “routine, recurring and usual work” or under the second definition as “craft work.”

**B. The Water Testing and Water System Leak Inspection Also Constitute Maintenance.**

The “total chlorine tests” and hardness tests on the soft water system were not done solely to determine the water quality from the water treatment system, but mainly to ensure that the water treatment system was operating as intended. In that sense, the “routine, recurring and usual” tests were done for the “preservation, protection and keeping” of the water treatment system for “its intended purposes in a safe and continually usable condition for which it” was designed and installed. (Regulation 16000.) Inspecting the affixed water system for leaks was done for the same purpose. Following the reasoning set forth by a federal district court,<sup>2</sup> the Department has concluded in several determinations that routine, standalone inspection and testing of fire alarm, fire sprinkler, and fire pump systems is considered maintenance. (See PW 2015-012, *Sprinkler Inspection, Testing, and Maintenance Work - City of Santa Rosa* (Oct. 30, 2015); PW 2015-007, *Stand-Alone Testing and Inspection of Fire Alarm Systems - California Department of Corrections and Rehabilitation* (June 26, 2015); PW 2019-021, *Napa State Hospital Fire Alarm and Fire Pump Testing Services - Department of State Hospitals* (May 20, 2020).) The conclusions reached in those determinations apply equally to the testing and inspection work described above.

**C. Tank Replacement is an Essential Part of the Maintenance Contract for the Water Treatment System.**

Puretec’s replacement of the water tanks and inspecting them for leaks were recurring and routine tasks. While the work superficially involved only removable components of the affixed system, the work was necessary to ensure that the water

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<sup>2</sup> The United States District Court for the Northern District of California rejected the argument that “maintenance work cannot constitute “public work” unless it involves construction-related activity” and concluded that standalone testing and inspection of fire alarms is considered maintenance. (*Bennett v. SimplexGrinnell LP* (N.D. Cal., Mar. 5, 2014, No. 11-CV-01854-JST) 2014 WL 910354, at \*4.)

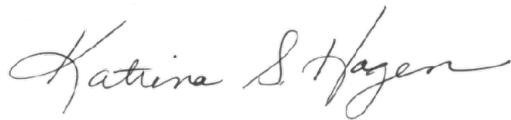
treatment system operated “in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.” (Regulation 16000.) The tasks of removing and replacing the water tanks, in conjunction with the sleeve and lamp replacement, and the water inspection, are essential to the preventative maintenance work necessary for the upkeep of the water treatment system.

### **Conclusion**

For the foregoing reasons, the Puretec Industrial Water Tanks Replacement and Related Services for the City of San Diego are subject to prevailing wage requirements.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Katrina S. Hagen".

Katrina S. Hagen  
Director of Industrial Relations