

BOARD OF WATER SUPPLY

TOM SHIGEMOTO CHAIR
JULIE SIMONTON, VICE CHAIR
KURT AKAMINE, SECRETARY

MICAH FINNILA, MEMBER
LAWRENCE DILL, MEMBER
KA'AINA HULL, MEMBER
TROY TANIGAWA, MEMBER



JOSEPH E. TAIT
MANAGER AND CHIEF ENGINEER

REGULAR MONTHLY MEETING NOTICE AND AGENDA

Thursday, February 15, 2024
9:30 a.m. or shortly thereafter

Meetings of the Board of Water Supply, County of Kaua'i will be conducted in-person at the Department of Water Board Room, 2nd Floor located at 4398 Pua Loke Street, Lihue, Kauai, Hawaii, and remotely in accordance with Act 220, Session Laws of Hawai'i 2021 via interactive conference technology as follows:

Click on the link below to join on your computer or mobile app by VIDEO:

<https://us06web.zoom.us/j/89352665730>

Passcode: 547370

OR

Dial phone number and enter conference ID to call in and join by AUDIO:

Phone: 888 788 0099 US Toll-free

Phone Conference ID: 893 5266 5730

Please Note: If you do not provide a name, unique identifier, or alias when joining the meeting, you will be renamed to allow staff to address and manage individual guests.

In the event of a lost connection the Board will recess for up to 30 minutes to restore the connection. If the connection cannot be restored within 30 minutes, the Board will continue the meeting to 12:00 p.m. or shortly thereafter. If the visual link cannot be restored, the Board may reconvene with an audio-only link using the above dial-in phone number and conference ID. A lost connection only applies to remote connections provided as part of the remote meeting but does not apply to a public member being unable to access the meeting due to a connectivity issue on their end.

CALL TO ORDER

ROLL CALL

ANNOUNCEMENTS

Next Scheduled Meeting: Thursday, March 21, 2023 – 9:30 a.m.

APPROVAL OF AGENDA

MEETING MINUTES

1. Regular Board Meeting – January 25, 2023
2. Executive Session – January 25, 2023

PUBLIC TESTIMONY

NEW BUSINESS

1. Discussion and Adoption of Resolution No. 24-05 2023 Employee of the Year Jeffery Silva, Operations Division
2. Discussion and Adoption of Resolution No. 24-06 2023 Employee of the Year, Jonelle Taira-Kakutani, Fiscal Division
3. Manager's Report No. 24-07 Discussion and Possible Action for Adoption of Budget Resolution No. 24-07 for the acceptance and expenditure of grant monies from the State of Hawai'i Appropriations Act of 2021 – Act 88, SLH 2021 in the amount of \$2,600,000.00 for the Kapa'a Homesteads Well No. 4
4. Manager's Report No. 24-08 Discussion and Possible Action on acceptance of certain terms and conditions as stated in the Service Agreement (XiO, Inc.)
5. Manager's Report No. 24-09 Discussion and Possible Action to consider amending the Department of Water, County of Kauai, Rules and Regulations, Part 2 for Water Service Connection, Part 4 for the Furnishing of Water Service in the County of Kauai and Board Policy No. 9 titled, "Meter Reading and Rending of Bills."

STAFF REPORTS

1. Fiscal:
 - a. Monthly dashboard
 - b. Budget Report for January 2024
2. Operations – Monthly dashboard
3. Engineering – Monthly dashboard
4. Administration
 - a. Monthly dashboard
 - b. Public Relations – updates on Public Notices & Announcements, Community Outreach & Education, and Upcoming Events
 - c. Human Resources – updates on Personnel Vacancies
 - d. Information Technology
 - i. Corrective Action Plan updates
5. Manager and Chief Engineer – Required communications to the Board, and update of Department activities

TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING: *(March)*

1. Discussion and Receipt of the Department of Water's (DOW) Draft Audit Financial Statements and Independent Auditor's Report for Fiscal Year 2023

TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETING:

1. CIP Update

EXECUTIVE SESSION:

Pursuant to Hawai'i Revised Statutes (HRS) §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the Executive Session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

ADJOURNMENT

WRITTEN TESTIMONY

The Board is required to afford all interested persons an opportunity to present testimony on any agenda item. The Board encourages written testimony at least two (2) business days prior to a scheduled Board meeting. At each Board meeting, the Board will accept oral and written testimony on any agenda item during the Public Testimony portion.

Please include:

1. Your name and if applicable, your position/title and organization you are representing
2. The agenda item that you are providing comments on; and
3. Whether you are a registered lobbyist and, if so, on whose behalf you are appearing.

Send written testimony to:

Board of Water Supply, County of Kaua'i
C/O Administration
4398 Pua Loke Street
Līhu'e, Hawai'i 96766

E-Mail: board@kauaiwater.org
Phone: (808) 245-5406
Fax: (808) 245-5813

Public Testimony

You do not need to register to provide oral testimony on the day of the meeting. Please note that public testimony is taken after the approval of the meeting agenda to ensure public testimony is received before any action is taken on an agenda item. The length of time allocated to present oral testimony may be limited at the discretion of the chairperson.

SPECIAL ASSISTANCE

If you need an auxiliary aid/service or other accommodation due to a disability, or an interpreter for non-English speaking persons, please call (808) 245-5406 or email board@kauaiwater.org as soon as possible. Requests made as early as possible will allow adequate time to fulfil your request. Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy.

A horizontal splash of clear blue water with bubbles, positioned behind the text.

DRAFT

MINUTES

MINUTES
BOARD OF WATER SUPPLY
Thursday, January 25, 2024

The Board of Water Supply, County of Kaua'i, met in a regular meeting in Līhu'e on Thursday, January 25, 2024 Vice Chair Julie Simonton called the meeting to order at 9:32 a.m. The following Board members were present:

BOARD:

Mr. Kurt Akamine, *Chair*
Ms. Julie Simonton, *Vice Chair*
Ms. Micah Finnila
Mr. Ka'aina Hull
Mr. Larry Dill
Mr. Troy Tanigawa (*remote*)

EXCUSED:

Mr. Tom Shigemoto

Quorum was achieved with 6 members present at Roll Call.

ANNOUNCEMENTS

Next Scheduled Meeting: Thursday, February 15, 2024

APPROVAL OF AGENDA

The agenda was approved with no objections

MEETING MINUTES

1. Regular Board Meeting – December 21, 2023
2. Executive Session – December 21, 2023

The meeting minutes were approved with no objections.

PUBLIC TESTIMONY

None received.

OLD BUSINESS

1. Discussion and Possible Action on Manager's Annual Evaluation timeline, process, and criteria (*Deferred from October 19, 2023 meeting*)

It was clarified that the PIG would meet separately and would propose a recommendation based on their findings to the full Board. There needs to be a meeting to present the findings, and then another meeting subsequent to that for discussion and decision-making.

Board member Hull moved to establish a Permitted Interaction Group (PIG) consisting of Board members Micah Finnila, Ka'aina Hull, and Kurt Akamine to discuss the proposed timeline, process, and criteria for the Manager's Annual Evaluation, seconded by Ms. Finnila; with no objections, motion carried with 6 Ayes.

NEW BUSINESS

1. Discussion and Adoption of Resolution No. 24-03, Farewell to Russell Yonahara (Retiree), Welder, Operations Division

Board member Hull moved to adopt Resolution No. 24-03, seconded by Mr. Dill; with no objections, motion carried with 6 Ayes.

2. Manager's Report No. 24-06 Discussion and Possible Action on Approving Compensation for Proposals for Job No. 24-05, WP2020 WK-39, Kapa'a Homesteads Well No. 4 Pump and Controls RFP, Kapa'a, Kaua'i, Hawai'i

Engineering Division Head Jason Kagimoto explained that this is a new venture they are trying with the design build bidding process to provide compensation for the second and third ranked proposals. The RFP would be two-part process, the first being a resume-based list of qualifications which would be used to short list the final 3 teams and will not be eligible for compensation. The 3 teams that are short-listed would then need to come up with a conceptual design for the project which Engineering will then evaluate; the 2 teams not selected will receive compensation in the amount of \$25,000 each to recognize the time, expense and effort that is put towards submitting a proposal. Mr. Kagimoto and Project Management Officer Scott Suga attended a Design Build conference late last year where this was a topic of discussion. It is not a standard or a requirement, but several utilities have done it, and, in their experience, they received more bids.

Mr. Dill asked if there is an internal estimate for the total design build portion of the project to which Mr. Kagimoto stated, not formally, but an internal estimate of \$10 million. In response to Mr. Dill Mr. Kagimoto confirmed that because we will be compensating the 2 non-successful bidders, we will then own those proposals and will be able to utilize ideas from those other proposals. Mr. Dill asked of the \$25,000 was a standard amount to which Mr. Kagimoto stated there is no standard, but they looked at what was a fair balance based on monies within our budget vs. cost and effort the teams would have to expend. Mr. Dill stated he will be supporting this as he feels it will help the Department get higher quality responses.

Board member Akamine asked if this approach was a result of not getting enough bids, or does it have to do with the quality of bids. Mr. Kagimoto stated Engineering typically solicits for Invitation for Bids (IFBs) which involves hiring a designer to provide a full design which the Department would then bid it out for just the construction side. This new process would morph those together where the design engineers and contractors would have to team up since the design and construction will have to be done under one contract so it will not be solely based on cost, but also the quality of the design and other scoring factors. The more innovative and more developed your design will give you a better chance at winning, so that requires a lot more time and effort.

Board member Hull asked whether the compensation is a flat \$25,000 or is it up to \$25,000 based upon what is submitted. Mr. Kagimoto stated it is a flat rate of \$25,000, but to qualify a conceptual design will need to be submitted; just being short-listed will not qualify.

Board member Akamine moved to approve Manager's Report No. 24-06, seconded by Mr. Dill; with no objections, motion carried with 6 Ayes.

3. Manager's Report No. 24-07 Discussion and Possible Action for Adoption of Budget Resolution No. 24-04 for the acceptance and expenditure of grant monies from the State of Hawai'i Appropriations Act of 2021 – Act 88, SLH 2021 for the Kapa'a Homesteads 325' Tanks, Two 0.5 MG Tanks, Package B

Engineering Division Head Jason Kagimoto stated that prior to his time at DOW, the department was able to secure state legislative appropriations that DOW would need to provide a 100 percent match. The department is able to provide the \$7.2 million match which would total \$14.5 million. In response to Mr. Dill Mr. Kagimoto explained that a contract for this project needs to be executed

by the end of this fiscal year to make the State's deadline. The project has been bid out and awarded and the award amount is higher than anticipated leaving us short about \$8 or \$9 million in budget versus the engineer's estimate. The combined amount of our match with the State appropriation would be \$14.5 million; the award amount is around \$22 million. Mr. Dill expressed concern and asked what the strategy is to come up with the additional funds. Mr. Kagimoto explained that there is \$5.2 million in principal interest under the SRF loan for our Kalaheo project that does not have to be paid back and can be utilized toward this project. Additionally, we have identified areas within our existing budget that can be used. In response to Mr. Dill, Mr. Kagimoto explained that we received 3 bids for this project, however the lowest bidder was non-responsive, so they are going with the number 2 bidder. Manager Tait stated the department is seeing this regardless of the project where the bids are no where near the engineering estimates.

Vice-Chair Simonton noted that the previously discussed design build process may help noting that engineers may not always provide the best, most cost-effective designs and by getting them to work together with the contractor may help. Mr. Kagimoto agreed adding that in his experience depending on the engineer, contractor or construction manager, there can be clashes on the design, so having them all work together will hopefully be more time and cost effective. Manager Tait stated that our biggest challenge is the lack of players available to create the competition. Mr. Kagimoto further explained that these two projects involve more specialized construction work which may reduce the number of qualified bidders; however, they are currently bidding out a pipeline project which there are more qualified contractors for so hopefully that one will receive more competitive bids.

Board member Hull asked if this project has to do with inadequacy with the system or would this free up development rights of some properties. Mr. Kagimoto stated this area of Kapaa Homesteads has been identified as needing these additional storage tanks. Mr. Hull asked if this will free up any properties to get additional meters to which Mr. Kagimoto clarified no, they would still need to wait for the well which is not a part of this project.

Board member Dill requested an update on how the Department is planning to fund the remainder of the project.

Board member Dill moved to approve Manager's Report 24-07, seconded by Mr. Akamine; with no objections; motion carried with 6 Ayes.

4. Discussion and Possible Action Granting Authority to the Waterworks Controller to transmit the Department of Water's Draft Financial Statement Amounts for Fiscal Year 2023 to the County of Kaua'i for inclusion in its Annual Comprehensive Financial Report (ACFR).

Waterworks Controller Renee Yadao reported that she did not have the draft financials available for the Board's review noting that they are still working through some open items such as revenue information due to the rebilling, amortization schedules relating to GASB 96 which is subscription-based technology arrangements, compiling, analyzing, and comparing encumbrance amounts. The external auditors need to go through their partner review, and Fiscal also conducts its own quality checks. This request from Fiscal would allow the Waterworks Controller to submit just the financial amounts the County needs to include in their Annual Comprehensive Financial Report (ACFR) which has a submittal deadline of December 31, 2023. Though she does not have the final numbers today, she is confident she can provide them to the County before the deadline.

Board member Dill expressed his appreciation noting this is a big job to be undertaken under the gun. However, he noted the Board has the responsibility to check the box that says these numbers have been reviewed and accepted by the Board. He is uneasy about transmitting that information to the County without having some review of the financial data first. He asked how hard their deadline is and can we let them know we need more time to get everything in place. Ms. Yadao shared Mr. Dill's frustration and she is certain that the County will not meet their deadline as it is; however, she has not been offered the courtesy of an extension and is being held to the December 31 deadline. She added that we are waiting for data from one more source which would involve making changes to their numbers as it relates to the billing issue that impacts revenues. Mr. Dill asked if it's possible to submit to the County with the caveat that there are things awaiting confirmation. Ms. Yadao stated that is the disclaimer she will be including, and the information she sends over will still be considered a draft as the Board has not yet approved it; she will be submitting draft information simply to comply with County's deadline.

Board member Akamine moved to grant authority to the Waterworks Controller to transmit DOW's draft financial statement amounts to COK for inclusion in its ACFR, seconded by Mr. Dill; with no objections, motion carried with 6 Ayes.

STAFF REPORTS

1. Fiscal:
 - a. Monthly dashboard
 - b. Budget Report for December 2023
 - c. Quarterly BAB Statement

Waterworks Controller Renee Yadao provided a summary of the Fiscal dashboard, budget report and Quarterly BAB Statement submitted. She highlighted Fiscal's overtime chart noting that they are still in the audit cycle, and though that is starting to taper down they are still experiencing elevated workloads relating to the rebilling and transponder issue. The Operations team have been replacing them in much larger quantities now so they are making a lot of progress, but it will still take some time. Vice-Chair Simonton stated she received a couple of calls regarding the meters, and one of the concerns raised was that the reconciliation amount for the overages for the previous 6-months appeared to have been applied to their bill as one lump sum usage, which brought their usage up to Tier 5 category. Ms. Yadao explained that Fiscal has been trying to catch those and place them back in the appropriate category depending on the situation and the different variables. She asked that anyone with questions or concerns please call or email the Department. Mr. Dill asked how the staffing is in Fiscal and whether the overtime they are experiencing is with full staff. Ms. Yadao stated they lost an 89-day hire who they are trying to manage without, and they are currently waiting for a current hire to be approved by COK DHR. She has expressed to the Manager what the needs are in Fiscal, and she is confident they will work something out.

Next month, Ms. Yadao hopes to share information about the stand-alone kiosk is coming which will allow for self-serve bill payment via credit card.

Ms. Yadao provided an overview of the November budget report that was submitted. Mr. Dill noted that we have only expended about half our budget for Services which tells him that we are not getting those services. Do we anticipate getting those professional service contracts executed by the end of the fiscal year? Ms. Yadao stated that those are primarily in Engineering to which Engineering Division Head Jason Kagimoto acknowledged that they will. Mr. Dill expressed surprise at the Debt Service Principal and Interest variable, stating that he thought that to be a well understood number when we budget. Ms. Yadao stated it is again a matter of the timing between when the payments are made which don't coincide with the reporting schedule, but it should even out by the end of the year.

Operations – Monthly dashboard

Chief of Operations Ryan Smith provided a summary of the Operations dashboard, highlighting that they just hired a new Pipefitter Helper and continue to plug away at trying to fill positions. The Kalaheo meter transponder changeout in December went well; they learned some things made some slight tweaks to the process mainly with the paperwork. This week, they began covering the Wailua-Kapaa and it has been going well. Mr. Smith pointed out that water loss dropped significantly during the month of December, partly due to the work fiscal has been doing with the rebilling, and partly because we had a lot of rain in December which brings down a lot of the usage and reduction in overtime. The leak investigators have been doing great work an incredible amount of work locating leaks, helping identify areas where leaks are and minimizing the amount of road needing to be dug up. Vice-Chair Simonton noted that the Board keeps seeing improved efficiency and improved ways of doing things between Fiscal and Operations, so the curve is going in the right direction.

Engineering – Monthly dashboard

Engineering Division Head Jason Kagimoto provided a summary of the Engineering dashboard highlighting the status of some of the ongoing CIP projects. Project Management continues to move forward, and they are starting to move forward on some key projects. Overtime continues to be high which is a result of trying to keep up with the CIP work, and bigger projects on the planning side. They currently have two engineers doing plan review for our private projects and they are continuing to have weekly meetings to find efficiencies and ways to do things more efficiently.

Within Water Resources there are three larger projects going on that are not typical:

- Water Use and Development Update - based on feedback from public comment at CWRM, they have scheduled meetings with Hawaiian Homelands beneficiaries in March.
- Water System Improvements Plan – working on prioritizing all the projects on their CIP list.
- Lead and Copper Rule Revisions – field investigations are about to commence to identify materials on either the customer or utility side using a DOH approved statistical method that will require field verification of approximately 1,500 laterals. The amount of effort needed to keep up with the timeline, so Engineering received a lot of help from other divisions and sections in DOW and it was nice to see everyone working together toward a common goal. In response to Mr. Dill, Mr. Kagimoto explained that this portion of the field work is just to identify and inventory materials though the hope is that they won't find any lead. The three points of verification are in the meter box on both the utility side and the customer side as well as the pipe that goes to the house. If lead is found, it would require follow up and trigger what the Department would need to provide to the customer. Several iterations of randomized addresses were compiled through GIS which is what was used to identify the 1,500 laterals. Mr. Dill asked if we are able to provide the customer with mitigation assistance if lead is found on the customer side of the meter. Mr. Kagimoto stated one of the things they are required to submit is a lead service replacement plan which they haven't developed yet, but it could include grant funding or loans. In addition to that the department would be required to provide some level of protection, such as filtration, until the lateral is replaced.

Mr. Dill referenced the work starting on the FRC and rate study task and asked if we expect to have information that might fold into next year's budget, or if it will be subsequent to that. Mr. Kagimoto stated there has been preliminary work that has been done; the Fiscal Division has been providing information to the consultants. One of the big pieces is to have an updated CIP list to determine the investment that is needed; they are currently working on the prioritization list. They are looking to have public meetings in the next couple of months so they may have draft information including in next year's budget, but it's doubtful there will be final numbers prior to

next year's budget approval. Mr. Dill requested that the Board continue to be updated on the status of this.

Board member Ka'aina Hull exited the meeting at 10:30 a.m.

Revisiting Mr. Dill's previous question regarding the budget report Services line item, Mr. Kagimoto explained that as it relates to the Engineering budget, under professional services, there is money identified for the Lead and Copper Rule Revisions and the Water Systems Investment Plan, which include work for the GIS and hydraulic model. The biggest portion of their budget money-wise is related to the design and construction for their CIP projects which have not been awarded contracts yet, but they anticipate those to be awarded and funds encumbered by the end of the fiscal year which should then even out the variance shown in the budget report.

Board member Finnila noted the amount of work Engineering has on their plate with very limited resources and asked in addition to the Engineering Permit Clerk they are recruiting for, what other positions remain open and is there any traction on those. Mr. Kagimoto stated there is currently 1 Engineer position open in Water Resources and Planning, and 3 in Project Management. They are in a similar position as Public Works in having a tough time finding qualified candidates. Manager Tait added that the current process is such that County DHR determines the qualifications for the candidates that apply, and while DHR qualifies them on paper, they are not qualified by Water Engineering standards. Additionally, the time it takes for DHR to submit the candidates to the hiring managers continues to be a challenge. Mr. Tait echoed what the other division heads shared that other divisions have all pitched in to help one another which is all we can do at this point. He noted that Administration is at a 50% vacancy, which hasn't been focused on because most of the heavy lifting is happening in the other divisions, but the workload is tremendous for a number of people. Board member Finnila expressed big kudos to everyone for helping to keep things moving despite the number of vacancies; it takes a team to do all of this.

2. Administration:
 - a. Monthly dashboard

Manager Tait stated the overtime for Administration will continue to stay up as there are not enough bodies. Most of the IT related items are pending projects or service contracts to support the changes we are going through. In addition to Admin. being at a 50% vacancy, half of the current staff are assisting other divisions as well.

- b. Public Relations – updates on Public Notices & Announcements, Community Outreach & Education, and Upcoming Events

Information and Education Specialist Jonell Kaohelaulii provided an overview of the PR report submitted, highlighting the Shower Better campaign that wrapped up in December. As a result of this campaign, we encouraged 277 households to install low-flow showerheads in their homes contributing to a savings of approximately 740,000 gallons of demand on our system. Manager Tait added that they had a mini-Make-A-Splash event at Hanalei Elementary School, which had a great volunteer turnout from different islands. They will be having another one at Kapaa Elementary School. Ms. Kaohelaulii explained the mini-Make-A-Splash events are being held at various schools for those schools that were unable to participate at the large-scale event due to school scheduling conflicts. Manager Tait also noted that one of the activity stations focused on water conservations, and many teachers and students were surprised to learn that DOW won a national conservation award for the 3rd consecutive year.

- c. Human Resources – updates on Personnel Vacancies

d. Information Technology – Monthly update

Manager Tait noted that this update will be done in Executive Session as there are updates of a confidential nature relating to safety and security

3. Manager and Chief Engineer – Required communications to the Board, and update of Department activities

TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING: (January)

TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETING

1. Employees of the Year Resolutions
2. CIP Update

EXECUTIVE SESSION:

Pursuant to Hawai'i Revised Statutes (HRS) §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the Executive Session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

1. Pursuant to Hawai'i Revised Statutes § 92-4 and § 92-5(a)(6), the purpose of this executive session is to consider sensitive matters related to public safety or security.
2. Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(3), the purpose of this Executive Session is to deliberate on the acquisition of public property, specifically, property identified by tax map key: 4-3-018-001.

The Board entered into Executive Session at 10:48 a.m.

The Board resumed in open session at 11:10 a.m.

In accordance with Act 19 Relating to Public Agency Meetings, Vice-Chair Simonton reported that the Board was provided an update on current IT challenges and steps being taken to notify the public of potential data breaches, and an update on the acquisition of public property identified as TMK 4-3-018-001.

ADJOURNMENT

The meeting was adjourned at 11:11 a.m.

Respectfully submitted,

Cherisse Zaima
Commission Support Clerk

A horizontal splash of clear blue water with bubbles and ripples, set against a white background. The water splash is centered horizontally and spans across the middle of the page.

NEW

BUSINESS

RESOLUTION No. 24-05

**DEPARTMENT OF WATER,
COUNTY OF KAUA‘I
EMPLOYEE OF THE YEAR**

**JEFFREY SILVA
MAHALO
2023**

WHEREAS, Jeffery Silva has been selected by his peers as the Department of Water’s 2023 Outstanding Employee of the Year; and

WHEREAS, Jeffery joined the Department of Water on June 16, 2006 as a Pipefitter, was promoted to Lead Pipefitter on January 16, 2019, and again promoted to Water Service Supervisor III on September 1, 2022; and

WHEREAS, Jeffrey sets an outstanding example of someone who excels at job performance and customer service; and

WHEREAS, Jeffrey’s dependability, reliability and dedication are evident by his willingness to be available anytime of the day or night, rain or shine, weekends and holidays, and for his response to service calls on his off-duty non-standby days ; and

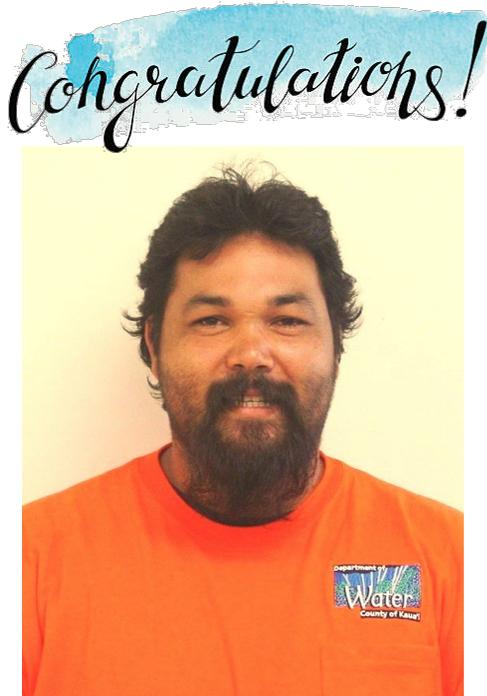
WHEREAS, Jeffrey is a highly valued member of the Operations Division who is continuously looked to by his co-workers for solid guidance, advice, and recommendations; and

WHEREAS, Jeffery strives to better himself and those around him and has consistently demonstrated superior performance as a team member and leader ; and

WHEREAS, Since Jeffery’s promotion to Water Services Supervisor III, he has been instrumental in the personal and professional development of his junior team members directly resulting in the promotion of 2 Pipefitters to Lead Pipefitters, and 3 Pipefitter Helpers to Pipefitters; and

WHEREAS, Jeffery is patient yet deliberate with his training methods which strengthen the group and fosters a team mentality approach; now therefore

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY, COUNTY OF KAUAI, STATE OF HAWAII, that it acknowledges and appreciates the contributions of Jeffery Silva for his outstanding dedication and loyalty and congratulate him upon being chosen to receive the 2023 Outstanding Employee of the Year Award.



We do certify that the foregoing was duly adopted by the Board of Water Supply during its meeting on February 15, 2024

Julie Simonton, Vice-Chair

Kurt Akamine, Secretary

RESOLUTION No. 24-06

**DEPARTMENT OF WATER,
COUNTY OF KAUA‘I
EMPLOYEE OF THE YEAR**

**JONELLE TAIRA-KAKUTANI
MAHALO
2023**

WHEREAS, Jonelle Taira-Kakutani has been selected by her peers as the Department of Water’s 2023 Outstanding Employee of the Year; and

WHEREAS, Jonelle, bringing along 20 years of private sector accounting knowledge, experience and expertise joined the Department of Water on April 16, 2019. as an Accountant I; and

WHEREAS, Jonelle, through dedicated and diligent efforts, quickly acclimated to the Department’s fiscal processes and programs and was promoted to Accountant II on May 1, 2020, and then to Accountant III on April 16, 2023; and

WHEREAS, Jonelle, continues to be an integral part of the Department of Water’s team whose enthusiasm, work ethic, integrity, perseverance and positivity are exceptional and admired by her peers and supervisors; and

WHEREAS, Jonelle, in concert with her Fiscal Division colleagues and Departmental team imparted her dedication and positivity to inspire staff members to push forward through challenging resource limitations and allow the Department to continue to operate without missing a beat; and

WHEREAS, Jonelle, is always willing to assist the Department team, continues to work diligently and tirelessly to provide guidance, training and knowledge transfer to ensure that staff transitions are as seamless as possible, and continues to remain flexible and adaptable as the Department continues to evolve; and

WHEREAS, Jonelle’s unwavering desire and dedication to support the Department challenged her to balance an equally demanding home life with those of the Department; and

WHEREAS, Jonelle’s efforts to share and impart her knowledge upon her colleagues have paid dividends, sharing the demands amongst a trained team, and allowing a work/life balance where she can focus more on her family, especially, with the newest member her great-grandson; and

WHEREAS, Jonelle’s bright, friendly, and cheerful nature is appreciated and admired by all who work alongside her fostering the spirit of teamwork; now therefore

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY, COUNTY OF KAUAI, STATE OF HAWAII, that it acknowledges and appreciates the contributions of Jonelle Taira-Kakutani for her outstanding dedication and loyalty and congratulate her upon being chosen to receive the 2023 Outstanding Employee of the Year Award.



We do certify that the foregoing was duly adopted by the Board of Water Supply during its meeting on February 15, 2024

Julie Simonton, Vice-Chair

Kurt Akamine, Secretary

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 24-07

February 15, 2024

Re: Discussion and Possible Action for Adoption of Budget Resolution No. 24-07 for the acceptance and expenditure of grant monies from the State of Hawai'i Appropriations Act of 2021 – Act 88, SLH 2021 for the Kapa'a Homesteads Well No. 4

RECOMMENDATION:

It is recommended that the Board approve the request to accept and expend the total sum of \$2,600,000.00 as authorized by Act 88, SLH 2021.

FUNDING:

The grant monies required a 100% match. The Department of Water has budgeted for the match as follows:

Account No.: 30-20-00-605-xxx

Account Description: BAB/Eng/Admin/Capital Outlay – Expansion/Capital Purchases

Project Name: BAB-Cns-WK-39-Kapa'a Homesteads Well No. 4

Budget: \$2,600,000.00

BACKGROUND:

The Department of Water has requested Capital Improvement State-Aid funds for the Kapa'a Homesteads Well No. 4 capital improvement project and the State legislature approved the appropriation with Act 88, SLH 2021 for the Wailua-Kapa'a Water System, Kaua'i-L/S in the amount of \$2,600,000.00.

The State funds are available, pending the release of the funds by the Governor. Prior to requesting the Governor to release the funds, it is required that the Board of Water Supply approve to accept and expend these funds from the State. It is proposed to also document this by Resolution.

The use of State funds will allow the Department to move forward with the capital improvement project that will provide additional source improvements for the Wailua-Kapa'a Water System.

OPTIONS:

Option 1: Approve Manager's Report as recommended.

Pro: State funds will supplement the Department of Water's funds and allow for the projects to move forward with less impact to the Department's customers.

Con: State funds will require additional project management oversight to ensure that the funds are expended per State regulations and are subject to State project level audits.

Option 2: Do Not Approve Manager's Report as recommended.

Pro: Additional project management oversight efforts to ensure that the funds are expended per State regulations and potential State project level audits will not be required.

Con: Additional funds will be required using Department of Water funds and may be passed onto the Department's customers with water rate increases.

JK/crz

Attachment(s): Budget Resolution No. 24-07 Acceptance and Expenditure of Grant of Funds from the State of Hawaii under Act 88 SLH 2021 in the amount of \$2,600,000.00

A RESOLUTION APPROVING THE ACCEPTANCE AND EXPENDITURE OF GRANT OF FUNDS FROM THE STATE OF HAWAII UNDER ACT 88 SLH 2021 IN THE AMOUNT OF TWO MILLION SIX HUNDRED THOUSAND DOLLARS (\$2,600,000.00).

WHEREAS, the State of Hawai'i approved funds under Act 88, SLH 2021, in the total amount of TWO MILLION SIX HUNDRED THOUSAND DOLLARS (\$2,600,000.00) to the Department of Water, County of Kaua'i (hereinafter "DOW") for the design and construction of the Kapa'a Homesteads Well No. 4, including ground and site improvements, and equipment and appurtenances, and drainage and other related improvements (hereinafter "Project"), provided that partial matching funds be provided by the Board of Water Supply, County of Kaua'i (hereinafter "Board"); and

WHEREAS, the Board has sufficient partial matching funds for the Project; and

WHEREAS, the Board desires to accept said approved funds from the State of Hawai'i, and to expend said funds for the Project; now, therefore,

BE IT RESOLVED BY THE BOARD OF WATER SUPPLY, COUNTY OF KAUAI, STATE OF HAWAII:

1. That it does authorize the Manager and Chief Engineer of the DOW, or his duly authorized representative, to accept funds on behalf of the Board in the amount of TWO MILLION SIX HUNDRED THOUSAND DOLLARS (\$2,600,000.00) from the State of Hawai'i for the Project; and
2. That the Manager and Chief Engineer of the DOW, or his duly authorized representative, is hereby authorized to execute any and all documents necessary to process and accept such funds, including amendments thereto; and
3. That the Manager and Chief Engineer of the DOW, or his duly authorized representative, is hereby authorized to expend such funds solely for the Project.

APPROVED AS TO FORM AND LEGALITY:

BOARD OF WATER SUPPLY

Tyler C. Saito
Deputy County Attorney,
County of Kaua'i

Julie Simonton, Vice-Chair
4398 Pua Loke Street
Līhu'e, Hawai'i 96766

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER’S REPORT No. 24-08

February 15, 2024

Re: Discussion and Possible Action on acceptance of certain terms and conditions as stated in the Service Agreement (XiO, Inc.)

RECOMMENDATION:

It is recommended that the Board approve Option 1, which will allow the Department to continue use of the XiO software for operation of the sewage lift station located in the Ops base yard.

FUNDING: N/A

Account No.	10-40-60-560-000			
Acct Description	WU/Ops/TandD/Reopairs and Maintenance – Water System			
Funds Available	<i>Verified by WWC</i>		\$	476,336.35
Contract No.	TBD			
Vendor	XiO, Inc.			
	Contract Amount	\$	2,499.00	
	5% Contingency	\$	0.00	
	Total Funds Certified To Date	\$	2,499.00	
Amendment:				
Description		\$		
	Total Amendment	\$		
Contract Amount To Date		\$	2,499.00	
Fund Balance		\$		473,837.35

Contract NTP Date: 6/1/23

Original Contract End Date: 6/30/24

BACKGROUND:

The sewage lift station located in the Ops base yard collects all the sewage and pumps it to the gravity line located on Pua Loke Street. Operation of the lift station and its associated pumps are controlled through software provided by XiO, Inc. XiO has teamed with Acuity to upgrade the software and as such, there are new Terms and Conditions in the Service Agreement (SA) for the Board to approve. The Operations Division worked with our Deputy County Attorney to review and approve the Terms and Conditions of the SA. These are standard Terms and Conditions that cannot be removed from the SA and are deemed reasonable and acceptable. There is no cost to the Department for the new software and the current agreement with XiO is good through June 2024. The upgraded software will provide the Department with more options for alarm

monitoring and notification, upgraded graphing ability, and improved control options for the pumps.

The sections within the SA that reference Unspecified Future Obligations, Indemnification, and Governing Law and Jurisdiction, and Venue are shown below:

Exhibit A

2. General Payment Terms.

2.1 Unless as otherwise specified in the applicable Order, all payments are due net 30 days from the date of invoice. Customer hereby procures the Services and Hardware and shall pay the amounts on the terms set forth in each Order in accordance with this Agreement. All sales of Services and Hardware are final and related payments are non-refundable except to the extent otherwise expressly provided in the Agreement. Any credit extended by Vendor and the limits of the credit, are at Vendor's sole discretion, and may be reduced or terminated by Vendor at any time, for any reason. A late charge is payable on all overdue balances while outstanding at the rate of the lesser of 1.5% monthly and the highest rate allowed by law. Vendor may defer delivery of Hardware ordered and/or suspend the provision of Services until all such overdue amounts are paid. All payments must be paid in U.S. Dollars. Except as otherwise specified in this Agreement, (i) all fees are exclusive of, and Customer is responsible for, applicable foreign, federal, state, and local sales, use, excise, value added, export, customs, duties and other governmental fees or levies or other applicable taxes, other than taxes on the net income of Vendor, (ii) Customer shall pay or reimburse Vendor for any such taxes and fees paid by Vendor, and (iii) Vendor may add any such taxes to invoices submitted to Customer by Vendor. Vendor shall be entitled to recover from Customer any costs incurred in collecting any amount past due under this Agreement, including reasonable attorneys' fees. Customer may make no offset for any amounts due regardless of the justification for the intended offset. Any good faith invoice disputes must be brought by Customer within thirty (30) days of receipt, otherwise Customer waives the dispute. Additional Hardware and Services not within the scope of an Order are subject to additional fees at Vendor's then-current rates or as mutually agreed by the parties.

9. Customer Obligations Regarding Site Conditions. Except as otherwise disclosed in writing to Vendor and acknowledged in writing by Vendor in advance of providing Professional Services, Customer represents and warrants that, to Customer's knowledge after reasonable inquiry, there are no potentially hazardous substances, environmental contamination, or conditions in, on, or near the properties required to be visited by Vendor employees or other representatives in performing Vendor's obligations under the Agreement that present, within the context of similar facilities, an unreasonable and/or unanticipated danger to human health or the environment. Customer shall immediately notify Vendor if it becomes aware of a change in such circumstances. Vendor shall not be responsible for remedying any pre-existing hazardous materials, pre-existing hazardous conditions or pre-existing violations of laws, or regulations affecting the site where Professional Services are to be performed, and Customer shall indemnify, defend, and hold harmless Vendor from any liability, loss, damages, cost, and expense (including attorneys' fees) arising out of or relating to a failure or breach of Customer's representations, warranties, and undertakings in this Section.

10. Protection and Use of Confidential Information. Each party shall not use or disclose Confidential Information of the other party without the prior written consent of the other

party or as permitted or required by this Agreement. The receiving party may disclose the other party's Confidential Information to the extent necessary to comply with a lawful order of a court or taxing authority, or government regulation, on condition that the party making the disclosure provides the other party with reasonable advance written notice to the extent legally permissible, and reasonably cooperates with the other party's efforts (at the other party's request and expense) to seek confidential or protective treatment. In addition, each party shall take at least reasonable measures to protect and maintain in confidence the other party's Confidential Information. Each party may disclose the terms of this Agreement to (i) its attorneys, accountants, and other professional advisors, or to potential investors or other third parties conducting due diligence in connection with a potential financing, change of control, or other similar transaction of the party, and (ii) in the case of Vendor, to Vendor's independent contractors and service providers for the purpose of performing Vendor's obligations under this Agreement, in each case, so long as the third party is under a duty of confidentiality with respect to the disclosure at least as protective as those in this Agreement. Customer may disclose this Agreement to the extent necessary to comply with applicable laws and regulations that make this Agreement a public document or to otherwise comply with applicable public disclosure laws and regulations; provided, however, that, to the extent permitted by law, Customer shall use commercially reasonable efforts to seek confidential treatment of all pricing information within this Agreement in connection with the disclosure. If Vendor is obligated to respond to a third-party subpoena or other compulsory legal order or process in connection with Customer Information or Customer's use of the Hardware or Services, Customer shall reimburse Vendor for Vendor's reasonable and documented related attorneys' fees, and other reasonable costs and expenses of responding to the legal order or process at Vendor's then-current hourly rates for such Services.

12.2 By Customer. Customer shall indemnify, defend, and hold harmless Vendor and its Affiliates and their respective officers, directors, agents, and employees (each a "Vendor Indemnified Party") from and against any and all Claims to the extent arising out of death, injury, and property damage to the extent caused by Customer's gross negligence, or willful, reckless, or criminal misconduct; and except in each case to the extent caused by the negligence or misconduct of a Vendor Indemnified Party or resulting from Vendor's failure to comply with this Agreement.

15. Limitation of Liability. To the maximum extent permitted by applicable law, in no event will Vendor or its Affiliates, including their respective employees, officers, directors, owners, agents, successors and assigns, be liable to Customer or to any third party for any indirect, incidental, special, exemplary or consequential damages, including, but not limited to, lost profits, loss of data, loss of use, business interruption, loss of good will, or cost of procuring substitute products or services, arising out of or in relation to this Agreement or the Hardware or Services, even if advised of the possibility of such damages or losses. Notwithstanding anything else in this Agreement to the contrary, Vendor's aggregate liability arising from, relating to, based on, or connected with this Agreement including the Hardware and Services, shall in any event and under any theory of recovery, including claims of negligence, be limited to the amount of fees actually received by Vendor under this Agreement relating to the Customer facility for which the claim accrued during the twelve month period immediately preceding the date on which Customer's claim first accrued.

Exhibit B

3. Restrictions. Customer shall not, and shall not knowingly permit any third party to, in whole or in part, (i) reverse engineer, decompile, or disassemble the Platform or use similar methods to determine any design structure, concepts, or construction method of the Platform, including its database, or replicate the functionality of the Platform for any purpose, (ii) copy, translate, resell, distribute, or create a derivative work of the Platform or use the Platform for timesharing, service bureau, or similar purposes, (iii) use the Platform for the purpose of building a similar or competitive product or service, (iv) obtain or knowingly assist in obtaining unauthorized access to the Platform including by sharing log-in credentials to access to Platform, (v) use the Platform in a manner that is contrary to applicable law, in violation of this Agreement or any third party rights of privacy or Intellectual Property Rights, (vi) use the Platform to store, access, distribute or transmit any material that is unlawful, inappropriate, or infringing; facilitates illegal activity; or causes or is reasonably likely to cause damage or injury to any person or property, or (vii) transmit viruses or other code intended to harm or surreptitiously intercept data to or from the Platform, or Vendor's or a third party's networks or systems, or adversely affect their operation or security. Customer shall indemnify, defend, and hold Vendor harmless from claims, demands, liabilities, losses, and costs and expenses (including attorneys' fees) arising out of or relating to Customer's breach of this Section 3. Vendor has the right (but not the obligation) to monitor and review all information and materials transferred to or otherwise stored under Customer's account in the Platform for information, material, or activity that Vendor deems in its sole discretion to violate these Platform Terms or the Agreement generally. Customer shall comply with all applicable laws and regulations in connection with its use of the Platform including export laws and obtain any permits, licenses, and authorizations required to be obtained by Customer in using the Platform. Customer shall not remove, modify, or obscure any Vendor or other copyright, trademark, or other proprietary notices affixed to or displayed on or in the Platform and shall not knowingly allow any third party under Customer's control to take any such action. Customer is responsible under this Agreement for all activities conducted in the Platform under its login credentials and account including those of its independent contractors or any other third party.

7. Platform Disclaimer. Without limiting Section 14 of the General Terms (Disclaimers), the Platform provided by Vendor relies upon numerous interconnected communication and other technologies that are inherently not fault-free and may contain errors or become interrupted. Vendor disclaims responsibility for liabilities, losses, claims, and demands resulting from any such errors or interruptions. The Platform should not be used for fault-intolerant applications or where such errors or interruptions would present a high degree of risk. Certain Platform features allow alerts and notifications to be sent to mobile devices. Vendor is not responsible for text or other mobile communications charges resulting from such alerts and notifications or for alert failures due to failures of the mobile device or its connectivity. Vendor is not responsible for Platform errors due to Hardware or other equipment failure.

OPTIONS:

Option 1: Approve Manager's Report as recommended.

Pro: The Department can continue to remotely operate its sewage lift station and receive alarms to always notify of problems, even after normal working hours.

Con: The Board would agree to indemnify the contractor, agree to unspecified future obligations in the event of a breach or similar contract issue occurring, and Governing Law outside of the State of Hawai'i.

Option 2: Do not approve Manager's Report.

Pro: There is no risk associated with indemnification, unspecified future obligations, or breach of contract.

Con: XiO software will lapse, and the Department will be forced to operate the lift station manually with no remote alarm notifications. This may result in sewage overflows after normal working hours.

RS /crz

Attachment(s): County of Kaua'i ACUITY op1622 AGREEMENT v.1.2-4

XiO, Inc. Certificate of Liability Insurance

XiO Service Agreement

This XiO Service Agreement is made between XiO, Inc. at 100 Smith Ranch Road, San Rafael, CA 94903 ("**Vendor**" or "**XiO**") and **Department of Water, County of Kaua'i at 4398 Pua Loke Street, Lihue, HI 96766** ("**Customer**"), with an effective date of 11/22/2023 (the "**Effective Date**") and forms part of the Agreement as defined in the attached XiO General Terms and Conditions.

Subject to the terms and conditions of this Agreement, XiO will provide the goods and/or services for the payments and on the other terms each as are set forth in the "Department of Water, County of Kaua'i v.1.2" document attached as Attachment 1 (the "Proposal"). The Start Date of the Subscription Term will be the first day of the first full calendar month immediately following the date on which all Professional Services necessary to implement Customer's Subscription account and Platform access have been completed.

XiO Service Agreement Acceptance

By signing below, Customer agrees to purchase the products and services indicated above on the terms and conditions contained in the Agreement

XiO, INC.:	Department of Water, County of Kaua'i:
Signature: 	Signature:
Name: Colin Bunyard	Name:
Title: VP of Sales, XiO Inc.	Title:
	Signature:
	Name:
	Title:
	Signature:
	Name:
	Title:

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Acuity Hub Operations Management for Department of Water, County of Kaua'i

Version: 1.2

Publish Date: December 4, 2023

1 Proposal

XiO, Inc. (XiO) is pleased to supply this Proposal for Department of Water, County of Kaua'i.

1.1 Synopsis

Migration of Assets, Inputs, and Control to the Acuity Hub.

1.2 Monitored Assets (4)

FIU Name	Soft Device
FIU-1: Lift Station Pumps	Lift Pump 1 RMS Electrical Current
FIU-1: Lift Station Pumps	Wet Well Level from SEALED GAUGE Submersible Pressure Sensor
FIU-1: Lift Station Pumps	Lift Pump 2 RMS Electrical Current
FIU-2: Lift Station UPS	Lift Station Water Meter

1.3 Additional Inputs (4)

FIU Name	Soft Device
FIU-1: Lift Station Pumps	High Float
FIU-1: Lift Station Pumps	Low Float
FIU-1: Lift Station Pumps	General Alarm
FIU-2: Lift Station UPS	Intrusion Switch

1.4 Controlled Outputs (2)

FIU Name	Soft Device
FIU-1: Lift Station Pumps	Lift Pump 2 Contactor Relay
FIU-1: Lift Station Pumps	Lift Pump 1 Contactor Relay

1.5 Disabled and Not Displayed Soft Devices (4)

FIU Name	Soft Device
FIU-1: Lift Station Pumps	Barometric Pressure ABSOLUTE
FIU-2: Lift Station UPS	UPS Battery Charge Output
FIU-2: Lift Station UPS	UPS Power or Voltage Sense Output
FIU-2: Lift Station UPS	UPS Battery Relay

1.6 Scope of Supply

Recurring Services

Description	Details
<p>XiO ACUITY Hub operations management platform <i>Monitored Assets and Inputs with a full suite of software tools and data management</i></p>	<p>4 x Asset, Monitored 4 x Additional Inputs</p>
<p>XiO Control Services <i>Automated and remote control of devices</i></p>	<p>2 x Controlled Outputs</p>
<p>XiO Cellular Service <i>Cellular Internet Service managed by XiO</i></p>	<p>1 x Cellular Internet Service</p>

1.7 Pricing

Hardware		
XiO Hardware	\$0.00	
3rd Party Hardware	\$0.00	
Hardware Total		\$0.00
Non-Recurring Services		
Standard Support	\$0.00	
Services Subtotal		\$0.00
Subscription Fee Detail		
Annual Subscription Fee (Includes Standard Support)	\$2,940.00	
Annual Escalation Adjustment	\$0.00	
Annual Subscription Fee Discount	(\$441.00)	
Subscription Fee at Start Date (1 year paid up front)		\$2,499.00

Summary of Up Front Fees	
Subscription Fee at Start Date (1 year paid up front)	\$2,499.00
Total Up Front Fees	\$2,499.00

1.8 Payment Terms

Subscription Fees Vendor will invoice the Subscription Fee at Start Date indicated above on the Start Date payable on net30 terms. Except where it is indicated above that Customer is prepaying for Subscription Fees for all years of the Subscription Term, (i) the Subscription Fee at Start Date indicated above is for the first year only and Vendor reserves the right each subsequent year of the Subscription Term to increase the then annual recurring fee by an amount equal to the then year-over-year percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U); U.S. City Average; All items, not seasonally adjusted, 1982/1984 = 100 reference base prepared by the U.S. Department of Labor plus 1.5 percentage points, not to exceed a 5.5% increase. For example, if the CPI year-over-year increase were 2%, then the maximum fee increase would be a 3.5% increase to the then recurring annual fee.

Special Terms.

1. The Start Date will be 7/1/2024 and the Subscription Fees for the first year of the Subscription will be invoiced on the Start Date due net 30.

1.9 Scope of Services; Term

Such services will include providing access and use of the Platform to Customer for a Subscription Term commencing on the Start Date, continuing for an **Initial Term of 1 year**, and thereafter automatically renewing for successive 1 year terms **upon written agreement only**. Except as otherwise stated in the Special Terms above, the Start Date of the Subscription Term will be the first day of the first full calendar month immediately following the date on which all Professional Services necessary to implement Customer's Subscription account and Platform access have been completed.

End XiO Proposal

EXHIBIT A: XiO General Terms and Conditions

These XiO General Terms and Conditions (these “**General Terms**”) govern the provision by XiO, Inc. (“**Vendor**” or “**XiO**”) of goods and/or services to Customer as described in one or more Orders. All Orders, together with these General Terms and all attachments to, and ancillary terms incorporated into, the foregoing form a binding master agreement between Vendor and Customer (collectively, the “**Agreement**”). The Agreement is effective as of the effective date of the initial Order to which these General Terms are attached or that reference being subject to these General Terms. Capitalized terms used in these General Terms, but not defined herein have the meaning given to them elsewhere in the Agreement.

1. Definitions.

- 1.1 “**Affiliate**” means, as to a party, an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that party.
- 1.2 “**Confidential Information**” means all technical, business, financial, and other information, in whatever form (including written, oral, visual, paper, electronic, narrative, and graphic), that a party discloses to the other party in relation to this Agreement except information that (i) is or becomes publicly available other than as a result of disclosure by the receiving party in violation of this Agreement or any other legal, contractual or fiduciary obligation; (ii) is or was independently developed by personnel of the receiving party without access to or use of any Confidential Information of the other party (as defined without regard to this exception); (iii) is or becomes available to the receiving party on a non-confidential basis from a source (other than the disclosing party) that is not prohibited from disclosing such information to the receiving party by any legal, contractual or fiduciary obligation; or (iv) is information that was already known by the receiving party, so long as the receiving party can prove that such information had been in the receiving party’s possession prior to receipt of the Confidential Information by the receiving party.
- 1.3 “**Customer**” means the entity or person indicated as the procuring party on the initial Order.
- 1.4 “**Customer Data**” has the meaning given it in Exhibit B – Platform Terms and Conditions.
- 1.5 “**Customer Information**” means information made available to Vendor or its representatives by or on behalf of Customer in connection with this Agreement including in the context of Professional Services and including Customer Data.
- 1.6 “**De-identified Data**” means Customer Information that is aggregated with other information of Vendor’s customers or that has been de-identified.
- 1.7 “**Deliverables**” means reports, analyses, and other work product delivered by Vendor pursuant to an Order for the provision of Professional Services that constitutes Customer Information or that is unique and specific to Customer.
- 1.8 “**Hardware**” means tangible goods sold by Vendor to Customer pursuant to an Order.
- 1.9 “**Order**” means an initial or any subsequent Vendor proposal, Statement of Work, quotation, Service Agreement, Engagement Terms, or similar ordering document prepared by Vendor that is signed by the parties and provides for one or more of the sale of Hardware, the provision of Professional Services, or Subscription(s) and that references these General Terms or is otherwise entered into by the parties in relation to this Agreement.
- 1.10 “**Platform**” has the meaning given it in Exhibit B – Platform Terms and Conditions.
- 1.11 “**Professional Services**” means consulting, design, analysis, assessments, evaluations, verification, installation, commissioning, implementation, support, management, training, configuration, and other professional services (and excluding for the avoidance of doubt, access or use of the Platform) provided by or on behalf of Vendor to Customer pursuant to the Agreement as further described in the applicable Order.
- 1.12 “**Professional Services Fees**” mean the fees payable to Vendor in consideration of Professional Services as provided in the applicable Order.
- 1.13 “**Services**” means collectively, Professional Services and the provision of access to and use of the Platform in relation to this Agreement.
- 1.14 “**Statement of Work**” means a written proposal or other document prepared by Vendor and executed by the parties that describes the nature and scope of Professional Services and any Hardware and/or Subscriptions to be sold or otherwise provided by Vendor to Customer and that may include, as applicable, related compensation, expense reimbursement, and other terms and conditions relating thereto. A Statement of Work may be attached to and form part of an Order or serve as a stand-alone Order.
- 1.15 “**Vendor**” means XiO, Inc.
- 1.16 “**XiO Hardware**” means Hardware that is proprietary to Vendor or is Vendor-branded Hardware.

2. General Payment Terms.

2.1 Unless as otherwise specified in the applicable Order, all payments are due net 30 days from the date of invoice. Customer hereby procures the Services and Hardware and shall pay the amounts on the terms set forth in each Order in accordance with this Agreement. All sales of Services and Hardware are final and related payments are non-refundable except to the extent otherwise expressly provided in the Agreement. Any credit extended by Vendor and the limits of the credit, are at Vendor's sole discretion, and may be reduced or terminated by Vendor at any time, for any reason. A late charge is payable on all overdue balances while outstanding at the rate of the lesser of 1.5% monthly and the highest rate allowed by law. Vendor may defer delivery of Hardware ordered and/or suspend the provision of Services until all such overdue amounts are paid. All payments must be paid in U.S. Dollars. Except as otherwise specified in this Agreement, (i) all fees are exclusive of, and Customer is responsible for, applicable foreign, federal, state, and local sales, use, excise, value added, export, customs, duties and other governmental fees or levies or other applicable taxes, other than taxes on the net income of Vendor, (ii) Customer shall pay or reimburse Vendor for any such taxes and fees paid by Vendor, and (iii) Vendor may add any such taxes to invoices submitted to Customer by Vendor. Vendor shall be entitled to recover from Customer any costs incurred in collecting any amount past due under this Agreement, including reasonable attorneys' fees. Customer may make no offset for any amounts due regardless of the justification for the intended offset. Any good faith invoice disputes must be brought by Customer within thirty (30) days of receipt, otherwise Customer waives the dispute. Additional Hardware and Services not within the scope of an Order are subject to additional fees at Vendor's then-current rates or as mutually agreed by the parties.

3. Orders.

3.1 All Orders and amendments and attachments thereto are hereby incorporated into this Agreement upon their execution by the parties. Any Customer purchase order or similar purchasing document issued by any entity other than Vendor is subject to and incorporates these General Terms and will be valid only for the purpose of identifying this Agreement and the items and quantities ordered. Any other terms and conditions included in such purchasing document that conflict with, vary, or supplement the terms in this Agreement are void and will be of no effect, even if Vendor otherwise accepts the purchase order. In the event of a conflict between these General Terms and an Order, these General Terms will control. Vendor's failure to object to Customer terms and conditions contained in any Order or other document from Customer will not be construed as a waiver of the foregoing nor an acceptance of any such terms and conditions.

4. Platform Terms and Conditions

4.1 Access to and use of the Platform is subject to the additional terms and conditions in the Platform Terms and Conditions (also referred to as the "**Platform Terms**").

5. Professional Services

5.1 **Engagement; Cooperation.** Customer hereby engages Vendor to perform the Professional Services of the scope and on the terms described in Orders specifying the provision of Professional Services and Customer agrees to reasonably cooperate with the performance of such Professional Services.

5.2 **Professional Services Fees and Terms.** Except as otherwise provided in the applicable Order, (i) Professional Services and related reimbursable expenses will be invoiced monthly in arrears or, for brief engagements, at completion, at Vendor's option, (ii) any total fee amount communicated in connection with a time and materials-based project is an estimate only and not a guarantee that the Professional Services will be completed for such total fee amount, and (iii) Customer shall obtain and pay for all state and local permits and approvals legally required of Customer to receive the Hardware and Services and Vendor may suspend the provision of Professional Services pending receipt of such permits and approvals. In the event of an early termination of Professional Services (to the extent permitted by the Agreement), Vendor shall invoice and Customer shall pay all Professional Services Fees for Professional Services provided up to the effective date of termination of the applicable Order plus reasonable shutdown fees, if any, incurred by Vendor. Professional Services are limited to the scope and planned Deliverables as are set forth in the applicable Order, which do not include all design, installation, use, or maintenance considerations for Customer's systems generally.

5.3 **Change Orders.** If Customer or Vendor requests a change in the scope or other terms of Professional Services to be provided (excluding Standard and Premium Technical Support), the parties shall promptly meet to discuss the proposed changes. Once any changes are tentatively agreed, if

at all, Vendor will prepare and deliver for Customer's review and approval a change order describing the proposed changes including any changes in fees and expenses (each, a "**Change Order**"). Change Orders are not binding unless and until they are executed by both parties. Upon their execution, Change Orders will be deemed part of, and subject to, this Agreement. If the parties disagree about the proposed changes, the parties shall, at the request of either party, promptly escalate the change request to their respective senior management officers for resolution.

5.4 **Professional Services Warranty.** Vendor warrants to Customer that Vendor will perform Professional Services in a professional manner consistent with industry standards and that it will deliver Deliverables substantially conforming to those specified to be delivered in the applicable Order. Customer's sole and exclusive remedy for Vendor's breach of the foregoing warranty is as follows: Customer must provide Vendor with a detailed written description of the non-conforming Deliverables and their claimed non-conformity within ten (10) days from the date of delivery of the Deliverables or Professional Services claimed to be non-conforming, Vendor shall promptly review and confer with Customer regarding such written claims and, for those claims that Vendor accepts as valid following an inquiry in good faith, Vendor shall promptly and at its expense, use commercially-reasonable efforts to re-perform the non-conforming Professional Services. If no written rejection is given to Vendor by Customer within ten (10) days following such re-performance, the Deliverables and/or Professional Services as re-performed will be deemed accepted by Customer. If Vendor determines, in its sole discretion, that it is not commercially feasible to re-perform non-conforming Professional Services so as to be conforming, then Vendor shall refund amounts paid by the Customer for the non-conforming Professional Services. To the extent Vendor disagrees with Customer's notice of non-conformance, the parties shall, at the written request of Customer, escalate the matter to their respective senior management. This Section constitutes Customer's sole remedy and Vendor's sole obligation with respect to a breach of the foregoing Professional Services warranty.

5.5 **Insurance Coverage.** In respect of Professional Services, Vendor shall maintain insurance policies and coverages as follows: Worker's Compensation Insurance insuring Vendor's liability under the worker's compensation and occupational disease laws of the state where Professional Services are performed with at least the coverage required by law; Commercial General Liability Insurance with coverage on an "occurrence" basis with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; in each case to insure Vendor for Professional Services performed under an Order; and Insurance for operations of all hired and non-owned vehicles with limits for each accident of \$1,000,000 combined single limit with respect to bodily injury, death and property damage. Vendor shall provide a current certificate of insurance to Customer upon request.

5.6 **Termination of Professional Services.** Excluding Standard and Premium Technical Support, either party may terminate Professional Services (i) in the event of material breach by the other party with notice and thirty (30) days' opportunity to cure (or 10 days for failure to pay Professional Services Fees or reimburse expenses not disputed in good faith) or (ii) in accordance with the termination provisions of the applicable Order.

6. **Sale of Hardware.**

6.1 **Hardware Purchase Terms.** Except as otherwise specified in the applicable Order, (i) Hardware prices are F.O.B. origin, freight prepaid to the destination specified in the Order and added to the invoice and (ii) Vendor will invoice sales of Hardware at the time of their shipment. Title and risk of loss pass to Customer upon tender of shipment to the carrier. Customer must make any good faith claim for shipment shortfall or damage within five (5) days of receipt of shipment; otherwise, Customer waives such claim as to such Order.

6.2 **Hardware Warranties.** All XiO Hardware is warranted in accordance with and is sold subject to the Hardware limited warranty found on Vendor's website (the "**Limited Warranty**"), currently at <http://xiowatersystems.com/warranty>. The remedies provided in the Limited Warranty constitute Customer's sole remedies and Vendor's sole obligations with respect to a breach of the Limited Warranty. The Limited Warranty is made expressly subject to the terms and conditions of this Agreement including Section 14 below. Hardware other than XiO Hardware sold by XiO to Customer is sold subject to the Hardware manufacturer's applicable warranty, if any, on a passthrough basis and is otherwise sold "AS-IS" by Vendor.

7. **Ownership; Proprietary Rights.**

7.1 **The Services and XiO Hardware.** Except as otherwise expressly provided in the applicable Order referencing this Section 7.1, the Services, Deliverables, and all ideas, know-how, processes, software, documentation, information, drawings, documents, designs, models, inventions, copy-

rightable material, and other tangible and intangible materials authored, prepared, created, made, developed, delivered, conceived, or reduced to practice, in whole or in part, by Vendor in relation to this Agreement (collectively, the “**Works**”) and all copyrights, patent rights, trade secrets, trademarks, moral rights, and all other proprietary and intellectual property rights throughout the world in each of the foregoing (collectively, “**Intellectual Property Rights**”) are and will remain the sole and exclusive property of Vendor. As between Vendor and Customer, each party retains all of its rights to its trademarks, logos, trade names, and service marks, website(s), technologies, patents, copyrights, trade secrets, and other intellectual property, and proprietary rights. Without limiting the generality of the foregoing, Vendor shall at all times solely and exclusively own (i) all rights, title, and interest in and to the Platform and content therein (excluding Customer Data), the Professional Services, De-identified Data, and any and all improvements, enhancements, derivative works, and extensions thereof, and all Intellectual Property Rights therein and (ii) all Intellectual Property Rights in XiO Hardware. No implied licenses are granted. All rights not expressly granted to Customer in this Agreement are reserved to Vendor.

- 7.2 **Use of Information.** Customer hereby consents to Vendor’s use of Customer Information as required or permitted by this Agreement and for exercising and enforcing Vendor’s rights under this Agreement, including generating De-identified Data from Customer Information.
- 7.3 **Feedback.** Customer hereby grants XiO a perpetual, royalty-free, worldwide right to use any information, suggestions, bug reports and fixes, and ideas provided by or on behalf of Customer to XiO for enhancements, modifications, and other feedback regarding the Services, Hardware, or any other XiO product or service.
8. **Customer Cooperation.** Customer shall provide reasonable cooperation to Vendor in Vendor’s performance of Vendor’s obligations under this Agreement.
9. **Customer Obligations Regarding Site Conditions.** Except as otherwise disclosed in writing to Vendor and acknowledged in writing by Vendor in advance of providing Professional Services, Customer represents and warrants that, to Customer’s knowledge after reasonable inquiry, there are no potentially hazardous substances, environmental contamination, or conditions in, on, or near the properties required to be visited by Vendor employees or other representatives in performing Vendor’s obligations under the Agreement that present, within the context of similar facilities, an unreasonable and/or unanticipated danger to human health or the environment. Customer shall immediately notify Vendor if it becomes aware of a change in such circumstances. Vendor shall not be responsible for remedying any pre-existing hazardous materials, pre-existing hazardous conditions or pre-existing violations of laws, or regulations affecting the site where Professional Services are to be performed, and Customer shall indemnify, defend, and hold harmless Vendor from any liability, loss, damages, cost, and expense (including attorneys’ fees) arising out of or relating to a failure or breach of Customer’s representations, warranties, and undertakings in this Section.
10. **Protection and Use of Confidential Information.** Each party shall not use or disclose Confidential Information of the other party without the prior written consent of the other party or as permitted or required by this Agreement. The receiving party may disclose the other party’s Confidential Information to the extent necessary to comply with a lawful order of a court or taxing authority, or government regulation, on condition that the party making the disclosure provides the other party with reasonable advance written notice to the extent legally permissible, and reasonably cooperates with the other party’s efforts (at the other party’s request and expense) to seek confidential or protective treatment. In addition, each party shall take at least reasonable measures to protect and maintain in confidence the other party’s Confidential Information. Each party may disclose the terms of this Agreement to (i) its attorneys, accountants, and other professional advisors, or to potential investors or other third parties conducting due diligence in connection with a potential financing, change of control, or other similar transaction of the party, and (ii) in the case of Vendor, to Vendor’s independent contractors and service providers for the purpose of performing Vendor’s obligations under this Agreement, in each case, so long as the third party is under a duty of confidentiality with respect to the disclosure at least as protective as those in this Agreement. Customer may disclose this Agreement to the extent necessary to comply with applicable laws and regulations that make this Agreement a public document or to otherwise comply with applicable public disclosure laws and regulations; provided, however, that, to the extent permitted by law, Customer shall use commercially reasonable efforts to seek confidential treatment of all pricing information within this Agreement in connection with the disclosure. If Vendor is obligated to respond to a third-party subpoena or other compulsory legal order or process in connection with Customer Information or Customer’s use of the Hardware or Services, Customer shall reimburse Vendor for Vendor’s reasonable and documented related attorneys’ fees, and other reasonable costs and expenses of responding to the legal order or process at Vendor’s then-current hourly rates for such Services.

11. **Use of Third-Party Services and Subcontractors.** Vendor may, in the ordinary course of business, utilize third-party services (including third-party hosting and data centers) and may also engage independent contractors and subcontractors in performing its obligations under this Agreement (including for Hardware installation and other Professional Services) and Customer hereby consents to such use provided Vendor is responsible for its subcontractors' compliance with this Agreement in their performance on behalf of Vendor.
12. **Indemnification.**
 - 12.1 **By Vendor.**
 - 12.1.1 **General.** Vendor shall indemnify, defend, and hold harmless Customer and its officers, directors, agents, and employees (each a "**Customer Indemnified Party**") from and against any and all third-party claims, demands, losses, liabilities, suits, costs, and expenses (including reasonable attorney's fees and legal expenses) (collectively, "**Claims**") to the extent arising out of death, injury, and property damage to the extent caused by Vendor's gross negligence, or willful, reckless, or criminal misconduct in the performance of the Professional Services at Customer's location except to the extent caused by the negligence or misconduct of a Customer Indemnified Party or resulting from Customer's failure to comply with this Agreement.
 - 12.1.2 **Infringement.** Vendor shall indemnify, defend, and hold Customer Indemnified Parties harmless from all Claims to the extent arising out of or relating to any third-party claims, demands, or suits alleging that one or more of the XIO Hardware, the Platform, or the Services infringe a third-party's United States copyright or trademark rights except to the extent the alleged infringement is caused by: (a) changes or modifications to the Platform made or specified by Customer or any third party; or (b) combinations of the Platform or Professional Services Deliverables with any product or service not supplied or specified by Vendor under this Agreement. If a Claim contemplated under this Section 12.1.2 is brought, Vendor shall, at its sole option and expense, and within a reasonable period, use commercially reasonable efforts to (1) procure for Customer the right to continue using the allegedly infringing item; (2) replace the same with a non-infringing item providing materially equivalent functions and efficiency; (3) modify the same to be non-infringing without material loss of functionality; or, if none of the foregoing (1)-(3) is, in Vendor's sole discretion, commercially reasonable, at Vendor's notice, Customer shall discontinue use of the allegedly infringing item and Vendor shall refund to Customer the fees paid by Customer to Vendor corresponding to the period following the effective date of such discontinuance and any pre-paid unused Subscription fees. This Section 12.1.2 sets forth Vendor's sole liability, and Customer's sole and exclusive remedy, in lieu of all others, with respect to infringement.
 - 12.2 **By Customer.** Customer shall indemnify, defend, and hold harmless Vendor and its Affiliates and their respective officers, directors, agents, and employees (each an "**Vendor Indemnified Party**") from and against any and all Claims to the extent arising out of death, injury, and property damage to the extent caused by Customer's gross negligence, or willful, reckless, or criminal misconduct; and except in each case to the extent caused by the negligence or misconduct of a Vendor Indemnified Party or resulting from Vendor's failure to comply with this Agreement.
 - 12.3 **Procedures.** The obligations under this Section 12 are conditioned upon the indemnified party (i) giving the indemnifying party prompt written notice of any Claim; (ii) granting the indemnifying party complete control of the defense and (conditioned upon a full release of the indemnified parties) settlement of Claims; and (iii) reasonably cooperating with the indemnifying party in the defense and settlement of the Claims.
13. **Representations and Warranties by Both Parties.** Each party represents and warrants to the other party that (i) this Agreement is binding on it and it has the right to enter into this Agreement and perform its obligations hereunder in the manner contemplated by this Agreement, (ii) this Agreement does not conflict with any other agreement entered into by it and (iii) that it shall comply with all applicable law in connection with the performance of its obligations and use of the Hardware and Services.
14. **Disclaimers.** **Except for the express warranties provided in this Agreement, the Hardware and Services are provided "AS IS AND WITH ALL FAULTS" and "AS AVAILABLE" and to the fullest extent permissible under applicable law, Vendor disclaims all warranties, express, implied, and statutory, concerning the Hardware and Services, and otherwise related to this Agreement, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and any warranties of non-infringement. Vendor does not warrant (i) that the Hardware or Services will meet Customer's requirements, (ii) that the Platform's operation will be error-free or uninterrupted (including due to performance of the Internet, other transmission networks, and customer's local network and equipment, which systems**

Vendor is not responsible for providing), (iii) that the Services or any Hardware will properly operate when used with equipment, other systems, or configurations, in each case not specified by Vendor in an Order, or (iv) Vendor's qualification under state licensing provisions. Vendor's express warranties do not apply to failures due to misuse, electrical power line surge damage, improper installation by user, improper power supply attachment, water damage, or physical abuse or where resulting from Customer's failure to reasonably cooperate with Vendor's performance. Vendor does not provide design, installation, or maintenance services for water or other industrial systems generally. Proper installation and use of Vendor Hardware and Services may involve design, installation, and other considerations not provided by Vendor and for which Vendor is not responsible. Vendor is not responsible for (i) errors in data provided by Customer or its users or representatives, (ii) injury or property damage or other damages or losses due to a failure of Hardware or Services or resulting from local or remote management through Hardware and/or Services of Customer's facilities or systems, (iii) use of its Hardware and Services in a manner inconsistent with their specifications and intended use as provided by Vendor, or (iv) defects or problems in Hardware or Services to the extent caused by factors other than the Hardware or Services, or to the extent as a result of tampering with Hardware or Services (including without limitation disconnection, abuse, misuse, accident, alteration, neglect, unauthorized repair, relocation, or interference). Customer acknowledges that the Hardware and Services, as equipment and activities in an industrial operation, have an inherent risk of failure and Customer assumes such general risk. The specific risks disclaimed in this Section are not exhaustive. Procurement of Hardware or Services from Vendor does not limit Customer's obligation to ensure, and is not a replacement for, Customer's on-site monitoring and management of its facilities including responding to water leaks, malfunctions, and hazardous conditions. The entire responsibility in connection with the consequences resulting from the use of the Hardware and Services as well as the intended or achieved results resulting from the use of the Hardware and Services lies entirely with Customer. If Customer has acquired the Hardware or Services through an authorized distributor or reseller of Vendor, Vendor shall not be held responsible for any promises or warranties made by such distributor or reseller. To the maximum extent permitted by law, this Section shall apply even if any express warranty or limited remedies set forth in this Agreement fails of its essential purpose.

15. **Limitation of Liability.** To the maximum extent permitted by applicable law, in no event will Vendor or its Affiliates, including their respective employees, officers, directors, owners, agents, successors and assigns, be liable to Customer or to any third party for any indirect, incidental, special, exemplary or consequential damages, including, but not limited to, lost profits, loss of data, loss of use, business interruption, loss of good will, or cost of procuring substitute products or services, arising out of or in relation to this Agreement or the Hardware or Services, even if advised of the possibility of such damages or losses. Notwithstanding anything else in this Agreement to the contrary, Vendor's aggregate liability arising from, relating to, based on, or connected with this Agreement including the Hardware and Services, shall in any event and under any theory of recovery, including claims of negligence, be limited to the amount of fees actually received by Vendor under this Agreement relating to the Customer facility for which the claim accrued during the twelve month period immediately preceding the date on which Customer's claim first accrued.
16. **Limitations of Disclaimers and Limitations on Liability.** Applicable law in certain jurisdictions relevant to this Agreement may limit the contractual exclusion, limitation, or disclaimer of warranties or damages. In such cases, Vendor's liability (and the liability of its Affiliates and agents) will be limited in accordance with this Agreement to the greatest extent permitted by applicable law.
17. **Not a Licensed Contractor.** Customer acknowledges that Vendor is performing services as an independent contractor and that Vendor is a provider of water facility control systems and services and is not a licensed contractor. Customer acknowledges that Vendor may work with a third-party installer (who, if required by applicable law, will be licensed) to perform specified installation services described in the applicable Order. Customer acknowledges that Vendor is not a licensed contractor under California or other law or regulations or under the law or regulations of the state in which it will perform Professional Services (each are "state licensing provisions"). Customer hereby waives any claim, and shall not raise any defense to enforcement of a contract, on grounds that Vendor (i) is a contractor within the meaning of any state licensing provisions, or (ii) is required under any state licensing provisions or other applicable law to be licensed as a contractor.

18. **Force Majeure.** Vendor shall not be liable to Customer or any other person or entity for any delay or failure in the performance of this Agreement or for loss or damage of any nature whatsoever suffered by Customer or its Affiliates due to (i) disruption or unavailability of communications, utility, hosting, or Internet service not within the reasonable control of Vendor, (ii) acts of war, acts of vandalism, pandemics, terrorism, hacking, lightning, flood, fire, strike, or (iii) any other causes not reasonably anticipated and beyond Vendor's reasonable control.
19. **Sale of Real Property.** If Customer sells or otherwise transfers ownership of an individual facility or property serviced by Vendor under this Agreement to an unrelated third party in an arms-length transaction, Customer may, with notification to Vendor delivered within 60 days following the transfer of ownership, assign the Services relating to such facility or property to the new owner only in respect of such individual facility or property and related Services, and only if the new owner agrees with Vendor in writing to be bound by an agreement substantially equivalent to this Agreement as it applies to the transferred Services, except that Customer acknowledges that splitting of Customer's Platform account and Services for purposes of the foregoing may require additional Services at additional cost. Any such assignment will not relieve Customer of obligations or liabilities under the Agreement occurring and/or accruing prior to the date of the assignment, and Customer shall continue to be bound by the Order to the extent not assigned. Absent such assignment in accordance with this Section, Customer will remain obligated under the Agreement for contracted Services relating to such transferred property.
20. **Publicity.** Customer consents to Vendor's reasonable and limited use of Customer's name, logo, and use case in promotion of Vendor's goods and services on condition that: (i) any public use, such as on a website or press release must first be submitted for approval by Customer and (ii) Customer reserves the right to terminate this use right at any time upon written notice to Vendor (email acceptable).
21. **Independent Contractor.** The relationship of Vendor and Customer is solely that of independent contractors. Nothing contained in this Agreement will be construed to make either party the other's partner, joint venturer, co-owner, agent, franchisee, or employee. Neither party is authorized or empowered to transact business, incur obligations, or make representations on behalf of the other party.
22. **Dispute Resolution.** In the event of any dispute arising out of or related in any way to this Agreement (except for non-payment by Customer), the parties shall, at the written request of either party, first attempt, in good faith, to settle such disputes informally through direct discussions and negotiations. If a resolution cannot be reached informally within a reasonable period (not to exceed 15 days), the parties shall, before the filing of any lawsuit, submit such disputes to and participate in good faith in at least one non-binding mediation before a mutually-acceptable mediator (or if they cannot agree, then the parties will each choose a mediator and the two mediators will select a third mediator to serve as the sole mediator). For purposes of the procedures set forth in this paragraph, a "dispute" means any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to this Agreement. The foregoing does not apply to the seeking of injunctive relief. No formal proceedings for the judicial resolution of any dispute, except for the seeking of injunctive relief, may begin until the foregoing dispute resolution procedure has been completed except as otherwise agreed in writing by the parties.
23. **Miscellaneous.** This Agreement, including all its attachments, contains the entire agreement of the parties, and supersedes any and all previous or contemporaneous agreements, with respect to the subject matter hereof, whether oral or written. This Agreement will be binding and will inure to the benefit of the parties hereto and their respective successors and permitted assigns. Subject to Section 19, this Agreement may not be assigned by Customer, in whole or in part, without Vendor's prior written consent, such consent not to be unreasonably withheld. Any attempted assignment in violation of the foregoing is void. Vendor may assign, delegate, and subcontract any or all of its rights or obligations hereunder. All formal notices, requests, demands, consents, and communications under this Agreement must be in writing and delivered by electronic mail, by certified or registered mail, return receipt requested, or by overnight courier and will be deemed given five (5) days after deposit in the mail, two (2) days after deposit with an overnight courier, and on the date sent by email if sent during normal business hours of the sender, and on the sender's next business day if sent outside of the normal business hours of the sender, in each case with confirmation of email transmission. Notices will be sent to the party's most recent contact information set forth in the Order or such other contact information as the party may specify in writing for notification purposes in accordance with the foregoing from time to time. This Agreement is governed in all respects, including validity, interpretation and effect, by the laws of the State of California, without reference to the conflicts of laws rules or any other rules that would result in the application of a different body of law. The UN Convention on Contracts for the International Sale of Goods will not apply to this Agreement. For purposes of enforcement of this Agreement, except

to the extent the parties otherwise agree in writing, the parties submit themselves to the exclusive jurisdiction of the state and federal courts located in Marin County in the state of California and hereby agree that such courts have exclusive jurisdiction for the enforcement of this Agreement and any rulings or orders associated therewith, and voluntarily waive any right to challenge jurisdiction based on any theory, including inconvenience of forum. Notwithstanding the foregoing, Vendor may seek injunctive or other equitable relief, wherever it deems appropriate, to protect or enforce Vendor's rights under this Agreement. If any part of this Agreement is held to be void or unenforceable, such part will be treated as severable, leaving valid the remainder of this Agreement notwithstanding the part or parts found to be void or unenforceable. No waiver will be effective unless it is in writing and signed by an authorized representative of the waiving party, and any such waiver will only be applicable to the specific instance(s) referenced in such written waiver. This Agreement may be amended only by a writing executed by each of the parties. Headings in this Agreement are for purposes of reference only and will not limit or otherwise affect the meaning hereof. Sections 7, 10, 12, 14 - 18, 22, and 23, Vendor's limited Hardware warranties in Section 6.2 (subject to their terms), and any and all payment obligations of Customer will survive a termination of this Agreement or any one or more Orders. The words "for example", "e.g." "including" and "includes" in this Agreement are deemed to be followed by "without limitation".

End General Terms and Conditions

EXHIBIT B: Platform Terms and Conditions

These Platform Terms and Conditions (these, “**Platform Terms**”) are supplemental terms and conditions governing the provision by XiO, Inc. (“**Vendor**”) of access to and use of the Platform, as defined below, and are attached to the General Terms and made part of the Agreement between Vendor and Customer. These Platform Terms supplement, but do not replace, the General Terms and other terms and conditions of this Agreement. Capitalized terms used, but not defined in this Exhibit have the meaning given them elsewhere in the Agreement.

1. **Definitions.**

- 1.1 “**Customer Data**” means electronic data submitted to and stored in the Platform by or behalf of Customer in using the Platform.
- 1.2 “**Platform**” means, collectively, the software application-based and other electronic services and data provided by Vendor to which Customer procures access and use pursuant to the Agreement via one or more of the Internet, cell and/or other wireless technology, and other telecommunications methods (“**Electronic Communications**”). The Platform may include web-based management and/or monitoring applications, and data feeds and services, and includes those that are accessed by the Customer through Hardware and other equipment. Platform excludes Professional Services.
- 1.3 “**Start Date**” means the date on which a Subscription Term commences as set forth in the applicable Order procuring the Subscription or if no date is indicated, then the effective date of the Order.
- 1.4 “**Subscription**” means the right to access and use the Platform for the applicable Subscription Term pursuant to and in accordance with this Agreement.
- 1.5 “**Subscription Fees**” mean the fees owed in consideration of a Subscription.
- 1.6 “**Subscription Term**” means, as to a Subscription, the Initial Term and any Renewal Terms (or until earlier terminated in accordance with this Agreement) commencing on the Start Date.

2. **General; Term of Subscription.** Subject to the terms and conditions of the Agreement (including payment by Customer of applicable Subscription Fees) and for the Subscription Term, Customer hereby subscribes to, and Vendor shall use commercially reasonable efforts to make available, access and use of the Platform via Electronic Communications solely for Customer’s internal business use. Subscriptions commence on the Start Date. The Subscription Term will continue for the initial term of the Subscription (the “**Initial Term**”) indicated on the applicable Order. **If no such Initial Term is indicated, then the Initial Term is one (1) year. Upon expiration of the Initial Term, the Subscription Term will renew for successive renewal periods of duration specified in the applicable Order or if not so specified, successive one (1) year renewal terms upon written agreement only (each, a “Renewal Term”).**

3. **Restrictions.** Customer shall not, and shall not knowingly permit any third party to, in whole or in part, (i) reverse engineer, decompile, or disassemble the Platform or use similar methods to determine any design structure, concepts, or construction method of the Platform, including its database, or replicate the functionality of the Platform for any purpose, (ii) copy, translate, resell, distribute, or create a derivative work of the Platform or use the Platform for timesharing, service bureau, or similar purposes, (iii) use the Platform for the purpose of building a similar or competitive product or service, (iv) obtain or knowingly assist in obtaining unauthorized access to the Platform including by sharing log-in credentials to access to Platform, (v) use the Platform in a manner that is contrary to applicable law, in violation of this Agreement or any third party rights of privacy or Intellectual Property Rights, (vi) use the Platform to store, access, distribute or transmit any material that is unlawful, inappropriate, or infringing; facilitates illegal activity; or causes or is reasonably likely to cause damage or injury to any person or property, or (vii) transmit viruses or other code intended to harm or surreptitiously intercept data to or from the Platform, or Vendor’s or a third party’s networks or systems, or adversely affect their operation or security. Customer shall indemnify, defend, and hold Vendor harmless from claims, demands, liabilities, losses, and costs and expenses (including attorneys’ fees) arising out of or relating to Customer’s breach of this Section 3. Vendor has the right (but not the obligation) to monitor and review all information and materials transferred to or otherwise stored under Customer’s account in the Platform for information, material, or activity that Vendor deems in its sole discretion to violate these Platform Terms or the Agreement generally. Customer shall comply with all applicable laws and regulations in connection with its use of the Platform including export laws and obtain any permits, licenses, and authorizations required to be obtained by Customer in using the Platform. Customer shall not remove, modify, or obscure any Vendor or other copyright, trademark, or other proprietary notices affixed to or displayed on or in the Platform and shall not knowingly allow any third party under Customer’s control to take any such action. Customer is responsible under this Agreement for all activities conducted in the Platform

under its login credentials and account including those of its independent contractors or any other third party.

4. **Customer Data; Right to Use; Other Customer Responsibilities.** Responsibility for ensuring that Customer Data is accurate and reflects Customer requirements lies solely with Customer. Customer hereby grants Vendor the right and license to use, copy, store, transmit, modify, process, and display Customer Data for the purposes of performing Vendor's obligations under this Agreement. The Platform may require the use of Hardware or other equipment such as transmitting sensors and communications and other hardware and software necessary to access the Internet and the Platform, which are not included in Subscription Fees (collectively, the "**Equipment**") and Customer is responsible for obtaining and maintaining Equipment, at Customer expense. Customer is responsible for maintaining the security of the Equipment, Customer account information, passwords and files, and for all uses of Customer's Platform account or the Equipment with or without Customer's knowledge or consent (excluding uses by Vendor in performing its obligations under this Agreement). Customer consents to Vendor's creation of De-identified Data from Customer Data. Vendor owns all right, title, and interest in and to De-identified Data and nothing herein restricts Vendor's use of De-identified Data in any manner whatsoever.
5. **Subscription Fees.** Customer shall pay all Subscription Fees in the amounts and according to the terms as are set forth in the applicable Orders procuring the Subscriptions. Except as otherwise specified in the Agreement, (i) Subscription Fees will be invoiced annually in advance and due within thirty (30) days of Customer's receipt of the invoice, and (ii) Vendor may increase Subscription Fees at each renewal of the Subscription Term by notice delivered at least 120 days' prior to the renewal. If Customer's use of the Platform exceeds the parameters or restrictions set forth in the applicable Order or otherwise requires the payment of additional Subscription Fees (per the terms of this Agreement), Customer will be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Subscriptions Fees are not refundable except in accordance with this Agreement.
6. **Service Level Agreement Terms.** During the Subscription Term, Vendor shall meet the service levels on and subject to the terms and conditions indicated in the Service Level Agreement Terms attached as Exhibit C.
7. **Platform Disclaimer.** Without limiting Section 14 of the General Terms (Disclaimers), the Platform provided by Vendor relies upon numerous interconnected communication and other technologies that are inherently not fault-free and may contain errors or become interrupted. Vendor disclaims responsibility for liabilities, losses, claims, and demands resulting from any such errors or interruptions. The Platform should not be used for fault-intolerant applications or where such errors or interruptions would present a high degree of risk. Certain Platform features allow alerts and notifications to be sent to mobile devices. Vendor is not responsible for text or other mobile communications charges resulting from such alerts and notifications or for alert failures due to failures of the mobile device or its connectivity. Vendor is not responsible for Platform errors due to Hardware or other equipment failure.
8. **Improvements to Platform.** Vendor may make enhancements, updates, and other modifications to the functionality, user interface, usability, and documentation of the Platform from time to time in its sole discretion as part of its ongoing effort to improve its offerings, so long as such modifications do not materially diminish the functionality of the Platform.
9. **Ownership of Platform.** Without limiting Section 7 of the General Terms (Ownership; Proprietary Rights), as between Vendor and Customer, Vendor owns all right, title and interest in and to the Platform including all Intellectual Property Rights therein. Nothing in this Agreement grants Customer any right, title or interest in or to the Platform other than the limited right to access and use the Platform during the Subscription Term in accordance with the Agreement. All rights not expressly granted to Customer in this Agreement are reserved by Vendor.
10. **Termination of a Subscription for Cause.** Either party may terminate a Subscription during the Subscription Term in the event that the other party has committed a material breach of this Agreement that is not cured within thirty (30) days after the other party's receipt of written notice thereof, which notice must expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure the alleged breach, except that the cure period for failure of Customer to pay fees when due is five (5) days.
11. **Effect of Termination.** Upon termination or expiration of a Subscription, for any reason, Customer shall cease all use of the Platform and Vendor has the right, at any time more than ninety (90) days following such termination or expiration, to permanently delete Customer Data and Customer's account associated with the terminated Subscription.

12. **Export; U.S. Governmental Rights.** Customer shall not remove or export from the United States or knowingly permit the export or re-export of the Platform, or any of its source code, object code, or underlying structure, ideas, know-how or algorithms, documentation or data (the “**Platform Materials**”), or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. The Platform Materials are “commercial items”, “commercial computer software”, and “commercial computer software documentation” under U.S. federal acquisition regulations (FAR) and U.S. defense federal acquisition regulations (DFAR). Consistent with such regulations, any use modification, reproduction, release, performance, display, or disclosure of Platform Materials by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by this Agreement.

End Platform Terms and Conditions

EXHIBIT C: Service Level Agreement Terms

These Service Level Agreement Terms (these “**SLA Terms**”) are provided pursuant to that certain Agreement to which these SLA Terms are attached between Vendor and Customer and form part of the Agreement. Capitalized terms used in these SLA Terms, but not defined herein have the meaning given to them elsewhere in the Agreement.

1. **Availability Service Levels**

1.1 **Definitions** For purposes of these SLA Terms, the following terms have the following meanings:

1.1.1 “**Emergency Maintenance**” means Vendor’s unplanned or emergency maintenance for application of hotfixes, security related maintenance activities, and other actions necessary to maintain the integrity or operation of the Platform during which the Platform is unavailable.

1.1.2 “**Scheduled Maintenance**” means scheduled maintenance to maintain the integrity or operation of the Platform during which the Platform is unavailable.

1.1.3 “**Total Monthly Time**” means the total number of minutes in the applicable calendar month.

1.1.4 “**Unavailable Monthly Time**” means the total number of minutes in the applicable calendar month during which the Platform was unavailable for use.

1.1.5 “**Uptime Percentage**” = $((A-B+C)/A)$
multiplied by 100 and expressed as a percentage, where:

A = Total Monthly Time;

B = Unavailable Monthly Time; and

C = Excluded Monthly Time (as defined below)

1.2 **Availability Commitment** Subject to these SLA Terms:

1.2.1 During the Subscription Term, Vendor shall use commercially reasonable efforts to ensure that the Platform will have an Uptime Percentage of at least **99.9%**; and

1.2.2 Vendor shall endeavor to schedule Scheduled Maintenance to occur outside of Vendor’s normal business hours and to provide Customer at least 48 hours’ notice prior to Scheduled Maintenance. No prior notice to Customer is required for Emergency Maintenance; however, Vendor shall use commercially reasonable efforts to notify Customer in advance of Emergency Maintenance.

1.3 **Exclusions.** Notwithstanding anything to the contrary in these SLA Terms, no Unavailable Monthly Time will be deemed to have occurred if it: (a) is caused by factors outside of Vendor’s reasonable control, including, without limitation, Internet access or related problems occurring beyond the point in the network where Vendor maintains access and control over the Platform; (b) results from failures or issues in satellite, radio, cellular, or other non-Internet-based telecommunications transmissions used to communicate with or to the Platform, whether procured through Vendor or otherwise; (c) results from any actions or inactions of Customer or any third party (except for Vendor’s agents and subcontractors); (d) results from any Customer third party application(s), Customer’s equipment, software, or other technology, add-on services, or third-party equipment, software, or other technology; (e) occurs during Scheduled Maintenance; (f) occurs during Emergency Maintenance; or (g) is less than five (5) minutes of continuous unavailability in duration (minutes of unavailability in the calendar month resulting from (a)-(g) collectively, “**Excluded Monthly Time**”).

1.4 **Unavailability Credits**

1.4.1 For any calendar month that has an Uptime Percentage indicated in the Unavailability Credit Table below, Customer may request an Unavailability Credit corresponding to the Uptime Percentage, where “Unavailability Credit” is calculated as the applicable Unavailability Credit Percentage of the Subscription Fees corresponding to the calendar month at issue. The Unavailability Credit will be credited toward the next invoice for Subscription Fees or refunded if the Subscription Term expires or is terminated before it can be so credited.

1.4.2 Customer must request the Unavailability Credit by submitting a request to Vendor via email to accounts-receivable@xiowater.com during the first 15 calendar days of the calendar month immediately following the calendar month for which the credit is claimed.

1.4.3 Unavailability Credit Table:

Uptime Percentage	Unavailability Credit Percentage (%)
99.5% - <99.9%	2.0%
98.5% - <99.5%	3.0%
<98.5%	5.0%

1.5 **Chronic Unavailability** If the Platform experiences an Uptime Percentage that is less than **98.5%** for any two consecutive months, or for any four out of 12 consecutive months, then Customer will have the right, upon 10 business days’ notice to Vendor, to terminate the Subscription in which case Vendor shall refund to Customer its prepaid and unused fees corresponding to the period from the effective date of termination to the expiration of the then applicable Subscription Term. The foregoing credits and termination right constitute Vendor’s sole and entire liability to Customer, and Customer’s sole and exclusive remedy with respect to Vendor’s failure to meet Vendor’s commitments regarding availability of the Platform provided in this Exhibit C.

2. **Standard Support**

2.1 **Standard Support Access and Hours.** Vendor shall provide requested general technical support services to address errors in the Platform as further described in and subject to the Standard Support terms in this Section 2 of these SLA Terms (such support services, “**Standard Support**”). Standard Support is available without extra charge from 8am – 5pm Pacific time, Monday – Friday, except Vendor holidays (“**Standard Support Hours**”) through Vendor’s online ticketing system accessible at www.xiowater.com and via email at support@xiowater.com. Vendor reserves the right to update the contact information for accessing Standard Support from time to time by written notice to Customer.

2.2 **Standard Support Service Levels.** Each request for Standard Support received by Customer must identify an Error (defined below) and will be assigned a case number (each, a “Case”). An “Error” means a failure of the Platform to perform in accordance with its specifications as further described in the Error Description column below. For each Error, Vendor will prioritize the Case in accordance with the Severity Levels in the table below and will work to provide a temporary or permanent solution, fix, or work-around that resolves the material aspects of the Error with the corresponding Level of Effort as described in the table below.

2.3 **Standard Support Service Levels Table:**

Severity Level	Error Description	Target Initial Response Time	Level of Effort
“Severity 1 (Critical)”	Critical production issue affecting all users, including Platform unavailability and data integrity issues with no workaround available.	Four (4) hours	Vendor shall use best efforts, applying its resources on a 24 hour per day basis to the exclusion of other priorities, to correct the Error as quickly as possible.
“Severity 2 (High)”	Major functionality is impacted. Issue is persistent and affects many users and/or major functionality. No reasonable workaround available.	Four (4) Hours	Vendor shall use best efforts, applying resources during normal business hours, to correct the Error as quickly as reasonably practicable.
“Severity 3 (Medium)”	Platform performance issue or bug affecting some but not all users. Short-term workaround is available, but not scalable.	Eight (8) hours	Vendor shall use commercially reasonable efforts, applying resources during normal business hours, to correct the Error as quickly as reasonably practicable.
“Severity 4 (Low)”	Inquiry regarding a routine technical issue; bug affecting a small number of users. Reasonable workaround available.	Twenty four (24) hours	Vendor shall use commercially reasonable efforts to correct the Error.

As used above, “**Target Initial Response Time**” means the elapsed time during Standard Support Hours between the moment a request regarding an Error is first submitted to Vendor via a Standard Support contact until Vendor first responds to the request except that, if the request is submitted during the last 30 minutes of Support Hours on a given day, the elapsed time will be measured from the start of the next day on which Standard Support Hours are available.

Under no circumstances does Vendor warrant or represent that Errors can or will be corrected.

2.4 Customer Obligations for Standard Support. Vendor’s ability and obligation to fulfill its Standard Support obligations is conditioned upon Customer (a) providing all relevant information necessary for Vendor to respond to a Standard Support request within the applicable response times set forth above; (b) providing all relevant information and any additional requested information and documentation necessary for Vendor to reproduce the Error; (c) designation of Customer’s primary and secondary contacts (along with after-hours contact information for such personnel) who have been trained on the Platform and who can provide Vendor with all requested information; (d) submission of Standard Support requests promptly in response to an Error; (e) using commercially reasonable efforts to diagnose and resolve problems in the operation of the Customer’s interface to the Platform prior to submitting a request for Standard Support; (f) using commercially reasonable efforts to confirm that reported problems are not due to Customer’s systems or third-party systems; (g) consultation of Vendor-supplied documentation before submitting Standard Support requests; and (h) providing Vendor with remote access to Customer’s account or environment on the Platform for purposes of providing the requested Standard Support. Customer acknowledges that if it provides Vendor with erroneous information, or fails to provide all reasonably available information, then Vendor will not be liable for delays in, or improper performance of Standard Support. Customer is responsible for procuring, installing, and maintaining all applications, equipment, telephone lines, communications interfaces, and other hardware necessary to access the Platform and to obtain Standard Support.

2.5 Standard Support Exclusions. The following are outside the scope of Standard Support:

- support provided outside of the Standard Support Hours;
- support that relates to or becomes necessary due to failure of computer hardware, equipment or programs not provided by Vendor,

- negligence of Customer, error by Customer in operation of the Platform, or improper modification or use of hardware or software by Customer;
- maintenance and support of hardware, software programs, or data connections not provided by Vendor ("**Third Party Products**");
- development, customization, coding, installation, integration, consulting, and training;
- any other services that are not for the identification and resolution of Errors in the Platform; and
- issues or failures caused by:
 - Customer acts or omissions, including any Customer misuse or abuse of the Vendor system or in violation of the Agreement;
 - Any force majeure event as described in the Agreement;
 - Viruses or system attacks not prevented by Vendor's application of industry standard anti-virus software; and
 - An increase in Platform utilization by Customer materially beyond the Platform's standard or mutually agreed hosting capacity.

2.6 **Out-of-Scope Support.** If Customer does not have Premium Technical Support and requests and receives technical support from Vendor that is provided outside of Standard Support Hours or is otherwise outside the scope of Standard Support (for example, providing assistance or training in use of the Platform, troubleshooting of non-Vendor products or services, or light engineering advice) or if Customer is subject to additional charges for overuse of Premium Technical Support as described in Section 3.3 ("**Out-of-Scope Support**"), then Customer will be charged and agrees to pay for such excess support on an hourly basis at Vendor's then generally applicable hourly rates for the type of support provided. Higher rates will apply for Out of Scope Support provided outside of Standard Support Hours, that is outside of the scope of Standard Support, or that involves assistance from a Vendor engineer. Any such charges will be invoiced and payable monthly in arrears. Customer may request Vendor's support services hourly rates at any time. Out-of-Scope Support is subject to Section 3.5 below (Disclaimer).

2.7 **Chronic Support failures.** If Vendor materially fails to meet its Standard Support commitments in this Exhibit C for any two consecutive months, or for any four out of 12 consecutive months as shown by reasonable documentation, then Customer will have the right, upon 30 days' prior written notice to Vendor, to terminate the Agreement in which case Vendor shall refund to Customer its prepaid and unused Subscription Fees corresponding to the period from the effective date of termination to the expiration of the then applicable Subscription Term. The foregoing termination right constitutes Vendor's sole and entire liability to Customer, and Customer's sole and exclusive remedy with respect to Vendor's failure to meet the Standard Support commitments in this Exhibit C.

3. **Premium Technical Support**

3.1 The following terms apply only to Customers that have procured Premium Technical Support. Premium Technical Support is an enhanced technical support plan, further described below, which includes an annual allotment of support points that may be redeemed at different rates depending on the nature and timing of the support provided and that, in addition to online ticketing and email support contacts provided with Standard Support, includes telephone support at the support telephone number made available by Vendor to its Premium Technical Support Customers ("**Premium Technical Support**").

3.2 **Scope.** In addition to receiving Standard Support, Customers that have purchased Premium Technical Support may request technical support for assistance in the use of the Platform, requests that may involve some light engineering, and requests that may involve or relate to software, hardware, services, or products provided by third parties ("**Third-Party Products**"). Subject to Section 3.5 (Disclaimer) below, Vendor will use its commercially reasonable efforts to fulfill and/or resolve its Premium Technical Support requests. Standard Support requests (i.e., those involving errors in the Platform provided during Standard Support Hours) will be subject to the Standard Support terms in Section 2 (Standard Support) above.

3.3 **Support Points.** On or before the Start Date of the Subscription Term, Customers with Premium Technical Support will be allotted the number of support points indicated in the applicable Order purchasing Premium Technical Support, which points will be redeemable during the Subscription Term. The points expire if not redeemed during the Subscription Term for which they were allotted. Support points are redeemed for Premium Technical Support provided at the applicable rate in the table below based on the time spent by Vendor providing the support, subject to the rounding

described below. Premium Technical Support provided via telephone, email, the online ticketing portal, or otherwise, as well as time spent by Vendor on the support case outside of communications with Customer count for purposes of determining points redeemed. Standard Support provided during Standard Support Hours will not use or count against Premium Technical Support points. Every approximately three months, Vendor will provide Customer a statement of Standard and Premium Technical Support provided and an accounting of points redeemed and remaining since the period covered by the last such report provided (or since the Start Date, as applicable). If Customer has exhausted its available points during the Subscription Term, Premium Technical Support will still be provided at Vendor’s applicable hourly rates in the manner specified in Section 2.6 (Out-of-Scope Support), except that the rates will be discounted by the discount percentage applicable to the Premium Support level or plan that Customer has procured (as indicated in the applicable Order). Unused points have no cash value and expire upon termination or expiration of the Subscription for which the Premium Technical Support was procured.

3.4 Premium Technical Support Point Redemption Rates:

Type of Premium Technical Support	During/Outside Standard Support Hours	Rate of Point Redemption*
Premium Technical Support (not provided by a Vendor engineer)	During Standard Support Hours	1 point redeemed per hour of support provided.
Premium Technical Support or Standard Support (not provided by a Vendor engineer)**	Outside Standard Support Hours	1.5 points redeemed per hour of support provided.
Premium Technical Support provided by a Vendor engineer***	During Standard Support Hours	2 points redeemed per hour of support provided.

*For purposes of point redemption for a support case, Premium Technical Support provided for the case will be rounded up to the nearest 6 minute increment. For example, with respect to a Premium Technical Support case, 21 minutes of actual time spent by Vendor providing the support would be treated as the provision of 24 minutes of support.

** Support provided outside of Standard Support Hours (regardless of whether the issue is within or outside the scope of Standard Support) redeems points at 1.5 points per hour, subject to the applicable rounding described above.

*** Engineer-provided Premium Technical Support is not available outside of Standard Support Hours.

3.5 Disclaimer. With respect to Premium Technical Support that involves engineering and/or that relates to Third Party Products, Customer acknowledges that Vendor makes no guarantees as to Vendor’s ability to resolve or otherwise provide such support or as to the accuracy or appropriateness of any such support that is provided. Engineering provided through Premium Technical Support is intended for relatively minor engineering matters or where exigent circumstances require immediate attention and action. Engineering needs that involve complex or critical functions or problems should be addressed, if at all, through the provision of Professional Services separately procured pursuant to a properly scoped Statement of Work and not through Premium Technical Support whenever possible. Vendor reserves the right at any time to decline to provide engineering and assistance with Third Party Products through Premium Technical Support that Vendor determines in its sole discretion is beyond the scope of what is appropriate for Premium Technical Support, including at any time after such support has been commenced.

3.6 Changes to these SLA Terms. During the Subscription Term, upon reasonable notice, Vendor reserves the right to reasonably modify these SLA Terms, but not in manner that materially, adversely reduces Vendor’s commitments herein.

End of Service Level Agreement Terms



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/28/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CF&P Insurance Brokers 101 Ygnacio Valley Road Ste. 200 Walnut Creek, CA 94596	CONTACT NAME: Elizabeth Ferguson PHONE (A/C, No. Ext): 925.956.7723 E-MAIL ADDRESS: elizabeth@cfpinsurance.com	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	
INSURED XiO, Inc. 100 Smith Ranch Rd. Ste 120 San Rafael, CA 94903	INSURER A: West American Insurance Co.	NAIC # 44393
	INSURER B: American Casualty Company	20427
	INSURER C: Prop.&Cas. Ins. Co.of Hartford	34690
	INSURER D: Underwriters at LLOYD'S, London	15792
	INSURER E: Scottsdale Insurance Company	41297
	INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			BKW58590748	01/22/2024	01/22/2025	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 15,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAS58590748	01/22/2024	01/22/2025	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10000.00			USA58590748	01/22/2024	01/22/2025	EACH OCCURRENCE	\$ 3,000,000
							AGGREGATE	\$ 3,000,000
								\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	57WECAC4399	01/22/2024	01/22/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
D	Errors & Omissions			TBD	12/29/2023	12/29/2024	Limit	2,000,000
E	XS Errors & Omissions			TBD	12/29/2023	12/29/2024	Limit	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

For Verification Purposes

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT No. 24-09

February 15, 2024

RE: Discussion and Possible Action to consider amending the Department of Water, County of Kauai, Rules and Regulations, Part 2 for Water Service Connection, Part 4 for the Furnishing of Water Service in the County of Kauai and Board Policy No. 9 titled, "Meter Reading and Rending of Bills."

RECOMMENDATION:

It is recommended that the Board consider amendments to the Department of Water, County of Kauai, Rules and Regulations, Part 2 for Water Service Connection, Part 4 for the Furnishing of Water Service in the County of Kauai and Board Policy No. 9 titled, "Meter Reading and Rending of Bills."

FUNDING: N/A

BACKGROUND:

Due to the unexpected and undue burden that failing meter equipment has placed upon the Department staff, the Manager and Chief Engineer requests the Board's consideration to enter into discussion to address the issue with revisions to its Rules & Regulations and existing Board policy.

OPTIONS:

Option 1: **Approve Manager Report's to consider amendments for discussion with the Board's Rules Committee.**

Pro: Approving this option will allow discussion and consideration to amend the Department's Rules and Regulations and Board Policy No. 9 to address the challenges and undue burden brought forth by the failing meter equipment.

Con: Approving this option will result in the added effort to prepare, discuss, review and amend the Department's Rules and Regulations and Board Policy No. 9.

Option 2: **Reject the Manager's Report.**

Pro: Approving this option will result in no changes to the Rules and Regulations and Board Policy.

Con: Approving this option will not address the challenges and undue burden placed upon the Department until the failing meter equipment is repaired and/or replaced or consider amendments to the Department's Rules and Regulations and Board Policy to address the issue.

A horizontal splash of clear blue water with bubbles, positioned behind the text.

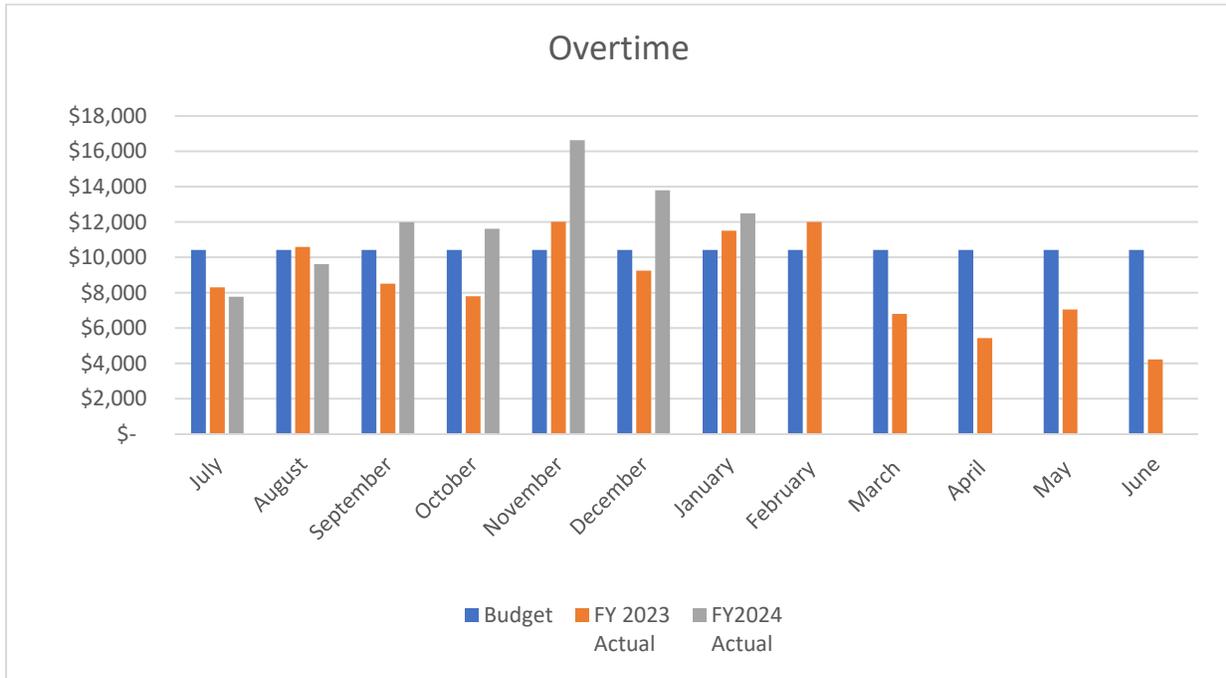
STAFF

REPORTS

FISCAL DIVISION DASHBOARD



Overtime



Note: January 2024 includes amounts posted from January 1st through January 15th (pay date January 31st) and “pending” transactions from January 16th through January 31st. Once HR Payroll reconciles and processes the payroll closing batches, the Central Accounting Division will post the payroll transactions to the general ledger.

FISCAL DIVISION DASHBOARD

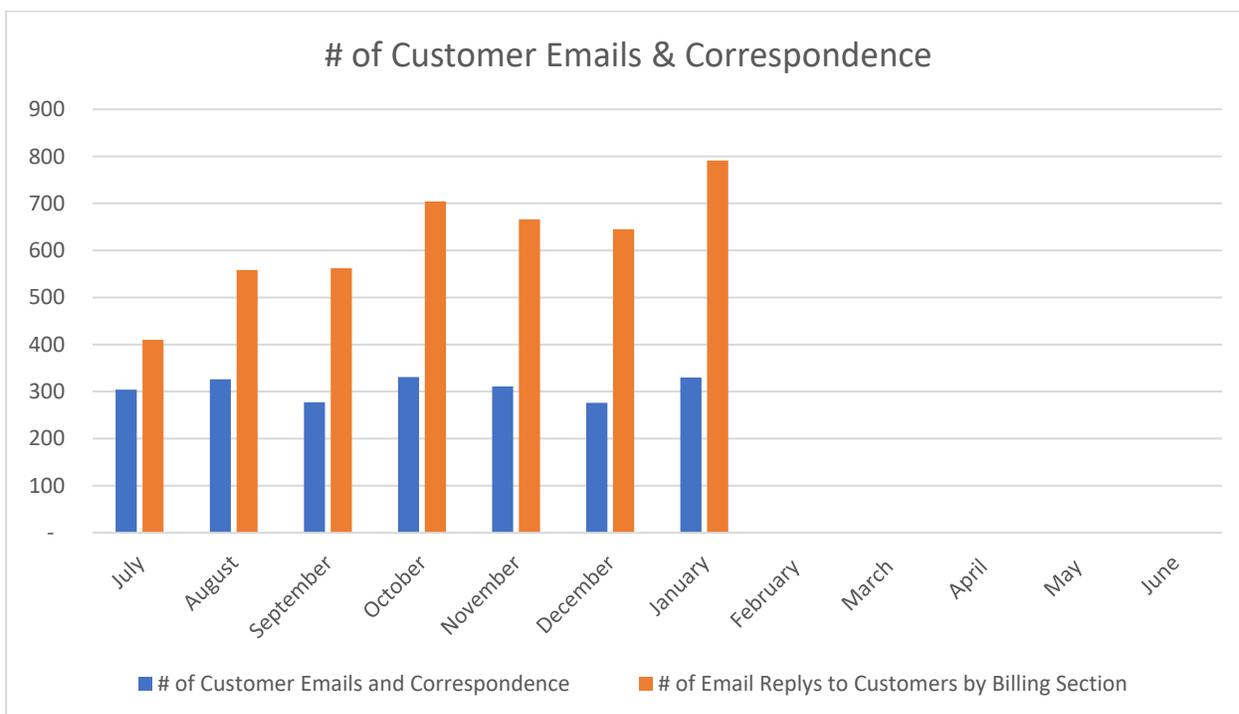


Walk-In Customers



Note: The Billing Section currently operates two (2) payment windows, Lobby 1, and Lobby 2. There is a designated “floater” to assist at the window during breaks or for short-staffing coverage. There is a total of 19 meter reading routes island-wide with varying billing cycles.

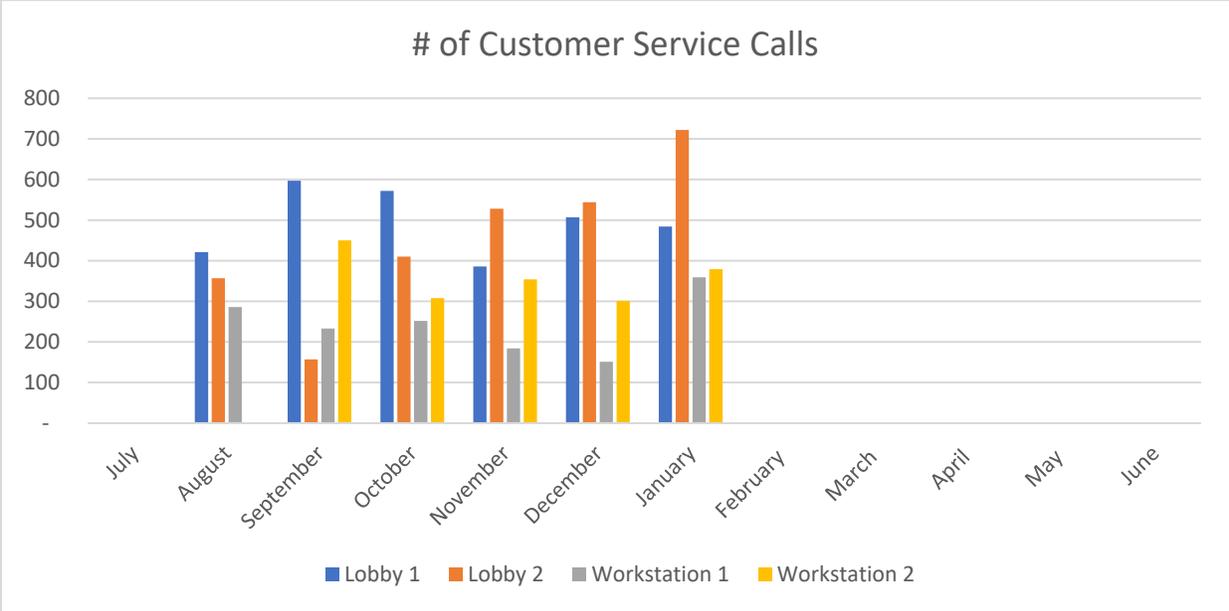
Customer Emails & Correspondence



FISCAL DIVISION DASHBOARD



Customer Service Calls



Note: In addition to the two (2) payment windows, Lobby 1 and Lobby 2, there are two (2) Workstations, Workstation 1, and Workstation 2. The Billing Team of four (4) employees assist with the phone calls, respond to emails, and assist walk-in customers with payments and/or questions surrounding their account. They also provide assistance to the Meter Readers in the field.

Department Of Water Budget Report for January 2024

	January 2024			Fiscal Year 2024			
	Budget	Actual	Variance	Year to Date Budget	Year to Date Actual	Variance	Variance %
Operating Revenue	\$ 2,777,499.00	\$ 5,112,158.41	\$ 2,334,659.41	\$ 19,442,493.00	\$ 22,457,186.74	\$ 3,014,693.74	16.%
Expenses							
Labor *	\$ 1,075,032.00	\$ 1,025,238.98	\$ 49,793.02	\$ 7,525,224.00	\$ 7,176,672.86	\$ 348,551.14	5.%
Services	828,127.00	597,544.80	230,582.20	5,796,889.00	2,969,021.70	2,827,867.30	49.%
Utilities & Materials	647,822.00	441,967.30	205,854.70	4,534,754.00	3,646,307.49	888,446.51	20.%
Total Operating Expenses	\$ 2,550,981.00	\$ 2,064,751.08	\$ 486,229.92	\$ 17,856,867.00	\$ 13,792,002.05	\$ 4,064,864.95	23.%
Debt Service Principal & Interest	469,227.25	523,728.24	(54,500.99)	5,915,696.75	5,928,826.12	(13,129.37)	(0.%)
Operating and Debt Expenses	\$ 3,020,208.25	\$ 2,588,479.32	\$ 431,728.93	\$ 23,772,563.75	\$ 19,720,828.17	\$ 4,051,735.58	17%
Net Income (Loss)	\$ (242,709.25)	\$ 2,523,679.09	\$ 2,766,388.34	\$ (4,330,070.75)	\$ 2,736,358.57	\$ 7,066,429.32	163.%

* Current month's labor is estimated

Capital Projects and Purchases**

	Fiscal Year Budget	January FYD 2024 Actual	Remaining Budget
Water Utility Funded Projects ***			
IT Capital Purchases	\$ 2,505,000.00	\$ 15,153.99	\$ 2,489,846.01
Job 09-01 Yamada Tank	-	170,636.15	(170,636.15)
Job 15-07 HE-01 HE-10 Kaumualii Hwy 16" Main Boost	-	-	-
Job 11-07 HE-03 Hanapepe & Koloa Well MCC	-	5,070.00	(5,070.00)
Job 16-04 Kilauea Wells Rehab	-	193,803.74	(193,803.74)
Job 17-10 KW-07 Paua Valley Tank Repair	-	-	-
Job 18-03 Kuhio Hwy Hardy Oxford 16" Main	2,000,000.00	8,734.18	1,991,265.82
Job 23-02 Kuamoo Rd 8" Replacement	-	53,215.00	(53,215.00)
Job 23-03 Kuhio Hwy Papalooa to Waikaea	-	51,918.73	(51,918.73)
Job 23-07 Rehabilitate Puupilo Steel Tank	-	65,421.45	(65,421.45)
Wailua Homesteads Tank	3,750,000.00	118,543.74	3,631,456.26
Ops Meter Replacement Program	-	-	-
Ops Capital Purchases	1,753,491.00	237,507.95	1,515,983.05
Projects with budget but no activity	5,515,000.00	-	5,515,000.00
	\$ 15,523,491.00	\$ 920,004.93	\$ 14,603,486.07

FRC Funded Projects			
Job 04-08 Drill Kapaa Homestead Well 4	\$	700,000.00	\$ 68,980.00 \$ 631,020.00
Projects with budget but no activity		400,000.00	- 400,000.00
	\$	1,100,000.00	\$ 68,980.00 \$ 1,031,020.00
Build America Bonds Funded Projects			
Job 09-01 Yamada Tank	\$	-	\$ 52,373.11 \$ (52,373.11)
Job 02-06 Kilauea Tank		-	12,942.24 (12,942.24)
Projects with budget but no activity		6,100,000.00	- 6,100,000.00
	\$	6,100,000.00	\$ 65,315.35 \$ 6,100,000.00
State Allotment Funded Projects			
Job 09-01 Yamada Tank	\$	-	\$ 309,662.00 \$ (309,662.00)
17-10 KW07 Paua Valley Tank Repair		-	-
Projects with budget but no activity		10,600,000.00	10,600,000.00
	\$	10,600,000.00	\$ 309,662.00 \$ 10,290,338.00
State Revolving Funded Projects			
Job 09-01 Yamada Tank	\$	-	\$ 3,789,738.31 \$ (3,789,738.31)
Projects with budget but no activity		\$5,000,000.00	\$5,000,000.00
	\$	5,000,000.00	\$ 3,789,738.31 \$ 1,210,261.69
Total Capital Projects	\$	38,323,491.00	\$ 5,153,700.59 \$ 33,235,105.76

** Capital projects and capital purchases with no activity in the 2024 fiscal year are presented in the aggregate

*** Zero balance budgets are prior year projects awaiting supplemental budget and Board approval

Selected Divisions

	January 2024			Fiscal Year 2024			
	Budget	Actual	Variance	Year to Date Budget	Year to Date Actual	Variance	Variance %
Engineering	\$ 454,613.00	\$ 341,771.70	\$ 112,841.30	\$ 3,182,291.00	\$ 1,712,159.05	\$ 1,470,131.95	46.%
Fiscal	222,259.00	200,669.38	21,589.62	1,555,813.00	1,489,773.49	66,039.51	4.%
Operations	1,257,036.00	1,031,984.83	225,051.17	8,799,252.00	7,345,551.38	1,453,700.62	17.%
	\$ 1,933,908.00	\$ 1,574,425.91	\$ 359,482.09	\$ 13,537,356.00	\$ 10,547,483.92	\$ 2,989,872.08	22%

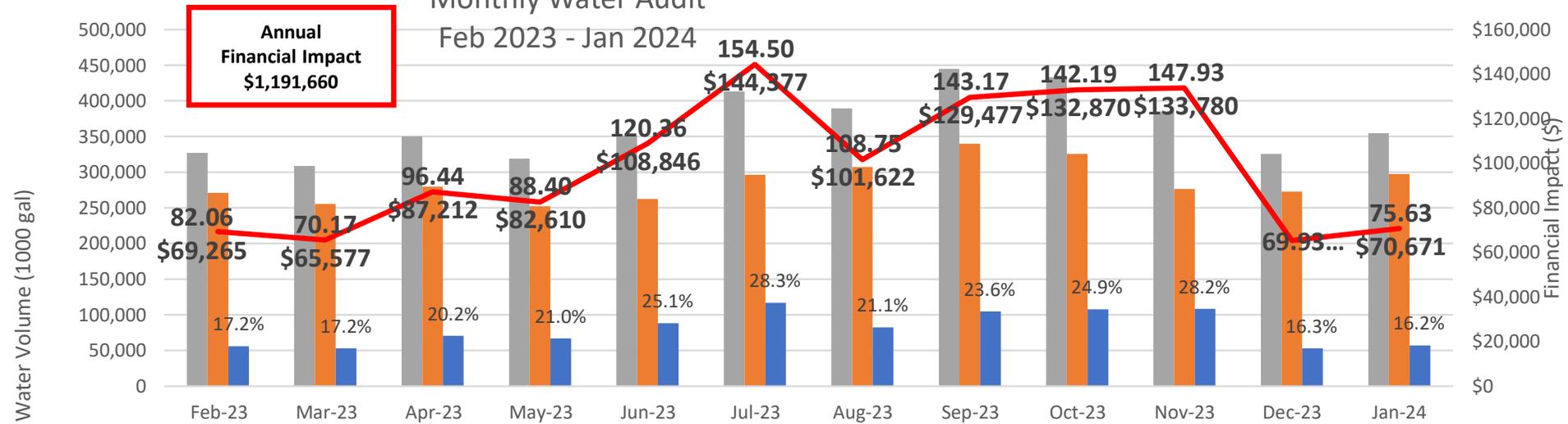


OPERATIONS DASHBOARD

Ops Highlights:

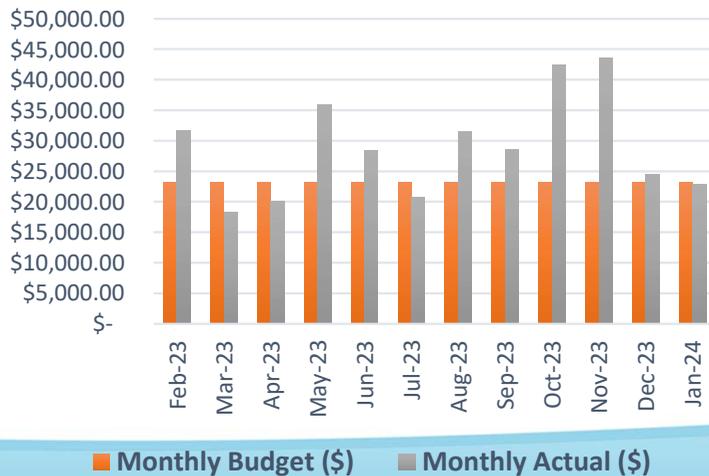
1. Continuous recruiting for Electronics Tradesperson and Pipefitter Helper.
2. Started the Wailua/Kapa'a meter transponder changeout. 1152 meter register/trans en route.
3. Water Service Investigators - 11 leaks were located and spotted along with assisting locating meter boxes for the Wailua/Kapa'a meter changeout.

Monthly Water Audit
Feb 2023 - Jan 2024

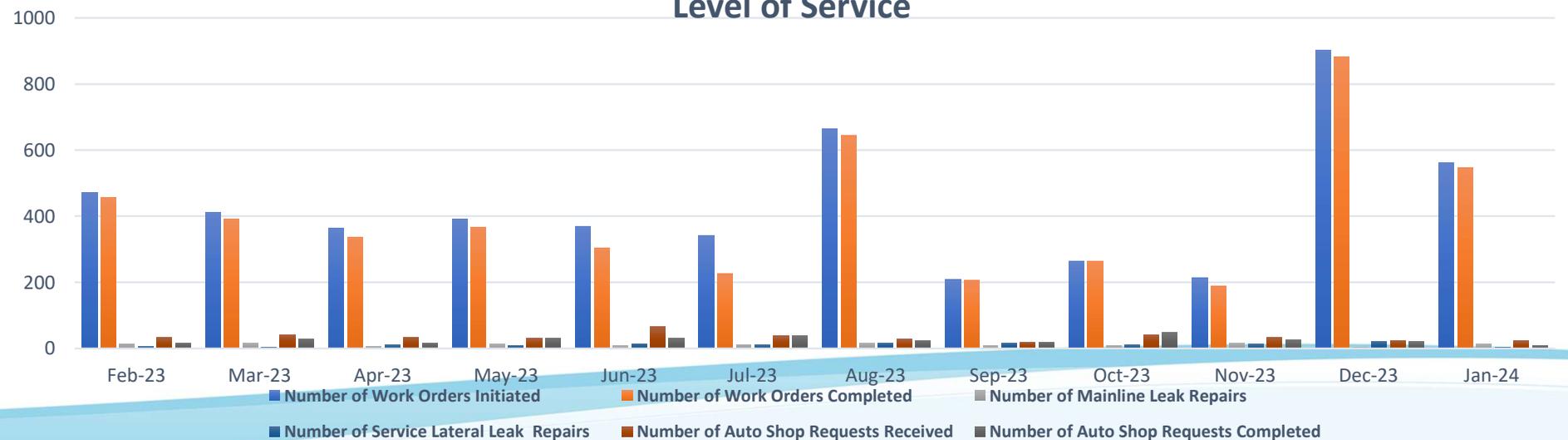


	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24
Produced (Kgals)	326,932	308,539	350,219	319,002	350,766	413,260	389,372	444,660	433,059	384,904	325,580	354,475
Customer Read (Kgals)	270,820	255,415	279,569	252,080	262,590	296,300	307,048	339,771	325,421	276,529	272,639	297,225
Non-Rev Water (Kgals)	56,112	53,124	70,650	66,922	88,176	116,960	82,324	104,889	107,638	108,375	52,941	57,250
Financial Impact	\$69,265	\$65,577	\$87,212	\$82,610	\$108,846	\$144,377	\$101,622	\$129,477	\$132,870	\$133,780	\$65,351	\$70,671

Overtime



Level of Service



OPERATIONS

	Last Month		Current Month		Previous FY		Current FY	
					Year to Date		Year to Date	
STAFFING								
Budgeted Staff Vacancies	50	7	50	7	48	9	50	7
OVERTIME								
Budget (\$) Actual (\$)	\$23,283.33	\$24,586.99	\$23,283.33	\$22,791.79	\$162,983.33	\$177,444.24	\$162,983.33	\$214,322.43
FLEET MANAGEMENT								
# of Vehicles Active per day	38		41		40		42	
# of Vehicles Active per month	749		865		802		872	
METER PROGRAM								
# of Existing Meters Replaced	2		1		25		14	
# of Existing Meters Repaired	720		397		320		1385	
# of New Meters Installed	1		3		62		44	
# of New Laterals Installed	0		0		15		7	

OPERATIONS



LEVEL OF SERVICE

	Last		Current		Previous		Current	
	Month	Month	Month	Month	FY YTD	FY YTD	FY YTD	FY YTD
# of Work Orders Initiated	901		561		1541		3156	
# of Work Orders Completed	881		547		1291		2960	
# of Mainline Leak Repairs	4		13		71		79	
# of Service Lateral Leak Repairs	21		4		81		94	
# of Calls for Service	176		219		1312		1410	
# of Temporary Hydrant Meters Installed	1		2		15		20	
# One Call Request Received Completed	24	24	24	24	194	194	297	296
# of Auto Shop Requests Received Completed	24	20	24	20	291	247	207	185
# of Hydrant Hits	3		3		16		18	

WATER AUDIT

	Last	Current Month	Previous	Current
	Month		FY YTD	FY YTD
Water Produced (Million Gallons)	325.580	354.475	2817.097	2745.310
Customer Meter Reading (Million Gallons)	272.639	297.225	2373.326	2114.933
Non-Revenue Water (Million Gallons)	52.941	57.250	443.771	630.377
Non-revenue %	16%	16%	16%	23%
Financial Impact	\$65,351.43	\$70,670.55	\$547,799.80	\$778,149.58



ENGINEERING DASHBOARD

	Last Month		Current Month		Previous FY Year to Date		Current FY Year to Date	
STAFFING								
Budgeted Staff Vacancies	23	5	23	5	22	9	23	5
OVERTIME								
Budget (\$) Actual (\$)	\$4,900	\$17,900	\$4,900	\$19,700	\$34,400	\$42,100	\$34,400	\$122,500

CIP Project Highlights:

- Kapa‘a Homesteads Well No. 4 Pump and Controls
 - Pre-Qualification Proposals Due 2/16
- Weke, ‘Anae, Mahimahi and He‘e Roads Water Main Replacement
 - Issued Bid 1/16
- Kūhiō Highway (Hardy-Oxford) 18” Main Replacement
 - Anticipate Bidding This FY
- Kapa‘a Homestead 325’ Tanks and Exploratory Well
 - Draft EA Being Published 2/8
- Kukuiolono Parcels
 - Completed Demo of Tank, Received Appraisal for Land Swap

	Last Month		Current Month	
PROJECT MANAGEMENT				
DOW Projects In Design In Construction	30	4	30	4
Private Projects Design Approved In Construction	69	26	11	138
Private Projects Construction Completed	32		1	

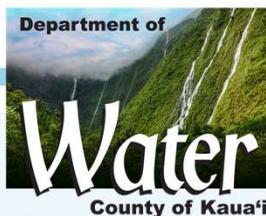
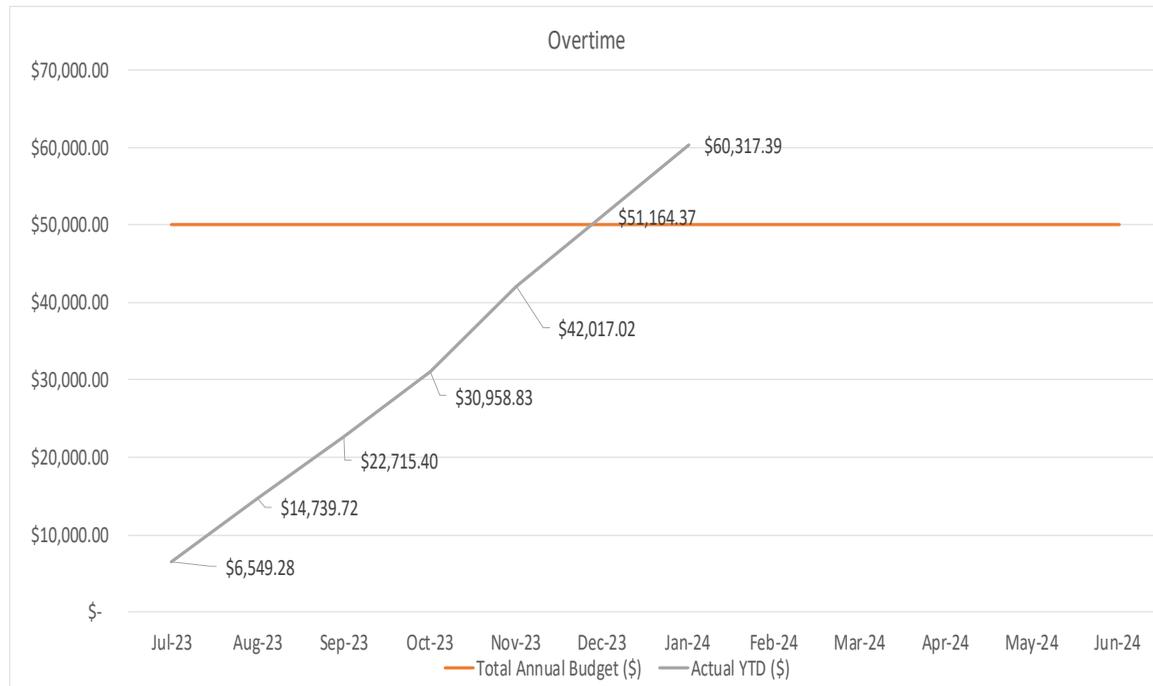
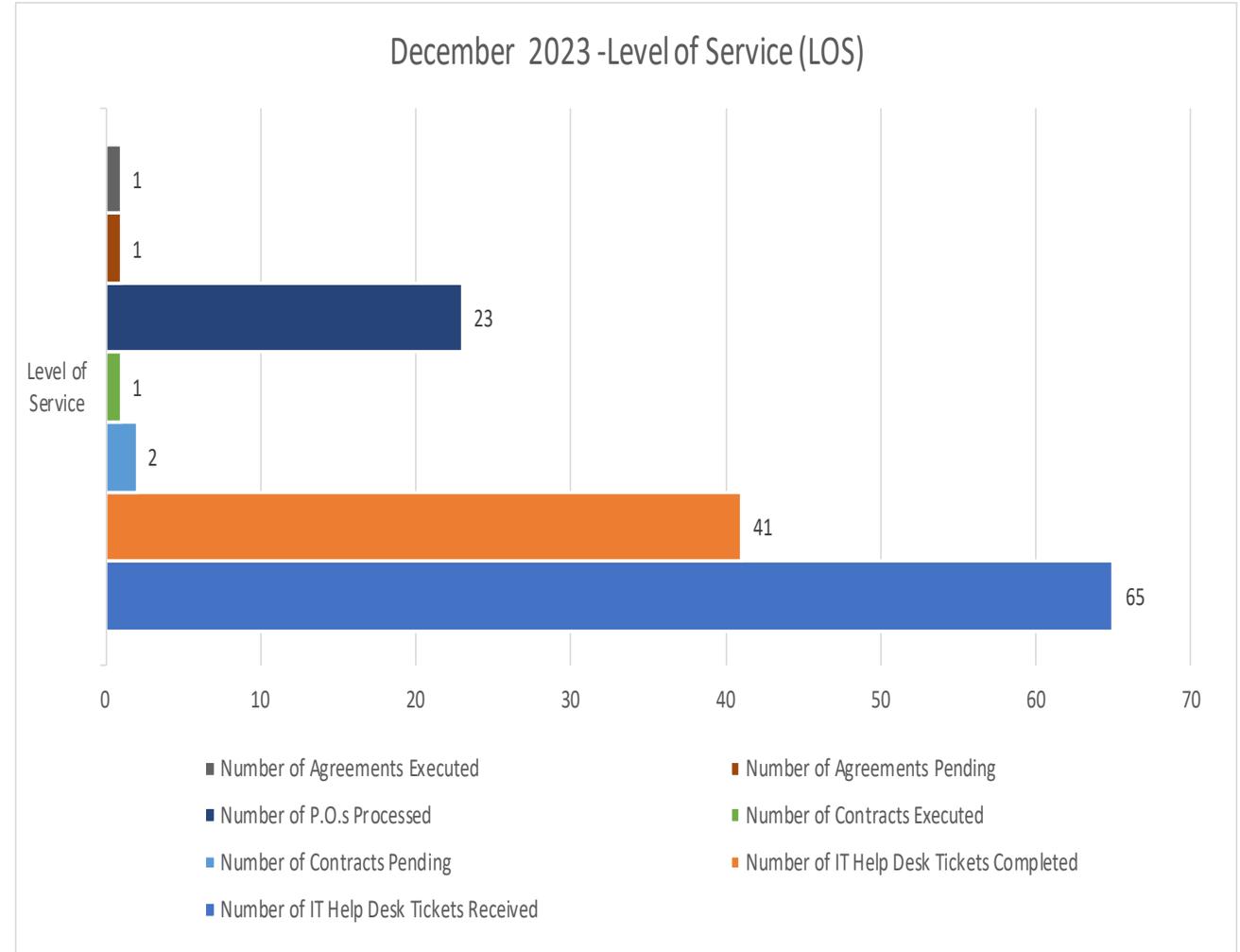
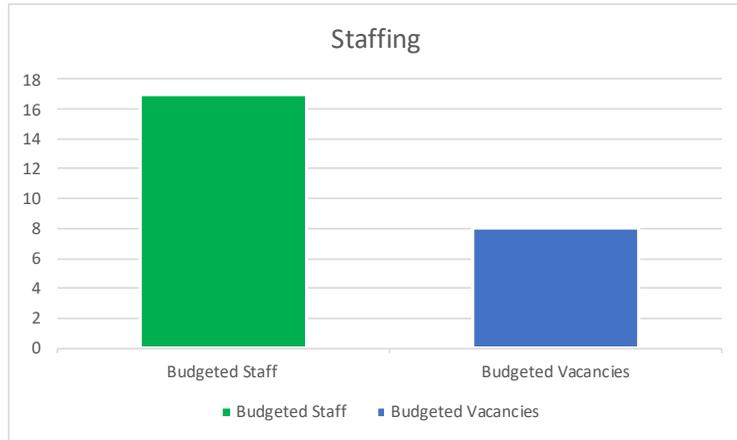
ENGINEERING DASHBOARD

	Last Month		Current Month		Previous FY Year to Date		Current FY Year to Date	
WATER RESOURCES AND PLANNING								
Number of Customer Requests Received Completed								
Subdivision Applications, Zoning, Land Use and Variance Permits	7	5	4	14	20	65	47	56
ADU/ARU Clearance Applications	0	0	4	0	55	55	12	31
Building Permits	99	100	132	106	368	1,026	950	960
Water Service Requests	14	16	21	33	60	145	146	163
Government Records Request	1	4	1	0	7	4	12	13
Backflow Inspection # of Devices Tested	83		120		739		730	

DOW Project Highlights:

- KWUDP Update
 - Meeting with DHHL beneficiaries on 3/21, 3/28
- Water System Improvements Plan (WSIP)
 - Evaluating CIP project list
 - Working on FRC and rate study
- Lead and Copper Rule Revisions (LCRR) Update
 - First week of field work performed week of 1/29 in Puhi-Līhu'e-Kapa'a Water System
 - Next week of field work anticipated to be last week of February in Kalāheo-Kōloa Water System

ADMINISTRATION DASHBOARD

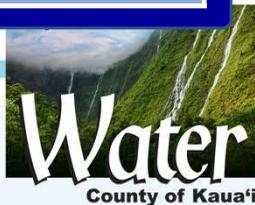


ADMINISTRATION

	Dec-23		Jan-24		Previous FY YTD		Current FY YTD	
STAFFING								
Budgeted Staff vs Vacancies (Admin-HR-IT-PR)	17	8	17	8	17	9	17	8
OVERTIME								
Budget (\$) vs Actual (\$)	\$ 4,166.67	\$ 9,147.35	\$ 4,166.67	\$ 9,153.02	\$ 29,166.67	\$ 54,086.17	\$ 29,166.67	\$ 60,317.39

	Dec-23		Jan-24		Previous FY YTD		Current FY YTD	
LEVEL OF SERVICES								
# of IT Help Desk Tickets Received Completed	32	25	65	41	106	82	305	195
# of Legal Claims Outstanding Resolved			0	0	2	0	0	0
# of Contracts Pending Executed	3	2	2	1	5	2	2	8
# of Purchase Orders Processed	22		23		77		171	
# of Agreements Pending Executed	0	2	1	1	3	16	1	24
# of MOU MOA Pending	0	0	0	0	0	1	0	0
# of MOU MOA Executed	0	0	0	0	0	0	1	0
# of Customer Remarks	0		0		2		1	
# of Customer Compliments	1		1		3		5	

Notes: DOW Dashboard data tracking started November 2022 & Legal claims are compiled quarterly as of March, June, September, & December



DEPARTMENT OF WATER

“Water has no Substitute – Conserve it!”

INFORMATION & EDUCATION SPECIALIST REPORT

February 15, 2024

Public Notices and Announcements

All news releases are sent to statewide media partners, published on the Department of Water’s (DOW) Facebook page and the County of Kaua’i’s website at www.kauai.gov/press-releases. Notices labeled as a Public Service Announcement (PSA) are shared directly with local newspaper and radio stations and posted on the Department’s Facebook page. Additionally, all roadwork notices are emailed to the Department of Transportation’s (DOT) communications office.

Service Announcements

<i>Date Issued</i>	<i>Water System & Affected Service Areas</i>	<i>Announcement</i>	<i>Effective Date & Times</i>	<i>Other Notices</i>
01-22-2024	Island wide	DOW to begin monthly water service line inspections through May 2024	n/a	Door notices Direct calls
01-22-2024	Kapa’a - portion of Kihei Road, Haleilio Road and Kaulana Road	Water service shutdown in Kapa’a scheduled for Jan. 23	Jan. 1, 2024 9 a.m. to 4 p.m.	Kauai County Alert
01-29-2024	Kalaheo Water Systems Improvement Project - Pu’uwai Road	Partial lane closure notices on Pu’uwai Road extended through Feb. 28	Feb. 3-28, 2024	Kauai County Alert
02-05-2024	Kilauea – portion of Anini Road	Emergency water service shutdown on a portion of Anini Road	Feb. 5, 2024	Kauai County Alert

Public Relations Programs

Community Outreach & Education

- The Department of Water hosted a lobby display to promote water conservation and successfully distributed 118 shower timers in January. The shower timers promoted the 5-minute shower challenge encouraging water users to limit their showers to 5-minutes only to save approximately 25 gallons of water per month. Every drop counts!

Advertising & Communications

- The Department’s “Wise Water Wednesday” advertising awareness campaign for the month of February includes Billing Services reminders, conservation tips and water service line inspection notices related to the Lead and Copper Rules Revision. The weekly media campaign is posted on the Department’s Facebook page, aired on local radio stations and published in the Garden Island Newspaper.

Upcoming Community Outreach & Educational Events

- Career Day at Kalaheo Elementary – Feb. 9, 2024
- Career Day at King Kaumuali’i Elementary – March 6, 2024
- Project WET Facilitator Training Workshop – March 8, 2024
- EPA WaterSense Fix a Leak Week – March 18-22, 2024

Project WET (Water Education Today) Hawaii

- Project WET Hawaii is coordinating a Facilitator Training workshop on March 8, 2024, in Lihue, Kauai. This will be our first Kaua'i workshop since 2015. The workshop is open to Educational Coordinators, outreach specialists and water industry staff with an interest in starting their own water education program. Space will be limited, and registration is required.
- Project WET hosted the final Mini Make a Splash Festivals for the 2023-2024 school year in Kapa'a and Hanalei Elementary Schools on Jan. 23 and 26, 2024. The 2 festivals hosted a total of 153 students and their teachers to experience lessons in groundwater, the water cycle, watershed management and the importance of native marine animals in the eco system. Special thanks to the following agencies and staff for their assistance in conducting mini festival in Hanalei and Kapa'a:
 - Department of Land and Natural Resources: Aaron Swink, Caroline Kealoha
 - Kauai Invasive Species Committee: Haylin Chock, Kim Rogers
 - Hawaii Rural Water Association: Daniel Chang, Juanita Reyher-Colon, Juleen
 - DOW staff: Joe Tait, Dustin Moises, Ani Turner, Gerardo Ramos, Joseph Durocher, Regina Flores, Erin Doi, Margie Mills and Jonell Kaohelauli'i.

Attachments: photos from mini Make a Splash festivals in Kapa'a and Hanalei:



Mini Make a Splash at Kapa'a Elementary



Students learn and experience the O'opu life cycle obstacle course.

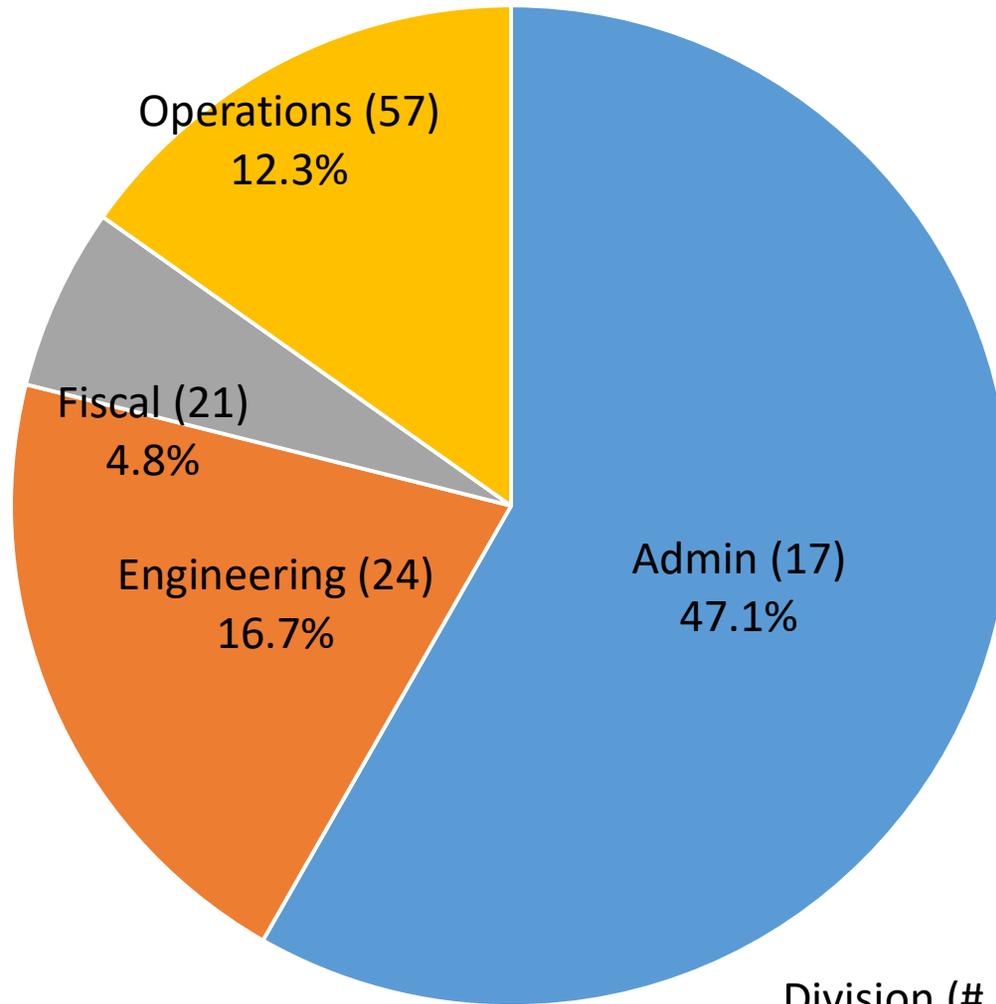


Hanalei student comes up close to an o'opu



Groundwater well demonstrations featuring a sand vs rock aquifer.

% Vacancy Within Each Division Level



Division (# Auth) - % Vacant

CORRECTIVE ACTION PLAN

2022-001 **Improve Internal Communication**

- The Manager & Chief Engineer (MCE) will continue to hold bi-weekly Division/Section Manager (DSM) meetings.
- MCE will require meeting minutes of these DSM meetings distributed for use by attendees when researching critical decisions and plans.

Schedule for Implementation:

The MCE will have DSM minutes distributed to all invited managers in attendance and/or excused. Managers will be held accountable for scheduling assigned projects and tasks with submittal to MCE and Deputy Manager-Engineer (DME) for tracking assigned programs and projects for submittal to Fiscal managers and Contracts Officer responsible for budget and accounting tracking and confirmation of adjoined funds within contracts. **Effective 03/15/2023**

2022-002 **IT General Control Deficiencies**

Logical Security

- A formal offboarding process will be designed and implemented for use by the IT Manager and Human Resources Coordinator to ensure effective termination of users as they separate from DOW (Department of Water).

Schedule for Implementation:

The process is under review and preparations to implement will follow. The plan is that this will become part of the change management solution in addition to the current ADCUA (Add Delete Change User Account) forms. Software will be written or purchased. **Requirements 9/2023**

- Ensure a process that documents non-adherence to password security policies and that protection of systems has been adequately demonstrated to management.

Schedule for Implementation:

Password security has been reviewed and implementation by group policy is now in line with current industry standards. **Completed 3/31/2023**

- DOW Policies and Procedures will be developed for use by Management upon recommendations from the IT Steering Committee and retained IT consultants contracted by DOW.

Schedule for Implementation:

System analysis continues with the assistance of IT professionals and peers to help define the policies and procedures to be implemented. Ryan Smith is heading the IT Steering Committee which will produce the documents mentioned above. *Ongoing 8/2023*

- DOW will utilize Microsoft Defender for 365 to design a new Security Awareness Program implemented through the IT Section. Mike Hartig at County has given me a demo of their solution.

Schedule for Implementation:

Testing soon. *Rollout ETA 4/2024*

- This is currently underway as DOW has contracted with professional services firms to work alongside IT staff.

Schedule for Implementation:

Consultant services and staff work is ongoing. *Ongoing 1/2023*

- This effort will be completed in conjunction with hardware, software, and staffing augmentation overseen by the IT Manager.

Schedule for Implementation:

Efforts have been underway to address critical issues with hardware, software, and system security. We have budgeted for a Managed Services Provider (MSP) contract. Measure of success will be MSP contracted. Defining DOW Matrix procurement process with Tyler. *Quoted 12/2023*

Specialist III will address tickets and common tasks but still attack team issues independently. We need to generate questions and set interview appointment. *Candidate list delivered 2/2024*

Physical Security

- Management and the IT Manager will identify and monitor server room access.

Schedule for Implementation:

Leadership has identified authorized personnel who are granted access to the server room, based on position responsibility. Access monitoring has been implemented and is ongoing. **Completed 1/31/2023**

Change Management

- The IT Steering Committee will design and recommend a new DOW SOP (STANDARD OPERATING PROCEDURE) to define and ensure that changes to systems are authorized, tested, accepted, and tracked. May not be defined in SOP but within Section. May be captured in Contracts database.

Schedule for Implementation:

The Department has been and continues to work through the process of creating a stable environment; and will be creating a process of change authorization, unit testing, system test and implementation. Database schema and use cases being developed. Planned implementation using software or dev IIS server and SQL Server. Software will be written or purchased. **Requirements 9/2023**

2022-003 **Improve Procedures to Identify and Account for Contracts**

- Management will design, implement, and monitor collection, additions, changes to and elimination of DOW contracts and agreements to ensure staff efficiency through utilization of a one-source database.

Schedule for Implementation:

A new Contracts, Agreements, Licenses, and Leases Team (*CALL team*) has been formed to include MCE, DME, Contracts Officer, Accountant IV, and IT Manager to ensure that all formal, financial documents relating to procurement, purchasing, inventory, and electronic cataloging and storage of DOW documents continuously occurs for ease of accounting by supervisors and managers as well as offering a one-stop location for DOW annual audit process. **Effective 5/1/23.**

DEPARTMENT OF WATER
 County of Kaua'i
 "Water has no substitute – Conserve It!"

MANAGER’S UPDATE

February 15, 2024

Pursuant to Board Policy No. 3

CONTRACTS AWARDED, EXTENDED, AND/OR AMENDED

**1. FIFTEENTH AMENDMENT TO CONTRACT NO. 535 WITH FUKUNAGA & ASSOCIATES, INC.
 JOB NO. WRP 01 FY05-06, KAUA'I WATER USE AND DEVELOPMENT PLAN (WUDP) UPDATE, LIHU'E, KAUA'I, HAWAII**

RECOMMENDATION:

It is recommended that the Manager approve the Fifteenth Amendment to Contract No. 535 with Fukunaga & Associates, Inc. for a contract time extension of 365 calendar days to perform two additional meetings with the State of Hawai'i, Department of Hawaiian Home Lands (DHHL) beneficiaries and update the Kaua'i Water Use and Development Plan (KWUDP) report based on the December 19, 2023 CWRM Board meeting.

FUNDING:

Account No.	10-20-10-540-010		
Acct Description	WU/Eng/Admin/Professional Services (Line 3, Kaua'i Water Use and Development Plan Update)		
Funds Available	<i>Verified by WWC</i>		\$100,000.00
Contract No.	535		
Vendor	Fukunaga & Associates, Inc.		
	Contract Amount	\$513,000.00	
	5% Contingency	\$0.00	
	First Amendment	\$0.00	
	Second Amendment	\$0.00	
	Third Amendment	\$0.00	
	Fourth Amendment	\$0.00	
	Fifth Amendment	\$114,400.00	
	Sixth Amendment	\$0.00	
	Seventh Amendment	\$0.00	
	Eighth Amendment	\$0.00	
	Ninth Amendment	\$0.00	
	Tenth Amendment	\$0.00	
	Eleventh Amendment	\$0.00	

	Twelfth Amendment	\$22,000.00	
	Thirteenth Amendment	\$0.00	
	Fourteenth Amendment	\$0.00	
	Total Funds Certified To Date	\$649,400.00	
Fifteenth Amendment:			
	Additional meetings for DHHL beneficiaries and update the KWUDP Update report per comments at the December 19, 2023 CWRM Board meeting.	\$47,600.00	
	Total Amendment	\$47,600.00	<\$47,600.00>
Contract Amount To Date		\$697,000.00	
Fund Balance			\$52,400.00

BACKGROUND:

Contract NTP Date: July 25, 2011
 Original Contract End Date: January 10, 2014
 New Contract End Date: 365 calendar days from NTP of Amendment

Notice to proceed for this project was issued on July 25, 2011 with a contract completion date of January 10, 2014. A request for a contract time extension was reviewed, granted and executed on September 10, 2014 to extend the contract completion date to July 2, 2016. An additional contract time extension was reviewed, granted and executed on September 7, 2016 to extend the contract completion date to December 19, 2018.

Due to circumstances beyond the contractor's control, the project was not able to be completed by the December 19, 2018 contract completion date as several significant policy and water-related issues caused delays and changes in the original scope of the project. Some of these changes include the coordination of the Kaua'i Water Use and Development Plan (KWUDP) Update with the Kaua'i General Plan Update, evaluation of the recently completed Lihu'e Community Plan and South Community Plan, coordination with the Commission on Water Resource Management (CWRM) on the update of the Aquifer Section and System sustainable yields (SYs), and a request by CWRM regarding the evaluation of traditional and customary practices of the resource.

The project originally evaluated the 2000 Kaua'i General Plan, which has since been updated by the County of Kaua'i, Planning Department and approved by the Kaua'i County Council in 2018. The DOW and its consultant coordinated with the Planning Department periodically during the update process to ensure that the impacts of the Kaua'i General Plan Update would be reviewed and addressed in the KWUDP. Additionally, the evaluation of the recently completed Lihu'e Community Plan and South Kaua'i Community Plan were conducted. The evaluation of these recently completed plans were not part of the original proposal.

In late 2015, CWRM provided preliminary information of the Aquifer Section and System SY. The information at the time indicated that the new SY for the Hanamā'ulu and Kōloa Aquifer

System Areas could have a significant impact on the comparison with water demands associated with the full build-out of the County General Plan and Community Development Plans. Discussion and feedback ensued between CWRM, the DOW and the Planning Department regarding the SY values. Subsequent discussion with CWRM indicated that the new SY would not be as low as the 2016 estimates and should not have a significant impact on the comparison with full build-out water demands. It was emphasized that, while CWRM is confident in the new SY values, the SY values could still change and are not final until the Water Resource Protection Plan (WRPP) Update was approved. A public review of the draft WRPP Update was released on November 2, 2018.

In 2016, CWRM requested that counties incorporate the Ka Pa'akai analysis into the WUDP update to the greatest extent possible and specifically mentioned the Aha Moku Advisory Committee (AMAC). The AMAC is administratively attached to the DLNR and is utilized as a conduit for identifying valued resources, traditional and customary practices and appropriate mitigation. An AMAC representative has been added to the KWUDP stakeholder advisory group.

These unanticipated changes have caused work to proceed at a pace slower than originally anticipated and have required additional resources and coordination efforts with other agencies, stakeholder groups and the public to verify that information originally obtained at the onset of the project is still accurate and current. Additionally, a higher level of coordination and outreach was required to gather stakeholder and public advisory group information. Hence, a fifth location for public meetings was added, on top of the four locations originally planned, for greater outreach.

In order to complete the project with the additional project requirements noted above and provide the necessary time for the approval process, Fukunaga and Associates, Inc. provided a fee proposal of \$114,400.00 and a contract time extension request of 180 days.

The proposal for the additional tasks were requested and received by the Department on December 13, 2018. In an effort to review the proposal and prepare a contract amendment for the additional scope and time required to complete the project, the Department issued a Stop Work Order on December 17, 2019 for sixty (60) calendar days ending on February 17, 2019. A Stop Work Order Supplemental Agreement was issued on February 7, 2019 to extend the suspension of the Contract an additional ninety (90) calendar days end on May 8, 2019.

A third contract amendment was executed to allow the performance of the Contract to resume at the end of the suspension period, May 8, 2019, and continue pending the anticipated approval and execution of a fourth amendment by the Board at its May 24, 2019 meeting.

The Board, at its May 24, 2019 Board meeting, decided to defer the Manager's updates to be heard at a subsequent Board meeting. The Manager's update included the report to manager requesting approval to execute a fourth contract amendment for additional tasks, cost and time.

A fourth contract amendment was executed to allow the performance of the Contract to continue from May 24, 2019, for one hundred eighty (180) calendar days or less to allow the Board time to review and approve a fifth amendment for additional tasks, time and cost to this Contract.

A fifth contract amendment was executed on June 28, 2019 to extend the Contract an additional one hundred eighty (180) calendar days to address the changes in scope and provide compensation for the additional tasks, with a completion date of December 25, 2019.

A sixth contract amendment was executed on December 20, 2019 to extend the Contract an additional one hundred eighty (180) calendar days to accomplish the additional scope and tasks identified in the fifth contract amendment, with a completion date of June 17, 2020.

A seventh contract amendment was executed on May 28, 2020 to extend the Contract an additional one hundred eighty (180) calendar days to accomplish the additional scope and tasks identified in the fifth contract amendment, with a completion date of November 24, 2020.

An eighth amendment was executed to allow the Contractor additional contract time of one hundred eighty (180) calendar days, ending May 18, 2021 to accomplish the work identified in the fifth amendment.

A ninth amendment was executed to allow the Contractor additional contract time of one hundred eighty (180) calendar days, ending November 14, 2021 to accomplish the work identified in the fifth amendment.

A tenth amendment was executed to allow the Contractor additional contract time of one hundred eighty (180) calendar days, ending May 13, 2022 to accomplish the work identified in the fifth amendment.

An eleventh amendment was executed to allow the Contractor additional contract time of one hundred eighty (180) calendar days, ending November 9, 2022 to accomplish the work identified in the fifth amendment.

A twelfth amendment was executed to allow the Contractor additional contract time of one hundred eighty (180) calendar days, ending May 8, 2023 and additional budget of \$22,000.00 to accomplish the work identified in the fifth amendment and address CWRM's comments which requested information be added to the report beyond the Contractor's scope of work.

A thirteenth amendment was executed to allow the Contractor additional contract time of one hundred eighty (180) calendar days, ending November 4, 2023 to hold stakeholder and public meetings and present the WUDP Update Report to CWRM.

A fourteenth amendment was executed to allow the Contractor additional contract time of one hundred eighty (180) calendar days to present the WUDP Update Report to CWRM and the Board of Water Supply.

This fifteenth amendment will allow the Contractor additional contract time of three hundred sixty-five (365) calendar days and additional budget of \$47,600.00 to hold two additional meetings with DHHL beneficiaries and update the KWUDP report to address comments identified in the December 19, 2023 CWRM Board meeting.

**2. CHANGE ORDER NO. 2 FOR CONTRACT NO. 735 WITH DERRICK'S WELL DRILLING & PUMP SERVICES, LLC.
 JOB NO. 23-01, KŌLOA WELL "A" PUMP REPLACEMENT**

RECOMMENDATION:

It is recommended that the Manager approve Change Order No. 2 for a contract time extension of 95 calendar days to the contract time.

FUNDING:

Account No.	10-40-50-560-000		
Acct Description	WU/Ops/PandP/Repairs and Maintenance – Water System		
Funds Available	Verified by WWC		\$N/A
Contract No.	735		
Vendor	Derrick's Well Drilling & Pump Services, LLC		
	Contract Amount	\$169,316.00	
	5% Contingency	\$8,466.00	
	Total Funds Certified To Date	\$177,782.00	
Change Order No. 2:			
	Contract Time Extension of 95 calendar days	\$0.00	
	Total Change Order	\$0.00	<\$N/A>
	Contract Amount To Date	\$169,316.00	
Fund Balance			\$N/A

BACKGROUND:

Contract NTP Date: May 1, 2023
 Original Contract End Date: January 26, 2024
 New Contract End Date: April 30, 2024

This contract amendment is to add a no cost time extension. There have been some delays in getting design drawings from the pump manufacturers for replacement parts. Approval of the design drawings are required prior to Contractor ordering the parts. Lead times for replacement discharge heads are longer than usual and outside of the Contractor's ability to control.

3. JOINT FUNDING AGREEMENT WITH U.S. GEOLOGICAL SURVEY (USGS) FOR PERIOD OCTOBER 1, 2023 TO SEPTEMBER 30, 2024

RECOMMENDATION:

It is recommended that the Manager approve the Joint Funding Agreement to continue the Department of Water's (DOW's) cooperative groundwater-monitoring program with the addition of surface-water monitoring at selected sites for period October 1, 2023 to September 30, 2024.

FUNDING:

Account No.	10-20-10-540-010		
Acct Description	WU/Eng/Admin/Professional Services (Line 2, USGS Rainfall, Streamflow, and Groundwater Monitoring Program)		
Funds Available	<i>Verified by WWC</i>		\$72,000.00
Contract No.	N/A (purchase order)		
Vendor	U.S. Geological Survey		
	Contract Amount	\$70,119.00	
	Total Funds Certified	\$70,119.00	<\$70,119.00>
Fund Balance			\$1,881.00

BACKGROUND:

Contract NTP Date: N/A
 Original Contract End Date: N/A
 New Contract End Date: N/A

DOW continues to use the services of the USGS through the Joint Funding Agreement cooperative ground-monitoring program. The purpose of the water-resources monitoring program is to collect data needed to evaluate the status and trends of water levels in selected wells and also streamflow and rainfall at selected sites on Kaua'i. Data is collected by the USGS in accordance with well-documented techniques and quality-assurance procedures.

**4. AWARD CONTRACT NO. 757 TO WONG'S EQUIPMENT & SERVICES, LLC
 GS-2024-02 FURNISH AND DELIVER ONE (1) LEAK DETECTION CORRELATOR**

RECOMMENDATION:

It is recommended that the Manager approve a contract award to Wong's Equipment & Services, LLC for the furnishing and delivery of One (1) Leak Detection Correlator.

FUNDING:

Account No.	10-40-00-604-999		
Acct Description	WU/Ops/Capital Outlay – R&R/Misc. Capital Purchases (Line 6, Leak Detection Equipment)		
Funds Available	<i>Verified by WWC</i>		\$21,553.41
Contract No.	757		
Vendor	Wong's Equipment & Services, LLC		
	Contract Amount	\$18,718.21	
	5% Contingency	\$N/A	
	Total Funds Certified	\$18,718.21	<\$18,718.21>
Fund Balance			\$2,835.20

BACKGROUND:

Leak investigation and detection requires up-to-date equipment and new technology. The purchase of this new leak detection correlator will provide our personnel with the proper tools to continue locating and defining leaks that do not surface and are hard to detect.

**5. SOLE SOURCE #2024-07, CONTRACT AWARD TO XiO, INC.
 SEWER LIFT STATION MONITORING AND CONTROL**

RECOMMENDATION:

It is recommended that the Manager approve to enter into agreement with XiO, Inc. for the monitoring and control of the Department's sewer lift station.

FUNDING:

Account No.	10-40-60-560-000		
Acct Description	WU/Ops/TandD/Repairs and Maintenance – Water System (Line 1-Outside Contractual Services)		
Funds Available	<i>Verified by WWC</i>		\$38,673.00
Contract No. (PO)	XiO Service Agreement		

Vendor	XiO, Inc.		
	Contract Amount	\$2,499.00	
	5% Contingency	\$N/A	
	Total Funds Certified	\$2,499.00	<\$2,499.00>
Fund Balance			\$36,174.00

BACKGROUND:

The sewage lift station located in the Ops base yard collects all the sewage and pumps it to the gravity line located on Pua Loke Street. Operation of the lift station and its associated pumps are controlled through hardware and software provided by XiO, Inc. This contract will allow DOW to continue remote operations of the lift station and provide alarm notifications for emergency issues.

CONVEYANCE OF WATER FACILITIES NONE