

RESOLUTION 2024-02

ST. VRAIN WATER AUTHORITY

BOULDER, LARIMER, AND WELD COUNTIES, COLORADO

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ST. VRAIN WATER AUTHORITY APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE ST. VRAIN WATER AUTHORITY AND NEW IPT, INC.

WHEREAS, the Board of Directors (“Board”) of the St. Vrain Water Authority (“Authority”) has the power and authority pursuant to its Establishing Agreement and C.R.S. 29-1-204.2 *et. seq.*, to enter into contracts and agreements effecting the affairs of the Authority; and

WHEREAS, the Authority will be operating a reverse osmosis water treatment plant, deep injection well, and related facilities (“Water Treatment Facilities”); and

WHEREAS, the Authority has requested and received a proposal from New IPT, Inc., a Delaware corporation (“New IPT”) to perform professional services for the Reverse Osmosis Waste Brine Disposal Well in the Water Treatment Facilities; and

WHEREAS, the Authority has been presented with an Agreement for Services (“Agreement”) whereby New IPT will provide the services in the Scope of Work attached to the Agreement which is acceptable to the Authority; and

WHEREAS, the Authority’s Board, after reviewing New IPT proposal and the Agreement, desires to enter into the Agreement with New IPT for professional services for the Reverse Osmosis Waste Brine Disposal Well in the Water Treatment Facilities.

NOW, THEREFORE, BE IT RESOLVED BY the Board of Directors of the St. Vrain Water Authority that:

1. **Approval of Agreement.** The Agreement between the Authority and New IPT in substantially the form attached hereto as Exhibit 1 is hereby approved. The Authority’s President and Secretary, or if one or both of them are unavailable, any other appropriate officer of the Authority is hereby authorized to execute the Agreement by and on behalf of the Authority.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2024 by the Board of Directors of the St. Vrain Water Authority by a vote of 3 FOR and 0 AGAINST.

ST. VRAIN WATER AUTHORITY

By: 1 Don Conyac
~~Julie Svaldi, President~~
Don Conyac, Treasurer

Attest:

[Signature]
Dave Lindsay, Secretary

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into this 8th day of January, 2024, to be effective as of the 10th day of January, 2024 (“Effective Date”), between the **ST. VRAIN WATER AUTHORITY**, a political subdivision of the State of Colorado (“Authority”), whose address is 9950 Park Avenue, Firestone, Colorado 80504 and **NEW IPT, INC.**, a Delaware corporation, (“Contractor”), whose local address is 1707 Cole Blvd., Suite 200, Golden, CO 80401. Authority and Contractor may hereinafter singularly be referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Authority was established for the purpose of developing potable water treatment systems and facilities that are capable of furnishing a potable water supply for the benefit of the Authority’s members, and their constituents, and end users; and

WHEREAS, in furtherance of that purpose, the Authority operates a reverse osmosis water treatment plant, deep injection well, and related facilities (“Water Treatment Facilities”) having an initial capacity of treating up to 1.5 million gallons per day of water, and having the capability of being expanded in phases in future years to a water treatment capacity of 5 million gallons per day; and

WHEREAS, the Authority is in need of obtaining professional services for the Water Treatment Facilities, specific to the **Reverse Osmosis Waste Brine Disposal Well** (“Project”); and

WHEREAS, at the request of Authority, Contractor submitted a proposal for the Project; and

WHEREAS, Contractor represents that it has the personnel and expertise necessary to perform the Project in a competent and timely manner; and

WHEREAS, the Authority’s Board of Directors, after reviewing Contractor’s proposal dated Jan. 3, 2024, the Authority has decided to retain Contractor to perform the Project upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the promises set forth herein, Authority and Contractor agree as follows:

1. **Scope of Work**. Contractor shall perform the work, as more particularly described in **Exhibit A** (consisting of 1 page) and incorporated herein by this reference

("Scope of Work"), together with all necessary labor, materials, scheduling, procurement, and related work and services as may be necessary and reasonably inferable from the Scope of Work to complete the totality of the obligations imposed upon Contractor by this Agreement (collectively the "Services" or the "Project"). The Scope of Work describes Services to be provided.

2. **Notice to Proceed.** As soon as practical, after Authority has received satisfactory certificates of insurance as required by paragraph 16 below, Authority shall issue a written Notice to Proceed to Contractor.

3. **Completion Date.** Contractor shall give this Agreement and the Services to be performed hereunder such priority as is necessary to cause the authorized Services to be timely and promptly performed in accordance with the time periods contemplated or expressly provided for in the Scope of Work and in future Work Orders. At any time during the term of this Agreement, Authority may request, and Contractor shall, within twenty (20) days of such request, submit for Authority's approval a written schedule for the completion of the work which comprises the Project. Unless delayed by acts or the failure to act of Authority or other causes beyond the control of Contractor, and without extending any deadline established elsewhere in this Agreement, all Services shall be completed to the Authority's reasonable satisfaction and all deliverables that are a part of the Project shall be delivered to the Authority.

3.1 **Deliverables.** Without in any way limiting the deliverables as described in the Scope of Work, Contractor shall provide the Authority with an electronic and up to one (1) hard copy of all final product documents and reports prepared by Contractor pursuant to this Agreement. In addition, all deliverables shall comply with such reasonable requirements as the Authority may establish from time to time, provided those requirements are communicated in writing to Contractor as part of specific Work Orders.

4. **Responsibility for Services.** The Authority shall not supervise the work of Contractor or instruct Contractor on how to perform the Services. Contractor shall be fully responsible for the professional quality, technical accuracy, timely completion, and coordination of the Services including all work and reports that are a part thereof, whether such work is performed directly by Contractor or by any subcontractor hired by Contractor and approved by Authority in accordance with paragraph 12 below. Without entitling Contractor to additional compensation and without limiting Authority's remedies, Contractor shall promptly remedy and correct any errors, omissions, or other deficiencies in the Services. Contractor warrants that all Services provided under this Agreement shall be performed with competence and in accordance with the standard of care of Contractor's profession prevailing in Colorado.

5. **Compensation.** Authority shall compensate Contractor and amount not to exceed \$180,000.00 in accordance with Contractor's hourly rates and reimbursable costs

as set forth on **Exhibit B** (consisting of 1 page) as attached hereto and incorporated herein by this reference, which may be updated periodically with approval of the Authority.

(a) Compensation for Services will be billed monthly to the Authority at the rates identified in **Exhibit B**.

(b) The compensation to be paid Contractor under this Agreement is entire and complete and includes any and all reimbursable and other costs as set forth, and only as set forth, on **Exhibit B**. Contractor further represents and agrees that except as set forth on **Exhibit B** the reimbursable costs to Contractor together with any approved subcontractor costs are at Contractor's actual cost and do not include any additional mark-up whatsoever. It is understood and agreed that Contractor will contract with and pay directly any and all approved subcontractors retained by Contractor for any Services or portion thereof provided under this Agreement.

(c) **Rates and Employee Categories.** **Exhibit B** sets forth the projected man hours for the work, and the hourly rates and category of Contractor's employees that are expected to perform the work under this Agreement. Contractor agrees that all labor performed hereunder shall be performed for an hourly rate and by the category of employee identified on **Exhibit B**, except that if any work is performed by an employee whose hourly rate is less than the rate described on **Exhibit B**, Authority shall be charged the lesser rate. Further, should any employee's job category or classification change during the term of this Agreement, that change shall not, in any way, affect or modify the employee's billing rate under this Agreement unless the billing rate has been reduced as a result of such job reclassification, in which case the reduced billing rate shall be applied for purposes of the invoices submitted to the Authority.

6. **Method of Payment.** Contractor shall provide an invoice no later than the tenth (10th) day of each month for Services completed through the last day of the preceding month. Each invoice shall be submitted only for those Services actually performed during the period for which the invoice is submitted. Contractor shall submit with each invoice such supporting documentation as Authority may reasonably request. Each invoice submitted by Contractor shall constitute a representation to Authority that the Services are completed to the point as represented in the billing invoice. Unless Contractor does not properly perform the Services, invoices will be paid within thirty (30) to forty-five (45) days after receipt. Authority shall have the right to refuse to pay all or any portion of an invoice that is inconsistent with this Agreement. Authority may delay payment until it can verify the accuracy of an invoice, obtain releases or waivers with respect to Services covered in the invoice, or resolve a dispute with Contractor regarding an invoice.

7. **Conflict of Interest.** Contractor agrees that it shall not accept any employment during the term of this Agreement that creates a potential conflict of interest

or compromises the effectiveness of Contractor or otherwise interferes with the ability of Contractor to perform the Services required by this Agreement.

8. **Records and Audits.** Contractor shall at all times maintain a system of accounting records in accordance with its normal billing procedures, together with supporting documentation for all work, purchases, Services and billings under this Agreement. Contractor shall make available for audit and reproduction by Authority all records, in whatever form, related to the Services. Contractor shall provide such availability during the term of this Agreement and for two (2) years after final payment. Contractor shall refund to Authority any charges determined by Authority's audit to be inconsistent with this Agreement.

9. **Confidentiality of Information.** Except as required by law or as is necessary for the performance of the Services, Contractor shall retain in strictest confidence all information furnished by Authority and the results of any reports or studies conducted as a result of this Agreement, along with all supporting work papers and any other substantiating documents. Contractor shall not disclose such information to others without the prior written consent of Authority's representative. Notwithstanding the foregoing, Contractor shall have no confidentiality obligation with respect to information that: (i) becomes generally available to the public other than as a result of disclosure by Contractor or its agents or employees; (ii) was available to Contractor on a non-confidential basis prior to its disclosure by Authority; and (iii) becomes available to Contractor from a third party who is not, to the knowledge of Contractor, bound to retain such information in confidence.

10. **Ownership of Work Product and Documents.** All printed materials and electronic documents produced as a result of the Services performed under this Agreement shall be the sole property of Authority after payment to Contractor and may not be used, sold or disposed of in any manner without prior written consent of Authority's representative. All documents applicable to the work identified in the Scope of Work shall be delivered and turned over to Authority as and when such work is completed; provided, however, that under no circumstances shall any printed or electronic material, or other documents produced as a result of the Services performed under this Agreement be retained by Contractor from and after the date Contractor has been paid in full all monies due Contractor hereunder. Notwithstanding the foregoing, Contractor may retain a copy of all printed material, electronic or other documents prepared under this Agreement.

11. **Changes in Services.** The Authority shall have the right to order non-material additions, deletions, or changes in the Services at any time, so long as such changes are within the Scope of Work covered by this Agreement. Requests for material changes in the Services may be made by Authority's representative orally or in writing; provided, however, that oral requests shall be confirmed by a written request within ten

(10) days after the oral request. If Authority directs Contractor to proceed with the material change, Contractor shall be paid for the change as agreed to by the Parties.

12. **Approval of Subcontractors.** Contractor shall not employ any subcontractor without the prior written approval of Authority's representative, nor shall Contractor assign any rights or obligations under this Agreement in whole or in part without the Authority's prior written approval which may be withheld for any reason. Contractor shall be responsible for the coordination, accuracy, and completeness of all Services in accordance with generally accepted principles and practices of Contractor's profession, regardless of whether the Services are performed by Contractor or one or more subcontractors. Contractor shall endeavor to bind any of its approved subcontractors, if any, to the terms of this Agreement. In the event that any subcontractor is unwilling or unable to comply with any term or provision of this Agreement, Contractor will inform Authority of the specific term or provision at issue. Authority may accept the lack of compliance to the terms of this Agreement on the part of the subcontractor or may request that a different subcontractor be retained. This Agreement may be terminated by Authority if subcontracted or assigned, either in whole or in part, by Contractor without the express written consent of Authority's representative.

13. **Independent Contractor.** In the performance of the Services, Contractor shall be, for all purposes, an independent contractor and not an employee or agent of Authority. Contractor and its employees and subcontractors shall in no way represent themselves to third parties as agents or employees of Authority.

14. **No Unemployment Insurance or Workers' Compensation Benefits.** Contractor agrees that it is not entitled to unemployment insurance or workers' compensation benefits as a result of performance of the Services for Authority. Contractor is required to provide workers' compensation and unemployment insurance benefits for its employees and/or subcontractors as required by law.

15. **Payment of Taxes.** Contractor is solely liable for any federal, state, and local income and withholding taxes, unemployment taxes, FICA taxes and workers' compensation payments and premiums applicable to the performance of the Services under this Agreement. Contractor shall indemnify Authority for any liability resulting from nonpayment of such taxes and sums.

16. **Insurance.** Neither Contractor nor any subcontractor, agent, or employee thereof, shall continue work on any Services until the following minimum insurance coverages have been obtained:

(a) **Workers' Compensation Insurance.** Contractor and each subcontractor, if any, shall carry workers' compensation insurance to cover liability under the laws of the State of Colorado in connection with the Services performed

pursuant to this Agreement. Contractor and each subcontractor shall carry separate policies.

(b) **Commercial General Liability Insurance.** Contractor and each subcontractor, if any, shall carry commercial general liability insurance, which shall include blanket contractual liability coverage. Such insurance shall be in an amount \$2,000,000 per occurrence for bodily injury and property damage.

(c) **Automobile Liability Insurance.** Contractor and each subcontractor, if any, shall carry automobile liability insurance to include owned, non-owned and hired vehicles used in the performance of Services under this Agreement. Such insurance shall be in the amounts \$2,000,000 per occurrence for bodily injury and property damage.

(d) **Professional Liability Insurance.** Contractor and each subcontractor, if any, shall carry professional liability insurance in the amount of \$2,000,000 per claim and aggregate limit, unless an alternate amount is agreed to in writing by the Authority.

The required commercial general liability and automobile policies shall: (i) name the Authority as an additional insured for coverage only, with no premium payment obligation; (ii) provide a cross-liability/severability of interest clause; and (iii) provide that the coverage for the Authority will not be impaired by Contractor's or any subcontractor's failure to comply with any of the terms or conditions of the policy.

Contractor and each subcontractor, if any, shall provide certificates of insurance (and renewals thereof) identifying this Agreement and demonstrating that the required coverages have been obtained. Contractor shall not allow any subcontractor, agent, or employee to commence work until appropriate certificates of insurance have been obtained and approved by the Authority. The coverages specified in each certificate of insurance shall not be terminated, reduced, or modified without providing at least thirty (30) days prior written notice to the Authority.

17. **Compliance with Laws and Workers Without Authorization.** In performing this Agreement, Contractor shall comply with all applicable laws, rules and regulations, including but not limited to all federal, state and local laws.

18. **Communications.** It is understood by Authority and Contractor that successful progress under this Agreement requires frequent, concise, and documented communication between the Party's representatives. Authority hereby designates Dave Lindsay, as Authority's representative, who may give information to and receive information from Contractor. Authority may change its designated representative or add additional representatives from time to time.

Contractor hereby designates Neel Duncan, as Contractor's representative who may give information to and receive information from Authority and may separately bind Contractor. Contractor may change its designated representative only with the prior written approval of Authority. Each designated representative shall have full authority to not only accept and receive information but also to accept notices, give approvals and to fully represent its respective Party for all purposes under this Agreement.

19. **Liability.** Contractor agrees to provide a defense and pay any damages and costs for any liability or claim of whatsoever kind or nature arising in any way out of this Agreement, to the extent caused by any negligent or wrongful act or omission of Contractor, or Contractor's officers, agents, or employees, or any of Contractor's Subcontractors, or their officers, agents or employees. This paragraph 19 shall survive termination of this Agreement.

20. **Acceptance Not a Waiver.** The Authority's approval of studies, drawings, designs, plans, specifications, reports, computer programs and other work or material shall not in any way relieve Contractor of responsibility for the technical accuracy of the Services. The Authority's approval or acceptance of, or payment for, any Services shall not be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement.

21. **Termination or Suspension.** The Authority reserves the exclusive right to terminate or suspend all or a portion of the Services under this Agreement by giving fourteen (14) days written notice to Contractor. If any portion of the Services shall be terminated or suspended, the Authority shall pay Contractor equitably for all services properly performed pursuant to this Agreement. If the work is suspended and Contractor is not given an order to resume work within sixty (60) days from the effective date of the suspension, this Agreement will be considered terminated. Upon termination, Contractor shall immediately deliver to the Board any documents then in existence, that have been prepared by Contractor pursuant to this Agreement.

22. **Default.** Each and every term and condition of this Agreement shall be deemed to be a material element of this Agreement. In the event either Party shall fail or refuse to perform according to the material terms of this Agreement, such Party may be declared in default by the other Party by a written notice.

23. **Remedies.** In the event a Party has been declared in default, such defaulting Party shall be allowed a period of fifteen (15) days within which to correct or commence correcting the default. In the event that the default has not been corrected or begun to be corrected, or the defaulting Party has ceased to pursue the correction with due diligence, the Party declaring default may elect to (i) terminate this Agreement and seek damages; (ii) treat the Agreement as continuing and require specific performance; or (iii) avail itself of any other remedy at law or in equity. In the event Contractor fails or neglects to perform the Services in accordance with this Agreement, the Authority may

elect to correct such deficiencies and charge Contractor for the full cost of the corrections.

24. **Term.** Unless sooner terminated in accordance with the provisions of paragraph 21 above, this Agreement shall remain in effect until December 31, 2024, at which time the Agreement shall terminate and be of no further force and effect, except as to those provisions which expressly survive termination, including but not limited to paragraphs 8, 9, 10, and 19.

25. **Force Majeure.** The Parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement caused by acts of God, flood, fire, war or public enemy or the failure of Authority to furnish timely information or to approve or disapprove Contractor's instruments of service within a reasonable period of time.

26. **Assignment.** Subject to the provisions of paragraph 12, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns. This Agreement is intended to benefit only the Parties and neither subcontractors nor suppliers of Contractor nor any other person or entity is intended by the Parties to be a third-party beneficiary of this Agreement.

27. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Colorado.

28. **Notice.** All notices required or given under this Agreement shall be in writing and shall be deemed effective: (i) when delivered personally to the other Party; or (ii) seven (7) days after being deposited in the United States mail, first-class postage prepaid, properly addressed as follows; or (iii) when sent by facsimile transmission and receipt is confirmed by return facsimile transmission.

If to Contractor:

Brian Ervine, Managing Director
New IPT, Inc.
1707 Cole Blvd., Suite 200
Golden, Colorado 80401

With a copy to:

If to Authority:

Dave Lindsay, Secretary
St. Vrain Water Authority
9950 Park Avenue
Firestone, Colorado 80504

And a copy to:

Timothy J. Flynn
Collin Cole Flynn Winn Ulmer, PLLC
165 South Union Boulevard, Suite 785
Lakewood, Colorado 80228

Or such other persons or addresses as the Parties may designate in writing.


29. **Governmental Immunity.** The Parties understand and agree that the Authority is relying upon, and has not waived, the monetary limitations of \$424,000 per person, \$1,195,000 per occurrence, and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act § 24-10-101 *et seq.*, C.R.S., as it may be amended from time to time.

30. **Entire Agreement.** This Agreement constitutes the entire agreement between the Authority and Contractor and replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument.

31. **Effective Date.** This Agreement shall be effective as of the date and year set forth above.

AUTHORITY:

ST. VRAIN WATER AUTHORITY, a political subdivision of the State of Colorado

By: 
~~Julie Svaldi, President~~
Don Conyae, Treasurer

This Agreement is accepted by:

CONTRACTOR:

NEW IPT, INC., a Delaware corporation

By: *Brian Ervine*

Name: Brian Ervine

Title: Managing Director

Date: January 8, 2024

By execution, signer certifies that he/she is authorized to accept and bind Contractor to the terms of this Agreement.

EXHIBIT A

Town of Firestone SWD #1- 2024 Work Order						
Item	Frequency	Rate	Time Per Instance	Cost Per Instance	Total Cost	
	[#/yr]	[\$/hr]	[Hr]	[\$]		[\$]
Tank Battery						
Inspections	12	250	1.75	437.50	5,250.00	
SPCC Compliance Review	4	275	2	550.00	2,200.00	
Injection Skid						
Inspections	12	250	2.75	687.50	8,250.00	
Skid Performance Monitoring	12	275	3.00	825.00	9,900.00	
* Programming Changes Project	1	275	10.00	2,750.00	2,750.00	
Well						
Inspections	12	250	2.5	625.00	7,500.00	
Injection Data Review	24	275	1	275.00	6,600.00	
Hall Plot Analysis w/ Relative Skin Analysis	12	275	4	1,100.00	13,200.00	
Falloff Test						
Completions Setup	1	250	10	2,500.00	2,500.00	
Wellsite Supervision	1	2000	3	6,000.00	6,000.00	
Monitoring during test	1	275	10	2,750.00	2,750.00	
Faloff Test Analysis	1	275	30	8,250.00	8,250.00	
* Operational Analysis for Green Acid and Design	1	275	45	12,375.00	12,375.00	
EPA Reporting / Communications						
Regulatory Staff	4	225	15	3,375.00	13,500.00	
Engineering Staff	4	275	10	2,750.00	11,000.00	
Geology / Seismic Analysis	4	275	15	4,125.00	16,500.00	
Communications with EPA	4	275	5	1,375.00	5,500.00	
* Change of Operator						
Regulatory Staff	1	225	10	2,250.00	2,250.00	
Engineering Staff	1	275	5	1,375.00	1,375.00	
* MAIP EPA Follow-up	1	275	25	6,875.00	6,875.00	
* 2023 MAIP Data Analysis Carry-Over					8,541.90	
* Initial Falloff Test Design EPA Communications	1	275	15	4,125.00	4,125.00	
Water Authority Meetings	4	275	4	1,100.00	4,400.00	
Estimated Mileage	26	2	93	186.00	4,836.00	

*Items are One-Time

Item Total= 166,427.90

Contingency= 13,572.10

Total= 180,000.00

EXHIBIT B

Description	Price
Regulatory	\$225/hr
Geology	\$275/hr
Engineering	\$250/hr - \$275/hr
Wellsite Supervision^{1,2} – 12-hour day and night shifts.	\$1,900/shift
Mileage	\$2/mile
Meal per diem	\$50/person/shift
Safety and Technology Charge	\$50/person/shift

1. Expenses are billed at actual cost. Travel days are billed at the shift rate.
2. Travel and/or work on the 4th of July, Thanksgiving, the day after Thanksgiving, Christmas Eve or Christmas day is considered a holiday for our field personnel and the client will be charged at double the day rate