

MUNICIPAL VOTING CONTRACT

Agreement for eVoting Services made and effective this 8th day of February, 2022

BETWEEN:

TOWN OF PRESCOTT

Of 360 Dibble Street West, Prescott, Ontario, K0E 1T0
(herein called “the Municipality”)

- and -

INTELIVOTE SYSTEMS INC.

Of 12-40 Thornhill Drive, Dartmouth, Nova Scotia, B3B 1S1
(herein called “ISI”)

WHEREAS ISI has developed application software, procedures and expertise to provide an electronic voting service incorporating voting through secure wireless, telephone and internet connections, in conjunction with mail-in votes and ballots cast in person at polling stations (“the ISI Service”);

AND WHEREAS the Municipality wishes to obtain from ISI the use of some of the ISI Service to conduct its Election on the Election Date(s) defined in Article 1 below;

AND WHEREAS ISI and the Municipality wish to set forth the terms applicable to the use of the ISI Service for the Municipality’s Election on the Election Date(s);

NOW THEREFORE FOR the mutual consideration set forth herein, the adequacy of which is hereby acknowledged, ISI and the Municipality, intending to be legally bound, agree as follows:

1. Definitions

- 1.1 “Auditor” – means a third party or an individual assigned by the Municipality to conduct audit processes that have been agreed to by the Municipality and ISI and who will be responsible to render an official opinion as to the validity of the total voting process as conducted by ISI and the Election Officials.
- 1.2 “Candidate” means the same as the definition provided in the Municipal Elections Act, 1996, S.O. 1996, CHAPTER 32.
- 1.3 “Candidates’ Agents” – means persons accredited by the Municipality as a candidate, or agent or scrutineer of a candidate.

- 1.4 “Candidate Reports”- means an electronic record in an agreed upon format produced and made available to Candidates’ Agents during the Voting Period at times agreed upon in advance between the Municipality and ISI showing the name or other identifier for each Eligible Elector recorded on the ISI Service for each Eligible Elector and which of those Eligible Electors have voted.
- 1.5 “Consulting Services”- means the services described in Schedule “A” hereof which are to be rendered by ISI.
- 1.6 “Contract Administrator”- means the persons identified in Article 4 as primary Contract Administrators or other Contract Administrators.
- 1.7 “Control Centre”- means the location at which ISI sets up the control access and monitoring of the database and processing functions of the ISI Service.
- 1.8 “Election Date(s)”- means the following days: Monday October 17, 2022 until Sunday, October 23, 2022 and October 24, 2022.
- 1.9 “Election Officials”- means the persons who the Municipality designates in writing to ISI as the persons who have jurisdiction over the legal control and conduct of the Election, including the usual powers and authority of a Returning Officer and/or Deputy Returning Officer, whose rulings ISI shall be compelled to comply with.
- 1.10 “Eligible Elector”- means a person who the Municipality has determined is eligible to vote in the Election and to whom a PIN has been provided.
- 1.11 “Interactive Voice Response” and “IVR”- means the capability for electors to listen to voting options and to cast a vote(s) through a telephone system including wireless phones.
- 1.12 “Internet Enabled Connection Service”- means the capability for electors to connect through the internet to a website and to read the voting options and to cast a vote(s) through the internet connection.
- 1.13 “PIN”- means a unique personal identification number assigned to each Eligible Elector.
- 1.14 “Telephone Voting Number”- means the toll-free telephone number to be agreed upon between the Municipality and ISI to which Eligible Electors may connect through a telephone including a wireless telephone and cast their votes.

- 1.15 “Voting Decision”- means one or more slates of candidates in which the elector is entitled to vote in a predetermined manner and any number of questions on which the elector is entitled to vote.
- 1.16 “Voting Period”- means the hours designated by the Municipality during the Election Date(s) during which Eligible Electors are entitled to cast their vote.
- 1.17 “Website Voting Address”- means a secure Internet Protocol address to be agreed upon between the Municipality and ISI to which Eligible Electors may connect through a web browser and cast their votes.

2. Provision of ISI Services

- 2.1 ISI hereby agrees to provide the use of the ISI Service to the Municipality and to its Eligible Electors during the Voting Period and to provide any required and agreed to Consulting Services and Technical Support Services to the Municipality for the municipal election and the Municipality shall pay the fee set out in article 7 to ISI in accordance with the payment terms set out in clause 7.1.4.

3. Specifications

- 3.1 The ISI Service shall permit a person submitting a PIN, or a PIN and any other voting credential agreed upon by the Municipality and ISI, to access the ISI Service and to cast the votes permitted by the Municipality on the Voting Decisions in respect of each PIN in any of the manners set out in clauses 3.2, 3.3, and 3.4, to record through verifiable records in what manner and when the votes of each PIN were cast, to ensure that votes may be cast in respect of the Voting Decisions only once for each PIN and to ensure that no record is kept or is recoverable which allows the identification of the candidates for whom votes were cast by a PIN, or how votes were cast in answer to questions by a PIN.
- 3.2 The ISI Service shall enable IVR ports which will allow Eligible Electors to telephone the Telephone Voting Number and upon entering the elector’s PIN, or a PIN and any other voting credential agreed upon by the Municipality and ISI, to vote in respect of each Voting Decision by Interactive Voice Response.
- 3.3 The ISI Service shall enable an internet enabled application through a Website Voting Address that will enable each Eligible Elector to connect to the Website Voting Address and upon entering that elector’s PIN, or a PIN and any other voting credential agreed upon by the Municipality and ISI, to vote in respect of each Voting Decision by Internet Enabled Connection Service.

- 3.4 Access to the ISI Service via any voting telephone number and to the internet website address shall be restricted to only the times and dates set out in the Voting Period unless directed by the Election Officials to extend or reduce the Voting Period.
- 3.5 The ISI Service shall enable the Auditor to access the ISI Service and cast auditing votes during the Voting Period which can be tracked as auditing votes and removed from any final vote tally so as to obtain assurance that the ISI Service is functioning properly.
- 3.6 The ISI Service shall enable Election Officials and/or the Auditor to have secure access to the tally of votes cast by Interactive Voice Response and Internet Enabled Connection Service after the close of the Voting Period.
- 3.7 The ISI Service shall enable ISI personnel to shutdown the ISI Service and, in such case, the prescribed message shall be recorded on the Interactive Voice Response and displayed on Internet Enabled Connection Service.
- 3.8 The ISI Service shall enable the Candidates and/or Candidates' Agents to have access to the Candidate Module, if such service is requested to be enabled by the Election Officials.

4. Contract Administration

- 4.1 Each party shall designate the name, address, telephone, fax and email addresses of a primary Contract Administrator. The Contract Administrator shall be responsible for arranging all meetings, visits and consultations between the parties and for the transmission and receipt of all official notices and for all administrative matters such as invoices, payments and amendments.

The primary Contract Administrator for ISI shall be:

Name: Dean Smith
Telephone: (902) 481-1156
Email: Dean.smith@intelivote.com

The primary Contract Administrator for the Municipality shall be:

Name: Lindsey Veltkamp
Telephone: (613) 925-2812 x 6225
Email: lveltkamp@prescott.ca

- 4.2 Any party may by notice in writing to the other party's primary Contract Administrator designate a different person as Contract Administrator for a specific aspect of the administration of the contract.

- 4.3 The Contract Administrators will be available Monday through Friday 8:30 a.m. to 4:30 p.m. Eastern Time, excluding lunch hours and a reasonable number of days spent out of the office and shall respond within one (1) business day of the receipt of any request for information or request for decisions that are communicated between the Contract Administrators.
- 4.4 Each party may change its Contract Administrators by notice to the other party's primary Contract Administrator.
- 4.5 Each of the Contract Administrators shall communicate with each other promptly as to the status of information, procedures and progress on each of their respective tasks as set out in this Agreement and to advise the other forthwith upon the occurrence of any material change in such plans.
- 4.6 If any party (first party) receives notice from the other party that the first party's Contract Administrator is not carrying out his or her duties to the satisfaction of the other party, then the first party shall promptly designate another person as its Contract Administrator.

5. Obligations of the Municipality

- 5.1 The Municipality shall:
 - 5.1.1. Ensure that at all times it has a Contract Administrator ready, willing and competent to communicate with ISI on any issue relevant to this contract.
 - 5.1.2. Allocate appropriate resources with the necessary knowledge and authorization to work with ISI in defining tasks for all stages of activity leading up to and including Election Day(s); establish mutually agreed upon timelines for these tasks; coordinate all tasks assigned to the Municipality; provide all information required to configure the ISI Service as early as possible in the overall event schedule. A draft project plan detailing some of these tasks will be provided.
 - 5.1.3. Pay ISI for services such amounts as are outlined in Article 7 and pay to third parties such costs which pursuant to this contract and to Schedule "A" the Municipality is responsible to bear and to indemnify ISI in respect of such costs.
 - 5.1.4. Supply at its cost appropriate equipment, as required, such as computer hardware, internet access, telephone service at any, or all, Voter Help Centres.
 - 5.1.5. Engage a qualified individual to conduct audit processes that have been agreed to by the Municipality and ISI and who will be

responsible to render an official opinion as to the validity of the total voting process as conducted by ISI and the Election Officials.

6. Obligations of ISI

6.1 ISI shall:

- 6.1.1. Arrange at its cost in consultation with the Municipality for a Telephone Voting Number capable of handling not less than such number of calls per minute as is specified by ISI based on the number of Eligible Electors;
- 6.1.2. Arrange at its cost in consultation with the Municipality for a Website Voting Address capable of handling not less than such number of connections per minute as is specified by ISI based on the number of Eligible Electors;
- 6.1.3. Provide the ISI Service functioning in accordance with the Specifications set out in Clause 3 connected to the Telephone Voting Number and Website Voting Address to the Eligible Electors during the Voting Period;
- 6.1.4. Perform with diligence in a timely manner in accordance with generally accepted professional standards and practices recognized in the Information Technology Industry the Consulting Services described in Schedule "A";
- 6.1.5. Abide by decisions of the Election Official and comply with instructions from the Auditor and Election Officials in respect to operations of the ISI Service providing that such instructions and decisions do not adversely impact the operation or integrity of the ISI Service;
- 6.1.6. Ensure that the voting instructions are available on the ISI Service during the Voting Period;
- 6.1.7. Make available online to the Election Official and/or Auditor at the end of the Voting Period the results of votes cast for each candidate and question; and
- 6.1.8. Cause a duly qualified individual to meet with the Municipality at the offices of the Municipality in the event that any other communication is demonstrably ineffective to resolve any outstanding issues.

7. Fee and Payment Terms

- 7.1 The Municipality agrees to pay to ISI:
- 7.1.1. A base services fee equal to \$1.00 per Eligible Elector being the number of eligible and enumerated electors in the ISI Service on Election Day(s);
 - 7.1.2. A services and postage fee equal to \$1.30 per Eligible Elector for the creation, printing and distribution of Voter Instruction Letters;
 - 7.1.3. Any fees for additional consulting services described in Schedule “B”;
 - 7.1.4. The fees payable pursuant to clause 7.1.1 and 7.1.2 are payable as follows:
 - a) 30% of the base services fee of \$1.00 per Eligible Elector on execution of this Agreement, based on the number of Eligible Electors as determined by the previous list of electors used for the most recent Election held in the Municipality, when invoiced by ISI;
 - b) The services and postage fee of \$1.30, for each Voter Instruction Letter to be sent to each Eligible Elector when invoiced by ISI (typically 30 days prior to letter printing) and,
 - c) the balance of the service fee immediately after the Election Date, when invoiced by ISI;
 - 7.1.5. The Municipality shall pay in addition to the fees stated above Harmonized Sales Tax (HST) and any other taxes applicable to the provision of such services.
 - 7.1.6. Any fee or portion thereof not paid on the date on which it is payable shall bear interest at the rate of 12% per annum calculated and applied monthly.

8. Ownership and Rights

- 8.1 ISI shall maintain ownership of all intellectual property rights associated with the ISI Service and the Municipality is only entitled to the data concerning the Election generated by the ISI Service and the Municipality shall have no other rights in or further use of the ISI Service.

9. Representations and Warranties

- 9.1 ISI represents and warrants that:
- 9.1.1. Use of the ISI Service as described in this Agreement does not infringe the intellectual property rights of any person;

- 9.1.2. ISI has and will have full and sufficient right to supply the use of the ISI Service during the Voting Period;
 - 9.1.3. ISI shall engage a national service provider(s) to provide a very high level of reliability, security, scalability and performance for a high volume transaction, mission critical solution; and
 - 9.1.4. ISI will destroy all formats of information relating to Voting Decisions upon receipt of instructions from the Election Official to do so.
 - 9.1.5. The person(s) signing this contract are duly authorized to execute and deliver it on behalf of ISI and that it is a duly binding obligation of ISI.
 - 9.1.6. If any Provincial or Federal Government Authority postpones the 2022 Municipal and School Board Elections scheduled for October 24, 2022, as a result of Covid-19 pandemic, ISI will continue to provide the obligated services described in Article 6 at no additional cost other than those already described in Article 7 of this Agreement.
- 9.2 The Municipality represents and warrants that:
- 9.2.1. The Municipality has the authority and jurisdiction to engage ISI for the provision of the ISI Service for its Municipal Election and that the person(s) signing this contract are duly authorized to execute and deliver it on behalf of the Municipality and that it is a duly binding obligation of the Municipality.

10. Remedies

- 10.1 If a party fails or refuses at any time to perform its obligations under this Agreement, then the other party may deliver the defaulting party notice of intent to terminate this Agreement, which notice shall specify the alleged failures or refusals and, if within three (3) business days of receipt of the notice or such other reasonable period in relation to the default, the defaulting party shall not have cured all the defaults set out in the notice or presented a plan reasonably acceptable to the other party to cure these defaults, the other party may, at its option elect to terminate this Agreement.
- 10.2 If the Municipality terminates this Agreement as a result of all the positions up for election being acclaimed, then the Municipality shall reimburse ISI all out-of-pocket expenses incurred for the planning and delivery of the Municipal Election in addition to the installments payable pursuant to clauses 7.1.4(a). To be clear, only the service fees for the eVoting service

deposit defined in section 7.1.4(a) are payable. The services and postage fee, for the Voter Instruction Letter is not required as there will be no service or postage required and thus it will not be billed to the municipality.

10.3 If the Municipality terminates this Agreement for any reason other than the reason stated in clause 10.2 without material default by ISI, then the Municipality shall pay ISI fifty percent (50%) of the total fees that would be payable pursuant to Article 7 if the ISI Service had been employed for the Municipal Election, except that a deduction shall be made of any fees payable under 7.1.2 that have not been incurred by ISI.

10.4 And any payments previously paid by the Municipality to ISI shall be deducted from amounts otherwise payable pursuant to Article 10.3.

11. Force Majeure

11.1 Either party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from an act of god, fires, floods, explosions, insurrection, war or riots, unusually severe weather, epidemics or quarantine restrictions, governmental priorities or allocations regulations or any cause beyond the reasonable control of the party including without limiting the generality of the foregoing, a failure of communication facilities, labor trouble or strikes by employees of telecommunications providers or postal carriers, including suppliers of application software to ISI, and restraint by Court or public authority.

12. Limitation of Liability

12.1 ISI's liability for damages howsoever caused, whether in contract or in tort, including negligence, shall be limited to the actual direct damages suffered by the Municipality and in no event shall ISI be able liable for any indirect, consequential or punitive damages of the Municipality or any other person. In any event, the liability of ISI for the breach of any representation, warranty or covenant shall not exceed the total fee payable to ISI by the Municipality pursuant to this Agreement regardless of the number of claims.

13. Miscellaneous

13.1 This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

13.2 The parties and their representatives signing this Agreement hereby acknowledge and represent that the representatives signing this Agreement are authorized and have full authority to enter into this Agreement on behalf of the parties for whom they have signed.

- 13.3 No delay or admission by either party to exercise any right or power occurring upon any noncompliance or default by other party shall impair any such right or power or to be construed as a waiver thereof, unless such waiver is in writing.
- 13.4 This Agreement, including the Schedules referred to in this Agreement, constitutes the entire agreement of the parties with regard to the subject matters addressed in this Agreement and this Agreement supersedes all prior or contemporaneous agreements or discussions or representations, whether oral or written with respect to the subject matter of this Agreement and this Agreement cannot be varied, amended, waived or discharged except in writing signed by all parties.
- 13.5 Time is of the essence to the performance of the party's obligations under this Agreement.
- 13.6 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 13.7 This Agreement may not be assigned to any other party without the written consent of the other party.

TOWN OF PRESCOTT

Per: _____

Per: _____

INTELIVOTE SYSTEMS INC.

Per: _____
Dean Smith, President and Founder

SCHEDULE "A"
Base Services

ISI Base Services to be provided within the agreed upon fee identified in clause 7.1.1. These services include:

- a) Develop and manage a critical path plan for required activities in coordination with the Municipality;
- b) Management and coordination of telecommunications requirements designed to provide the elector with their choice of voting channel: internet, phone, mail-in, or polling station, if offered by the municipality. Includes the activities associated with the telecommunications setup for electronic voting system; appropriate bandwidth; phone (IVR) ports; and website registration;
- c) Attending organizational committee meetings with the Municipality, online via Zoom, or in person if ISI staff are in-province;
- d) Assist in the development by the Municipality of educational materials for electors including creation of the Voter Instruction Letter providing specific instructions on how to successfully use the electronic voting process;
- e) Assistance in the management of the electors list;
- f) Assistance with the format, design and secure delivery methods of personal identification numbers (PIN). Intelivote Systems will generate the PINs using the eligible elector information to determine the required PIN length and to determine the number of additional PINs required as spares. A unique PIN will be created for each Eligible Elector based on the initial voters list provided by the Municipality. In addition to the PIN, an Eligible Elector category is created and a file is produced to be used for production of Voter Instruction Letters;
- g) Provision of a media spokesperson to address technology questions. Development and/or assistance with a media plan and a voter education plan that addresses the most common questions from both the media and members of the public. An Intelivote representative can speak directly with the media on any questions related directly to the Intelivote application. The Municipality is responsible for all advertising and marketing costs of the Municipal Election, and if the Municipality is paying ISI pursuant to Article 7.1.2 to prepare and mail out Voter Instruction Letters, then ISI will be responsible for the costs of preparing and mailing out the Voter Instruction Letters;
- h) Technical consultation to address specialized system requirements;
- i) Development and recording of voice scripts for the Election;
- j) Website development and design including generation of a customized webpage for voters to link from to vote;
- k) Assisting the Municipality in addressing legislative issues and by-laws relating to elector notification;

- l) Customization and development of all activity associated with configuring the Election such as: district/ward setup; candidate assignment; voice script recording; Elector List management; secure ID and password management; configuring and loading Voting Decisions (ie. type of race, sequence and presentation display), based on information to be provided by the Municipality;
- m) Assistance and guidance to Auditors, security personnel and Election Officials. A document will be provided which will outline the requirements for a regional centre (if required) to be used by the Election Officials and Auditor, provided that the Municipality shall provide any hardware and communication facilities required by the Auditors and Election Officials;
- n) Training for Election HelpLine staff, Auditors, Election Officials (Returning Officer and Deputy Returning Officer);
- o) Coordination for logistics for eVoting and assistance for the protocol to be followed for the voting event;
- p) Municipality specific consulting by ISI staff to work with the Municipality, at a date and time agreed upon by the parties, to deliver the services, training and consulting described in this Contract and in this Schedule "A". Where possible, and at ISI's discretion, ISI staff may be available to travel to the Municipality during the engagement and provide training or assistance, on site. Zoom coordinated training will be done in person with a live consultant providing the training to facilitate a more meaningful session and to address any municipality specific questions, prior to and during the election as required.

SCHEDULE "B"
Consulting Services

Additional consulting services that may be required by the Municipality in addition to those services provided in Schedule "A" will be provided at the following rates:

Intelivote Consultant - \$800/day plus applicable taxes
All travel and living expenses will be reimbursed to ISI at cost.