

Job # 1288

AGREEMENT

This Agreement is made this 26th day of January, 2000, by and between FIDLAR & CHAMBERS CO., (F&C), and the Surry County Board of Commissioners, a political subdivision duly organized and existing under the laws of North Carolina, (the "Client").

RECITALS

- A. F&C, in the normal and customary course of its business, sells voting equipment and computer equipment (hereinafter referred to as "hardware") manufactured by various hardware vendors (hereinafter referred to as "manufacturer").
- B. F&C, in the normal and customary course of its business, designs, develops, and acquires marketing rights to computer software (hereinafter referred to as "software") the terms of which are described herein.
- C. Client desires to purchase from F&C computer hardware licenses and computer software for the purpose of automating the election function of Voting Machines, Ballot Tabulation and Election Management Software for the Surry County Board of Elections Office.
- D. Client is a political subdivision of the State of North Carolina with full power and authority to enter into this Agreement and to perform all of its obligations hereunder.
- E. Client has duly authorized the execution and delivery of this Agreement by proper action by its governing body at a meeting, duly called, regularly convened and attended throughout by a requisite majority, and all requirements have been met and procedures have occurred in order to ensure the validity of this Agreement.

TERMS OF AGREEMENT

In consideration of the facts mentioned above and the mutual promises set out below, the parties agree as follows:

ARTICLE I - GENERAL TERMS

- 1.1 DEFINITIONS: Unless the context otherwise requires, the terms defined in Section 1.1 shall, for all purposes of this Agreement, have the meaning specified.
  - A. **Computer System:** A combination of computer hardware and computer software organized to accomplish a set of specific functions.
  - B. **Program or Computer Program:** A schedule or plan that specifies actions that may or may not be taken, expressed in a form suitable for execution by a computer.

- C. **Software or Computer Software:** Computer programs, procedures, rules and associated documentation concerned with the operation of a data processing computer system.
  - D. **Licensed Program:** Each program in computer readable form furnished by F&C to Client, including related supporting materials such as instruction manuals.
  - E. **Designated Voting Equipment:** A central processing unit (as defined below) and its associated equipment designated by a manufacturer's Sales Order Serial Number.
  - F. **Use:** The copying or duplication of any portion of any Licensed Programmer using any Licensed Program in the course of the operation of any computer hardware, or in support of any computer hardware program.
  - G. **Computer Hardware:** Physical equipment used in data processing, as opposed to computer programs, procedures, rules and associated documentation.
  - H. **Hardware Maintenance:** Any activity, such as tests, measurements, replacements, adjustments, and repairs, necessary to eliminate faults or keep computer hardware functional for the purpose which it was purchased.
  - I. **Data:** A representation of facts, concepts, or instructions in a formalized manner suitable for communication, interpretation, or processing by humans or automatic means.
  - J. **Software Maintenance:** Any tests, measurements, replacements, adjustments, and repairs necessary to eliminate faults and keep the computer software operating for the purpose for which it was purchased. This shall include, but is not limited to, a telephone number for technical support and any and all upgrades in the software which are or may become necessary under applicable state and federal laws, rules and regulations.
- 1.2 **COMPUTER SYSTEM:** Client agrees to buy from F&C the computer hardware and licensed program described in Schedule 1, subject to the terms and conditions hereof,

**ARTICLE II - COMPUTER SYSTEM**

- 2.1 **AUTHORITY:** Based on the contractual terms between manufacturer and F&C, F&C makes the representations found in ARTICLE II, and F&C hereby grants and assigns to Client the rights provided to F&C from manufacturer. Any rights granted to client under this section are in addition to and shall not limit the warranty contained in Section 2.8 of this Agreement.
- 2.2 **TITLE:** F&C warrants and agrees that good title to the computer hardware described in SCHEDULE I, COMPUTER SYSTEM DESCRIPTION, shall be conveyed to the Client by rightful transfer. Title to the hardware, however, shall not pass from F&C until full payment is made by client to F&C according to the terms in SCHEDULE II.
- 2.3 **INSURANCE:** F&C accepts the risk of loss for the computer hardware while in transit to Client's place of delivery. Client agrees to provide adequate "All Risk" insurance for the hardware while on Client's premises.
- 2.4 **PLACE OF DELIVERY:** The place for delivery of goods being sold under this Agreement is Client's facility within 30 business days, which is located at:

Surry County Board of Elections  
County Office Building  
P.O. Box 327  
Dobson, NC 27017,

Training of Software and Hardware to be provided and included in this Agreement. Training for Hardware and Software are based on Installation and Implementation Plan detailed in the formal proposal dated November 15, 1999 delivered to Client and which is incorporated by reference as if fully set out.

- 2.5 **HARDWARE MAINTENANCE:** F&C shall provide Client with hardware maintenance as provided in section 2.8 of this Agreement. In addition, F&C will offer a separate Hardware Maintenance Contract to provide hardware maintenance beyond the term stated in section 2.8. Hardware Maintenance is projected to be \$9,500.00 and begin February 1, 2001.
- 2.6 **SOFTWARE MAINTENANCE:** F&C shall provide Client with software maintenance as provided in section 2.8 of this Agreement. In addition, F&C will offer a separate Software Maintenance Contract to provide software maintenance beyond the term stated in section 2.8. Software Maintenance includes all program upgrades, legislative changes and 800-phone support. Support is 7:30AM - 5PM Monday - Friday (excluding Holidays). Software Maintenance is projected to be \$11,000.00 beginning February 1, 2001.

2.7 ACCEPTANCE BY CLIENT: Use of this computer system for a term not less than three (3) days following the later of (i) installation and testing of computer hardware, (ii) installation and testing of standard software or (iii) completion of the training period described in schedule I, shall be deemed to be an acceptance by client. During the period of the time prior to acceptance, Client reserves the right to reject all or part of the computer system and Client shall not be liable to F&C for incidental or consequential damages arising from such rejection.

2.8 WARRANTY: The following warranties for goods are in lieu of all warranties, express, implied, or statutory, including but not limited to, any implied warranties of merchantability and fitness for a particular purpose and of any other warranty obligation on the part of F&C. There are no warranties which extend beyond the description on the face hereof.

A. F&C, warrants, without limitation, (a) The design and condition of the computer system, including the hardware and software related components (except expendable items such as fuses, batteries, thermal paper, etc.) (b) that the hardware & software system complies with all applicable state and federal laws, rules and regulations, and (c) that the system is fit for use and which the system is being purchased. This warranty shall be in effect for a period of 365 from the date of client acceptance.

During the warranty, if the computer system is not properly installed, does not operate as represented or warranted, F&C shall repair or replace the computer system in whole or in part at the sole expense of F&C.

**ARTICLE III - SOFTWARE LICENSE**

- 3.1 **PROPERTY RIGHTS:** Client agrees that all program specifications, systems, design, applications, routines, subroutines, techniques, ideas and/or formula utilized or developed or provided by F&C in connection with the Agreement are and shall remain the sole property of F&C.
- 3.2 **LICENSE:** F&C hereby grants Client the rights to a nonexclusive, perpetual, and nontransferable license for the possession and use of all software (Licensed Software) pursuant to the Agreement described in SCHEDULE I, COMPUTER SYSTEM DESCRIPTION.
- A. Client agrees not to copy the software programs covered by this Agreement in any manner, except in normal backup procedures, without the express written consent of F&C.
- B. Client agrees to label all software documentation such as manuals, instruction guides, procedure manuals, etc. but not printed material produced by the operation of the system with the following "The information herein are trade secrets and proprietary properties of Fidar & Chambers Company."
- C. Client may modify any of the Software for its own use and merge into other program material to form an updated work. The use of any portion of the Software included in an updated work shall only be for Client and shall remain subject to all terms and conditions of this Agreement. In the event this License is terminated, the License Software will be completely removed from the updated work and treated as if the permission to modify had never been granted.
- D. Client is exclusively responsible for the supervision, management, and control of its use of the Software. Except as provided otherwise in this Agreement, Client agrees:
- (a) To not reveal any information contained in the Software, or any part thereof, or any copies thereof, in any form, to any third party except pursuant to a court order;
  - (b) To take all reasonable precautions to hold in confidence the design and documentation of the Software;
  - (c) To not encumber, assign, sublicense, or otherwise transfer same, by operation of law or otherwise, in whole or in part, directly or indirectly, to not exhibit, donate, barter, loan, or otherwise communicate said Software, or any other firm or person without the express written consent of F&C; and
  - (d) to take all reasonable action by instruction, agreement, or otherwise with its employees or other persons permitted access to the Software to satisfy its obligations under this Agreement with respect to use, protection and security of the Licensed Software.

- 3.3 PROTECTION OF LICENSE: F&C and Client agree to aid and assist one another in the protection of the trade secrets of the Software covered by this license.
- 3.4 TRANSFER: Client agrees that it will not sell, give, encumber in any manner, or otherwise transfer to any other company, firm, person, corporation, or entity any of its rights in any Software, whether or not later modified by either party, developed pursuant of this Agreement, without the express written consent of F&C.
- 3.5 WARRANTY: F&C warrants that it has good title to the Software.
- 3.6 LIMITATIONS OF LIABILITY: The parties shall not be liable or responsible for the failure or delay to perform any of the obligations contained in this Agreement due to the causes beyond the parties control, provided such causes are not due to negligence and are not subject to correction by due diligence.
- A. THE WARRANTY IN THIS AGREEMENT AS TO THE SOFTWARE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.
- 3.7 TERM AND TERMINATION: The license granted hereunder under ARTICLE III, with regard to the Software, may be terminated by F&C for material failure of Client to Comply with terms and conditions of this Agreement. Within thirty (30) days after Client has discontinued the use of any License program, or within ten (10) days after F&C has terminated any license, Client will certify in writing to F&C that through its best efforts and to the best of its knowledge, the original and all copies in whole or in part of the discontinued or terminated License program(s) have been destroyed, except that, upon prior written authorization from F&C, Client may retain copy for archive purpose only.
- A. F&C may only terminate this license upon forty-five (45) days prior written notice to Client. If during this time period Client is able to cure its compliance failure or show due diligence in curing such failure, then F&C shall not the authority to terminate this license.

**ARTICLE IV**

- 4.1 **CONFIDENTIAL INFORMATION:** F&C and Client agree that information designated in writing as proprietary by one party shall be held in confidence by the other party. Since unauthorized use or transfer of the Software or any information contained therein will diminish substantially the value to F&C of the trade secrets and proprietary properties of the Software, if Client breaches any of its obligations with respect to limited use or nondisclosure of the Software, or if such breach is likely to occur, F&C shall be entitled to equitable relief, including orders for specific performance and injunctions. The rights and remedies of F&C set forth in this Agreement are not exclusive and are in addition to any other rights or remedies provided by law or this Agreement, but are subject to the requirements imposed upon Client by virtue of any and all public disclosure laws.
- 4.2 **WAIVER:** Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that, or any other provision.
- 4.3 **NOTICES:** Any notices or demands required to be given herein shall be given to the parties in writing, and by certified mailing to the address hereinafter set forth, or to such other addresses as the parties may hereinafter substitute by written notice given in the manner prescribed in this Section.
- a. **Notice to F&C:** P.O. Box 6248  
Rock Island, IL 61204-6248  
Attn.: Dave Steil
- b. **Notice to Client:** Surry County Manager  
County Office Building  
Suite 329  
Dobson, NC 27017  
Attn: Dennis Thompson
- c. **Notice to Client** Surry County Director of Elections  
Surry County Board of Elections  
P.O. Box 372  
Dobson, NC 27017  
Attn: Angie Crews
- 4.4 **ENTIRE AGREEMENT:** It is expressly agreed that this Agreement embodies the entire contractual Agreement and that there is no other oral or written Agreement or understanding between the parties at the time of the execution hereunder. Further, this Agreement cannot be modified except by written agreement of all parties hereto.
- 4.5 **GOVERNING LAW:** The parties agree that this Agreement shall be governed by the laws of the State of North Carolina.

4.6 BINDING EFFECT: This Agreement shall inure to the benefit of and bind the parties hereto, their successors and assigns.

4.7 AUTHORITY: F&C and Client each hereby warrant and represent that their respective signatures set forth below have been and are on the date of this Agreement duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.

4.8 SECTION HEADINGS: All section headings contained herein are for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement.

This Agreement has been executed by the parties as of the aforementioned date.

ACCEPTED:

**SURRY COUNTY COMMISSIONERS**

BY *[Signature]*  
Date 1-24-00

BY \_\_\_\_\_

Date \_\_\_\_\_

BY \_\_\_\_\_

Date \_\_\_\_\_

BY \_\_\_\_\_

Date \_\_\_\_\_

**FIDLAR & CHAMBERS COMPANY**

BY *[Signature]*  
Date 1/26/00

**SURRY COUNTY COMMISSIONER**

BY \_\_\_\_\_

Date \_\_\_\_\_

**SURRY COUNTY  
SCHEDULE I  
COMPUTER SYSTEM DESCRIPTIONS**

**Surry County Hardware Investment**

1 - Compaq DeskPro 350/P or better 32Mb RAM, 2.1GB Drive PCMCIA Drive 15" Color Monitor Windows 95 Keyboard, Mouse Modem	\$ Included
86 - EV 2000 Voting Units PCMCIA Slot 100/PMHL Processor 16Mb RAM, 1.0 GB or better MicroTouch Touchscreen Windows 95 EV2000 License Check-It Diagnostic Software	\$ 503,000.00
31 - EV2000 Power Packs Power/Network Cables 1 UPS battery 28.8 Modem or better Thermal Precinct Printer	\$ Included
- PCMCIA Cards	\$ Included
86 - Voting Booths	\$ Included
48 - Carrying Cases	\$ Included
1 - Scanner for Absentee, Provisional, Curbside Ballots To Scan 50 ballots per minute or better	\$ Included
<b>Total Hardware Investment</b>	<b>\$ 503,000.00</b>

### Surry County Software Investment

PC Ballot	\$ Included
AbScanT "Ballot on Request"	\$ Included
EV 2000 PRT Vote/Recount	\$ Included
EM Power	\$ Included
EM Artwork	\$ Included
EV Set	\$ Included
EV Collect	<u>\$ Included</u>
<b>Total Software Investment</b>	<b>\$ Included</b>

### Total Solution

Voting Hardware	\$503,000.00
Voting Software	\$ Included
Training/Project Management	\$ Included (2 weeks)
Surry County Discount 5%	<u>(\$ 25,000.00)</u>
<b>Total Solution</b>	<b>\$478,000.00</b>

### SURRY COUNTY PRICING, TERMS AND CONDITIONS

#### PAYMENT SCHEDULE:

- \$33,000.00 Due upon contract signing
- \$445,000.00 Due upon Delivery and complete set-up

All invoices shall be due and payable upon presentation. Any invoices over thirty (30) days delinquent will be charged 1.5% interest per month.

**SURRY COUNTY**  
**EV 2000 VOTING SYSTEM**  
**November 15, 1999**

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**TIMELINE**

## Surry County Preliminary Timeline

**Purpose:** To review chain of events of and implementation of EV 2000 in Surry County for February 2000 Election. All dates are approximate and estimated.

**Start Date    End Date**

<b>12/1/99</b>		<b>Board Approves EV 2000 for Implementation</b>
<b>1/3/00</b>		<b>Surry County</b> A. EM Power Training, Election Set-up & Coding B. Communications & Wiring C. Storage Rack Set-up D. Prepare Voter Education Plan
<b>1/17/00</b>		<b>Receives Delivery of EV 2000</b>
<b>1/17/00</b>		<b>Train the trainers (Voter Education Outreach Program)</b>
<b>1/25/00</b>	<b>2/2/00</b>	<b>Surry County Voter Education Tour</b>
<b>1/25/00</b>	<b>1/28/00</b>	<b>Pollworker Training</b> A. Class size limited to 30 with 15 demo units B. 100 practice connectors & manuals given prior to training
<b>2/2/00</b>		<b>February Fire Election</b>