



MARIPOSA COUNTY

Treasurer-Tax Collector-County Clerk ·



RESOLUTION - ACTION REQUESTED 2016-515

MEETING: September 27, 2016

TO: The Board of Supervisors

FROM: Keith Williams, Treasurer/Tax Collector

RE: Tracker Investment Software Agreement

RECOMMENDATION AND JUSTIFICATION:

Approve the Subscription Agreement with Tracker, A Division of C2, LLC for Portfolio Accounting Management Software in the Amount of \$6,235; and Authorize the Treasurer to sign the Agreement.

This subscription will replace the current Sympro portfolio management system. Portfolio management software is used to manage the County's investment portfolio with requires asset class allocations, cash projections, market and Book values, etc. The software also produces daily, monthly, and quarterly reports. The Tracker software is an online based system that provides greater functionality than the current system is use. The annual subscription cost \$4,740 with a onetime setup and training cost of \$1,495. The subscription will renew annually with each payment and can be cancelled with 30 days notice and the unused portion of the subscription refunded.

This agreement will result in an annual savings of \$2,545 and is budgeted in the current year.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has supported the use of portfolio management software in the past.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the Agreement and continue with the old system.

FINANCIAL IMPACT:

Sufficient funding has been included in the Treasurer/Tax Collector Budget for this costs associated with this subscription agreement.

ATTACHMENTS:

16 00330 SA Tracker Mariposa County (PDF)

CAO RECOMMENDATION

Requested Action Recommended

Mary Hodson
Mary Hodson, CAO 9/22/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier

TRACKER SUBSCRIPTION AGREEMENT

This Agreement ("**Agreement**") is entered into and effective as of:

October 15, 2016 ("**Effective Date**")

by and between Tracker, a division of C2, LLC, ("**Tracker**") a North Carolina Corporation, having its principal place of business at 161 Village View – Suite 101, Mooresville, NC 28117; and

Mariposa County ("**CUSTOMER**")
5100 Bullion Street
Mariposa, CA 95338

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

"**Customer Data**" means all electronic data or information submitted by Customer to the Service.

"**Service**" means the online, web-based portfolio accounting management service provided by Tracker via <http://www.tracker.us.com> and/or other designated websites, but does not include customer data or reports the customer generates using the web-based service and that data.

"**Users**" means Customer's employees who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Tracker at Customer's request).

2. Service.

2.1 Provision of Service. Tracker shall make the Service available to Customer pursuant to the terms and conditions set forth in this Agreement. During the term of this Agreement, the functionality of the Service will not be materially decreased from that available as of the Effective Date.

2.2 Users. User subscription is for named Users and may be reassigned from time to time to new Users replacing former Users who have terminated employment or other prior relationship with Customer, changed job status or function, or otherwise no longer requires ongoing use of the Service.

3.0 Use of the Service.

3.1 Tracker Responsibilities. Tracker shall: (i) not use, edit or disclose to any party other than Customer the Customer Data; (ii) maintain the security and integrity of the Service and the Customer Data;

(iii) provide telephone and online standard support to Customer's Users, at no additional charge, (iv) use commercially reasonable efforts to make the Service generally available 24 hours a day, 7 days a week, except for: downtime caused by circumstances beyond Tracker's reasonable control, including acts of God, acts of government, flood fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems not involving Tracker employees, computer or telecommunications failures or delays involving hardware or software not within Tracker's possession or reasonable control, and network intrusions or denial of service attacks, but only to the extent unavailability results notwithstanding the exercise by Tracker of reasonable care and due diligence to avoid or mitigate the same in anticipation of or in response to such causes.,

3.2 Customer Responsibilities. Customer is responsible for all activities that occur under Customer account. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Tracker promptly of any such unauthorized use; and (iii) comply with all applicable local, state, and federal laws in using the Service.

3.3 Use Guidelines. Customer shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party (ii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (iii) attempt to gain unauthorized access to the Service or its related systems or networks.

3.4 Third-Party Providers. Certain third-party providers, some of which may be listed on pages within Tracker's website, offer products and services related to the Service, including implementation, customization and other consulting services related to customers' use of the Service and applications that work in conjunction with the Service. Tracker does not warrant any such third-party providers or any of their products or services. Any exchange of data or other interaction between Customer and a third-party provider, and any purchase by Customer of any product or service offered by such third-party provider, is solely between Customer and such third-party provider.

Tracker

A DIVISION OF C2, LLC

TRACKER SUBSCRIPTION AGREEMENT

4.0 Fees, Invoicing & Payment.

4.1 Fees. Tracker will provide the above services to the Mariposa County for:

Annual Subscription Fee: \$ 3,540.00 annually.

Additional User(s): Unlimited; no charge.

Additional Tracker Modules:

Charts & Graphs: \$ 600.00 – not activated
Economic Indicators: \$ 300.00 – not activated
Enhanced Reporting: \$ 1,200.00 – activated
Market Price Import: \$ 480.00 – not activated
General Ledger: \$1,200.00 – not activated
Accuracy Check: \$600.00 – not activated

Portfolio Set Up and Training Fee: Subject to the execution of this document, a one-time fee in the amount of \$ 1,495.00

4.2 Invoicing & Payment. Fees for the Service will be invoiced annually in advance; charges are due net 10 days from the invoice date.

4.3 Suspension of Service. If Customer's account is 30 days or more overdue, Tracker reserves the right to suspend the Service provided to Customer, without liability to Customer, until such amounts are paid in full.

5.0 Proprietary Rights.

5.1 Reservation of Rights. Customer acknowledges that in providing the Service, Tracker utilizes (i) the Tracker name, the Tracker logo, the Tracker domain name, the product and service names associated with the Service, and other trademarks and service marks; (ii) certain audio and visual information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "Tracker Technology") and that the Tracker Technology is covered by intellectual property rights owned or licensed by Tracker (collectively, "Tracker IP Rights"). Other than as expressly set forth in this Agreement, no license or other rights in or to the Tracker Technology or Tracker IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved.

5.2 License Grant. Tracker grants Customer and its Users a non-exclusive, non-transferable, non-sublicense able right to access and use the Service in accordance with the terms of this Agreement.

5.3 Restrictions. Customer shall not (i) modify, copy or create derivative works based on the Service or Tracker Technology; (ii) create Internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service; or (iii) disassemble, reverse engineer, or decompile the Service or Tracker Technology, or access it in order to (A) build a competitive product or service, (B) build a product or service using similar ideas, features, functions or graphics of the Service, or (C) copy any ideas, features, functions or graphics of the Service.

5.4 Customer Data. As between Tracker and Customer, all Customer Data is owned exclusively by Customer.

5.5 Suggestions. Tracker shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users relating to the operation of the Service.

6.0 Warranties & Disclaimers.

6.1 Warranties. Each party represents and warrants that it has the legal power to enter into this Agreement. Tracker represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) it owns or otherwise has sufficient rights to the Service and the Tracker Technology to grant the rights and licenses granted herein; and (iii) the Service and Tracker Technology do not infringe any intellectual property rights of any third party.

6.2 Disclaimer. TRACKER MAKES NO WARRANTY OF ANY KIND, IMPLIED, STATUTORY, OR OTHERWISE. TRACKER HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.0 Indemnification.

7.1 Indemnification by Tracker. Subject to this Agreement, Tracker shall defend, indemnify and hold Customer harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party; provided, that Customer (a) promptly gives written notice of the Claim to Tracker; (b) gives Tracker sole control of the defense and settlement of the

Tracker

A DIVISION OF C2, LLC

TRACKER SUBSCRIPTION AGREEMENT

Claim (provided that Tracker may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Tracker, at Tracker's cost, all reasonable assistance.

the United States and the State of California, without regard to its conflicts of laws provisions.

8.0 Term & Termination.

8.1 Term of User Subscription. This Subscription commences on the Effective Date and continues until terminated by either party. User subscriptions shall automatically renew for additional periods of one (1) year at the price in effect at the time of renewal unless Customer gives Tracker notice of termination at least 30 days prior to the end of the relevant subscription term.

8.2 Termination. Either party may terminate this Agreement at any time upon 30 days written notice. Upon termination, Tracker shall refund to Customer any prepaid fees within seven (7) business days.

8.3 Outstanding Fees. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Tracker prior to the effective date of termination.

9.0 General Provisions.

9.1 Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

9.2 Notices. All notices under this Agreement shall be in writing and shall be delivered to the addresses notified by the parties to each other.

9.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

9.4 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party.

9.5 Governing Law. This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement as of the Effective Date:

TRACKER, a division of C2, LLC

Name: J. David Silvas
Title: President

Signature: J. David Silvas

Date: October 15, 2016

MARIPOSA COUNTY, CALIFORNIA

Name: Keith Williams

Title: Treasurer / Tax Collector / Co. Clerk

Signature: Keith Williams

Date: 9/27/2016

Name: Steven W. Dahlem

Title: County Counsel

Signature: Steven W. Dahlem

Date: 9-27-16