

Attachment C

Funding Agreement A-15124

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Monterey County Board of Supervisors

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1st Floor
Salinas, CA 93901
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Board Order

A motion was made by Supervisor John M. Phillips, seconded by Supervisor Luis A. Alejo to:

Agreement No.: A-15123 and Agreement No.: A-15124

- a. Approve Professional Services Agreement with Rincon Consultants, Inc., to prepare an Environmental Impact Report for the Charolais Ranch Subdivision Project (PLN050692) where the Base Budget is \$129,442.00, and the Contingency Budget is \$19,416.30, for a total amount not to exceed \$148,858.30, for a term from February 24, 2021 to February 23, 2026;
- b. Approve a Funding Agreement with The Don Chapin Company, Inc., to fund costs for Rincon Consultants, Inc., incurred by Monterey County for preparing an Environmental Impact Report for the Charolais Ranch Subdivision Project (PLN050692) where the Base Budget is \$129,442.00, the Contingency Budget is \$19,416.30, and the Contract Administration Fee is \$3,424.00, for a total amount not to exceed \$152,282.30, for a term from February 24, 2021 to February 23, 2026; and
- c. Authorize the Housing and Community Development Director or designee to execute the Professional Services Agreement, Funding Agreement and up to three (3) future amendments to the Agreements where the amendments do not significantly alter the scope of work or increase the approved amount of the Agreements, subject to review and approval by the Office of the County Counsel as to form.

PASSED AND ADOPTED on this 9th day of March 2021, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew and Adams
NOES: None
ABSENT: None
(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting March 9, 2021.

Dated: March 11, 2021
File ID: A 21-066
Agenda Item No.: 35

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Julian Lorenzana, Deputy

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**FUNDING AGREEMENT
FOR THE
CHAROLAIS RANCH SUBDIVISION PROJECT
ENVIRONMENTAL IMPACT REPORT**

THIS FUNDING AGREEMENT, hereinafter, “**AGREEMENT**”, is made and entered by and between the County of Monterey, a political subdivision of the State of California, hereinafter, “**County**,” and The Don Chapin Company, Inc., hereinafter, “**PROJECT APPLICANT**” (collectively, the “**Parties**”) and effective as of the last date opposite the respective signatures below and with reference to the following facts and circumstances:

RECITALS

A. PROJECT APPLICANT has applied to County for approval of development permits for the Charolais Ranch Subdivision Project. The property is approximately a 130.8-acre parcel to be divided into twenty-six (26) residential lots ranging in size from approximately one and one-half (1.5) to three and one-half (3.5) acres and three (3) separate open space areas totaling 73.23 acres. The property fronts on and is south of Pesante Road, (Assessor’s Parcel Number 125-051-012-00), east of Prunedale, referred to herein as “**PROJECT**.” Additional work has been identified to process the PROJECT application. The property is located in the North County Area Plan, referred to herein as “**PROJECT**.”

B. Due to the magnitude and complexity of the PROJECT, the Parties have agreed that it is necessary and desirable that County engage Rincon Consultants, Inc., hereinafter, “**CONTRACTOR**,” to provide assistance with processing the application for the PROJECT and perform related work. CONTRACTOR shall perform the Scope of Work specified in the Professional Services Agreement, hereinafter, “**PSA**,” between County and CONTRACTOR, attached to this AGREEMENT as Exhibit “1,” and incorporated herein by reference. County shall manage the PROJECT work performed by CONTRACTOR.

C. The Parties hereby agree that County shall engage CONTRACTOR to provide the services set forth in Exhibit “1” of this AGREEMENT.

D. A fundamental premise of this AGREEMENT is that nothing herein is to be construed as a representation, promise, or commitment on the part of County to give special treatment to, or exercise its discretion favorably for, the PROJECT in exchange for PROJECT APPLICANT’s obligation to cover County’s cost of retaining CONTRACTOR and providing County staff to work on the PROJECT.

E. The subject matter of this AGREEMENT is PROJECT APPLICANT’s funding of the CONTRACTOR’s services on the PROJECT. This AGREEMENT also covers the County fee for contract administration.

F. The County department costs associated with processing the application for the PROJECT, other than contract administration, will be funded through separate land use application fees to be paid by the PROJECT APPLICANT pursuant to the Monterey County

Land Use Fee Schedule, attached to this AGREEMENT as "Exhibit 2," and incorporated herein by reference. These land use application fees are separate from and in addition to the funding provided by the PROJECT APPLICANT pursuant to this AGREEMENT. Land use application fees will for the PROJECT will be as a Tier 7 (Deposit) fee pursuant to Exhibit 2.

G. The Parties make this AGREEMENT with full knowledge of the requirements of state and local law, including, but not limited to the California Environmental Quality Act (Public Resources Code Section 21000 et seq., hereinafter, "CEQA") and the State CEQA Guidelines (California Code of Regulations Title 14, Section 15000 et seq., hereinafter, "Guidelines") and the Monterey County Code.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. Deposits to Fund PSA and County Fee for Contract Administration. PROJECT APPLICANT shall deposit an amount equal to the CONTRACTOR's Base Budget, excluding the optional task, and the County's Contract Administration Fee. This amount totals \$132,866.00 and includes:

CONTRACTOR'S Base Budget (excluding optional task)	\$129,442.00
County Contract Administration Fee (non-refundable)	<u>\$3,424.00</u>
	\$132,866.00

PROJECT APPLICANT shall deposit a total amount of \$132,866.00 with County Planning Department upon approval of this AGREEMENT by the County of Monterey Board of Supervisors acting on behalf of the County, currently scheduled for March 9, 2021.

PROJECT APPLICANT's deposit of \$132,866.00 with County shall be a condition precedent to County's obligation under this AGREEMENT.

2. Fifteen Percent (15%) Project Contingency. An additional fifteen percent to CONTRACTOR's Base Budget shall be included in the AGREEMENT between County and CONTRACTOR to cover contingencies. This 15% Project Contingency totals \$19,416.30 and is subject to the procedures set forth in this AGREEMENT.

3. Maximum Budget Under AGREEMENT. The maximum amount which may be charged to PROJECT APPLICANT under this AGREEMENT is \$170,832.30.

CONTRACTOR's Base Budget (excluding optional task):	\$ 129,442.00
CONTRACTOR's Base Budget (optional task):	18,550.00
County Contract Administration Fee (non-refundable):	3,424.00
Project Contingency:	<u>19,416.30</u>
<u>Maximum Charge Under AGREEMENT:</u>	<u>\$ 170,832.30</u>

4. Within thirty (30) days after the end of each quarter, County shall provide quarterly progress reports to the PROJECT APPLICANT showing CONTRACTOR's charges from the prior quarter associated with completion of task(s) as specified in "Exhibit A" of the PSA (Scope of Services/Payment Provisions for the PROJECT). Any Base Budget funds remaining at completion of CONTRACTOR's services shall be returned to the PROJECT APPLICANT.

5. Engagement of CONTRACTOR. This AGREEMENT is based on County engaging CONTRACTOR in accordance with the PSA between County and CONTRACTOR, attached hereto and incorporated by this reference as Exhibit "1." CONTRACTOR shall be responsible only to County, and nothing in this AGREEMENT imposes any obligation on County or CONTRACTOR to PROJECT APPLICANT other than to devote the time and attention to assisting with the processing of the PROJECT. County shall provide direction and guidance to the CONTRACTOR. CONTRACTOR's contact(s) with PROJECT APPLICANT shall only be through County. PROJECT APPLICANT, its agents, employees, consultants, representatives or partners shall not contact CONTRACTOR directly in any manner unless at a public hearing, meeting, or workshop for the PROJECT.

6. Payments to CONTRACTOR and County.

a. CONTRACTOR

CONTRACTOR's invoices shall be paid from Base Budget funds deposited by PROJECT APPLICANT in the amount of \$129,442.00.

CONTRACTOR'S invoices for the optional task(s) shall be paid from Base Budget funds in the amount of \$18,550.00. Funding for the optional task(s) will be deposited by the PROJECT APPLICANT when CONTRACTOR requests approval from the County and receives a notice to proceed to complete the optional task.

Should this AGREEMENT be terminated prior to March 9, 2026, any unearned balance of the Base Budget deposited by PROJECT APPLICANT to fund the PSA's Base Budget amount shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by County.

b. County Contract Administration Fee

The County Contract Administration Fee, in an amount not to exceed \$3,424.00, shall be paid by PROJECT APPLICANT in accordance with this Agreement. County Contract Administration Fee shall be non-refundable.

The County Contract Administration Fee shall apply to this AGREEMENT (flat fee). This covers County project management and contract administration to be distributed to the following County departments upon execution of this AGREEMENT.

c. Project Contingency

An additional fifteen percent (15%) of CONTRACTOR's Base Budget, in an amount not to exceed \$19,416.30, covers potential contingencies, and transfer of any Project Contingency funds into the Base Budget shall require the approval of both County and PROJECT APPLICANT. Within five (5) working days of receipt of a request from County, PROJECT APPLICANT shall approve or disapprove the Request for Transfer from Project Contingency and, if approved, at the same time submit a check to the County for the amount requested.

If PROJECT APPLICANT takes more than five (5) working days to respond to a Request for Transfer from Project Contingency, additional costs may accrue to CONTRACTOR, which may result in another Request for Transfer from Project Contingency.

d. Land Use Application Fees

The PROJECT APPLICANT agrees that PROJECT APPLICANT will separately pay land use application fees to cover all County staff costs associated with the PROJECT in accordance with the current County of Monterey Land Use Fee Schedule. The fee schedule applicable to the PROJECT is dated September 17, 2019, and is attached to this AGREEMENT as "Exhibit 2." PROJECT APPLICANT agrees to pay any remaining amounts due and owing for the required deposit upon approval of this AGREEMENT by the County of Monterey Board of Supervisors acting on behalf of the County, currently scheduled for March 9, 2021.

7. No Promise or Representation. The Parties agree that nothing in AGREEMENT is to be construed as a representation, promise, or commitment on the part of County to give special treatment to, or exercise its discretion favorably for the PROJECT, it being understood that PROJECT APPLICANT's funding obligation under AGREEMENT is undertaken without regard to County's actions regarding the PROJECT.

8. Term. AGREEMENT shall become effective March 10, 2021, and continue through March 9, 2026, unless terminated pursuant to Paragraph 9 or amended pursuant to Paragraph 13 of AGREEMENT.

9. Termination. AGREEMENT shall terminate on March 9, 2026, but may be terminated earlier by PROJECT APPLICANT or County, by giving thirty (30) days' written notice to the other. Upon such termination, PROJECT APPLICANT shall immediately pay any outstanding invoices, as well as pay for any work performed by CONTRACTOR through effective date of termination.

10. Entire Agreement. AGREEMENT and its attachments constitute the entire agreement between the Parties respecting the matters set forth herein. The Parties each represent

that neither has relied on any promise, inducement, representation, or other statement made in connection with AGREEMENT that is not expressly contained herein.

11. Negotiated Agreement. It is agreed and understood by the Parties that AGREEMENT has been arrived at through negotiations and that neither is deemed the party which prepared AGREEMENT within the meaning of Civil Code Section 1654.

12. Assignment. Neither County nor PROJECT APPLICANT shall have the right to assign its respective rights and obligations hereunder without the written consent of the other party. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

13. Amendment. This AGREEMENT may be amended, modified or supplemented only in writing by both the Parties.

14. Contracting Officer. The contracting officer of County, and the only entity authorized by law to make or amend AGREEMENT on behalf of County, is the County of Monterey Board of Supervisors or a County employee whom they have specifically authorized.

15. Waiver. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this AGREEMENT shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instance or a waiver of any other condition or breach of any other term.

16. Governing Law. AGREEMENT shall be construed, interpreted and applied in accordance with the laws of the State of California applicable to commercial contracts entered into and to be performed wholly in California.

17. Construction. The language in all parts of AGREEMENT shall be construed, in all cases, according to its fair meaning. The Parties acknowledge that each party has reviewed AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of AGREEMENT.

18. Conflict with Professional Services Agreement between CONTRACTOR and County. In the event of a conflict between the provisions of AGREEMENT and the PSA between County and CONTRACTOR, the provisions of AGREEMENT shall govern.

19. Relationship of Parties. The Parties agree that this AGREEMENT establishes only a funding arrangement between the Parties, and that the parties are not joint venturers or partners.

20. Indemnification. PROJECT APPLICANT agrees to defend, indemnify and hold County harmless in any action brought by any third party in which the authority of the County to enter into AGREEMENT or the validity of AGREEMENT is challenged.

21. Counterparts. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same AGREEMENT.

22. Notices. Notice to the Parties in connection with AGREEMENT shall be given personally or by regular mail addressed as follows:

TO COUNTY: Craig Spencer, Planning Services Manager
County of Monterey
Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

TO PROJECT APPLICANT: The Don Chapin Company, Inc.
560 Crazy Horse Canyon Road
Salinas, California 93907-8434

WITH A COPY TO:

TO PROJECT APPLICANT'S REPRESENTATIVES: Derric G. Oliver, Attorney
John S. Bridges, Attorney
Fenton & Keller
P. O. Box 791
Monterey, California 93942-0791

Notice shall be deemed effective at the time of personal delivery or seventy-two (72) hours after mailing.

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT as of the day and year written below.

COUNTY OF MONTEREY

PROJECT APPLICANT*

DocuSigned by:
By: mike novo
8991001A16C04C3
Mike Novo, AICP, Interim Director
Housing and Community Development

DocuSigned by:
By: Don Chapin
94781089033148D...
(Signature of Chair, President or Vice President)

Date: 3/12/2021

Its: Don Chapin, President
(Print Name and Title)

Approved as to Form
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager

Date: 3/3/2021

DocuSigned by:
By: Brian Briggs
2926AA5CB79F475...
Brian Briggs
Deputy County Counsel

By: N/A
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)

Date: 3/4/2021

Its: N/A
(Print Name and Title)

Approved as to Fiscal Provisions

Date: N/A

DocuSigned by:
By: Gary Giboney
D3834BFECTD8449...
Gary Giboney
Chief Deputy Auditor-Controller

Date: 3/4/2021

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Manager

By: _____
Leslie J. Girard
County Counsel-Risk Manager

Date: _____

*INSTRUCTIONS: IF CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

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