

SUBRECIPIENT GRANT AGREEMENT
Between
the COUNTY OF MONTEREY
and
the AROMAS COMMUNITY CENTER FOUNDATION

A. R. Wilson Community Park Restroom Construction

THIS AGREEMENT, entered into this ____ day of _____ 2013, by and between the County of Monterey, hereinafter called "County" and the Aromas Community Center Foundation, hereinafter called "Foundation," is made with reference to the following facts and circumstances:

RECITALS

- A. WHEREAS, on February 3, 1995, the Foundation was chartered as a non-profit organization to provide educational and charitable assistance to residents of Aromas and the surrounding tri-county community;
- B. WHEREAS, the Foundation acquired an 18 acre site at 300 Aromas Road, Aromas, CA to be developed as a park and known as the A. R. Wilson Community Park (Park);
- C. WHEREAS, on January 8, 2003, a Conditional Use Permit for the Park was approved by the County Planning Commission;
- D. WHEREAS, on May 16, 2007, a building permit was issued by the County for a restroom, snack shack, and scoreboard facilities at the Park and renewed on June 21, 2012;
- E. WHEREAS, the Foundation lacks funding to construct the restroom facilities at the Park and has requested funding from the County;
- F. WHEREAS, on July 26, 2011, the County Board of Supervisors approved an application for a Housing Related Parks Program (HRPP) grant to fund construction of the Park restroom facilities;
- G. WHEREAS, on October 24, 2011, the County was awarded a Housing Related Parks Program (HRPP) grant in the amount of \$127,625;
- H. WHEREAS, on March 28, 2012, the County entered into a Standard Agreement with the State of California Housing and Community Development Department (HCD) in the amount of \$127,625 to fund the construction of the Park restroom facilities;
- I. WHEREAS, the use of HRPP funds will advance the development of the A. R. Wilson Community Park; and

- J. WHEREAS, the Foundation has demonstrated its ability to manage the delivery of park facilities which have included construction of a large storage building, septic system, and park entrance improvements through the volunteer efforts of its Board of Directors.

AGREEMENT

Accordingly and consistent with the above recitals, the County and the Foundation hereby agree as follows:

ARTICLE 1: GRANT PROVISIONS

Section 1.1 Grant Amount

Pursuant to this Agreement, the County shall grant to the Foundation an amount not to exceed One Hundred and Twenty Seven Thousand Six Hundred and Twenty Five Dollars (\$127,625) for the purposes set forth herein and upon the terms and conditions set forth in this Agreement. The sole source of funding for the County's grant to the Foundation is State of California Housing Related Parks Program Grant #11-HRPP-7832. The grant and all of its terms and conditions are hereby incorporated into this Agreement as Exhibit A.

Section 1.2 Term of Grant

The term of this Agreement shall commence upon the execution of this Agreement and shall continue until the completion of the Park restroom which is anticipated to be September 30, 2013. The County may in its sole discretion extend the term of the agreement for good cause, but, in no event may funds eligible for reimbursement under this Grant be expended later than September 30, 2014.

Section 1.3 Use of Grant Funds

The Grant funds shall be used to assist in the payment of expenses related to the following activities:

- a. Construction of the Restroom at A. R. Wilson Park, Aromas, as presented in Exhibit B and C, including appurtenances and required utilities.
- b. The Foundation hereby agrees to perform work pursuant to this Agreement in full compliance with all applicable provisions of the HRPP Grant. The Foundation further agrees to incorporate all applicable provisions of the County's grant and the HRPP grant into all agreements regarding the Restroom with all the Foundation employees, officers, directors, agents, contractors and subcontractors.

Section 1.4 Disbursement of Grant Proceeds

The County shall disburse the Grant to the Foundation as set forth below.

- a. For all requests to the County for disbursal of Grant proceeds, the Foundation shall submit a disbursement request to the County documenting the action requiring proceeds and the amount required.

- b. Requests shall be made by the Foundation not more frequently than once per month and shall be based on billings received for work and/or materials. The County shall review such requests and either approve or disapprove such requests within ten (10) business days and forward approved requests to the County Auditor/Controller.
- c. The County's review and approval of disbursement requests shall be based on consistency with this Agreement, including the Scope of Development, as shown in the drawings prepared by the Waring Group, Fresno, CA, and as shown in the drawings approved by and on file with the County Building Department.
- d. If the disbursement is for payment of a clearly identified cost that is included in the agreed-upon costs for the project, the County shall approve the request. Every effort will be made by the County to facilitate prompt payment of approved disbursement requests to the Foundation, with a goal of payment by the Auditor within thirty (30) business days after submittal of the request to the County Auditor/Controller.
- e. In lieu of disapproving a disbursement request, the County may consult with the Foundation and request additional documentation necessary to support the request.

**ARTICLE 2:
CONSTRUCTION AND MAINTENANCE ACTIVITIES**

The Foundation shall undertake to construct the Restroom as follows:

Section 2.1 Restroom Construction.

The Foundation shall hire appropriate, licensed contractors, obtain necessary permits, clearances and consents, and generally manage the Project. The Foundation shall:

- a. obtain all required permits;
- b. diligently construct an approximately 500 square foot restroom with six toilets, 2 urinals and 4 sinks, in accordance with the Scope of Work as shown in the drawing labeled Exhibit C and the Budget as shown in Exhibit D;
- c. communicate at least monthly with County staff to review the scope, budget, and schedule of the project and to provide status reports;
- d. perform the work in conformance with applicable federal, state and County laws and regulations as well as with all HRPP requirements;
- e. maintain the restroom in substantially the same condition following building permit final approval for a period of fifteen (15) years after its completion; and
- f. provide timely invoices for materials purchased and services rendered.

Section 2.2 Schedule of Performance.

The Foundation shall complete its efforts under the Restroom Construction Project, no later than September 30, 2013 unless the Agreement is extended by the County.

Section 2.3 Prevailing Wages

- a. The Foundation shall comply with provisions of the Labor Code (sections 1720, et seq.) governing public works, including payment of prevailing wages, payroll records, and employment of apprentices. Copies of the determination of the general prevailing rate of

per diem wages are available at:

<http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

- b. The Foundation shall engage the services of, and be responsible for payment to, a labor compliance contractor certified by the State of California who shall be required to independently verify the Foundation's compliance with applicable prevailing wage requirements of this Grant.
- c. The labor compliance contractor shall submit monitoring reports to the County weekly for review and approval.
- d. The Foundation may use volunteers to complete the Project consistent with California Labor Code GC 1720.4 (a)(1)(c), which reads as follows:

An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

Section 2.4 Inspection of Work

The County or its authorized designee shall have the right to inspect all construction work financed, in whole or in part, with the proceeds of the grant. The Foundation will take all steps necessary to assure that the County or its designee is permitted to examine and inspect the construction work and all contracts, materials, equipment, payrolls and conditions of employment pertaining to the work, including all relevant data and records.

ARTICLE 3 MISCELLANEOUS PROVISIONS

Section 3.1 Conflict of Interest

The Foundation represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

Section 3.2 Authority/Enforceability

The Foundation shall certify to the County that it is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to undertake all actions contemplated by this Agreement.

Section 3.3 Relationship of Parties

Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the County and the Foundation or its agents, employees or contractors, and the Foundation shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. The Foundation has and

retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. The Foundation shall be solely responsible for all matters relating to payment of its respective employees, including but not limited to compliance with Social Security, State Disability Insurance, Payroll Taxes, Workers' Compensation Insurance, Employee Benefits, and any applicable withholding or contribution, and any and all other laws and regulations governing employment matters. The Foundation shall be solely liable for and obligated to pay directly all applicable taxes, including but not limited to Federal and State Income Taxes and Social Security and, in connection therewith, the Foundation shall indemnify and hold harmless the Agency from any and all liability which may arise due to the Foundation's failure to pay such taxes.

Section 3.4 No Claims

Nothing contained in this Agreement shall create or justify any claim against the County by any person that the Foundation may have employed or with whom the Foundation may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the development or operation of the Project on the Property.

Section 3.5 Amendments

This Agreement may be amended or modified only by an instrument in writing signed by the County and the Foundation.

Section 3.6 Indemnification

The Foundation shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Foundation's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "The Foundation's performance" includes the Foundation's action or inaction and the action or inaction of the Foundation's officers, employees, agents and subcontractors.

Section 3.7 Insurance Requirements

a. Evidence of Coverage

Prior to commencement of this Agreement, the Foundation shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, upon request, the Foundation shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Foundation shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved

such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Foundation.

b. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

c. Insurance Coverage Requirements

Without limiting the Foundation's duty to indemnify, the Foundation shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

(i) Commercial General Liability Insurance including, but not limited to, premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Foundations, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note. Any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

(ii) Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: Any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

(iii) Workers' Compensation Insurance, if the Foundation employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

(iv) Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the Foundation shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

(v) Other Requirements All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis; or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date the Foundation completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for the Foundation and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement; or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Foundation's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Foundation's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 2010 10 01 in tandem with CG 20 3710 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, the Foundation shall file certificates of insurance with the County's contract administrator and the County's Contracts/Purchasing Division, showing that the Foundation has in effect the insurance required by this Agreement. The Foundation shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy which would alter the information on the certificate

then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement which shall continue in full force and effect.

The Foundation shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by the County, annual certificates to the County's Contract Administrator and the County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, the County shall notify the Foundation and the Foundation shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by the Foundation to maintain such insurance is a default of this Agreement which entitles the County, at its sole discretion, to terminate this Agreement immediately.

Section 3.8 No Third Party Beneficiaries

There shall be no third party beneficiaries to this Agreement.

Section 3.9 Obligation to Refrain from Discrimination

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religious creed, national origin, ancestry, physical disability (including HIV and AIDS - acquired or perceived), medical condition (including cancer), age, marital status, sex, sexual orientation or preference, or retaliation for having filed a discrimination complaint in the performance of this Agreement by the Foundation.

Section 3.10 Notices, Demands and Communications

Any notice, demand, or communication under, or in connection with, this Agreement between the parties may be served by personal service; by electronic transmission; by facsimile; by mailing the same by certified mail, postage prepaid, return receipt requested; or delivered by express delivery service, return receipt requested; or delivered personally to the principal office of the parties as follows:

Agency: County of Monterey
168 W. Alisal Street, Third Floor
Salinas, CA 93901
Attention: Director, Economic Development Department

Foundation: Aromas Community Center Foundation
PO Box 792
Aromas, CA 95004
Attention: President

Notice shall be deemed satisfied within one (1) business day if provided by personal service, by electronic transmission, or by facsimile. Notice shall be deemed satisfied within three (3) business days if provided by certified mail or by express delivery. Either party may change such address by notifying the other party in writing as to such new address as the party may desire used and which address shall constitute the new address for notice, until further written notice.

Section 3.11 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

Section 3.12 Governing Law

This Agreement shall be governed by and interpreted under the laws of the State of California.

Section 3.13 Parties Bound

Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

Section 3.14 Severability

If any section of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 3.15 County Approval

Whenever this Agreement calls for the County approval, consent or waiver, the written approval, consent or waiver of the Director of the Economic Development Department (Director) shall constitute the approval, consent, or waiver of the Agency, without further authorization required from the Board of Supervisors, provided it is determined that the overall feasibility of the objectives of this Agreement is not in jeopardy, no additional funds are required from the County, and no material term of this Agreement is altered. The County hereby authorizes the Director to deliver such approvals or consents as are required by this Agreement or to waive requirements under this Agreement on behalf of the County upon the terms specified above. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made except where it is specifically provided that a sole discretion standard applies. The County agrees to give reasonable consideration to requests by the Foundation for extensions of any time deadlines imposed under this Agreement provided that it is determined that the overall feasibility of the objectives of this Agreement is not in jeopardy. The County shall not unreasonably delay in reviewing and approving or disapproving any proposal by the Foundation made in connection with this Agreement. Notwithstanding this delegation, approval of the Board of Supervisors is required to amend this Agreement, and this Section 3.13 shall not preclude the Director, in his or her sole discretion, from seeking approval from the Board of Supervisors for any matter under this Agreement.

Section 3.16 Waivers

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of the Foundation or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to the Foundation to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by the Foundation shall not be

construed to be a consent to any other or subsequent act or omission or to waive the requirement for the County 's written consent to future waivers.

Section 3.17 Title of Parts and Sections

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 3.18 Entire Understanding of the Parties

This Agreement, together with all Exhibits, constitutes the entire understanding and agreement of the parties with respect to the development of the Project and the terms of the Grant.

Section 3.19 Construction of Agreement

The County and the Foundation agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

Section 3.20 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.

Section 3.21 Authority

Any individual executing this Agreement on behalf of County or the Foundation represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

Section 3.22 Integration

This Agreement, including the exhibits, represent the entire Agreement between County and the Foundation with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between County and the Foundation as of the effective date of this Agreement, which is the date that the County signs the Agreement.

Section 3.23 Interpretation of Conflicting Provisions

In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

IN WITNESS WHEREOF, the parties hereto executed this agreement as of the date set forth below.

COUNTY OF MONTEREY

AROMAS COMMUNITY CENTER
FOUNDATION

By: _____

By: 

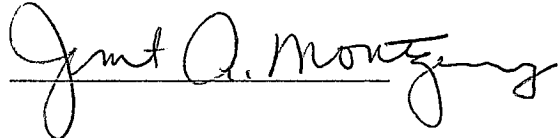
(print name)

WAYNE R. ADAMS
(print name)

Date: _____

Date: 14 FEB 2013

AROMAS COMMUNITY CENTER
FOUNDATION

By: 

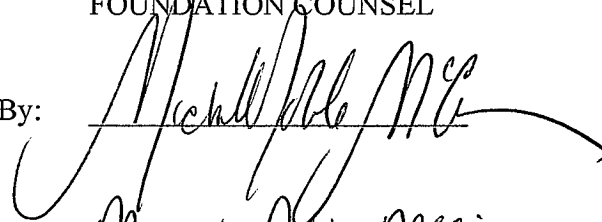
JANET A. MONTGOMERY
(print name)

Date: 2/14/2013

Approved as to form:
COUNTY COUNSEL

Approved as to form:
FOUNDATION COUNSEL

By: 
DEPUTY COUNSEL

By: 

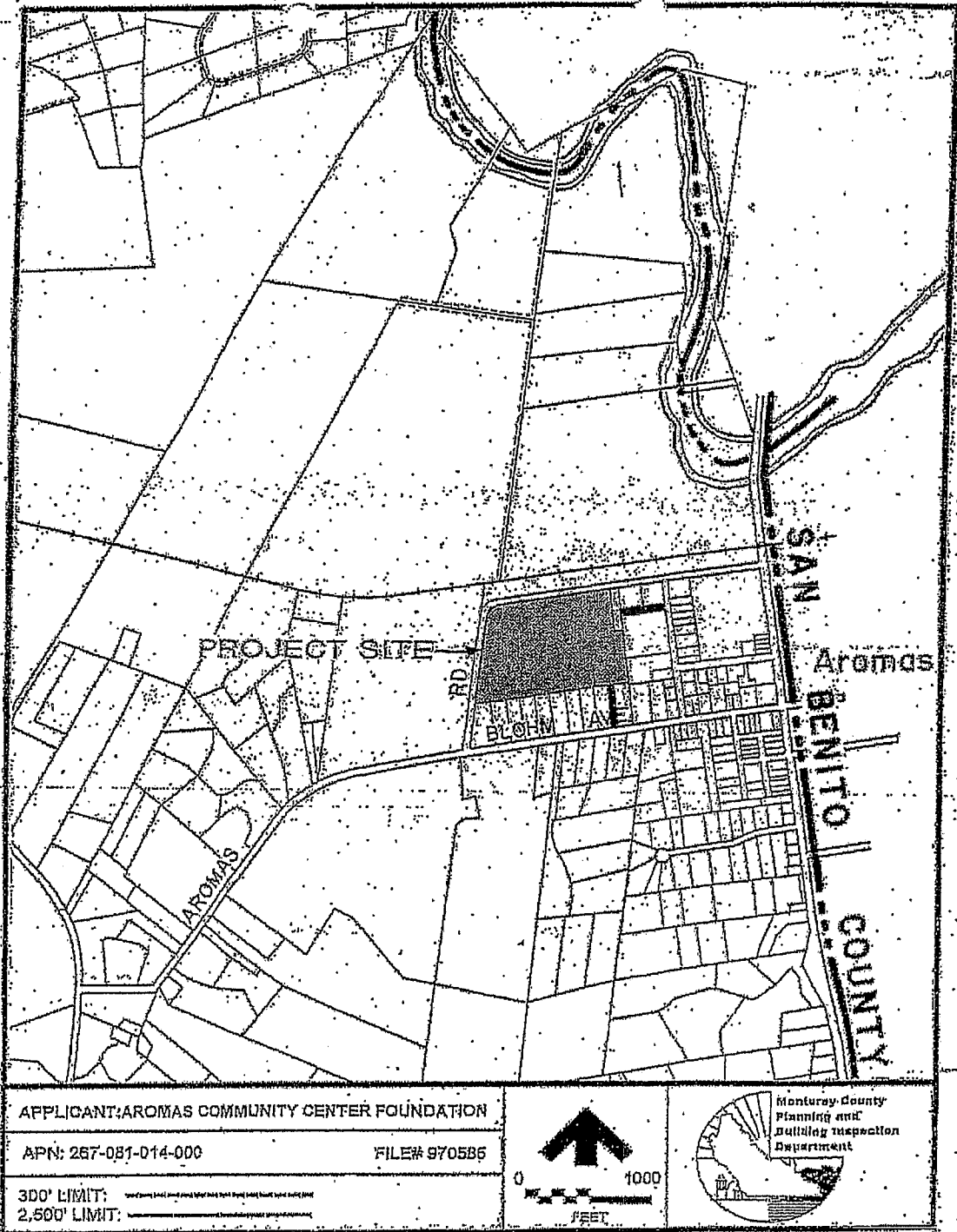
PATRICK MCGREAL
(print name)

Michelle Noble McCain
(print name)

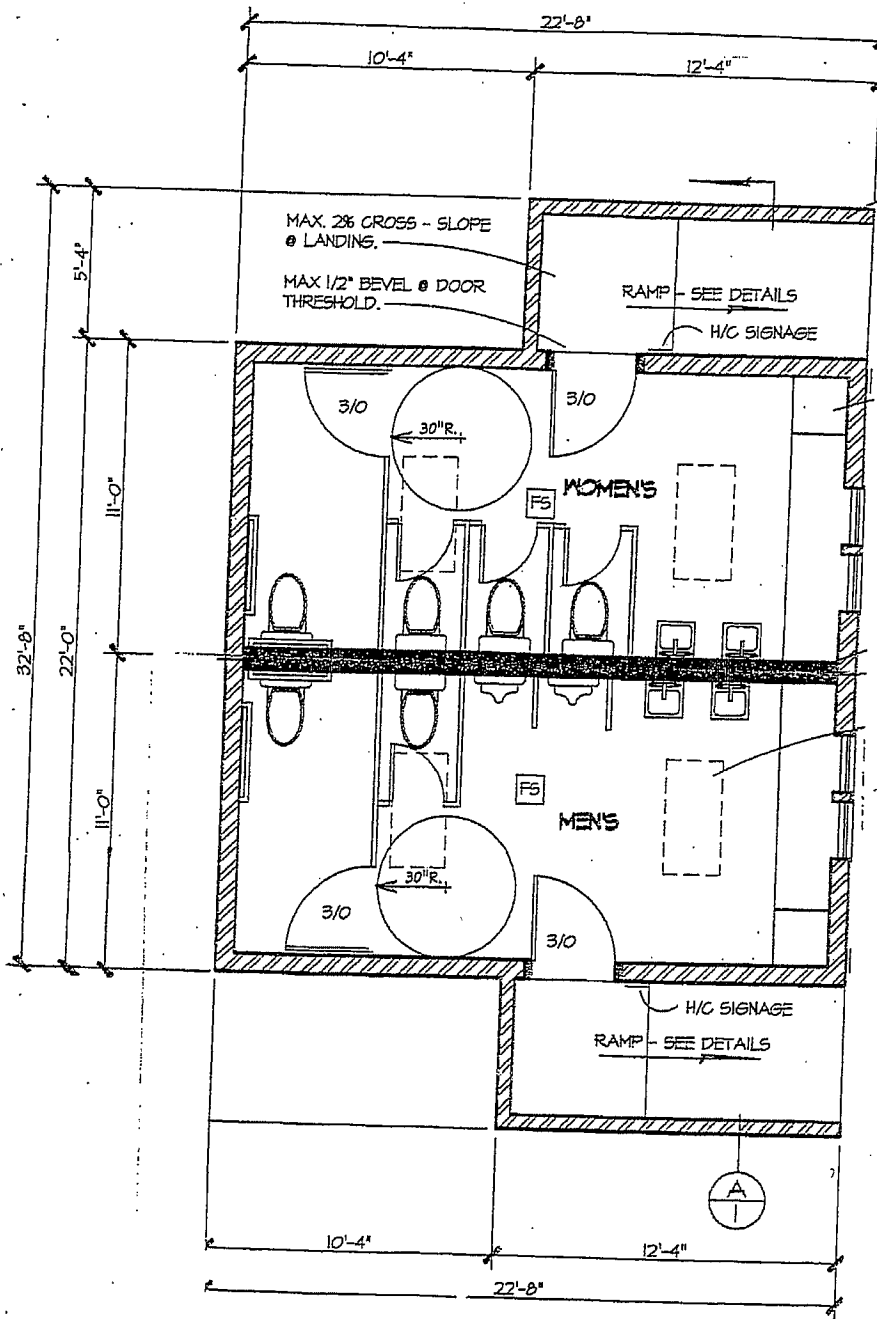
Date: 2/21/13

Date: 2/19/2013

EXHIBIT B



DATE: 2/26/98



A R WILSON COMMUNITY PARK
RESTROOM PROJECT

EXHIBIT C

EXHIBIT D
PRELIMINARY PROJECT BUDGET

A. R. Wilson Community Park Restroom Project

Restroom building and fixtures	\$ 101,600
Specifications	\$ 1,500
Site and Utility Improvements	\$ 19,525
Labor Compliance contract	<u>\$ 5,000</u>
TOTAL PROJECT BUDGET	<u>\$ 127,625</u>