

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING AND DIRECTING THE COUNTY ADMINISTRATOR TO EXECUTE AND DELIVER A CONTRACT WITH PROJECT SKATE, INC., A FLORIDA NOT FOR PROFIT CORPORATION, FOR THE PURCHASE OF A FULLY COMPLETED AND INSTALLED SKATE PARK FACILITY IN TREATY PARK.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA as follows:

Section 1. Findings. The Board of County Commissioners of St. Johns County, Florida (the "Board") hereby finds, determines and declares the following:

- A. Project Skate, Inc., is a Florida not-for-profit corporation organized for the specific purpose of assisting St. Johns County in the creation of a skate park for recreational activities such as skateboarding and in-line skating.
- B. Team Pain Enterprises, Inc. ("Team Pain") is a corporation that designs and builds skatepark facilities. The Board has been advised by Skate Park Association of the United States of America, a non profit association, that the design and construction of skatepark facilities requires highly specialized expertise and skill, that Team Pain has an excellent reputation for designing and building skatepark facilities, and that Team Pain is the only skatepark facility design and build team on the east coast.
- C. A public purpose will be served by providing a skatepark facility in the County for public recreation and as an inducement to divert skateboarding from streets and crowded sidewalks.
- D. It is in the County's best interest that Treaty Park include a skatepark facility for public use and that Team Pain participate in the design and construction of the skatepark facility.
- E. The Board has been advised by Project Skate, Inc. that Project Skate, Inc. has an agreement or understanding with Team Pain whereby Team Pain will design and supervise the construction of a skatepark facility for Project Skate, Inc. in Treaty Park for \$130,000.
- F. The Board has also been advised by Project Skate, Inc. that Project Skate, Inc. has an agreement or understanding with A. D. Davis Construction Co., Inc. ("A. D. Davis") general contractor whereby A. D. Davis will supervise and oversee the construction of the Team Pain designed skatepark facility in Treaty Park for Project Skate, Inc., cooperative with the supervision of Team Pain, at no charge,

provided that the necessary supplies, materials and rental equipment are provided by Project Skate, Inc. The Board has been advised by Project Skate, Inc. that the value of those supplies, materials and rental equipment (not including fill dirt) is approximately \$101,179.00 (much of which will be donated or provided at cost) and that they will be provided by Project Skate, Inc. at no cost to the County.

- G. The County can provide the necessary fill dirt at an approximate cost of \$5000.
- H. The County has been advised by Project Skate, Inc. that the cost of the payment and performance bonds that are required to be provided by Project Skate, Inc. under the Contract that is attached hereto is approximately \$2,000.
- I. The Board has also been advised by Project Skate, Inc. that the skatepark facility that is the subject of the Project Skate, Inc. agreements/understandings with Team Pain and with A. D. Davis is the skatepark facility that is described in the proposed Contract between St. Johns County and Project Skate, Inc. that is attached hereto as Exhibit A.
- J. Based on the above, the County's total cost of acquiring the skateboard facility for Treaty Park is \$132,000 (the Contract price) plus \$5,000 (the cost of the fill dirt) which comes to \$137,000.
- K. Also, based on the above, Project Skate, Inc. is the sole source from which the County can purchase a Team Pain designed skatepark facility for Treaty Park; and
- L. Section 302.3.4.3 of the County's Purchasing Policy and Procedures provides that contracts for sole source items are exempt from bids when approved by the Board. Section 302.3.4.6 of the County's Purchasing Policy and Procedures also provides that contracts for real estate and structures are exempt from bids when approved by the Board.

Section 2. Approval of Contract. The Contract between St. Johns County, Florida and Project Skate, Inc., a copy of which is attached hereto as Exhibit A, is hereby approved and the County Administrator is authorized and directed to execute and deliver the Contract.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 5th day of December, 2000.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Mary F. Kohnke
Mary F. Kohnke, Chair

ATTEST: Cheryl Strickland, Clerk

By: Patricia DeGrande
Deputy Clerk



ST. JOHNS COUNTY SKATEPARK FACILITY
PURCHASE AND SALE CONTRACT

THIS PURCHASE AND SALE CONTRACT (the "Contract") is made as of the ____ day of _____, 2000 by and between Project Skate, Inc., a Florida not for profit corporation, and St. Johns County, a political subdivision of the State of Florida (the "County").

WITNESSETH

WHEREAS, Project Skate, Inc., is a Florida not-for-profit corporation organized for the specific purpose of assisting St. Johns County in the creation of a skate park for recreational activities such as skateboarding and in-line skating; and

WHEREAS, the design and construction of a safe skatepark facility requires highly specialized expertise and skills; and

WHEREAS, Team Pain Enterprises, Inc. ("Team Pain") is a corporation that designs and builds skatepark facilities and has an excellent reputation for designing and building skatepark facilities; and

WHEREAS, a public purpose will be served by providing a skatepark facility in the County for public recreation and as an inducement to divert skateboarding from streets and crowded sidewalks; and

WHEREAS, it is in the County's best interest that Treaty Park include a skatepark facility for public use and that Team Pain participate in the design and construction of the skatepark facility; and

WHEREAS, the County has been advised by Project Skate, Inc. that Project Skate, Inc. has an agreement or understanding with Team Pain whereby Team Pain will design and supervise the construction of a skatepark facility for Project Skate, Inc. in Treaty Park for \$130,000; and

WHEREAS, the County has also been advised by Project Skate, Inc. that Project Skate, Inc. has an agreement or understanding with A. D. Davis Construction Co., Inc. ("A. D. Davis") general contractor, whereby A. D. Davis will supervise and oversee the construction of the Team Pain designed skatepark facility in Treaty Park for Project Skate, Inc., cooperative with the supervision of Team Pain, at no charge, provided that the necessary supplies, materials and rental equipment are provided by Project Skate, Inc. The Board has been advised by Project Skate, Inc. that the value for those supplies, materials and rental equipment (not including fill dirt) is approximately \$101,179.00 (much of which will be donated or provided to Project Skate, Inc. at no cost) and that they will be provided by Project Skate, Inc. at no cost to the County; and

WHEREAS, the County can provide the necessary fill dirt at an approximate cost of \$5000; and

EXHIBIT A

WHEREAS, the County has been advised by Project Skate, Inc. that the cost of the Payment and Performance Bonds described in paragraph 2.9 of this Contract is approximately \$2,000.00; and

WHEREAS, the County has also been advised by Project Skate, Inc. that the skatepark facility that is the subject of the Project Skate, Inc. agreements/understandings with Team Pain and with A. D. Davis is the skatepark facility that is described in this Contract.

NOW THEREFORE, in consideration of the mutual covenants, promises and undertakings contained herein, the parties hereby agree and covenant as follows:

1. PURPOSE AND CONSTRUCTION

1.1 Purpose. The purposes of this Contract are as described in the foregoing recital paragraphs. This Contract shall be interpreted in such manner as may be most consistent with such purposes.

1.2 Entire Understanding. This Contract sets forth the entire understanding of the parties hereto with respect to Project Skate, Inc.'s construction, furnishing, equipping and delivery of the below described skatepark facility to the County at the location in Treaty Park hereinafter described.

1.3 Construction of Contract. The parties acknowledge that each party and its counsel have reviewed and revised this Contract 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 this Contract or any amendments, exhibits or schedules hereto.

2. SKATEPARK FACILITY

2.1 Project Skate, Inc. shall construct, or cause the construction of, under the supervision of A. D. Davis Construction Co., Inc., and Team Pain, a skatepark facility designed by Team Pain to be constructed and located at a location in Treaty Park (off Wildwood Drive in St. Johns County, Florida) that is designated by the County Administrator or his designee. Upon completion, the skatepark facility shall be owned by St. Johns County free and clear of all liens and encumbrances.

2.2 The skatepark facility will be designed by Team Pain in such a manner that its use will be safe for all users from beginners through intermediate to advanced level.

2.3 Project Skate, Inc. hereby represents to the County that the skatepark facility drawing that is attached as Exhibit A to this Contract was drawn by Team Pain in accordance with paragraph 2.2 above as the plan for the skatepark facility that is the subject of this Contract.

2.4 The size and configuration of the skatepark facility shall be substantially as shown in the drawing attached hereto as Exhibit A with such changes as are approved by Team Pain, Project Skate, Inc. and the County Administrator or his designee.

2.5 On or prior to the commencement of the construction of the skatepark facility, other than the preliminary placement of fill dirt and site preparation, the County shall receive, and have approved, construction drawings and specifications for the skatepark facility consistent with Exhibit A and this Contract in every material respect which thereafter may not be amended in any material respect without the prior written consent of the County Administrator or his designee.

2.6 The County shall not be required to approve the construction drawings and specifications or any amendments or changes thereto until the County Administrator or his designee is satisfied that they are consistent with the intent of this Contract in every material respect. The approval by the County Administrator or his designee of the construction drawings and specifications shall not constitute in any manner the approval by the County of such plans or drawings for any technical or safety or engineering purposes or for any building permits or other governmental requirements applicable or relating to the skatepark facility, and such approval shall not mitigate the requirements that the skatepark facility be designed and constructed in accordance with this Contract.

2.7 Project Skate, Inc. shall cause the skatepark facility to be fully constructed, completed and operational by April 2, 2001. Completion of the skatepark facility, as contemplated by this Contract, shall be evidenced by a certificate of completion executed by Team Pain, Project Skate, Inc. and the County Administrator, or his designee.

2.8 The skatepark facility shall be constructed on behalf of Project Skate, Inc. through A. D. Davis Construction, Inc. ("A. D. Davis") or any other contractor designated by Project Skate, Inc. who shall have a high quality reputation and experience constructing facilities similar in scope and nature to the skatepark facility (hereinafter, the "Contractor"). In all events, the Contractor will be supervised by Team Pain, to the extent deemed necessary by Team Pain, to assure that the skatepark facility is safe and is functional for beginning, intermediate and advanced levels of skating.

2.9 Prior to commencement of any construction, other than the preliminary placement of fill dirt by the County and site preparation by the Contractor and Team Pain, Project Skate, Inc. shall at its expense cause the Contractor to furnish to the County good and sufficient labor and material payment and performance bonds relating to the skatepark facility (collectively, the "P&P Bonds"), in the amount of \$132,000.00 to ensure completion of the skatepark facility and payment of all labor, materials and equipment time that are used in constructing and completing the skatepark facility. The P&P Bonds shall name the County as a dual obligee and shall be maintained for the life of this Contract and until the County has been provided the final lien waivers, contractors affidavits and documentation described in paragraph 3.6 of this Contract. All P&P Bonds relating to the skatepark facility shall comply with the provisions of Section 255.05, Florida Statutes.

2.10 Project Skate, Inc. shall timely pay all costs and expenses, other than the cost of fill dirt, incurred in connection with the construction, furnishing, equipping and delivery of the skatepark facility in accordance with this Contract.

2.11 The County shall, at its expense, provide the fill dirt that is necessary to construct and complete the skatepark facility.

3. PAYMENT FOR SKATEPARK FACILITY

3.1 Under the terms of this Contract, Project Skate, Inc. hereby agrees to cause the skatepark facility to be designed and constructed in the manner provided in this Contract and to sell and deliver to the County the fully completed skatepark facility at the location in Treaty Park designated by the County Administrator or his designee and the County agrees to provide the necessary fill dirt for the skatepark facility and to pay to Project Skate, Inc., the total sum of \$132,000.00 (the "Purchase Price") under the conditions and in the installments hereinafter described.

3.2 The County shall pay Project Skate, Inc. \$12,000.00 upon execution of this Contract by both parties. Thereafter, the County shall pay Project Skate, Inc.:

\$24,000.00 upon the County's receipt of (i) a certificate from the Contractor that certifies to the County that the skatepark facility is 20% completed and (ii) an executed Contractor's Affidavit of Release of Liens in substantially the form attached hereto as "Exhibit B" containing no exceptions;

\$24,000.00 upon the County's receipt of (i) a certificate from the Contractor that certifies to the County that the skatepark facility is 40% completed and (ii) an executed Contractor's Affidavit of Release of Liens in substantially the form attached hereto as "Exhibit B" containing no exceptions;

\$24,000.00 upon the County's receipt of (i) a certificate from the Contractor that certifies to the County that the skatepark facility is 60% completed and (ii) an executed Contractor's Affidavit of Release of Liens in substantially the form attached hereto as "Exhibit B" containing no exceptions;

\$24,000.00 upon the County's receipt of (i) a certificate from the Contractor that certifies to the County that the skatepark facility is 80% completed and (ii) an executed Contractor's Affidavit of Release of Liens in substantially the form attached hereto as "Exhibit B" containing no exceptions; and

\$24,000.00 (subject to paragraph 3.3) upon the County's receipt of (i) a certificate from the Contractor that certifies to the County that the skatepark facility is 100% completed and (ii) an executed Contractor's Affidavit of Release of Liens in substantially the form attached hereto as "Exhibit B" containing no exceptions;

3.3 The provisions of paragraph 3.2 notwithstanding, the County may retain \$10,000.00 of the Purchase Price (the "Retainage") until it has received the certificate of completion described in paragraph 2.7, the documents and writings described in paragraphs 3.4, 3.5., 3.6 and 3.7 and, if applicable, the satisfactory final inspection described in paragraph 3.8.

3.4 Project Skate, Inc. shall procure and furnish to the County all necessary mechanics' lien waivers, releases, and affidavits evidencing payment in full of all amounts due and owing to all persons and entities who have furnished materials or performed labor of any kind entering into the construction or installation of any part of the skatepark facility.

3.5 Upon completion of the skatepark facility, Project Skate, Inc. shall provide the County with a certificate executed by Team Pain certifying to the County that the skatepark facility was designed by Team Pain; that Team Pain supervised and is satisfied with the construction of the skatepark facility; and that the skatepark facility was designed for safe use by beginning, intermediate and advanced skaters.

3.6 Upon completion of the skatepark facility, Project Skate, Inc. will provide the County with all appropriate final lien waivers, contractor's affidavits and other documentation required by Florida law governing mechanics' liens sufficient to evidence satisfaction of all existing and inchoate mechanics' and materialmen's liens.

3.7 Even though the parties agree that the skatepark facility improvements will constitute realty and not personality, upon completion of the skatepark facility, Project Skate, Inc. shall give the County a bill of sale conveying the skatepark facility to the County. The bill of sale shall be in a form agreed to by the County and Project Skate, Inc.

3.8 If the County so elects, a final inspection of the skatepark facility shall be completed by the County Administrator or his designee and such person shall determine, to his or her reasonable satisfaction that the construction thereof is in compliance with the requirements of this Contract prior to paying the Retainage to Project Skate, Inc.

4. DEFAULTS; EVENTS OF DEFAULTS

4.1 If Project Skate, Inc. shall (a) fail to complete construction of the skatepark facility by the completion date set forth in paragraph 2.7 or such later date as Project Skate, Inc. and the County may agree upon, or (b) fail or neglect to perform, keep or observe any other term, provision, condition or covenant contained herein which is required to be performed, kept or observed by Project Skate, Inc., or (c) breach any material representation or material warranty made by it herein in any material respect, then, in each of such events described in clauses (a) through (c) above, such failure shall constitute a "Project Skate, Inc. Default" hereunder.

4.2 Upon the occurrence of a Project Skate, Inc. Default, the County shall have the right to notify Project Skate, Inc. in writing of such Project Skate, Inc. Default and if such Project Skate, Inc. Default is not cured within thirty (30) days of receipt of such notice from the County, a Project Skate, Inc. event of default (a "Project Skate, Inc. Event of Default") shall be deemed to have occurred hereunder.

4.3 Upon occurrence of and during the continuation of a Project Skate, Inc. Event of Default, the County shall have available to it all of the rights and remedies that are available to it at law and in equity against Project Skate, Inc. The County shall use reasonable efforts to mitigate any and all damages to the County arising from a Project Skate, Inc. Event of Default.

4.4 If the County shall (a) fail or neglect to perform, keep or observe any term, provision, condition or covenant contained herein to be performed, kept or observed by the County, or (b) if the County shall breach a material representation or material warranty made by it herein in any material respect, then, in each of such events described in clauses (a) and (b) above, such failure shall constitute a "County Default" hereunder.

4.5 Upon the occurrence of a County Default, Project Skate, Inc. shall have the right to notify the County in writing of such County Default, and if such County Default is not cured within thirty (30) days of receipt of such notice from Project Skate, Inc., a County event of default (a "County Event of Default") shall be deemed to have occurred hereunder.

4.6 Upon the occurrence of and during the continuation of a County Event of Default, Project Skate, Inc. shall have available to it all of the rights and remedies that are available at law and in equity against the County. Project Skate, Inc. shall use reasonable efforts to mitigate any and all damages to Project Skate, Inc. arising from a County Event of Default.

5. MISCELLANEOUS

5.1 Time is of the essence in the performance of the respective obligations of the parties contained in this Contract. Whenever pursuant to this Contract the acceptance, consent or approval of any party is required, such party, except as may otherwise be provided to the contrary in this Contract, shall not unreasonably withhold or delay such acceptance, consent or approval.

5.2 This Contract and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party may assign this Contract without the prior written consent of the other party.

5.3 This Contract constitutes the entire agreement between Project Skate, Inc. and the County. There are no oral promises, or other conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties.

5.4 This Contract and the rights of the parties hereunder shall be governed and construed in accordance with the laws of the State of Florida.

5.5 No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by any party hereto of the breach of any covenant of this Contract shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Contract. No provision of this Contract may be waived unless such waiver is set forth in writing and signed by the party to be charged, and this Contract otherwise may be modified or amended only by a written instrument signed by the County and Project Skate, Inc.

5.6 All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or by U.S. mail, return

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date first above written.

The County:
ST. JOHNS COUNTY, FLORIDA

By: _____
Ben W. Adams, Jr.
Its County Administrator

PROJECT SKATE, INC.

By: _____

Its President

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2000 by Ben W. Adams, Jr., the County Administrator of St. Johns County, Florida, on behalf of the County. He is personally known to me or produced _____ as identification, and who did not take an oath.

Notary Public, State of Florida

Print, type or stamp commissioned name of Notary Public

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2000 by _____, President of Project Skate, Inc., on behalf of the corporation. He is personally known to me or produced _____ as identification, and who did not take an oath.

Notary Public, State of Florida

Print, type or stamp commissioned name of Notary Public

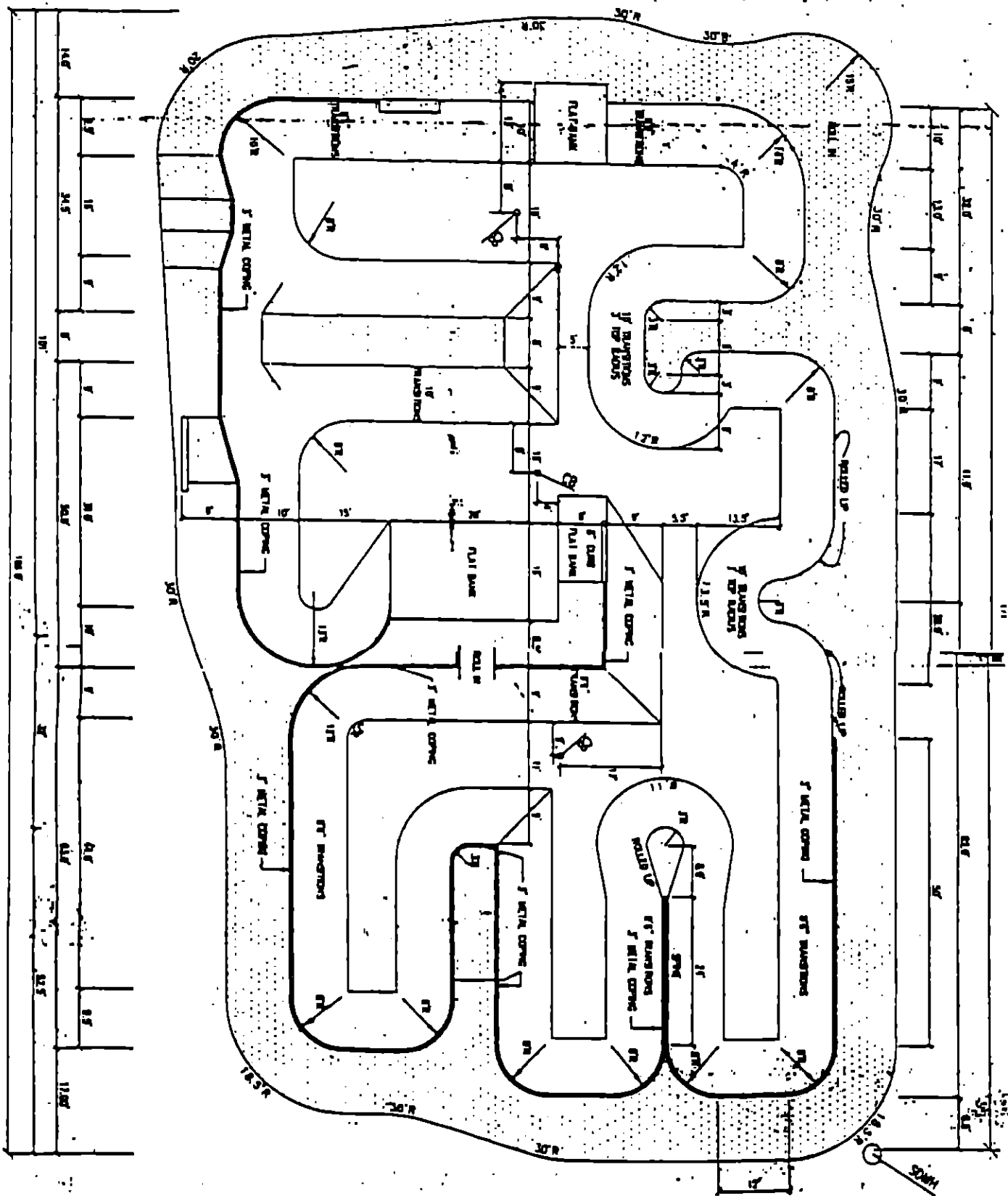


EXHIBIT A

**CONTRACTOR'S
AFFIDAVIT OF
RELEASE OF LIENS**

AIA DOCUMENT G706A

OWNER
ARCHITECT
CONTRACTOR
SURETY
OTHER

TO (Owner)

St. Johns County

ARCHITECT'S PROJECT NO:

CONTRACT FOR:

PROJECT:

(name, address)

Skatepark facility
at Treaty Park

CONTRACT DATE:

State of:

County of:

The undersigned, pursuant to Article 9 of the General Conditions of the Contract for Construction, AIA Document A201, hereby certifies that to the best of his knowledge, information and belief, except as listed below, the Releases or Waivers of Lien attached hereto include the Contractor, all Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor or services who have or may have liens against any property of the Owner arising in any manner out of the performance of the Contract referenced above.

EXCEPTIONS: (If none, write "None". If required by the Owner, the Contractor shall furnish bond satisfactory to the Owner for each exception.)

SUPPORTING DOCUMENTS ATTACHED HERETO:

1. Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, ~~to the extent required by the Owner, accompanied by a list thereof.~~

CONTRACTOR:

Address:

BY:

Subscribed and sworn to before me this
day of

19

Notary Public:

My Commission Expires:

EXHIBIT B