

12355

CONTRACT NO. 709

AGREEMENT

THIS AGREEMENT, made the 9th day of March in the

year Nineteen Hundred and Seventy-six, by and between
Lakeview Industrial Service
4861 Laverne Ave.
Klamath Falls, Oregon 97601
hereinafter called the Contractor, and
Weyerhaeuser Company
P. O. Box 9
Klamath Falls, Oregon 97601
hereinafter called the Owner.

WITNESSETH, That Contractor and Owner each in consideration of the agreements
of the other, hereinafter set forth, hereby mutually agree as follows:

Article 1. The Contractor agrees to provide all the materials, tools and equipment
and perform all labor necessary to construct a trash conveyor to replace the existing
trash conveyor on Owner's low profile grading table, located in Owner's Klamath
Falls Sort Yard

as shown on drawings, P-002

and described in specifications, quotation dated February 17, 1976, including alternate
number 2,
and do everything required by the Contract and to fully complete and deliver the work to
Owner ready for use and occupancy.

Article 2. The General Conditions consisting of 6 pages
numbered 1 to 6, and attached hereto are made a part of this Agreement.

The Drawings and Specifications described in the List attached hereto marked "Draw-
ings and Specifications List" and identified in the manner stated in said List are, whether
attached or not attached hereto, as may be specified in said List, made a part of this Agreement.
If said Drawings and Specifications, or any thereof, are not attached hereto the Contractor
hereby acknowledges receipt thereof.

All other or further detailed or amended specifications and drawings delivered by the
Owner to the Contractor or to the latter's representative at the site of the work shall be identi-
fied by the initials of a representative of the Owner, receipt thereof shall be acknowledged by
the Contractor or by his representative at the site of the work, and shall thereupon become and
be a part of this Agreement.

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Articles 3. The site of the work is

The Contractor represents that he has examined the site of the work and has investigated and considered the conditions affecting the execution of the work, and agrees to waive all claims against the Owner on account of any such conditions.

Article 4. The Contractor covenants that he has the full knowledge and experience requisite for the design and practical construction and operation of the work and agrees to apply such knowledge and experience in the execution of the work and to enter forthwith upon the full performance thereof; to provide a sufficient number of skilled workmen of the various trades, under proper supervision, to the end that the work will be accomplished in the most expeditious, substantial and workmanlike manner possible; to begin his work at the site one week after signing Contract or as soon as the progress of related work permits; to proceed with the work at a rate commensurate with the progress of related work;

and to complete the work fully and ready for use and occupancy ~~on~~ not later than five weeks after starting the project

The Contractor agrees to familiarize himself with the progress being made in related work and to make delivery of all material and equipment so as not to delay his work and not to interfere with or delay related work and to arrange, and if necessary postpone, such deliveries to conform to the requirements of the Owner's construction schedule.

Article 5. The Owner agrees to pay the Contractor for the performance of the Contract, subject to additions and deductions as provided therein, the sum of \$ 25,557.00.

payable in current funds as follows: \$6,022.50, with Contract, with balance due upon completion and acceptance by Owner.

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5020

PAGE 3

CONTRACT No. 709

Article 6. Unit prices to be used in calculating additions to or deductions from the work, pursuant to the provisions of Article 7 (a) of the General Conditions, shall be as follows:

None

Article 7. The fee of cost plus fee basis work performed under the provisions of Article 7 (b) of the General Conditions shall be none per cent of the cost as set forth therein.

Article 8. The Contractor guarantees to repair, replace or otherwise make good to the satisfaction of the Owner any defects in workmanship or material, appearing in the work within one year after the date of the certificate for final payment; and further guarantees for the same period the successful performance of the work for the service intended.

Article 9. The Contractor, for himself, and for his sub-contractors and for his and their materialmen and employees and for all other persons performing any labor or furnishing any labor or materials for any of the work covered by the Contract, hereby waives, to the full extent permitted by law, all mechanics' or other liens, for or on account of the work done or materials furnished hereunder, and agrees that all labor and materials furnished hereunder, and the improvements or structure wherein the same may be incorporated, and the land to which they are appurtenant shall at all times be free and clear of all such liens.

Article 10. The limits of liability provided in the liability insurance policies required by Article 20 of the General Conditions, to be carried by the Contractor, shall not be less than \$ 300,000.00 for injuries including accidental death to any one person and subject to the same limits for each person, not less than \$ 100,000.00 for any one accident involving two or more persons.

Liability insurance shall also provide for property damage of not less than \$ 300,000.00 covering all owned and rented automobiles and other equipment which is used in or on the work.

5021

PAGE 4

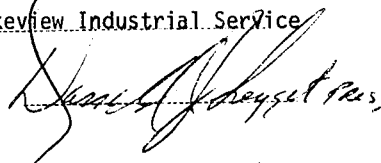
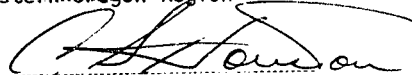
CONTRACT NO. 709

Article 11. The Contractor shall, prior to commencement of work hereunder, furnish to the Owner a performance bond covering the faithful performance of this contract and the payment of all obligations arising thereunder in the amount of \$ 25,557.00, and in such form as the Owner may prescribe, and with such sureties as he may approve. The premium or premiums for said bond shall be paid by Owner.

Article 12. The Contractor agrees to assume responsibility for, and to indemnify and save the Owner harmless from, the payment of all charges and taxes and all contributions to insurance or other funds, which are or may be required under any present or future State or Federal law or laws, upon or in respect to all salaries, wages or other compensation of all persons employed by the Contractor and his subcontractors, and upon or in connection with or in respect to the performance of any work covered by this contract, and to execute and deliver such other and future instruments, and comply with such requirements of said laws, as may be necessary thereunder to conform and effectuate this agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

Lakeview Industrial Service

Weyerhaeuser Company
Eastern Oregon Region
Region Purchasing Manager

CONTRACT No. 709

DRAWINGS AND SPECIFICATIONS LIST

1. DRAWINGS,
P-002

2. SPECIFICATIONS,
Contractor's quotation dated February 17, 1976, including alternate
number 2

THE GENERAL CONDITIONS OF THE CONTRACT

INDEX

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|--|--|
| 1. Quality Guarantee | 13. Liens and Claims |
| 2. Conduct of the Work | 14. Accounting |
| 3. Testing and Inspection | 15. Laws, Permits, Regulations |
| 4. Separate Contracts | 16. Return of Drawings and Specifications; Proprietary Information |
| 5. Lines and Levels | 17. Patents |
| 6. Cleaning Up | 18. Assignments and Sub-Letting |
| 7. Delays | 19. Exercise of Rights of Owner |
| 8. Increase or Decrease in the Work | 20. Payments Withheld |
| 9. Assumption of Builder's Risk by Owner | 21. Termination and Suspension |
| 10. Insurance | 22. Termination for Convenience of Owner |
| 11. Performance Bond | 23. Contract Documents, Entire Agreement |
| 12. Damage to Persons and Property | 24. Notices |

Art. 1. Quality Guarantee

Contractor shall use sound engineering and construction principles and practices in the performance of the Contract and shall apply that degree of skill, care, judgment and supervision necessary to assure that the facilities shall be of good quality, and proper, fit, suitable and sufficient for the purpose contemplated. Contractor warrants that, notwithstanding inspection, payment or acceptance by Owner, the quality of materials and workmanship shall be as set forth in the Drawings and Specifications and in accordance with the best trade practices, and the facilities shall fulfill the terms of all special guaranties established by the Contract. Contractor further warrants that the facilities shall be free from defects in materials, equipment, workmanship and any design features for which Contractor is responsible, appearing within one year from the date of final payment under the Contract or such longer period as may be either provided in the Contract or as may be available to Contractor without additional cost to Owner. If any of such warranties are not fulfilled, Contractor shall promptly reimburse Owner for its cost in making suitable repairs or replacements or, at Owner's option, promptly make suitable repairs or replacements at its own expense. In either case, Contractor shall also pay for any resulting damage to other property and work occasioned by its breach of any of such warranties.

Art. 2. Conduct of the Work

Contractor shall employ only experienced and competent supervisors and workmen. Upon order of Owner, Contractor shall replace any incompetent or controversial supervisors or other workmen.

If Contractor's operations are adjacent to or in any way related to existing operations of Owner or any other contractor of Owner, Contractor will take all reasonable means to minimize interference caused by Contractor's operations with any of such other operations, and shall have no claim for extra costs on account thereof. Contractor shall use in the work only such labor as will in no way disturb, hinder or interfere with labor employed by Owner or such other contractors. In no event shall Contractor hire any employee of Owner.

Contractor shall keep a job superintendent at the site of the work for the duration of operations under the Contract, who shall be authorized by Contractor to receive instructions and any further or detailed or amended Specifications or Drawings on behalf of Contractor. Such job superintendent shall not be changed without Owner's consent.

Contractor shall check and compare all Drawings and Specifications for errors, omissions or discrepancies in the course of planning for performance of each phase or unit of the facility; and prior to the time that any error, omission or discrepancy would cause a field problem.

If Contractor discovers that any of the Drawings or Specifications for any part of the facilities are at variance with the other or with other Contract Documents or with any rules or ordinances applying to the work or are likely to result in unsafe or imperfect construction, Contractor will not proceed with work on the part affected thereby and will notify Owner in writing of such opinion, and in what respect such Drawing or Specification is insufficient or improper. Contractor will not proceed with the part or parts of the work affected until Contractor has received a written order from Owner directing what is to be done and when to proceed.

Contractor shall be responsible for keeping one complete set of construction drawings showing an accurate up-to-date record of deviations from the plans and the as-built conditions. This set will be available at all times to Owner and is to be turned over to Owner at the completion of construction.

Art. 3. Testing and Inspection

Contractor will obtain and assume the costs of all tests customarily used by contractors in each applicable trade to assure compliance with Contract requirements as the work progresses. Owner shall be advised of the results of these tests. Owner may, at its option and cost, have independent tests made. Such tests shall not relieve Contractor from his obligation for compliance with the Contract requirements except to the extent that Owner specifies in writing that Contractor may rely on Owner's test reports. Contractor shall assist Owner in obtaining any soil compaction tests that may be required after commencement of Contractor's operations and in obtaining samples for concrete testing which may be either wet samples or dry cores after the work is in place, or both.

Owner shall have the right to inspect the materials furnished and work done to determine whether such work and materials are in accordance with the Contract Documents. Contractor shall give timely notice before any work is covered up and shall provide reasonable facilities for access and inspection. If any work should be covered up without such notice and access to Owner, such work must be uncovered for examination at Contractor's expense, if required by Owner.

Art. 4. Separate Contracts

Owner shall have the right to place other contractors and subcontractors (including suppliers) at work on the premises and Contractor agrees to work in harmony with all such other parties. Contractor shall inspect the work of other contractors or subcontractors upon which Contractor's work depends. If Contractor proceeds with work that is dependent upon work of such other parties, it shall constitute acceptance by Contractor of the fitness of such work.

Art. 5. Lines and Levels

Unless otherwise specified, Contractor shall provide all lines and levels and take all other engineering measurements necessary for the proper completion of the work and shall warrant the accuracy of such measurements. A base line grade datum shall be furnished by Owner.

Art. 6. Cleaning Up

Contractor shall clean up the site of the work from time to time as it progresses and remove therefrom all waste materials and rubbish. Upon completion, Contractor shall remove all tools, equipment, rubbish and all waste materials whatsoever and leave the facilities free and clear from all obstructions and hindrances.

If Contractor fails to perform these requirements, Owner may perform such obligations of Contractor and remove and store any remaining tools and equipment, all at Contractor's risk and cost, including reasonable storage charges.

Art. 7. Delays

Time is of the essence of the Contract, and any delay which is not excused by this article shall constitute a material default.

However, Contractor shall be excused for delays in performance of its obligations or of work necessary to such performance, if caused by fire, flood, earthquake, or other natural force, strike or other labor disturbance, act of any public authority, or other like cause beyond Contractor's control. If a delay in performance due to any such cause continues for a period of thirty days, Owner may elect to terminate the Contract at any time thereafter upon notice to Contractor. In such case, Owner shall pay such proportion, if any, of the Contract price as the work performed and materials on hand to date of termination bear to the total work specified by the Contract. Such amount shall be reduced by the aggregate amount of previous payments made to Contractor and damages incurred by Owner from any prior defaults by Contractor.

If any delay for which Contractor is excused as set forth above is attributable primarily to delay in performance of obligations of Owner or its other contractors or suppliers due to causes beyond Owner's reasonable control, and continues for a period of thirty days, Owner shall pay the reasonable extra costs incurred by Contractor that are attributable to such delay after the initial thirty day period if and so long as Owner elects not to terminate under Article 22.

Art. 8. Increase or Decrease in the Work

Owner may, at any time during the continuance of the Contract, increase or decrease the amount of or make alterations in the work to be performed or materials to be furnished hereunder. If such change increases or decreases the cost of the work to be done or time of performance, Owner shall issue a signed Contract Supplement to Contractor specifying the changes in work and the Contract price or time changes or both thereby required. Upon receipt of the Contract Supplement ordering a change in the work, Contractor shall forthwith comply with such order.

Contractor shall have no claim for compensation, in addition to the Contract price, for any work performed or materials furnished, unless performed or furnished pursuant to a Contract Supplement signed by Owner. At Owner's request, Contractor shall make daily reports of extra work performed and costs thereof.

The increase or decrease in the Contract price shall be determined as follows:

- a. By unit prices named in the Agreement that apply to such change.
- b. In the absence of applicable unit prices, by agreement between the parties upon a lump sum amount before the implementation of the change.
- c. Upon failure of the preceding two methods, on a cost-plus fee basis. For the purposes of this paragraph:

Cost is defined as (i) Contractor's payments for labor and supervision directly participating in the work at rates required by the applicable employment agreement, or in the absence of an agreement, at rates which are not higher than the standard paid in the locality of the work; (ii) fringe benefits required by law or employment agreement incurred on account of payments made for such labor and supervision; (iii) invoiced costs of material incorporated in the work or consumed in the course of performance; (iv) reasonable rental value of construction plant, whether owned by Contractor or rented from others, which is in addition to that required in order to perform other parts of the work; (v) transportation required for the proper execution of the work; (vi) taxes on materials and plant; (vii) costs of required permits; and (viii) payments for work required to be subcontracted. Any discounts, refunds or rebates not reflected in the invoice costs and any salvage value of reusable materials shall be subtracted for determining costs. All expenditures must be satisfactory to Owner. Contractor shall keep, in such form as Owner may require, an accurate account of costs, together with all supporting documents, and Owner shall have the right to audit same.

All items of cost which are not set forth above, shall be absorbed by Contractor as part of the fee. Without limiting the generality of the foregoing sentence, reimbursement of costs to Contractor shall not include any of the following: (i) salary of any person employed, during the execution of the work, in the main office or in any regularly established branch office of Contractor; (ii) overhead or general expenses of any kind, except as these may be expressly included in the above definition of costs; (iii) cost of small tools; (iv) interest on capital employed in plant or in expenditures on the work; (v) depreciation; and (vi) insurance.

Fee is the percent of costs set forth in the Agreement, unless a fixed fee is agreed upon in writing between Owner and Contractor. When the fee is a percentage of cost, there shall be excluded from the costs to which such percentage fee is applied the cost of freight, taxes and permits.

Art. 9. Assumption of Builder's Risk by Owner

Owner will indemnify Contractor and its subcontractors and suppliers from any and all loss from physical damage to the facilities being constructed on the site and materials, equipment, machinery, and supplies on hand or in transit for use in or incidental to the construction of such facilities, if caused by fire, flood, earthquake, windstorm, riots, theft, vandalism, and other perils normally covered by an all-risk builder's risk insurance policy. Contractor's and subcontractors' tools, equipment and motor vehicles are excluded from this indemnity provision, as are goods in transit outside the contiguous 48 states, District of Columbia and Canada.

As respects property included in the above indemnity, Owner has the right and hereby waives its insurance carriers' subrogation right against Contractor and its subcontractors and suppliers; and agrees that all insurance against damage to such property for the account of Owner shall also include the interest of Contractor, its subcontractors and suppliers.

Art. 10 Insurance

Before commencing any work at the jobsite by Contractor or any subcontractor, Contractor shall furnish three copies of certificates of insurance or other satisfactory proof that Contractor is in compliance with the insurance or other compensation requirements of the applicable Industrial Accident and Occupational Disease laws, and that Contractor carries liability insurance, including motor vehicle liability, in an insurance company acceptable to Owner with not less than the following limits:

Bodily Injury Including Consequent Death:	Per Person:	\$250,000
	Per Accident:	\$500,000
Property Damage:		\$250,000

Liability insurance certificates must show that the policies are noncancellable without ten days' advance written notice to Owner and that they cover contractually assumed liability. If requested, Contractor shall furnish Owner with copies of its insurance policies.

Art. 11. Performance Bond

If a performance bond is required by Owner, such performance bond shall cover full and timely performance of the Contract and the payment of all obligations arising thereunder in an amount equal to the Contract price. The premium or premiums on any such bond shall be paid by Owner.

Art. 12. Damage to Persons and Property

In addition to the liability imposed by law upon Contractor on account of damage to property or personal injuries, including death, arising from operations under the Contract, but subject to Owner's indemnity obligation under Article 9, Contractor hereby indemnifies Owner against claims for damage to property of others or bodily injuries, including death, which may arise from operations under the Contract and agrees to defend at its own expense any suits or other proceedings brought against Owner on account thereof and to pay all expenses and satisfy all judgments which may be incurred by or rendered against Owner in connection therewith.

Without limiting the generality of the foregoing, Contractor's indemnity obligation includes claims caused by the use, misuse or failure of any vehicle, rigging, blocking, scaffolding or other things used by Contractor, even though such vehicle, rigging, blocking, scaffolding or other things be rented, loaned or furnished to Contractor by Owner.

Art. 13. Liens and Claims

If Contractor becomes delinquent on any indebtedness which has become or may become a lien upon any property of Owner or which may become a claim against Owner or its property, then upon Owner's request Contractor shall immediately pay such indebtedness or cause such lien or claim to be dissolved and discharged by giving a bond or otherwise.

Prior to final payment Contractor shall submit proof, in form satisfactory to Owner, that all such liens or claims have been fully paid and discharged.

Art. 14. Accounting

Whether or not Contractor has furnished a cost breakdown for bid evaluating purposes, Contractor will furnish a detailed cost breakdown of the lump sum price in the form specified by Owner's Accounting Department, within thirty days after execution of the Contract.

Contractor shall also furnish details of actual costs incurred from time to time upon request.

Art. 15. Laws, Permits, Regulations

Contractor shall comply with all applicable laws, rules and regulations of federal, state and local government, including without limitation the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto. Contractor shall correct, at its own expense, any such material furnished or work done which does not comply with such laws, rules and regulations.

Contractor shall obtain all permits required for the performance of the Contract and pay the costs thereof.

Contractor shall maintain fire protection and other loss prevention facilities and procedures in accordance with the best prevailing standards of the construction industry and shall observe all rules of Owner and its insurance carriers and consultants. When the project site is on or adjacent to the site of an existing operating facility of Owner, Contractor and its employees shall observe all posted rules of Owner and shall use only such parking areas and project site entrance locations as are designated by Owner. At Owner's request, Contractor shall discharge any employee who violates these rules or instructions.

Art. 16. Return of Drawings and Specifications; Proprietary Information

The prints of the Drawings and the Specifications are Owner's property and shall be returned at its request after completion of the project.

Contractor shall exercise reasonable care to prevent disclosure of Owner's proprietary information to any third party and will not use for its own benefit or that of others such information whether developed in the course of the project or derived from Owner, except as may be authorized in writing by Owner, unless and to the extent that such information shall become publicly known through no fault of Contractor. This obligation shall not apply to such information as Contractor can show was known to Contractor in written or graphic form prior to its receipt of the bid documents.

Art. 17. Patents

Contractor shall defend all suits or claims for infringement of any patent rights arising out of its performance of the Contract and shall save Owner harmless from loss on account thereof, except when due to Owner's specifications of any particular equipment, material, the product of a particular manufacturer, or a particular process.

However, if Contractor has information indicating that any such specifications of Owner might constitute an infringement, Contractor shall promptly inform Owner in writing.

Art. 18. Assignments and Sub-Letting

The Contract shall be binding upon the successors and assigns of the parties hereto, provided that Contractor shall not have the right to sublet, transfer or assign the Contract, any part thereof or any interest therein, without first obtaining the consent in writing of Owner. Any and all subcontractors approved by Owner shall be bound by the conditions of the Contract.

The assignment, transfer, or sub-letting of the Contract, or any part thereof, by Contractor, even though consented to by Owner, shall not relieve Contractor from any obligations hereunder or give rise to any rights of subcontractors against Owner.

Upon or prior to execution of the Contract, Contractor shall submit to Owner a list of all subcontractors that Contractor proposes to use in the performance of its obligations and the nature of the services to be performed by each. Upon request, Contractor will also list its proposed materials suppliers and the products each will furnish and whether they will install such products. The described work and products will be furnished by the listed parties unless Owner consents in writing to a change or changes.

Art. 19. Exercise of Rights of Owner

Any and all remedies for default set forth in the Contract shall be cumulative and shall be in addition to remedies provided by law, except as may be expressly provided to the contrary in the Contract. Any election to pursue a particular remedy shall not constitute a waiver of the right to pursue any other remedy.

Failure of Owner to assert any of its rights under the Contract shall in no way be construed as a waiver of such rights nor shall a waiver of any right of Owner constitute or be deemed a waiver of any other right.

Art. 20. Payments Withheld

In case of any breach by Contractor under the provisions hereof, Owner may retain from any payment due or which may become due hereunder a sufficient sum as indemnity for any damages occasioned by such breach, including without limitation any damages arising out of any delay which is not excusable pursuant to Article 7 or any defect in work on the part of Contractor which is not remedied. When the above grounds for withholding payment are removed, Owner shall make payment to Contractor for amounts withheld because of them.

Art. 21. Termination and Suspension

Owner may terminate the Contract by notice to Contractor (i) immediately upon commencement of any voluntary action by Contractor seeking relief from its obligations on grounds of insolvency, or upon the filing of an involuntary petition in bankruptcy against Contractor if Owner has reasonable grounds to believe the Contractor is insolvent and has committed an act of bankruptcy, or (ii) ten days after issuance of such notice specifying any default in Contractor's performance hereunder, unless the default is cured during such ten-day period (or, if such default is of such a nature that it cannot be completely cured within ten days, if Contractor does not commence such curing within ten days and thereafter proceeds with reasonable diligence and in good faith to cure such default). If the notice of default so provides, Contractor shall immediately suspend further operations, except for operations essential to a cure of the default, pending the cure of the default to Owner's satisfaction.

In the event a default is not cured within the period set forth above, Owner may take over all or any portion of Contractor's operations relating to the default and prosecute the same to completion and may remove Contractor's tools and materials, obtain, if necessary, other tools, materials and labor, enter into other contracts, remove such remains or parts of the facility as it considers necessary, and deduct the costs thereof from the payment then or thereafter due to Contractor.

Art. 22. Termination for Convenience of Owner

If Owner should elect to curtail the entire project of which the Contract is a part or substantially modify its scope or purpose, Owner may terminate the Contract, without cause, effective immediately upon written notice to Contractor of such election by Owner. In such case, Owner shall pay such proportion, if any, of the Contract price as the work performed and materials on hand to date of termination bear to the total work specified by the Contract. For purposes of this article, such proportion includes the costs reasonably incurred by Contractor in preparation for work not yet performed. Such amount shall be reduced by any refunds or salvage values available to Contractor, the aggregate amount of previous payments made to Contractor, and damages incurred by Owner from any prior defaults by Contractor. Notwithstanding such termination, Contractor will do such work as Owner may request in writing to protect and preserve work in progress, as an increase in the work under Article 8 hereof.

Art. 23. Contract Documents, Entire Agreement

Organization of any specifications, drawings, or other Contract Documents by the type of work involved, such as electrical, mechanical, masonry or carpentry, shall not be determinative of the craft or trade that is to perform any or all of the operations described in that section of the Contract Document nor shall such organization be a representation that all work of the described nature is set forth in the section bearing that description.

The Contract Documents are to be considered together so that any work shown on the Drawings though not mentioned in the other Contract Documents, or vice versa, is to be executed by the Contractor as a part of this Contract, as well as any work which may be reasonably inferred from the Contract Documents.

These General Conditions may be superseded or modified by the Special Conditions of the Contract, but the provisions of each are to be construed in harmony wherever possible unless an intent to supersede or modify is expressly set forth in a particular Special Condition.

The Contract Documents set forth the entire agreement between Contractor and Owner with respect to the subject matter thereof. All prior negotiations and dealings regarding the subject matter thereof are superseded by and merged into the Contract Documents.

Art. 24. Notices

Any notice required to be given pursuant to this Contract must be given in writing to Owner's project manager if directed to Owner or Contractor's job superintendent if directed to Contractor. Such notice may be delivered in person or by United States mail properly addressed to Owner or Contractor at the project site and marked for the attention of the project manager or job superintendent, as the case may be. In addition, in the case of any notice of default, a copy of such notice must be deposited in the United States mail properly addressed to Contractor or Owner at the place indicated in the Agreement.

State of Oregon, } ss.
County of Klamath }

I hereby certify that the within instrument was received and filed for record on the 9th day of APRIL, 19 76, at 2:19 o'clock P M. and recorded on Page 5018 in Book M 76 Records of DEEDS of said County.

WM. D. MILNE, County Clerk

By [Signature] Deputy

Fee \$ 33.00

*Return to: C. J. Houston
Purchasing Mgr.
Wegman's Food Store
FORM 851-S
P.O. Box 9 - Klamath Falls, Or.*