

Section 109—Measurement and Payment

109.01 Measurement and Quantities

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made along the surface, and no deductions will be made for individual fixtures having an area of 9 ft² (1 m²) or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the Plans or ordered in writing by the Engineer.

Where payment is to be made by the square yard (square meter) for a specified thickness, the length will be measured on the surface along the centerline and the pay width shall be that width specified on the plans for the Final surface of the completed section. Intermediate courses shall be placed at a width sufficient to support successive courses with no detriment to the stability of the successive courses. The width of material required beyond the pay width will not be eligible for payment and shall be considered incidental to the work.

Structures will be measured according to neat lines shown on the Plans or as altered to fit field conditions.

All items which are measured by the linear foot (linear meter), such as pipe culverts, guard rail, underdrains, etc., will be measured parallel to the base or foundation upon which such structures are placed, unless otherwise shown on the Plans.

In computing volumes of excavation, the average end area method or other acceptable methods will be used.

The term “gage,” when used in connection with the measurement of steel plates, will mean the U.S. Standard Gage.

When the term “gage” refers to the measurement of electrical wire it will mean the wire gage specified in the National Electrical Code.

The term “ton” will mean the short ton consisting of 2,000 pounds avoirdupois. The term “megagram” will mean one metric ton, equivalent to 1,000 kg. Any commodity paid for by weight shall be weighed on scales that have been approved as specified below and which are furnished at the expense of the Contractor or Supplier. Weighing and measuring systems including remote controls shall be subject to type-approval by the Department of Transportation. The manufacture, installation, performance, and operation of such devices located in Georgia shall conform to, and be governed by, the Official Code of Georgia, Annotated, Section 10-2-5 of the Georgia Weights and Measures Act, the Georgia Weights and Measures Regulations, as amended and adopted, the current edition of the National Bureau of Standards Handbook 44, and these Specifications. Weighing and measuring systems located outside Georgia which are utilized for weighing materials to be used in Department work shall be manufactured, installed, approved, and operated in accordance with applicable laws and regulations for the state in which the scales are located.

All weighing, measuring, and metering devices used to measure quantities for payment shall be suitable for the purpose intended and will be considered to be “commercial devices.” Commodity scales located in Georgia shall be certified before use for accuracy, condition, etc., by the Weights and Measures Division of the Georgia Department of Agriculture, its authorized representative, or the Georgia Department of Transportation Office of Materials and Research. Scales located outside Georgia shall be certified in accordance with applicable laws and regulations for the state in which the scales are located. The Georgia Department of Transportation Office of Materials and Research may certify the scales. This certification shall have been made within a period of not more than one year prior to date of use for weighing commodity.

All equipment and all mechanisms and devices attached thereto or used in connection therewith shall be constructed, assembled, and installed for use so that they do not facilitate the perpetration of fraud. Any scale component or mechanism, which if manipulated would alter true scale values (including manual zero setting mechanisms) shall not be accessible to the scale operator. Such components and mechanisms that would otherwise be accessible to the scale operator shall be enclosed. Provisions shall be made for security seals where appropriate on equipment and accessories. A security seal shall be affixed to any adjustment mechanism designed to be sealed. Scale or accessory devices shall not be used if security seals have been broken or removed.

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Any certified scale or scale component which has been repaired, dismantled, or moved to another location shall again be tested and certified before it is eligible for weighing.

Whenever materials that are paid for based on weight are from a source within the State, the scales shall be operated by and the weights attested to by signature and seal of a duly authorized Certified Public Weigher in accordance with Standard Operating Procedure 15 and the Official Code of Georgia, Annotated, Section 10-2-5 of the Georgia Weights and Measures Act as amended and adopted. When such materials originate from another state that has a certified or licensed weigher program, the scales shall be operated by a weigher who is certified by that state in accordance with applicable laws, and weight ticket recordation shall be in accordance with Standard Operating Procedure 15.

When materials are paid for based on weight and originate from another state which has no program for certifying or licensing weighers, the materials shall be weighed on scales located in the State of Georgia by a Certified Public Weigher in accordance with Standard Operating Procedure 15 and the Official Code of Georgia, Annotated, Section 10-2-5 of the Georgia Weights and Measures Act as amended and adopted.

No scale shall be used to measure weights greater than the scale manufacturer's rated capacity. A digital recorder shall be installed as part of any commodity scale. The recorder shall produce a printed digital record on a ticket with the gross, tare, and net weights of the delivery trucks, along with the date and time printed for each ticket. Provisions shall be made so that the scales or recorders may not be manually manipulated during the printing process. The system shall be so interlocked as to allow printing only when the scale has come to rest. Either the gross or net weight shall be a direct scale reading. Printing and recording systems that are capable of accepting keyboard entries shall clearly and automatically differentiate a direct scale weight value from any other weight values printed on the load ticket.

All scales used to determine pay quantities shall be provided to attain a zero balance indication with no load on the load receiving element by the use of semi-automatic zero (push-button zero) or automatic zero maintenance.

Vehicle scales shall have a platform of sufficient size to accommodate the entire length of any vehicle weighed and shall have sufficient capacity to weigh the largest load. Adequate drainage shall be provided to prevent saturation of the ground under the scale foundation.

The Engineer, at his discretion, may require the platform scales to be checked for accuracy. For this purpose the Contractor shall load a truck with material of his choosing, weigh the loaded truck on his scales, and then weigh it on another set of certified vehicle scales. When the difference exceeds 0.4 percent of load, the scales shall be corrected and certified by a registered scale serviceman registered in the appropriate class as outlined in the Georgia Weights and Measures Regulations or in accordance with applicable requirements of the state in which the scales are located. A test report shall be submitted to the appropriate representative of the Department of Agriculture.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to their water level capacity as determined by the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined.

Cement and lime will be measured by the ton (megagram). Whenever cement or lime is delivered to the Project in tank trucks, a certified weight shall be made at the shipping point by an authorized Certified Public Weigher who is not an employee of the Department. Whenever cement and lime are from a source within the State, the scales shall be operated by the weights attested to by signature and seal of a duly authorized Certified Public Weigher in accordance with Standard Operating Procedure 15 and the Official Code of Georgia, Annotated, Section 10-2-5 of the Georgia Weights and Measures Act as amended and adopted. When such materials originate from another state that has a certified or licensed weigher program, the scales shall be operated by a weigher who is certified by that state in accordance with applicable laws, and the weight ticket recordation shall be in accordance with Standard Operating Procedure 15. When cement and lime originate from another state that has no program for certifying or licensing weighers, the materials shall be weighed on scales located

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in the State of Georgia by a Certified Public Weigher in accordance with Standard Operating Procedure 15 and the Official Code of Georgia, Annotated, Section 10-2-5 of the Georgia Weights and Measures Act as amended and adopted.

The shipping invoice shall contain the certified weights and the signature and seal of the Certified Public Weigher. A security seal shall also be affixed to the discharge pipe cap on the tank truck before leaving the shipping point. The number on the security seal shall also be recorded on the shipping invoice. The shipping invoice for quicklime shall also contain a certified lime purity percentage. Unsealed tank trucks will require reweighing by a Certified Public Weigher.

Timber will be measured by the thousand feet board measure (MFBM) (cubic meter) actually incorporated in the structure. Measurements will be based on nominal widths and thickness and the actual length in place. No additional measurement will be made for splices except as noted for overlaps as shown on the Plans.

The term “Lump Sum” when used as an item of payment will mean complete payment for the Work described in the Contract.

When a complete structure or structural unit (in effect, “Lump Sum” work) is specified as the unit of the measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured as defined in [Subsection 109.05.B.4.](#)

When standard manufactured items are specified as fence, wire, plates, rolled shapes, pipe conduits, etc., and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerance in cited Specifications, manufacturing tolerances established by the industries involved will be accepted.

109.02 Measurement of Bituminous Materials

A. By Weighing the Material

The Department prefers this method whenever it is practicable. This method will be considered acceptable under the following conditions:

1. **Weighed On Project:** If the weights of the bituminous materials delivered by tank trucks are to be determined on the Project, weights shall be determined on scales that have been previously checked by the Department with standard weights for accuracy. The scale platform shall be large enough to accommodate the entire vehicle at one time. Under no conditions will truck scales be used to measure weights greater than their rated capacity. All weights not determined in the presence of an authorized representative of the Department shall be made by a Certified Public Weigher who is not an employee of the Department of Transportation and who is in good standing with the Georgia Department of Agriculture. The weight tickets shall carry both the signature and seal of the Certified Public Weigher.
2. **Weighed At Shipping Point:** A certified weight made at the shipping point by an authorized Certified Public Weigher who is not an employee of the Department of Transportation and who is registered with the Georgia Department of Agriculture, will be acceptable provided all openings in the tank have been sealed by the producer and when, upon inspection on the Project, there is no evidence of any leakage. The shipping ticket in this case must carry the signature and seal of the Certified Public Weigher. If the tank is not completely emptied the amount of material remaining in the tank truck will be measured by either weight or volume and the amount so determined, as verified by the Engineer, will be deducted from the certified weight.
3. **By Extraction Analysis:** The weight of bituminous material used will be determined by extraction tests made by the field laboratory. The average asphalt content for each Lot will be used to compute the weight of the Asphalt Cement to be paid for in accordance with the following formula:

English:

$$P = \% AC \times T$$

Where:

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P	=Pay Tons of Asphalt Cement
% AC	=Lot average of % Asphalt Cement by weight of total mix as determined by extraction
T	=Actual accepted tons of mixture as weighed

Metric:

$$P = \% AC \times T$$

Where:

P	=Pay megagrams of Asphalt Cement
% AC	=Lot average of % Asphalt Cement by weight of total mix as determined by extraction
T	=Actual accepted megagrams of mixture as weighed

4. **By Digital Recording Device:** The amount of bituminous material as shown on the printed tickets will be the Pay Quantity.

B. By Volume

The volume will be measured and corrected for the difference between actual temperature and 60 °F (15 °C). Containers shall be level when measured, and one of the following methods shall be used, whichever is best suited to the circumstances:

1. **Tank Car Measurement:** If the material is shipped to the Project in railroad tank cars, the Contractor shall furnish the Engineer a certified chart showing the dimensions and volume for each inch (25 mm) of depth for each tank. The Engineer will make outage and temperature measurements before unloading is begun and after it is finished. The measurements will be taken when the bituminous material is at a uniform temperature and free from air bubbles. The Contractor shall not remove any bituminous material from any tank until necessary measurements have been made nor shall he release the car until final outage has been measured. The total number of gallons (liters) allowed for any tank car shall not be more than the U.S. Interstate Commerce Commission rating for that car, converted to gallons at 60 °F (15 °C).
2. **Truck Measurement:** If bituminous materials are delivered to the Project in tank trucks, distributor tanks, or drums, the Contractor shall not remove any bituminous material from the transporting vehicle or container until necessary measurements have been made, nor shall the transporting vehicle or container be released until final outage has been measured. If weighing is not convenient, the Contractor shall furnish the Engineer with a certified chart showing the dimensions and volume of each container together with a gauge or calibrated measuring rod which will permit the volume of the material to be determined by vertical measurement.
3. **Metering:** The volume may be determined by metering, in which case the metering device used and the method of using it shall be subject to the approval of the Engineer.
4. **Time of Deliveries:** The arrival and departure of vehicles delivering bituminous materials to the Project site shall be so scheduled that the Engineer is afforded proper time for the measurements of delivered volume and final outage. The Engineer will make the necessary measurements only during the Contractor's normal daily working hours.

C. Production for Multiple Projects

When a Contractor is producing Asphaltic Concrete from one plant, which is being placed on two or more jobs, public or private, the amount of bituminous material used may be determined by extraction tests in accordance with [Subsection 109.02.A.3](#) or digital recording device in accordance with [Subsection 109.02.A.4](#).

D. Tack Coat

When the same storage facility is utilized for Bituminous Materials to be used in Hot Mix Asphaltic Concrete, Bituminous Tack Coat, and/or Surface Treatment, the quantity used for Tack Coat shall be converted to tons (megagrams) and deducted from the quantities for the Bituminous Material used in the Hot Mix Asphaltic Concrete and Surface Treatment.

E. Corrections

When the volume and temperature have been determined as defined above, the volume will be corrected by the use of the following formula:

$$V_{\text{English}} = \frac{V1}{K(t-60) + 1} \qquad V_{\text{metric}} = \frac{V1}{K(t-15) + 1}$$

Where:

V = Volume of bituminous material at 60 °F (15 °C)

V1= Volume of hot bituminous material

t = Temperature of hot bituminous material in degrees Fahrenheit (Celsius)

K= Coefficient of Expansion of bituminous material (correction factor)

The correction factors K for various materials are given below:

- 0.00035 (0.00063) per °F (°C) for petroleum oils having a specific gravity of 60 °F/60 °F (15 °C/15 °C) above 0.966
- 0.00040 (0.00072) per °F (°C) for petroleum oils having a specific gravity of 60 °F/60 °F (15 °C/15 °C) between 0.850-0.966
- 0.00030 (0.00054) per °F (°C) for Tar
- 0.00025 (0.00045) per °F (°C) for Emulsified Asphalt
- 0.00040 (0.00072) per °F (°C) for Creosote Oil

109.03 Scope of Payment

The Contractor shall receive and accept the compensation provided for in the Contract as full payment for furnishing all materials, labor, tools, equipment, superintendence and incidentals, and for performing all work contemplated and embraced under the Contract in a complete and acceptable manner, for any infringement of patent, trademark or copyright, for all loss or damage arising from the nature of The Work, or from the action of the elements, for all expenses incurred by or in consequence of the suspension or discontinuance of The Work, or from any unforeseen difficulties which may be encountered during the prosecution of The Work and for all risks of every description connected with the prosecution of The Work until its Final Acceptance by the Engineer, except as provided in [Subsection 107.16](#).

The payment of any partial estimate prior to Final Acceptance of the Project as provided in [Subsection 105.16](#) shall in no way affect the obligation of the Contractor to repair or renew any defective parts of the construction or to be responsible for all damages due to such defects.

109.04 Payment and Compensation for Altered Quantities

When alteration in Plans or quantities of work not requiring Supplemental Agreements as herein before provided for are ordered and performed, the Contractor shall accept payment in full at the Contract Unit Bid Prices for the actual quantities of work done, and no allowance will be made for increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor, resulting either directly from such alterations, or indirectly from unbalanced allocation among the Contract Items of overhead expense on the part of the Bidder and subsequent loss of expected reimbursement therefore, or from any other cause.

Compensation for alterations in Plans or quantities of work requiring Supplemental Agreements shall be as stipulated in such agreement, except that when the Contractor proceeds with the Work without change of price being agreed upon, he shall be paid for such increased or decreased quantities at the Contract Unit Prices Bid in the Proposal for the Items of the Work.

109.05 Extra Work

Extra work, as defined in [Subsection 101.27](#), when ordered in accordance with [Subsection 104.04](#), will be authorized in writing by the Engineer. The authorization will be in the form of a Supplemental Agreement or a Force Account.

A. Supplemental Agreement

In the case of a Supplemental Agreement, the work to be done will be stipulated and agreed upon by both parties prior to any extra work being performed.

Payment based on Supplemental Agreements shall constitute full payment and settlement of all additional costs and expenses including delay and impact damages caused by, arising from or associated with The Work performed.

B. Force Account

When no agreement is reached for Extra Work to be done at Lump Sum or Unit Prices, such work may be authorized by the Department to be done on a Force Account basis. A Force Account estimate that identifies all anticipated costs shall be prepared by the Contractor on forms provided by the Engineer. Work shall not begin until the Force Account is approved. Payment for Force Account work will be in accordance with the following:

1. **Labor:** For all labor, equipment operators and supervisors, excluding superintendents, in direct charge of the specific operations, the Contractor shall receive the rate of wage agreed upon in writing before beginning work for each and every hour that said labor, equipment operators and supervisors are actually engaged in such work.

The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on The Work.

An amount equal to 15% of the sum of the above items will also be paid the Contractor.

2. **Bond, Insurance, and Tax:** For property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, and Social Security taxes on the Force Account work, the Contractor shall receive the actual cost, to which cost no percentage will be added. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.
3. **Materials:** For materials accepted by the Engineer and used, the Contractor shall receive the actual cost of such material incorporated into The Work, including Contractor paid transportation charges (exclusive of machinery rentals as hereinafter set forth), to which cost 10% will be added.
4. **Equipment:** For any machinery or special equipment (other than small tools) including fuel and lubricant, plus transportation costs, the use of which has been authorized by the Engineer, the Contractor shall receive the rental rates indicated below for the actual time that such equipment is in operation on The Work or the time, as indicated below, the equipment is directed to stand by.

Equipment rates shall be based on the latest edition of the *Rental Rate Blue Book for Construction Equipment* or *Rental Rate Blue Book for Older Construction Equipment*, whichever applies, as published by EquipmentWatch using all instructions and adjustments contained therein and as modified below.

Allowable Equipment Rates shall be established as defined below:

- Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 70%.
- Allowable Hourly Operating Cost = Hourly Operating Cost x 70%.
- Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.
- Standby Rate = Allowable Hourly Equipment Rate x 35%

NOTE: The monthly rate is the basic machine plus any attachments.

Standby rates shall apply when equipment is not in operation and is directed by the Engineer to standby for later use. In general, Standby rates shall apply when equipment is not in use, but will be needed again to complete The Work and the cost of moving the equipment will exceed the accumulated standby cost. Payment for standby time will not be made on any day the equipment operates for 8 or more hours. For equipment accumulating less than 8 hours operating time on any normal workday, standby payment will be limited to only that number of hours which, when

added to the operating time for that day equals 8 hours. Standby payment will not be made on days that are not normally considered workdays.

The Department will not approve any rates in excess of the rates as outlined above unless such excess rates are supported by an acceptable breakdown of cost.

Payable time periods will not include:

- Time elapsed while equipment is broken down
- Time spent in repairing equipment, or
- Time elapsed after the Engineer has advised the Contractor the equipment is no longer needed

If a piece of equipment is needed which is not included in the above *Blue Book* rental rates, reasonable rates shall be agreed upon in writing before the equipment is used. All equipment charges by persons or firms other than the Contractor shall be supported by invoices.

Transportation charges for each piece of equipment to and from the site of the Work will be paid provided:

- The equipment is obtained from the nearest approved source
- The return charges do not exceed the delivery charges
- Haul rates do not exceed the established rates of licensed haulers, and
- Such charges are restricted to those units of equipment not already available and not on or near the Project

No additional compensation will be made for equipment repair.

5. **Miscellaneous:** No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
6. **Compensation:** The Contractor's representative and The Engineer shall compare records and agree on the cost of work done as ordered on a Force Account basis at the end of each day on forms provided by the Department.
7. **Subcontract Force Account Work:** For work performed by an approved Subcontractor or Second-tier Subcontractor, all provisions of this Section (109.05) that apply to the Prime Contractor in respect to labor, materials and equipment shall govern. The prime Contractor shall coordinate the work of his Subcontractor. The prime Contractor will be allowed an amount to cover administrative cost equal to 5% of the Subcontractor's amount earned but not to exceed \$5,000.00 per Subcontractor. Markup for Second-tier Subcontract work will not be allowed.

Should it become necessary for the Contractor or Subcontractor to hire a firm to perform a specialized type of work or service which the prime Contractor or Subcontractor is not qualified to perform, payment will be made at reasonable invoice cost. To each invoice cost a markup to cover administrative cost equal to 5% of the total invoice but not to exceed \$5,000.00 will be allowed the Contractor or Subcontractor but not both.
8. **Statements:** No payment will be made for work performed on a Force Account basis until the Contractor has furnished the Engineer with duplicate itemized statements of the cost of such Force Account work detailed as follows:
 - a. Name, classification, date, daily hours, total hours, rate, and extension for each laborer, equipment operator, and supervisor, excluding superintendents.
 - b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
 - c. Quantities of materials, prices, and extensions.
 - d. Transportation of materials.
 - e. Cost of property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, and Social Security tax.

Statements shall be accompanied and supported by invoices for all materials used and transportation charges.

However, if materials used on the Force Account work are not purchased specifically for such work but are taken from the Contractor's stock, then, in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such

materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

Payment based on Force Account records shall constitute full payment and settlement of all additional costs and expenses including delay and impact damages caused by, arising from or associated with The Work performed.

109.06 Eliminated Items

Should any Items contained in the Proposal be found unnecessary for the proper completion of The Work, the Engineer may, upon written order to the Contractor, eliminate such Items from the Contract, and such action shall in no way invalidate the Contract. When a Contractor is notified of the elimination of Items, he will be reimbursed for actual work done and all costs incurred, including mobilization of materials prior to said notifications.

109.07 Partial Payments

A. General

At the end of each calendar month, the total value of Items complete in place will be estimated by the Engineer and certified for payment. Such estimate is approximate only and may not necessarily be based on detailed measurements. Value will be computed on the basis of Contract Item Unit Prices or on percentage of completion of Lump Sum Items.

When so requested by the Contractor and approved by the Engineer, Gross Earnings of \$150,000 or more for work completed within the first 15 days of any month will be certified for payment on a semi-monthly basis subject to the conditions and provisions of [Subsection 109.07.A](#), [Subsection 109.07.B.6](#), [Subsection 109.07.C](#), [Subsection 109.07.D](#), [Subsection 109.07.E](#), and [Subsection 109.07.F](#).

B. Materials Allowance

Payments will be made on delivered costs, or percentage of bid price if otherwise noted, with copies of paid invoices provided to the Department for the materials listed below which are to be incorporated into the Project provided the materials:

- Conform to all Specification requirements.
- Are stored on the Project Right-of-Way or, upon written request by the Contractor and written approval of the Engineer, they may be stored off the Right-of-Way, but local to the Project, provided such storage is necessary due to lack of storage area on the Right-of-Way, need for security, or need for protection from weather.

As a further exception to on-Project storage, upon written request by the Contractor, the Engineer may approve off-the-Project storage items uniquely fabricated or precast for a specific Project, such as structural steel and precast concrete, which will be properly marked with the Project number and stored at the fabrication or precast facility.

The Engineer may approve out-of-state storage for structural steel and prestressed concrete beams uniquely fabricated for a specific Project stored at the fabrication facility.

1. Paid invoices should accompany the materials allowance request, but in no case be submitted to the Project Engineer later than 30 calendar days following the date of the progress payment report on which the materials allowance was paid.

In case such paid invoices are not furnished within the established time, the materials allowance payment will be removed from the next progress statement and no further materials allowance will be made for that item on that Project.

2. Materials allowances will be paid for those items which are not readily available, and which can be easily identified and secured for a specific project and for which lengthy stockpiling periods would not be detrimental. Some exclusions are as follows:
 - a. No payments will be made on living or perishable plant materials until planted.
 - b. No payments will be made on Portland Cement, Liquid Asphalt, or Grassing Materials.

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- c. No payment will be made for aggregate stockpiled in a quarry. Payment for stockpiled aggregate will be made only if the aggregate is stockpiled on or in the immediate vicinity of the project and is held for the exclusive use on that project. The aggregate must be properly secured. If the aggregate stockpiled is to be paid for per-ton (megagram) it must be reweighed on approved scales at the time it is incorporated into the Project.
 - d. No payments will be made on minor material items, hardware, etc.
- 3. No materials allowance will be made for materials when it is anticipated that those materials will be incorporated into the Work within 30 calendar days.
 - 4. No materials allowance will be made for a material when the requested allowance for such material is less than \$10,000.
 - 5. Where a storage area is used for more than one project, material for each project shall be segregated from material for other projects, identified, and secured. Adequate access for auditing shall be provided. All units shall be stored in a manner so that they are clearly visible for counting and/or inspection of the individual units.
 - 6. The Commissioner may, at his discretion, grant waiver to the requirements of this Section when, in his opinion, such waiver would be in the public interest.

Subsequently, in the event the material is not on-hand and in the quantities for which the materials allowance was granted, the materials allowance payment will be removed from the next progress statement and no further materials allowance will be made for those items on that Project. If sufficient earnings are not available on the next progress statement, the Contractor agrees to allow the Department to recover the monies from any other Contract he may have with the Department, or to otherwise reimburse the Department.

Payments for materials on hand shall not exceed the invoice price or 75 percent of the bid prices for the pay items into which the materials are to be incorporated, whichever is less.

C. Minimum Payment

No partial payment will be made unless the amount of payment is at least \$1000.00.

D. Liquidated Damages

Accrued liquidated damages will be deducted in accordance with [Subsection 108.08](#).

E. Other Deductions

In addition to the deductions provided for above, the Department has the right to withhold any payments due the Contractor for items unpaid by the Contractor for which the Department is directly responsible, including, but not limited to, royalties (see [Section 106](#)).

F. Amount of Payment

The balance remaining after all deductions provided for herein have been made will be paid to the Contractor. Partial estimates are approximate and are subject to correction on subsequent progress statements. If sufficient earnings are not available on the subsequent progress statement, the Contractor agrees to allow the Department to recover the monies from any other Contract he may have with the Department, or to otherwise reimburse the Department. The Engineer is responsible for computing the amounts of all deductions herein specified, for determining the progress of the Work and for the items and amounts due to the Contractor during the progress of the Work and for the final statement when all Work has been completed.

G. Interest

Under no circumstances will any interest accrue or be payable on any sums withheld or deducted by the Department as authorized by [Subsection 109.07.A](#), [Subsection 109.07.B.6](#), [Subsection 109.07.C](#), [Subsection 109.07.D](#), [Subsection 109.07.E](#), and [Subsection 109.07.F](#).

H. Insert the Following in Each Subcontract

The Contractor shall insert the following in each Subcontract entered into for work under this Contract:

“The Contractor shall not withhold any retainage on Subcontractors. The Contractor shall pay the Subcontractor 100% percent of the gross value of the Completed Work by the Subcontractor as indicated by the current estimate certified by the Engineer for payment.”

Neither the inclusion of this Specification in the Contract between the Department and the Prime Contractor nor the inclusion of the provisions of this Specification in any Contract between the Prime Contractor and any of his Subcontractors nor any other Specification or Provision in the Contract between the Department and the Prime Contractor shall create, or be deemed to create, any relationship, contractual or otherwise, between the Department and any Subcontractor.

109.08 Final Payment

When Final Inspection and Final Acceptance have been made by the Engineer as provided in [Subsection 105.16](#), the Engineer will prepare the Final Statement of the quantities of the various classes of work performed. All prior partial estimates and payments shall be subject to correction in the Final Statement. The District Engineer will transmit a copy of the Statement to the Contractor by Registered or Certified Mail. The Contractor will be afforded 20 days in which to review the Final Statement in the District Office before it is certified for payment by the Engineer. Any adjustments will be resolved by the District Engineer or in case of a dispute referred to the Chief Engineer whose decision shall be final and conclusive. After approval of the Final Statement by the Contractor, or after the expiration of the 20 days, or after a final ruling on disputed items by the Chief Engineer, the Final Statement shall be certified to the Treasurer by the Chief Engineer stating the Project has been accepted and that the quantities and amounts of money shown thereon are correct, due and payable.

The Treasurer, upon receipt of the Engineer's certification, shall in turn furnish the Contractor with the Department's Standard Release Form to be executed in duplicate. The aforesaid Release Form, showing the total amount of money due the Contractor, shall be sent to the Contractor by Registered or Certified Mail, to be delivered to such Contractor upon the signing of a return receipt card, to be returned to the Department in accordance with the provision of Federal law in respect to such matters and such return receipt card shall be conclusive evidence of a tender of said sum of money to the Contractor. Upon receipt of the properly executed Standard Release Form, the Treasurer shall make final payment jointly to the Contractor and his Surety. The aforesaid certification, executed release form, and final payment shall be evidence that the Commissioner, the Engineer, and the Department have fulfilled the terms of the Contract, and that the Contractor has fulfilled the terms of the Contract except as set forth in his Contract Bond.

The Standard Release Form is to be executed by the Contractor within 120 days after delivery thereof, as evidenced by the Registered or Certified Mail Return Receipt. Should the Contractor fail to execute the Standard Release Form because he disputes the Final Payment as offered, or because he believes he has a claim for damages or additional compensation under the Contract, the Contractor shall, within 120 days after delivery to the Contractor of the Standard Release Form, as evidenced by the Registered or Certified Mail Return Receipt, enter suit in the proper court for adjudication of his claim. Should the Contractor fail to enter suit within the aforesaid 120 days, then by agreement hereby stipulated, he is forever barred and stopped from any recovery or claim whatsoever under the terms of this Contract.

Should the Contractor fail to execute the Standard Release Form or file suit within 120 days after delivery thereof, then the Surety on the Contractor's Bond is hereby constituted the attorney-in-fact of the Contractor for the purpose of executing such final releases as may be required by the Department, including but not limited to the Standard Release Form, and for the purpose of receiving the Final Payment under this Contract.

The Department reserves the right as defined in [Subsection 107.20](#), should an error be discovered in any estimates, to claim and recover from the Contractor or his Surety, or both, such sums as may be sufficient to correct any error of overpayment. Such overpayment may be recovered from payments due on current active Projects or from any future State work done by the Contractor.

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The foregoing provisions of this Section shall be applicable both to the Contractor and the Surety on his Bond; and, in this respect, the Surety shall be bound by the provisions of [Subsection 108.09](#) of these Specifications in the same way and manner as the Contractor.

A. Interest

In the event the Contractor fails to execute the *Standard Release Form* as prepared by the Treasurer because he disputes the amount of the final payment as stated therein, the amount due the Contractor shall be deemed by the Contractor and the Department to be an unliquidated sum and no interest shall accrue or be payable on the sum finally determined to be due to the Contractor for any period prior to final determination of such sum, whether such determination be by agreement of the Contractor and the Department or by final judgement of the proper court in the event of litigation between the Department and the Contractor. The Contractor specifically waives and renounces any and all rights it may have under Section 13-6-13 of the Official Code of Georgia and agrees that in the event suit is brought by the Contractor against the Department for any sum claimed by the Contractor under the Contract, for delay damages resulting from a breach of contract, for any breach of contract or for any extra or additional work, no interest shall be awarded on any sum found to be due from the Department to the Contractor in the final judgement entered in such suit. All final judgements shall draw interest at the legal rate, as specified by law. Also, the Contractor agrees that notwithstanding any provision or provisions of Chapter 11 of Title 13 of the Official Code of Georgia that the provisions of this contract control as to when and how the Contractor shall be paid for The Work. Further, the Contractor waives and renounces any and all rights it may have under Chapter 11 of Title 13 of the Official Code of Georgia.

B. Termination of Department's Liability

Final payment will be in the amount determined by the statement as due and unpaid. The acceptance of the final payment or execution of the Standard Release Form or failure of the Contractor to act within 120 days as provided herein after tender of payment, or final payment to the Contractor's Surety in accordance with the provisions stipulated herein, shall operate as and be a release to the Department, the Commissioner, and the Engineer from all claims of liability under this contract and for any act or neglect of the Department, the Commissioner, or the Engineer.

109.09 Termination Clause

A. General

The Department may, by written notice, terminate the Contract or a portion thereof for the Department's convenience when the Department determines that the termination is in the State's best interest, or when the Contractor is prevented from proceeding with the Contract as a direct result of one of the following conditions:

1. An Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense.
2. The Engineer and Contractor each make a determination, that, due to a shortage of critical materials required to complete the Work which is caused by allocation of these materials to work of a higher priority by the Federal Government or any agency thereof, it will be impossible to obtain these materials within a practical time limit and that it would be in the public interest to discontinue construction.
3. An injunction is imposed by a court of competent jurisdiction which stops the Contractor from proceeding with the Work and causes a delay of such duration that it is in the public interest to terminate the Contract and the Contractor was not at fault in creating the condition which led to the court's injunction.

The decision of the Engineer as to what is in the public interest and as to the Contractor's fault, for the purpose of Termination, shall be final.

4. Orders from duly constituted authority relating to energy conservation.

B. Implementation

When, under any of the conditions set out in Subsection A of this Section, the Contract, or any portion thereof, is terminated before completion of all Items of Work in the Contract, the Contractor shall be eligible to receive some or all of the following items of payment:

1. For the actual number of units of Items of Work completed, payment will be made at the Contract Unit Price.
2. Reimbursement for organization of the Work and moving equipment to and from the job will be considered where the volume of work completed is too small to compensate the Contractor for these expenses under the Contract Unit Prices. However, the Engineer's decision as whether or not to reimburse for organization of the Work and moving equipment to and from the job, and in what amount, shall be final.
3. Acceptable materials, obtained by the Contractor for the Work, that have been inspected, tested, and accepted by the Engineer, and that are not incorporated in the Work will, at the request of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the Engineer. This will include any materials that have been delivered to the project site or that have been specifically fabricated for the project and are not readily usable on other projects. It will not include materials that may have been ordered, but not delivered to the project site and that are readily usable on other projects (e.g., guard rail, stone, lumber, etc.).
4. For Items of Work partially completed, payment adjustments including payments to afford the Contractor a reasonable profit on work performed, may be made as determined by the Engineer based upon a consideration of costs actually incurred by the Contractor in attempting to perform the Contract.
5. No payment will be made, and the Department will have no liability, for lost profits on Work not performed. In particular, the Department will not be liable to the Contractor for all profits the Contractor expected to realize had the Project been completed, nor for any loss of business opportunities, nor for any other consequential damages.
6. In order that the Department may make a determination of what sums are payable hereunder, the Contractor agrees that, upon termination of the Contract, it will make all of its books and records available for inspection and auditing by the Department.

To be eligible for payment, costs must have been actually incurred, and must have been recorded and accounted for according to generally accepted accounting principles, and must be items properly payable under Department policies. Where actual equipment costs cannot be established by the auditors, payment for unreimbursed equipment costs will be made in the same manner as is provided in [Subsection 109.05](#) for Force Account Work. Idle time for equipment shall be reimbursed at standby rates. In no case will the Contractor be reimbursed for idle equipment after the Engineer has advised the Contractor the equipment is no longer needed on the job. Refusal of the Contractor to allow the Department to inspect and audit all of the Contractor's books and records shall conclusively establish that the Department has no liability to the Contractor for any payment under this provision, and shall constitute a waiver by the Contractor of any claim for damages allegedly caused by breach or termination of the Contract. The amount payable under this provision, if any, is to be determined by the Engineer, whose determination will be final and binding.

7. The sums payable under this Subsection shall be the Contractor's sole and exclusive remedy for termination of the Contract.

C. Termination of a Contract

Termination of a Contract or a portion thereof shall not relieve the Contractor of his responsibilities for any completed portion of the Work, nor shall it relieve his Surety of its obligation for and concerning any just claims arising out of the Work performed.

109.10 Interest

In the event any lawsuit is filed against the Department alleging the Contractor is due additional money because of claims or for any breach of contract, the Contractor hereby waives and renounces any right it may have under O.C.G.A. Section 13-6-

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13 to prejudgment interest. Also, the Contractor agrees that notwithstanding any provision or provisions of Chapter 11 of Title 13 of the Official Code of Georgia that the provisions of this contract control as to when and how the Contractor shall be paid for The Work. Further, the Contractor waives and renounces any and all rights it may have under Chapter 11 of Title 13 of the Official Code of Georgia.