

# Construction Contract Incentive Payment

U.S. Department of Housing  
and Urban Development  
Office of Housing  
Federal Housing Commissioner

OMB Approval No. 2502-0297  
(exp. 8/31/2013)

Under Section 202 of the Housing Act of 1959, as amended by  
Sec. 801 of NAHA or Section 811 of the National Affordable  
Housing Act

**Must be executed prior to initial closing.**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

**The Owner and the Contractor may amend the Construction Contract to provide for the payment of an additional sum to the Contractor as an incentive for completing the project earlier than the completion date specified in the contract, or by such date to which the contract completion may be extended.**

**The Construction Contract - Lump Sum** (Form HUD-92442-CA) may be amended by adding the following paragraph by rider:

**Article 3. Contract Sum and Payments** (cont.)

If the work is completed prior to the time for completion specified in the contract, the Owner shall pay the Contractor, in addition to the contract sum stated herein, an amount equal to \_\_\_\_\_\* percent of the amount by which the sum of HUD's estimates of real estate taxes and insurance during construction, totaling the amount of \$\_\_\_\_\_, \*\* exceeds the Owner's certified cost of these same items as approved by HUD through the final completion date. No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the actual cost of construction.

**The Construction Contract - Cost Plus** (Form HUD-92442-CA) may be amended by striking paragraph A(3) from Article 3 and adding the following paragraphs by rider:

**Article 3 - Payments** (cont.)

(3) If the work is completed prior to the time for completion specified in this contract, the Owner shall make an incentive payment to the Contractor. The amount of the payment shall be ascertained according to the instructions on the attachment entitled Incentive Payment Computation which is made a part hereof.

(4) If, upon completion, the Contractor shall have received cash payments in excess of (a) the actual cost of construction, plus (b) the cash fee specified in paragraph (1), plus the incentive payment under the provisions of paragraph (3), all such excess shall be refunded to the Owner.

(5) No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the actual cost of construction.

**In Witness Whereof**, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal) Attest	Owner
Witness	By
Witness	Title
(Seal)	Contractor
Witness	By
Witness	Title

**Note:** If Contractor or Owner is a corporation, Secretary should attest.

\* Not to exceed 50%

\*\* Insert here that portion of the sum of taxes and insurance that appear in Section G of Form HUD-92264 that are attributable to the construction period. For example, if the construction period also shown in Section G of Form HUD-92264 is estimated to be 15 months, taxes and insurance have been calculated for a 17 month period. Only a portion (15/17) may be included in the savings computation for these items.

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**Incentive Payment Computation**

To be completed at completion of the Project Construction (see Note 2)

**Step 1. Soft Cost Computations**

- (a) Enter the sum of HUD's estimated cost of interest, real estate taxes, insurance and Mortgage Insurance Premium from Section G, Form HUD-92264. \*\* (see other side) \_\_\_\_\_ \$
- (b) Enter the Owner's certified cost of these same items as approved by the Commissioner through the final completion date. \$ \_\_\_\_\_
- (c) Subtract 1(b) from 1(a). If 1(b) exceeds 1(a) enter 0. \$ \_\_\_\_\_

**Step 2. Construction Cost Computations**

- (a) Enter lesser of (1) HUD's estimated cost of physical construction (see Note 1) or (2) Cash upset price set out in Article 3.A of the Construction Contract). \$ \_\_\_\_\_
- (b) Enter HUD's estimated amount of the net increase in cost or net decrease in cost resulting from approved construction changes from the final Form HUD-92437. \$ \_\_\_\_\_
- (c) Enter sum of 2(a) and 2(b) if approved change orders resulting in construction cost increase. If approved changes resulted in a decrease in cost, subtract 2(b) from 2(a) and enter the difference. \$ \_\_\_\_\_
- (d) Enter the Contractor's actual certified cost of physical construction (including Builder's Profit). \$ \_\_\_\_\_
- (e) If 2(c) exceeds 2(d) enter difference here. If 2(d) exceeds 2(c) enter 0. \$ \_\_\_\_\_

**Step 3. Incentive Payment Computations**

- (a) Enter the sum of Step 1(c) and 2(e). \$ \_\_\_\_\_
- (b) Multiply 3(a) by \_\_\_\_\_% (Note 2) to obtain amount of incentive payment. \$ \_\_\_\_\_

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Note 1. HUD's estimate of the cost of physical construction shall be determined by adding together the following items that appear in Section G of Form HUD-92264, Total Land Improvements, Total Structures, General Requirements, Builder's Profit, Builder's General Overhead, Bond Premium and Builder's Other Fees.

Note 2. This blank should be completed on or before initial closing of the loan and the percentage to be inserted must not exceed 50%.