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Appendix 55

**Construction Contract
Incentive Payment**

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



Must Be Executed Prior to Initial Closing

In any case where there is no identity of interest between the Owner and the Contractor, the parties 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) 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 the Commissioner's estimates of interest, real estate taxes, insurance and mortgage insurance premium during construction, totaling the amount of \$_____, ** exceeds the Owner's certified cost of these same items as approved by the Commissioner.

The Construction Contract - Cost Plus - (From HUD-92442-A) 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 the 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 herof.

(4) In no event shall the cash fee specified in paragraph (1), plus any amounts specified in paragraph (2) to be paid by means other than cash, plus any incentive payment under the provisions of paragraph (3) exceed \$_____.

(5) 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.

* Not to exceed 50%

** Insert here that portion of the sum of interest, taxes, insurance, and Mortgage Insurance Premium 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, interest, 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. Similarly, the MIP must be prorated and (15/24's) would be included as this item is computed on an annual basis. In addition, if there has been a change in the interest rate charged for the construction period, the dollar amount included in Section G of Form HUD-92264 must be adjusted and the adjusted amount reflected in the savings computation.

*** The amount is to be computed by subtracting the amount of the Builder's Profit from the total Estimated Development Cost that appears in Section G, Form HUD-92264, and multiply the result by ten (10) percent. (See Reverse)

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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 Reverse Side.) \$ _____
- (b) Enter the owners certified cost of these same items as approved by the Commissioner. \$ _____
- (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 (as defined in Note 1 below 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 resulted 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 actual certified cost of physical construction as approved by the commissioner (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. \$ _____

Step 4 Maximum Allowable Incentive Payment

- (a) Enter the cash fee specified in paragraph 1, Article 3 of the construction contract. \$ _____
- (b) Enter the amount to be paid by means other than cash specified in paragraph 2, Article 3 of the construction contract. \$ _____
- (c) Enter the amount of the incentive payment calculated in step 3b above. \$ _____
- (d) Enter the sum of 4(a), 4(b) and 4(c). \$ _____
- (e) Enter the amount specified in paragraph 4, Article 3 of the construction contract. \$ _____
- (f) Subtract 4(e) from 4(d). If 4(e) exceeds 4(d) enter 0. \$ _____
- (g) Subtract 4(f) from 4(c) to obtain maximum allowable incentive payment. \$ _____

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 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%.