

**Office of Community Development**  
**Capital Programs Manual**

Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS  
Sub Section 6.01 Introduction

6.01.01 Summary

Unless otherwise noted at the top of a specific heading, these requirements apply to the programs listed below. Some programs have additional requirements which are noted in the text; therefore, project participants should read this Section carefully.

- (i) the Low-Income Housing Trust Fund (HTF) Program;
- (ii) the Housing Development Fund (HDF) Program; and
- (iii) the New York State HOME Program (HOME).

This Section describes the DHCR/HTFC's: general construction processing procedures and requirements; the roles and responsibilities of the project participants; procedures for change orders, budget modifications, award increases and escrow accounts; the DHCR/HTFC disbursement process; and cost certification requirements, where applicable.

## Office of Community Development

### Capital Programs Manual

Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS

Sub Section 6.02 Construction Procedures and Requirements

#### 6.02.01 Pre-Construction Meeting Requirements

A project's construction phase begins with a pre-construction meeting, which should be held within ten days of the Contract Closing. In requiring the pre-construction meeting, DHCR/HTFC's goal is to expedite the project's construction by setting forth all program regulations, procedures and contract requirements, as well as clearly delineating the roles and responsibilities of each of the project participants. Attendance at the pre-construction meeting is required of the project participants listed below:

- (i) the awardee, or its representative;
- (ii) the owner or its representative;
- (iii) the project contractor, or its representative;
- (iv) the project architect;
- (v) the OCD construction monitor;
- (vi) the OCD project manager;
- (vii) the OCD staff architect;
- (viii) The Davis-Bacon contracting officer, if applicable;
- (ix) the construction lender's representative, if applicable;
- (x) the representative of any other funding source, if applicable; and,
- (xi) the construction manager, or clerk of the works, if applicable.

It is the owner's responsibility to conduct the pre-construction meeting. The following agenda sets forth the topics that should be discussed during the meeting:

- (i) Introduction of project participants/signing of attendance sheet;
- (ii) Roles and Responsibilities of Project Participants:
  - (a) roles/responsibilities of owner;
  - (b) roles/responsibilities of contractor and construction manager/clerk of the works, if applicable;
  - (c) roles/responsibilities of project architect;

**Office of Community Development**  
**Capital Programs Manual**

- (d) roles/responsibilities of OCD project participants (OCD project manager, construction monitor and staff architect);
  - (e) roles/responsibilities of municipality's representative, if applicable; and
  - (f) roles/responsibilities of private lender and/or other funding source(s), if applicable;
- (iii) Review of General Conditions:
- (a) permits;
  - (b) progress schedule;
  - (c) list of subcontractors and suppliers;
  - (d) Schedule of Values;
  - (e) construction supervision;
  - (f) coordination between subcontractors;
  - (g) shop drawings and material submissions;
  - (h) payments;
  - (i) change orders;
  - (j) responsibility for damage;
  - (k) disputes;
  - (l) delays;
  - (m) as-built drawings;
  - (n) insurance;
  - (o) construction start and completion dates; and
  - (p) temporary facilities;
- (iv) Scheduling of construction meetings;
- (v) Scheduling of OCD site inspections; and
- (vi) Other issues

**Office of Community Development**  
**Capital Programs Manual**

The owner must prepare minutes of the meeting immediately thereafter, summarizing items discussed and specifying agreements made. Copies of the minutes must be distributed to each project participant, within 5 business days whether or not they attended the meeting. The project manager will review the minutes and respond to any discrepancies or errors, if necessary. Installation of DHCR project sign is a requisite for approval of first disbursement and photographic evidence of the sign shall be required. (See Design Handbook for sign specifications)

6.02.02      Roles/Responsibilities of the Project Owner

The project owner has the following responsibilities with regard to construction of the project:

- (i) selection and general supervision and coordination of the project contractor(s) during construction (the actions of the contractor(s) are the responsibility of the project owner);
- (ii) completing, within the time frame specified in the contract, a project which meets all program requirements;
- (iii) assuring compliance with all Minority and Woman Owned Business Enterprise (M/WBE) and Equal Opportunity requirements;
- (iv) if applicable, assure compliance with all Federal Labor Standards (Davis-Bacon Related Acts) regulatory requirements. In the selection of the general contractor/construction manager, assuring eligibility status of contractors on federally assisted contracts (not debarred).
- (v) processing and delivering all required paperwork regarding disbursement requests to the OCD project manager;
- (vi) notifying the project contractor, project owner, private lender and any other funding source(s) (if applicable) and OCD construction monitor of all construction work which is incomplete or incorrect and providing change orders for all changes in the construction documents prior to enacting any changes;
- (vii) immediately notifying DHCR/HTFC if the contractor or subcontractor places a mechanic's lien upon the project; and

**Office of Community Development**  
**Capital Programs Manual**

- (viii) for projects with total development costs greater than \$250,000, (or when required by DHCR/HTFC) providing DHCR/HTFC and the project owner with one set of as-built drawings at the time of project close-out, which include any significant deviations from the approved construction documents; and
- (ix) providing all required bonding, letters of credit, and/or retainages as required by the construction lender.
- (x) participating in the project's final inspection;
- (xi) operating and managing the project in accordance with all program requirements upon completion;
- (xii) complying with all program rules and regulations, and the provisions of DHCR's Audit and Accounting Manual. (With the exception of low-income homestead project owners, all project owners will be required to submit an annual CPA audit for the project within 120 days of the close of their fiscal year).

Project owners should also review Section 6.02.10 for a list of responsibilities with regard to construction documents.

HTF and HOME owners must meet cost certification requirements as described in Section 6.05 (Cost Certification). Applicants who will act as the project contractor are also responsible for performing the activities listed under Section 6.02.04 (Roles/Responsibilities of the Project Contractor). Applicants should also familiarize themselves with the project development responsibilities and requirements outlined in Section 5.00 (Development Requirements).

**6.02.03**      Roles/Responsibilities of the Project Architect

The project architect's responsibilities include, but are not limited to:

- (i) ensuring that the project is built in accordance with DHCR/HTFC approved construction documents and all applicable State and local codes, rules and regulations including the provision of adaptable and accessible requirements;
- (ii) making periodic site visits, but no less often than once every two weeks, to determine the quality and progress of the work, and its compliance with DHCR/HTFC approved construction documents;

**Office of Community Development**  
**Capital Programs Manual**

- (iii) notifying the owner and OCD construction inspector of any deficiencies, and giving written notification to the contractor to correct deficiencies;
- (iv) preparing and submitting any necessary reports advising the owner of problems, delays, changes and disputes;
- (v) preparing change orders;
- (vi) reviewing and approving shop drawings;
- (vii) participating in requisition meetings and punchlist and final inspections;
- (viii) identifying punchlist items and amounts to be withheld pending their correction;
- (ix) certifying that the project has been completed in accordance with the DHCR/HTFC approved construction documents, including any change orders; and
- (x) preparing as-built drawings, if applicable.

The project architect also has responsibilities with regard to construction documents, which are discussed in Section 6.02.10.

6.02.04      Roles/Responsibilities of the Project Contractor

The project contractor is responsible to the owner for performing the activities listed below. Project owners who also act as the project contractor must meet the contractor's responsibilities listed below, in addition to those of the owner listed in Section 6.02.02.

- (i) performing as specified in the Owner/Contractor Agreement (AIA A101 Form) including Davis-Bacon Related Acts requirements, if applicable;
- (ii) working with the owner and the project architect to resolve construction changes, delays and disputes;
- (iii) providing the Project architect and owner with written detailed cost estimates for all changes in the scope of work;
- (iv) participating in the requisition meetings, construction meetings, and punchlist and final inspections;
- (v) providing and updating the Schedule of Values;
- (vi) coordinating all on-site construction activities;
- (vii) providing on-site security (if applicable);

**Office of Community Development**  
**Capital Programs Manual**

- (viii) completing construction on schedule and within the DHCR/HTFC approved construction budget;
- (ix) meeting the bonding requirements outlined in Section 5.00 (Development Requirements);
- (x) meeting all contractor insurance requirements specified in Section 5.00 (Development Requirements);
- (xi) immediately notifying the owner if a mechanic's lien is placed upon the project;
- (xii) providing interim construction financing to meet all subcontractor payment requests;
- (xiii) supervising all subcontractors and suppliers; and,
- (xiv) documenting all changes for incorporation into the as-built drawings.

Contractors should review Sections 6.02.10, 6.02.11 and 6.02.12 for a discussion of responsibilities with regard to construction documents and stored materials.

**6.02.05**      Roles/Responsibilities of the Construction Lender

For some programs, DHCR/HTFC may, upon submission and approval of an escrow agreement, allow the construction lender to hold DHCR/HTFC funds in escrow for disbursement during the project's construction. This transfer of responsibility will take place only if there is no identity of interest between the construction lender and the owner or contractor, and provided the construction lender has the ability to perform bi-weekly project inspections. Other escrow account requirements are more fully discussed in Sub-Section 6.03.04.

In the event DHCR/HTFC agrees to the aforementioned arrangement, the construction lender will be responsible for performing one or more of the following activities (failure to perform designated activities will result in DHCR/HTFC freezing the escrow account or, in the case of permanent take-out, may result in the delay of settlement closing and/or a reduction in the permanent take-out amount):

- (i) administering the Construction Loan Agreement;
- (ii) making site inspections;
- (iii) approving construction work and change orders;
- (iv) disbursing progress payments and final payment;

**Office of Community Development  
Capital Programs Manual**

- (v) providing written monthly reports to the awardee, owner and DHCR/HTFC, detailing all deficiencies in construction work and/or delays and changes to construction documents;
- (vi) providing, at the time of project closeout, a final reconciliation of all transactions, fees, charges, and interest earned and paid out during construction;
- (vii) certifying to DHCR/HTFC that the required DHCR/HTFC closeout documents have been received and approved. DHCR/HTFC will not sign-off on the project's closeout or release the retainage until it receives such certification from the construction lender;
- (viii) returning all interest earned and/or unexpended funds to DHCR/HTFC within 90 days of project completion;
- (ix) releasing retainage only after DHCR/HTFC reviews and gives final approval of cost certification, if applicable; and
- (x) depositing any escrowed DHCR/HTFC funds in an interest-bearing account(s), the balance of each which does not exceed \$100,000, and agreeing to follow specific DHCR/HTFC policies for collateral and investment.

If the construction lender does not hold DHCR/HTFC funds in escrow, construction inspections will be done by DHCR/HTFC in conjunction with the construction lender's inspectors, and the monthly written reports on the construction work will be provided by DHCR/HTFC to the lender and owner.

**6.02.06      Roles/Responsibilities of the OCD Project Manager**

The OCD project manager has the following responsibilities during the project construction period:

- (i) coordinating all project correspondence with the owner, and with the OCD technical units;
- (ii) explaining to the owner all general disbursement and close-out procedures at the preconstruction meeting;

**Office of Community Development**  
**Capital Programs Manual**

- (iii) reviewing and processing all payments, budget modifications, and award increase requests (all payments and budget modifications must be approved by the Regional Director);
- (iv) notifying the owner and construction lender in writing of any construction problems that may prevent the DHCR/HTFC from executing its permanent take-out; and agreement, or approving any change order requests, which may result in the reduction of DHCR/HTFC funds available for permanent take-out; and
- (v) attending the project's final inspection.

6.02.07 Roles/Responsibilities of the OCD Construction Monitor

The OCD construction monitor is responsible for:

- (i) monitoring DHCR/HTFC Program's project construction on a pre-determined schedule based upon the size of the project, as discussed at the pre-construction meeting by the construction monitor, owner and contractor; (HDF projects will be inspected as set forth above only if DHCR/HTFC is the lead review agency, or if HDF will fund 50% or more of the construction loan amount);
- (ii) monitoring and reporting to the OCD staff architect and project manager the progress and quality of the project construction;
- (iii) making recommendations to the OCD staff architect for approvals of the contractor's payment requests based on the percentage and quality of work done;
- (iv) reviewing and assisting the OCD staff architect in approving change orders and resolving construction problems; and
- (v) performing punchlist and final inspections to ensure that the project construction is acceptable and in compliance with all construction documents (final project closeout cannot occur without the construction monitor's final inspection and report stating that the project is 100% complete).
- (vi) reviewing as built drawing submissions as requested by the OCD Staff Architect.

## Office of Community Development

### Capital Programs Manual

In case of tax exempt bond or 501(c)(3) Bond Financing, HTFC may consider having a joint construction monitor with other project lenders and/or the source of the credit enhancement or may assign this role to the bond issuer, if it is serving as lead agency for reviews and project monitoring

#### 6.02.08 Roles/Responsibilities of the OCD Staff Architect

The OCD staff architect is responsible for:

- (i) supervising the OCD construction monitor;
- (ii) assisting the construction monitor in performing the punchlist inspection;
- (iii) aiding in the resolution of any construction issues or problems;
- (iv) reviewing change orders and giving their approval or disapproval to the project manager; and,
- (v) assisting the owner/applicant in determining when the project is ready for occupancy.

#### 6.02.08.A Roles/Responsibilities of the DHCR Federal Labor Standards (Davis-Bacon Related Acts) Contracting Officer

The DHCR Contracting Officer will:

- (i) Provide technical assistance and training;
- (ii) Make updated determinations on appropriate wage rate schedules, (residential or building);
- (iii) Review certified payroll reports and related documentation, identifying discrepancies and/or violations, and ensure that any needed corrections are made promptly;
- (iv) As required, conduct on-site inspections, performing interviews with laborers and mechanics employed on work sites;
- (v) Ensure that the applicable Davis-Bacon wage decision and Department of Labor Notice to Employees notice is posted at the job site;
- (vi) Refer potential criminal or complex investigations, Contract Work Hours and Safety Standards Act assessments for overtime violations and debarment recommendations to HUD;
- (vii) Maintain full documentation for Federal Labor Standards administration and enforcement activities;

**Office of Community Development**  
**Capital Programs Manual**

- (viii) Comply with all HUD requirements concerning special statutory, program, and/or other requirements.

6.02.09      Roles/Responsibilities of the Local Program Administrator

For HTF program see Section 2.01.01

6.02.09.A    Roles/Responsibilities of the HOME Local Program Administrator (LPA) State Recipients and Subrecipients

HOME LPAs are responsible for the following areas:

- (i) ensuring that the minimum amount of HOME funds needed to maintain affordability is invested in each assisted unit, by conducting initial and subsequent inspections, independent work write ups and cost estimates, reviews of plans and specifications, determinations of financial feasibility, following acceptable contractor selection procedures, soliciting and reviewing bids, and adequately insuring assisted properties, consistent with the LPA's Administrative Plan;
- (ii) on-site monitoring of construction activities and disbursement of construction funds, reviewing change orders, placing liens, and ensuring full completion prior to release of retainage and liens, consistent with the LPA's Administrative Plan;
- (iii) financial management of all HOME funds, establishing a local HOME Investment Trust Fund account, if applicable, disbursing funds to owners or contractors, coordinating payment of HOME Program funds with funds from other sources, tracking and reporting on repayments and other program income, and data entry and maintenance of the recipient's account in HUD's Integrated Disbursement Information System;
- (iv) compliance with all uniform administrative requirements, as described in 24 CFR 92.505;

**Office of Community Development**  
**Capital Programs Manual**

- (v) compliance with 24 CFR 92.354, where applicable, requiring wages prevailing in the locality, as required by the Davis-Bacon Act, and the provisions of the Contract Work Hours and Safety Standards Act (42 CFR 327-333), and performing all activities related to compliance with applicable labor standards for any Program subject to this requirement.

For more information on the role of HOME LPAs, see Section 2.05.05.

6.02.10      Responsibilities for Construction Documents

This Section does not apply to HDF Program projects unless DHCR/HTFC is the lead review agency.

The project owner has the following responsibilities with regard to construction documents:

- (i) ensuring that the project architect maintains up-to-date plans, specifications, addenda, modifications and change orders, and that the OCD project manager and staff architect receive such documents;
- (ii) ensuring that the contractor or any other designated representative of the project owner obtains all necessary building permits, local approvals, licenses, etc., prior to starting project construction, and that the OCD project manager and staff architect receive such documents;
- (iii) ensuring that the contractor's Schedule of Values is delivered to the OCD staff architect at, or prior to, the pre-construction meeting, and that it has been reviewed and approved by the owner's project architect;
- (iv) ensuring that the contractor's Schedule of Values is updated to reflect all change orders, and is then forwarded to the OCD staff architect;
- (v) providing the DHCR/HTFC with all change order requests for DHCR/HTFC approval prior to authorizing any changes to the contractor; and
- (vi) submitting to the OCD project manager along with the final close-out payment request, mylar or 1 paper copy and 3 CDROMS of the as-built drawings, which reflect all significant deviations from the DHCR/HTFC approved documents, change order work, field conditions, and field directives performed on the project, including all shop drawings.

6.02.11 Schedule of Values

This Section does not apply to HDF Program projects unless OCD is the lead review agency.

Contractors must prepare and maintain a Schedule of Values for the project. This is a progress and payment schedule for each major trade item (as detailed in the contractor's trade item cost breakdown), listing the item's dollar value, and its percentage of completion for each payment request. Schedules of Value may also, on a month-by-month basis, project the estimated amount of work to be completed for each trade item. All change order work that has been performed must be reflected in the next monthly Schedule of Values submitted for a progress payment. The Schedule of Values is usually developed on the AIA G703 Form (Continuation Sheet), and must be reviewed and approved by the owner and project architect.

The Schedule of Values must be submitted to the OCD staff architect at or prior to the preconstruction meeting. Progress payment requests will not be processed by the OCD project manager until the OCD construction monitor compares the progress of construction to the estimates in the Schedule of Values, and recommends approval of the percentages of completion reflected in the schedule.

6.02.12 Stored Materials on Site

This Section does not apply to HDF Program projects unless DHCR/HTFC is the lead review agency.

Project contractors must provide DHCR/HTFC with the following items in order for stored on- or off-site materials to be recognized by DHCR/HTFC:

- (i) a letter to the OCD project manager and construction monitor, requesting a waiver of the DHCR/HTFC policy that disbursement requests may not include the cost of stored materials;
- (ii) a letter certifying that the contractor will take responsibility for the loss of materials, and will not seek compensation from DHCR/HTFC for stolen materials;
- (iii) a letter certifying that the contractor has on/off-site security and insurance to protect the materials at the location where they are stored;
- (iv) invoices and pictures of the stored materials which are submitted with the disbursement request; and

**Office of Community Development**  
**Capital Programs Manual**

- (v) stored materials have been visually inspected and photographed by the OCD construction monitor.

Contractors who do not provide the documentation set forth above may not count stored materials in the Schedule of Values percentage of completion, and may not claim payment for stored materials in their disbursement request.

6.02.13      Disputes, Claims, Delays and Time Extensions

It is the owner's responsibility to resolve any disputes and claims that arise between the project architect, contractor and subcontractors.

The owner must notify the OCD project manager and construction monitor within ten days of the occurrence of a dispute or claim. Any resolution of a claim which proposes either a change order or an increase in the contract must be reviewed and approved in writing by the OCD project manager. DHCR/HTFC may require that a "finding of fact" be prepared and submitted by the awardee/owner and its attorney so that DHCR/HTFC can review the circumstances surrounding the claim, and make an appropriate determination.

Owners must report delays in project construction within ten days to the OCD project manager and to the construction monitor. A written explanation for the delay, together with a request for a specific time extension must also be submitted within ten days. DHCR/HTFC will review all delays and additional costs incurred on a project-by-project basis.

The circumstances under which change orders, budget modifications and award increases will be considered by DHCR/HTFC are described below. Also discussed are the procedures and documentation which the owner must comply with in order to make changes to construction documents, budgets or awards.

## Office of Community Development

### Capital Programs Manual

Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS

Sub Section 6.03 Change Order/Budget Modifications/Escrow Accounts

#### 6.03.01 Change Orders

A change order is a written agreement which describes any changes in the construction work to be performed. Change orders are prepared by the project architect, who submits them to the owner for approval. DHCR/HTFC will not recognize any change orders for consideration of project scope changes or requests for additional funding, if they are received for review after the issuance of the temporary certificate of occupancy. The owner should not sign a change order until it has been accepted by DHCR/HTFC. Change orders reflecting the following conditions must be submitted to the OCD construction monitor and staff architect for review and acceptance prior to the contractor enacting any changes to the scope of the work:

- (i) changes to the project scope, or adding work which was not in the approved construction documents;
- (ii) deleting work which was provided for in the construction documents;
- (iii) changes to material, placement or number of work items which were provided for in the construction documents;
- (iv) unforeseen field conditions, such as deteriorated material, not visible upon normal inspection of the building;
- (v) errors or omissions in the construction documents which must be corrected in order to complete the construction and obtain a Certificate of Occupancy;
- (vi) time extensions beyond the date specified in the Owner/Contractor Agreement for completion of construction; and,
- (vii) no-cost change orders, which substitute items or have no impact on the project cost or the completion date of the construction work.

**Office of Community Development**  
**Capital Programs Manual**

Change orders are prepared by the project architect, using Form AIA G701 (Change Order). All alterations to the project resulting from change orders must be reflected on Form AIA G703 (Continuation Sheet). All change orders, including those which are to be financed by non-DHCR/HTFC funding sources or by owner equity, must be reflected on the Disbursement Request Form and/or Form AIA G702 (Application and Certificate of Payment). All change order submissions must include the following:

- (i) a completed Form AIA G701 (Change Order), containing the number of the change order, the date initiated, a detailed description of the work to be performed, and/or the referenced change order drawing(s) to be added to the construction documents; all change order drawing(s) must be stamped and signed by the project architect;
- (ii) the cost of the work (credit, debit or no charge);
- (iii) the contractor's written proposal for the cost of the work, attached to the change order;
- (iv) the signatures of the project architect and contractor;
- (v) an estimate of additional time required to complete the work;
- (vi) architectural drawing(s) showing the proposed change; and,
- (vii) the project architect narrative description and explanation attached to the change order.

The change order review process begins when the owner, contractor and project architect discuss the proposed change or work with the OCD construction monitor at the construction meeting. The OCD construction monitor will review the change order paperwork to ensure it contains all necessary documents and that it is indeed a change from the contract documents accepted by the OCD Staff Architect. The staff architect will confer with the construction monitor and the OCD project manager prior to accepting the change order. Upon the staff architect's approval, the original order will be returned to the owner, authorized by the OCD staff architect. This authorizes the contractor to include the change order on Form AIA G702 (Application and Certificate for Payment) when it is submitted with the next progress payment request. No change in work should be performed by the contractor prior to DHCR/HTFC acceptance of the change order in which the change in work scope is detailed.

## Office of Community Development

### Capital Programs Manual

Page 17 of 37

For projects where the DHCR/HTFC is a permanent take-out lender, the owner should get change order approval prior to commencement of such work to ensure the DHCR/HTFC commitment for permanent financing is not jeopardized. Failure to provide change orders to the DHCR/HTFC during construction will, at a minimum, result in a time delay at the closing, as DHCR/HTFC will not execute permanent loan closing documents until all change orders are correctly submitted and reviewed by the OCD staff architect. The amount of the DHCR/HTFC loan will be reduced by the amount of change orders not approved by DHCR/HTFC.

All change order requests which exceed the contingency funds allocated in the project's development budget must be approved by the HTFC President. The owner must submit a letter and support documentation, explaining in detail the reason for the cost overrun, and demonstrating that no other funding sources are available to pay for the cost overrun.

DHCR/HTFC does not guarantee payment for any cost overruns or change orders which have been ordered by the owner and have not been submitted to and approved by DHCR/HTFC.

For HTF and HOME Program projects, any change order requests which would result in a greater than ten percent increase in the approved award amount must be submitted to the HTFC Board for approval prior to performing the change of work.

#### 6.03.02 Emergency Change Order Requests

Emergency change orders are those that, if not approved, would force a complete shutdown of the job site for a period of more than one week. When making an emergency change order request, the owner must obtain the contractor's upset (or maximum) price for the work, which must be agreed upon by the owner and project architect. The owner must notify the OCD construction monitor immediately of the need to process an emergency change order, and provide the agreed upon upset price. The construction monitor will verify the emergency within 48 hours of notification by conducting a site visit or conferring with the OCD staff architect, if necessary. If the emergency is verified, the construction monitor and staff architect will review the upset price to ensure its appropriateness. The staff architect will confer with the project manager before approving any change order.

## Office of Community Development

### Capital Programs Manual

Page 18 of 37

Upon the staff architect's approval, the construction monitor will give verbal notification (followed in writing) to the owner to proceed with processing the change order. The owner will then give written notification to the project architect and contractor to proceed with the emergency change order work, stipulating that within seven days, the contractor must furnish a detailed written cost breakdown of the work to be performed, the total of which cannot exceed the agreed-upon upset price. If the contractor fails to submit the required written cost breakdown, the owner's future payment requests will not be processed. Upon receipt of the cost breakdown, the owner should submit the emergency change order request according to the standard change order procedures outlined herein.

Emergency change order requests with upset prices greater than the amount remaining in the contingency fund must be reviewed and approved before being processed. Emergency change order requests for projects funded under HTFC-administered programs must also receive the approval of the HTFC Board if greater than ten percent of the award amount.

#### 6.03.03 Budget Modifications

Applicants seeking to modify their project's budget by redirecting funds between major budget line items, (e.g. between construction and soft costs) must submit written documentation substantiating the need to make the change. The justification will be reviewed by the OCD project manager, who will recommend that the Regional Director either approve or deny the budget modification. No DHCR/HTFC approved project budget may be modified without authorization from the Regional Director. For HTFC-administered programs, the Regional Director will transmit the budget modification request to the HTFC Finance Officer for final approval. The HTFC Finance Officer will transmit the approved budget modification request to the owner.

Contingency funds should be requested only for approved construction change orders or construction-related cost overruns or other soft cost and item changes which have been approved by the Program Manager. Any funds remaining in the contingency fund will result in a reduction in the final disbursement.

**Office of Community Development**  
**Capital Programs Manual**

6.03.04      Escrow Accounts

On a case-by-case basis, OCD may permit the establishment of escrow accounts for DHCR/HTFC program projects which are financed in conjunction with other federal, State, private or municipal agencies. (See Sub-Section 6.02.05 for a detailed discussion of the construction lender's responsibilities with regard to escrow accounts).

For DHCR/HTFC program projects, funds may be deposited into the project's escrow account for disbursement during construction, in accordance with the owner's Construction Loan Agreement and the Escrow Agreement. The Escrow Agreement is a contract between the owner, DHCR/HTFC and an escrow agent, which establishes the terms and conditions under which the escrow agent may disburse funds, how the funds will be held on deposit, and in some cases, the terms of the construction loan management. Escrow account management fees are negotiated on a case-by-case basis. All unexpended funds and interest earned on HTF/HOME or HDF project escrow accounts must be returned to HTFC or DHCR, respectively, within 90 days of the Escrow Agreement's termination.

All escrow accounts holding DHCR/HTFC funds must be insured by the FDIC, with any funds in excess of the insured amount properly and adequately collateralized. Escrow accounts must be interest-bearing, with the interest accruing to DHCR/HTFC. Escrowed DHCR/HTFC funds must be invested in, or collateralized by, DHCR/HTFC approved instruments, in accordance with DHCR/HTFC's investment policies.

## Office of Community Development

### Capital Programs Manual

Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS

Sub Section 6.04 DHCR/HTFC Disbursement Procedures

The disbursement procedures set forth below do not apply to HDF projects for which DHCR/HTFC is not the lead review agency.

Since owners with projects having permanent DHCR/HTFC financing are required to submit a final Disbursement Request Form only, the progress payment disbursement procedures set forth herein do not apply. See Section 6.06 for discussion of permanent DHCR/HTFC financing close-out procedures.

DHCR/HTFC will only entertain payment requests for predevelopment or seed money funds from those awardees which have received a Funding Commitment, and which can document that costs have been incurred for eligible predevelopment expenses.

#### 6.04.01 Progress Payment Requests

After contract execution, owners may make progress payment requests for the disbursement of funds to pay for completed construction work, professional services rendered, fees paid or charges incurred with regard to the project's soft costs, or working capital expenses as delineated in the owner's DHCR/HTFC approved Development Budget.

At the preconstruction meeting, the owner should establish a specific date and time that the monthly construction inspection and review of each disbursement request will take place by the owner, contractor, project architect and OCD construction monitor. The owner should submit monthly progress payment requests to the OCD project manager after each construction inspection meeting unless otherwise agreed to by DHCR/HTFC. If the monthly construction inspection meeting must be rescheduled, the owner must notify the project manager of the new date. This notification may occur via telephone, but must be confirmed in writing. Rescheduling or postponing the monthly construction inspection meeting may result in delayed processing of the disbursement request.

Each progress payment request for completed construction work must have the required minimum retainage of ten percent of the construction cost withheld. Depending upon the conditions of the 100% performance bond or letter of credit, the retainage percentage may be higher than ten percent.

Requests for progress payments that include change order work will only be processed if the change order request has been approved by DHCR/HTFC and the work has been performed. DHCR/HTFC reserves the right to stop processing progress payment requests if change order work is performed without the express written approval of DHCR/HTFC.

6.04.02      Required Forms and Documentation for Progress Payment Requests

The owner must submit certain documents, which are detailed below, to the OCD project manager when making a progress payment request. Required documents may include, but are not limited to:

- (i) one original Request for Disbursement Form, reflecting updated disbursement amounts from all funding sources;
- (ii) one original Disbursement Request Support Documentation Form;
- (iii) one original AIA G702 Form (Application and Certificate for Payment);
- (iv) one original AIA G703 Form (Continuation Sheet);
- (v) for HDF and RRAP projects only, one Standard State Voucher;
- (vi) copies of DHCR/HTFC approved change orders for which work has been completed, together with appropriate support documentation;
- (vii) invoices for professional service fees, subcontractors, suppliers, vendors and utility companies, acquisition expenses (when the full acquisition amount is requested), relocation assistance expenses, and, if applicable, statements of finance charges for lines of credit and/or interim loans which were approved in advance by DHCR/HTFC;
- (viii) receipts for eligible working capital expenses; and
- (ix) the most recent bank statement for the checking account containing DHCR/HTFC funds.

## Office of Community Development

### Capital Programs Manual

In addition to the above, owners of projects receiving HTF and HOME Program funds must obtain a notice of title continuation each time a disbursement is requested (except for predevelopment award disbursements). This assures HTFC that no liens have been placed upon the property since the last disbursement. Upon completion of the title update, the title company must directly notify the HTFC Finance Officer. The notification may initially occur via telephone, but must be confirmed in writing. The disbursement will only be released when the HTFC Finance Officer receives verbal notification of clear title from the title company. If, by the time the next disbursement request is submitted, the required written confirmation of clear title has not been received for the previous disbursement, the next disbursement will be held until written confirmation of clear title, current with the most recent disbursement request, is received (facsimiled confirmations are acceptable). The OCD project manager will notify the owner immediately should a problem arise with the title.

#### 6.04.03 Progress Payment Requests for Multi-Site Projects

For projects with more than one site, owners must submit a separate Disbursement Request Form for each of the project sites, as well as a Disbursement Request Form summarizing all site costs for the project as a whole.

For multi-site projects with more than one contractor, disbursements will be processed, and close-outs will occur, on a site-by-site basis, rather than when all project sites are completed. This means that Final Payment Requests (Sub-Section 6.04.07) will be processed for each site in a multisite project as they are completed.

No project (as opposed to Program) will be closed out until all closing documents and cost certifications for all sites have been submitted and approved by DHCR/HTFC.

#### 6.04.04 Progress Payment Processing Procedures

Upon receipt, the project manager will review all required documents as listed in Section 6.04.02 to ensure completeness, accuracy, and conformance with the latest approved budget. If the Disbursement Support Documentation Form is not completed, the Request for Disbursement will not be processed.

## Office of Community Development

### Capital Programs Manual

Page 23 of 37

If the Request for Disbursement Form is approved by the project manager, he or she will sign and forward it to the Regional Director for approval. Request for Disbursement Forms for projects funded under HTFC-administered Programs will then be forwarded to the HTFC Finance Officer for final approval and processing. If the Request for Disbursement is complete and accurate, a check will be released to the owner within 10-14 calendar days of its receipt. However, for projects receiving HTF and HOME Program funds, this timetable is subject to the receipt of a timely verbal or written, if necessary, title continuation. For projects funded under program administered by DHCR, the Request for Disbursement Form will, following approval by the project manager and the Regional Director, be forwarded to the Office of Financial Administration for processing through the Office of the State Comptroller. A check will be released to the owner within 30 calendar days of the Request for Disbursement's receipt. Any inquiries regarding disbursements should be directed to the OCD project manager no earlier than one week after the above timeframes.

#### 6.04.05 Final Payment Requests

Final payment requests are made only after the project's final inspection has occurred and the project architect has signed the AIA G704 Form (Certificate of Substantial Completion). Additionally, the OCD project manager cannot begin to process a final disbursement request until the OCD staff architect determines that all punchlist items have been satisfactorily completed, and signs the final Request for Disbursement Form.

Final payment requests usually include disbursements for construction retainage, balances remaining in the working capital fund, and reserve funds. Contingency funds which are not needed will not be disbursed. Any interest earned will also be recaptured by DHCR/HTFC at this time. All change orders must be submitted and approved by DHCR/HTFC prior to processing a final payment request. DHCR/HTFC reserves the right to reduce the final award amount via the contingency fund if disputes arise from the result of unapproved but completed change order work. DHCR/HTFC also reserves the right to delay final payment to the awardee if all change orders have not been submitted for DHCR/HTFC approval.

## Office of Community Development

### Capital Programs Manual

HTFC may require the holdback of up to \$25,000 in addition to construction retainage. These additional funds will be disbursed upon submission of all project close-out documents including permanent Certificates of Occupancy, As-built Drawings and other items cited in Section 6.04.07 of the manual.

For projects involving tax exempt bonds or 501(c)(3) bonding, HTFC will require an escrow equal to 3% of total development cost (less the developer's fee) as a five-year guarantee on workmanship. Disbursement of the escrow is subject to verification of satisfactory workmanship through inspections by an HTFC-approved architect. However, there are exceptions to this program requirement and HTFC may reduce or eliminate the escrow requirement at its discretion for projects in which the bond issuer is serving as lead agency and for certain new construction projects. In addition, HTFC may waive the escrow requirement in consideration of the awardee having a construction contract with the general contractor which includes a guarantee of workmanship for five years beyond the construction completion date, and the awardee or its general contractor agrees to provide a payment and performance bond equal to 3% of TDC (less the developer's fee) for a term equivalent to the guarantee of workmanship.

#### 6.04.06 Punchlist and Final Inspections

When the project's construction is 95% complete, the owner will schedule a punchlist inspection with the OCD construction monitor, project contractor, and project architect. The contractor, project architect, and OCD construction monitor, should agree upon which incomplete or incorrect construction items should be included on the punchlist, which will be formally prepared by the project architect, with copies given to all parties listed above.

If the project architect wishes to minimize the number of items included on the punchlist, he or she should draft a punchlist prior to the inspection so that the owner and contractor can begin correction or completion. The OCD punchlist work items should not take more than five-to-seven work days to be completed or corrected. When all punchlist items have been corrected or completed, construction is 100% complete, and the owner has received a certificate of occupancy (C of O) or temporary C of O from the municipality having jurisdiction over the project, a final inspection will be scheduled by the owner. Those who must attend the final inspection include the owner,

**Office of Community Development**  
**Capital Programs Manual**

contractor, project architect, OCD project manager, OCD construction monitor and OCD staff architect.

If the project architect is satisfied with the quality of the construction work, and degree of completion, he or she will sign the AIA G704 Form (Certificate of Substantial Completion). The OCD staff architect will sign the final Request for Disbursement Form when all punchlist items have been completed or corrected, and the construction is 100% complete. The OCD project managers cannot begin to process the final Request for Disbursement Form until it has been signed by the OCD staff architect.

**6.04.07**      Required Forms and Documentation for Final Payment Requests

For each site for which the owner is submitting a final payment request, one signed original of each of the following documents must be submitted to the OCD project manager (LPA required documents are listed further below):

- (i) Request for Disbursement Form;
- (ii) Disbursement Request Support Documentation Form;
- (iii) final AIA G702 Form (Application and Certificate for Payment);
- (iv) final AIA G703 Form (Continuation Sheet);
- (v) AIA G704 Form (Certificate of Substantial Completion);
- (vi) AIA G706 Form (Contractor's Affidavit of Payment of Debts and Claims);
- (vii) AIA G706A Form (Contractor's Affidavit of Release of Liens) certified by the contractor, with general releases of liens from all major subcontractors and suppliers;
- (viii) construction monitor's Final Inspection Report;
- (ix) copies of all DHCR/HTFC approved change orders;
- (x) C of O issued by the local building authority; (a temporary C of O may be submitted for final payment with the stipulation that a permanent C of O must be issued prior to the release of the contractor's retainage, unless waived in writing by DHCR/HTFC);
- (xi) required licenses from governmental regulatory agencies, if applicable;
- (xii) a lien bond or indemnity bond for all outstanding claims in connection with the construction contract as identified in the Waiver of Mechanic's Liens, if applicable;

## Office of Community Development

### Capital Programs Manual

- (xiii) a fire insurance policy and blanket position fidelity bond naming DHCR/HTFC and the State of New York as loss payees, and comprehensive general liability insurance and worker's compensation and disability insurance policies naming DHCR/HTFC and the State of New York as additionally insured parties;
- (xiv) for projects with construction costs in excess of \$250,000, or when required by DHCR/HTFC, as-built drawings indicating all changes and revisions to the bid documents;
- (xv) standard lease to be used for project rent-up, incorporating all Program requirements, if applicable;
- (xvi) four color 5" x 7" prints of the completed project;
- (xvii) for all projects governed by Rent Stabilization or the Emergency Tenant Protection Act (ETPA), evidence of registration with DHCR Rent Administration;
- (xviii) a copy of the Two-Tier Rent Form, if applicable;
- (xix) a copy of the Rent Registration Form, if applicable;
- (xx) verification that all material warranties have been delivered to the project owner;
- (xxi) verification that all permanent financing as indicated in the contract is in place;
- (xxii) Occupancy Status Report Form;
- (xxiii) for HTF and HOME Program projects only, a Project Cost Certification Audit on project expenditures, prepared by an independent Certified Public Accountant (see Section 6.05);
- (xxiv) if the Development Budget approved by DHCR/HTFC at the time of contract execution has changed, an updated Development Budget reflecting the final DHCR/HTFC approved amounts;
- (xxv) if the Rent Plan and/or Affordability Plan approved by DHCR/HTFC at the time of contract execution has changed, an updated Rent Plan and/or Affordability Plan reflecting DHCR/HTFC approved adjustments; and
- (xxvi) documentation that all required project operating and Reserve accounts have been established, as well as copies of dual signature cards for Reserve accounts.
- (xxvii) J-51 Certification

**Office of Community Development**  
**Capital Programs Manual**

- (xxviii) For HOME projects, a Rental Housing Completion Report Form (HUD-40097) which includes the requested information for all project units.
- (xxix) approved Minority/Women - Owned Business Enterprise Utilization Plan, if not submitted.
- (xxx) for HOME projects, Section 3 Summary Report
- (xxxix) approved Marketing plan if not submitted.
- (xxxii) if the ownership of the project will be transferred to another entity for the regulatory period, an explanation of the need for the transfer, documentation showing that the new owner is an eligible applicant under the program providing funding for the project and information on the staff who will be involved in administering the project following the transfer.

6.04.08      Final Payment Processing Procedures

The OCD project manager will review all required documents described in Section 6.04.07 upon receipt for completeness, accuracy, required signatures, and conformance with the latest DHCR/HTFC approved budget. For projects which require it, the Cost Certification Audit will be sent to the OCD project manager as part of the close-out submission. (See Section 6.05) For the HTFC administered Programs, the OCD project manager and Regional Director will, upon review and approval of all required documents, sign the final Request for Disbursement Form, and forward the entire final disbursement package to the HTFC Finance Officer for final approval and processing.

For the HDF Program, the final Request for Disbursement Form and Support Documentation Form will be forwarded, following Regional Office approval, to CAU for processing through the State Comptroller's Office.

This Section applies to projects funded under all DHCR/HTFC administered Programs, with the following exceptions:

- (i) projects for which DHCR/HTFC program funds will be used only for a distinct purpose, such as acquisition, are exempt from DHCR/HTFC cost certification requirements;

**Office of Community Development**  
**Capital Programs Manual**

- (ii) projects for which another funding source is requiring a cost certification of all project funds, including DHCR/HTFC funds, are exempt from DHCR/HTFC cost certification requirements, provided that DHCR/HTFC is supplied with a copy of such certification; and
- (iii) projects which have only one funding source, and which have a total project cost less than or equal to \$100,000, are exempt from DHCR/HTFC cost certification requirements, but are subject to an independent closeout review.

The purpose of cost certification is to establish the project's actual total cost, including the construction cost, in order to determine the maximum DHCR/HTFC award amount for the project's final closeout. DHCR/HTFC requires that cost certifications be submitted as part of the project close-out package so that the final retainage may be released upon project completion.

**Office of Community Development  
Capital Programs Manual**

Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS  
Sub Section 6.05 Cost Certifications

Cost certification will be required of the following owner types:

- (i) for-profit owners;
- (ii) not-for-profit owners which have an identity of interest with the project architect, project contractor/developer, and/or project consultant;
- (iii) not-for-profit owners which have acted as the project contractor; and
- (iv) subrecipients which receive HTF awards from LPAs (except in cases where there is only one project funding source, and the total project cost is less than or equal to \$100,000).

DHCR/HTFC reserves the right to request a cost certification in situations other than those described above based on the size and complexity of the project financing or other substantive factors.

All cost certifications must be performed by an independent New York State Certified Public Accountant (CPA). DHCR/HTFC may require that the cost certification be performed by an independent CPA under contract with DHCR/HTFC if there is an identity of interest between a for-profit owner and the project architect, contractor and/or consultant. If the owner is told that the cost certification must be done by a DHCR/HTFC contracted CPA, it must notify the project manager when the project is 75% complete so that the cost certification can be scheduled. Failure to do so may result in an inability to schedule the cost certification with the DHCR/HTFC contracted CPA in a timely manner, and thus, a delay in the project's closeout.

To meet cost certification requirements, for-profit owners must submit the following:

- (i) a certification by the owner that the cost certification was completed by an independent CPA who is acceptable to DHCR/HTFC, or by the DHCR/HTFC contracted CPA, and that the certification is for the total project cost, including all funding sources;

## Office of Community Development

### Capital Programs Manual

- (ii) an accounting of all the major line items as detailed in the project's final approved Development Budget, and a listing of the actual dollar amount expended from every funding source (less any retainage) for each line item, compared against the approved total cost budgeted for each line item;
- (iii) copies of the final AIA G702 Form (Application and Certificate for Payment) for each prime contractor, indicating the final dollar amount of all construction work for that contractor, signed by the contractor, project architect and owner;
- (iv) a copy of the owner's final Request for Disbursement Form; and
- (v) a CPA's certification that the soft costs, acquisition costs and working capital expenses of the project are accurate, and adequately documented by actual invoices and payments by the owner to all vendors listed.

Owners who have an identity of interest with the project contractor/developer, architect and/or consultant must submit the following documents to meet the cost certification requirements:

- (i) all documents listed in (i)through (v) above;
- (ii) a detailed trade item breakdown of all the contractor's actual project costs, including overhead and profit, as listed on the AIA G703 Form (Continuation Sheet);
- (iii) unless performed by a CPA contracted by DHCR/HTFC, a CPA's certification that the project's actual construction costs have been adequately documented by invoices and payments by the owner to the contractor and all vendors; and
- (iv) verification by the contractor that there is no identity of interest between any project subcontractors and/or suppliers.

All cost certifications must utilize the following format:

- (i) an opinion letter prepared by the CPA, certifying that the project audit was performed in accordance with generally accepted auditing standards and practices, and that there is no identity or conflict of interest between the CPA, and the owner, contractor, project architect or any subcontractor;

**Office of Community Development**  
**Capital Programs Manual**

- (ii) a copy of the final Request for Disbursement Form prepared by the owner;
- (iii) a copy of the final AIA G702 Form (Application and Certificate of Payment) for the contractor, or for each prime contractor, prepared by the project architect;
- (iv) a copy of the AIA G703 Form (Continuation Sheet), prepared by the project architect, and listing all construction work, including all approved change orders;
- (v) a copy of the DHCR/HTFC approved Development Budget which was attached as an exhibit to the owner's Predevelopment Costs Agreement;
- (vi) a form similar to the Development Budget, which lists all line items in the Development Budget with columns showing the total cost budgeted for each item, the actual total cost for each item, and the actual corresponding amounts paid out from each funding source;
- (vii) a listing of all consultant and contractor payments for services rendered to the project; and
- (viii) a detailed breakdown of all construction work by subcontractors, vendors and suppliers, the total amount of each contract or invoice billed, and a summation of the total construction cost.

DHCR/HTFC will review all cost certifications for compliance with the following requirements:

- (i) the final AIA G702 Form (Application and Certificate for Payment) for the project's construction, or the total payment requests if more than one prime contractor was employed to construct the project, must equal the amount expended by the owner and/or contractor from all funding sources;
- (ii) any line item costs budgeted in the Development Budget which were not actually expended must be deducted from the actual total project cost;
- (iii) all non-DHCR/HTFC funds which were to be used in developing the project, must have been received from the non-DHCR/HTFC funding source(s), and expended by the owner; and,
- (iv) the contractor/developer fee cannot exceed ten - fifteen percent of the total project cost, or the contractor's profit cannot exceed ten percent of the total construction

**Office of Community Development**  
**Capital Programs Manual**

costs, depending on the relationship between the owner and contractor and what was approved at Contract Closing. (See Section 5.05 and the LIHC Allocation Plan for more information on this)

**Office of Community Development**  
**Capital Programs Manual**

Section: 6.0 CONSTRUCTION PROCESSING REQUIREMENTS  
Sub Section 6.06 Permanent HTFC Financing Only Close-Out Procedures

6.06.01 Final Inspection

Owners receiving permanent financing only from HTFC must provide the project manager with written notification 45 days in advance of the anticipated substantial completion date by which project will be ready for final inspection. Prior to the project's final inspection, the owner must schedule a punchlist inspection for the project with the project architect and OCD construction monitor. A representative of the owner or contractor must be present at the punchlist inspection. The punchlist which results from such inspection will be prepared by the project architect and owner, and must contain the following information:

- (i) the inspection date;
- (ii) the name and title of the contractor's or owner's representative present;
- (iii) any incomplete or unsatisfactory work items; and
- (iv) the specific location of each incomplete or unsatisfactory work item.

The owner must provide copies of the punchlist to the OCD construction monitor. The final inspection will occur upon completion and/or correction of all punchlist items. Those whose attendance is required at the project's final inspection (collectively referred to as the "inspection participants") are: the owner, construction lender's inspector, project architect, and OCD construction monitor, OCD staff architect, and OCD project manager.

6.06.02 Permanent Financing Inspection Conference

An inspection conference must be attended by the inspection participants immediately following the project's final inspection. The inspection participants must reach agreement on:

- (i) whether or not work has been completed in accordance with the final documents;  
and
- (ii) any incomplete or unsatisfactory work items, and when they will be completed or corrected.

**Office of Community Development**  
**Capital Programs Manual**

- (iii) any outstanding or unsubmitted change order work and a date when the permanent Certificate of Occupancy will be submitted for DHCR/HTFC review and approval (if not already submitted).

A mutually agreed upon final inspection report will be prepared by the owner, project architect and OCD construction monitor based upon the results of the Inspection Conference. The project architect will also prepare a Certificate of Substantial Completion showing the amount of money to be withheld if any for incomplete/unsatisfactory work and/or outstanding change order work. Upon receipt of the report and certificate, the project manager will immediately notify the owner and construction lender and schedule a date for the Settlement Closing. A Settlement Closing will not be scheduled if outstanding or unsubmitted change orders have not been received by the DHCR/HTFC. This may result in a time delay of the DHCR/HTFC settlement closing and/or a reduction in the final award amount or a holdback equal to the sum of two and one half times the value of unapproved work, any retainage, plus if there is an identity of interest between the owner and contractor, the project contractor's builders profit.

6.06.03      Settlement Closing

The owner must submit the following documents to DHCR/HTFC for prior review and approval before a Settlement Closing can occur:

- (i) a Certificate of Occupancy for each building, issued by the responsible local agency;
- (ii) submission of all change orders;
- (iii) a verified release and certification by the owner, stating that all contractors, subcontractors, vendors, suppliers, laborers and mechanics have been paid, or that the owner will satisfy all outstanding balances and obtain conditional waivers of mechanics liens from all parties with open accounts;
- (iv) Disbursement Request Form showing the total amount due the owner from DHCR/HTFC minus any unsettled claims;
- (v) assignments of all project guarantees and warranties to the owner and to DHCR/HTFC;

**Office of Community Development**  
**Capital Programs Manual**

- (vi) as-built drawings for the project;
- (vii) copies of receipts for real property taxes and utility bills paid by the owner during construction;
- (viii) an updated title report from a title company which is satisfactory to DHCR/HTFC, and which:
  - (a) states that the title is good and marketable;
  - (b) states that title is free of any mortgage, lease, lien or other encumbrance(s) which has not been approved by DHCR/HTFC; and,
  - (c) commits to the issuance of a title insurance policy at Settlement Closing, insuring DHCR/HTFC and the owner;
- (ix) project architect's certification letter;
- (x) evidence that bank accounts have been established for:
  - (a) working capital funds;
  - (b) replacement reserve funds;
  - (c) operating reserve funds;
  - (d) real estate tax and escrow account funds; and
  - (e) tenant security deposits;
- (xi) evidence that the following types of insurance are in place:
  - (a) comprehensive general liability;
  - (b) fire casualty insurance;
  - (c) worker's compensation & disability insurance; and
  - (d) blanket position fidelity bond;
- (xii) a copy of the proposed deed;
- (xiii) a copy of the proposed lease;
- (xiv) certified survey;
- (xv) rent registration forms, if applicable;
- (xvi) note and mortgage;
- (xvii) construction lender's pay out letter;
- (xviii) assignment/satisfaction of mortgage;
- (xix) four 5" x 7" color prints of the project;

**Office of Community Development**  
**Capital Programs Manual**

- (xx) Occupancy Status Report Form;
- (xxi) OCD construction monitor's final report;
- (xxii) required licenses from all involved governmental regulatory agencies, if applicable; and
- (xxiii) all other requirements, as specified in the Purchase Contract, which must be satisfied prior to DHCR/HTFC's purchase of the project.
- (xxiv) approved Minority/Women Owned Business Enterprise Utilization Plan, if not submitted.
- (xxv) for HOME projects Section 3 Summary Report, if not submitted.
- (xxvi) approved Marketing Plan, if not submitted.
- (xxvii) if the ownership of the project will be transferred to another entity for the regulatory period, an explanation of the need for the transfer, documentation showing that the new owner is an eligible applicant under the program providing funding for the project and information on the staff who will be involved in administering the project following the transfer.

Upon receipt of the documents listed above, DHCR/HTFC will schedule the Settlement Closing which must be attended by representatives of the owner, the construction lender and OCD. At the Settlement Closing, DHCR/HTFC will pay the owner the DHCR/HTFC Contract Price, less the required two and one-half percent holdback amount and any amounts required to be withheld to complete the project's construction.

Any monies withheld to complete outstanding construction work, such as landscaping, will be released to the owner upon a satisfactory inspection of the unfinished work by the OCD construction monitor and approvals by the OCD staff architect and project manager.

**Office of Community Development**  
**Capital Programs Manual**

The two and one-half percent holdback amount, which is required for all DHCR/HTFC administered projects pursuant to the DHCR/HTFC Purchase Contract or Commitment, will be released to the owner after the required holdback period (one year and 15 days or, if a letter of credit was provided, one year and 30 days) and a satisfactory inspection of the project by the OCD construction monitor and staff architect for compliance with the DHCR/HTFC approved construction documents (and to ensure that there are no material or construction defects which may have occurred during the holdback period). It is the owner's responsibility to schedule the inspection with the project manager 30 days prior to the holdback release date. The owner's failure to do so may delay the release of the holdback amount. If the inspection reveals any items which need correction, the cost of repairing such items may be paid out of the holdback amount; any money remaining after such repair(s) will be released to the owner after satisfactory reinspection by DHCR/HTFC.