

October 18, 2022

Housing Authority Board of Commissioners  
Clackamas County

Approval of an Amendment to the Regulatory Metro Bond Agreement  
for the Fuller Road Station, changing the Low-Income Housing Tax Credit set-aside from  
Average Income to 40-60 model.

No County General Funds are involved.

<b>Purpose/Outcome</b>	The proposed Amendments to the Fuller Road Station(FRS) Metro Bond Regulatory and Loan Agreements to change the Low-Income Housing Tax Credit (LIHTC) set-asides from Average Income (AI) to a more traditional 40-60 model to ensure the property can stay in tax credit compliance. The outcome of this amendment would change the income restriction of 5 units from up to 80% area median income (AMI) to up to 60% AMI, two units from up to 50% AMI to up to 60% AMI, five three-bedrooms from 30% of AMI to 60% of AMI, and five two-bedroom units from up to 60% AMI to 30% of AMI.
<b>Dollar Amount and Fiscal Impact</b>	The Fuller Road Station project was awarded \$8.57M in Metro Affordable Housing Bond funding, which will remain unchanged.
<b>Funding Source</b>	Metro Affordable Housing Bonds funds
<b>Duration</b>	60 years
<b>Previous Board Action/Review</b>	07/14/20 - Staff presented award and allocation recommendations from the 2020 Affordable Housing Bond NOFA in a policy session 07/23/20 - The Board approved Fuller Road Station for Regional Affordable Housing Bond funding and authorized the projects to proceed to Metro for concept endorsement 12/17/20 – The Board approved Resolution No 1951 Authorizing Metro Bond Funds Loan Financing and allocating Project-Based Section 8 Vouchers to support the financial closing of Fuller Road Station.
<b>Strategic Plan Alignment</b>	This project aligns with the County’s strategic priority to ensure safe, healthy, and secure communities by increasing the inventory of affordable housing units in Clackamas County.
<b>Counsel Review</b>	Reviewed by Paul Dagle, outside counsel, on 09/22/22
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide a brief explanation. The project was awarded funding through a competitive process. This is an amendment to the resulting agreement.
<b>Contact Person</b>	Devin Ellin, Director of Housing Development, HACC 971-227-0472
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Housing Authority of Clackamas County (HACC), a Division of the Health Housing and Human Services (H3S) Department of Clackamas County, is seeking the approval of Amendments to the FRS Metro Bond Regulatory and Loan Agreements changing the LIHTC set-aside from AI to 40-60 for the FRS Project thus ensuring the ongoing compliance of this project with LIHTC regulations amid uncertain times.

**FULLER ROAD STATION (FRS) PROJECT DETAILS:**

FRS is a 100-unit building with a mix of 1, 2- & 3-bedroom units, located at 9608 SE Fuller Road in unincorporated Clackamas County. It is new construction, transit-oriented, 100% affordable multifamily housing development.

On December 17, 2020, the Housing Authority Board approved Metro Bond Funds Loan Financing and an allocation of Project-Based Section 8 Vouchers to support the financial closing of the FRS. At the time, the LIHTC set-aside of AI was selected to create a more inclusive community.

Construction commenced on FRS in April 2021, and the project received the Temporary Certificate of Occupancy on September 21, 2022. The development team is currently working on leasing units and expects the first residents to move in on or around October 17, 2022.

Due to the timing of this project lease-up and current challenges surrounding AI set-aside implementation, the project sponsor is requesting a change to a 40-60 set-aside to ensure Tax Credit compliance for FRS. The outcome of this amendment would be to change the income restriction of 5 units from up to 80% AMI to up to 60% AMI, two units from up to 50% AMI to up to 60% AMI, five three-bedrooms from 30% of AMI to 60% of AMI, and five two-bedroom units from up to 60% AMI to 30% of AMI as detailed in the table.

Original Metro Bond Agreement			Proposed Metro Bond Agreement Change		
UNIT TYPE	Avg. Median Income%	Number of Units	UNIT TYPE	Avg. Median Income %	Number of Units
1 bed	30%	12	1 bed	30%	12
1 bed	80%	5	1 bed	60%	5
2 bed	30%	5	2 bed	30%	12
2 bed	50%	3	2 bed	50%	3
2 bed	60%	54	2 bed	60%	45
			2 bed	60%	2
2 bed - Manager		1	2 bed - Manager		1
3 bed	30%	8	3 bed	30%	3
3 bed	50%	4	3 bed	50%	2
3 bed	60%	8	3 bed	60%	3
			3 bed	60%	12
		100			100

**LIHTC SET-ASIDES:**

In 2018, Congress changed LIHTC, adding an income-averaging occupancy set-aside to the previous two set-asides of 20-50 and 40-60. The 20-50 set-aside is for projects in which at least 20% of the set-aside units are to be occupied by households with incomes no higher than 50% AMI, and the 40-60 set-aside is for projects in which at least 40% of the units were restricted to households at or below 60% AMI.

AI set-aside allows LIHTC owners to elect to serve households with incomes of up to 80% of AMI and have these households qualify as LIHTC units, so long as the average income/rent limit for the entire project remains at 60% or less of AMI.

The policy intent behind the AI set-aside was meant to develop more inclusive communities and to enable owners to offset lower rents, for extremely low and very low-income households, by charging higher rents to households above 60% of AMI, therefore, providing developments the

ability to maintain financial feasibility while providing a deeper level of affordability than may be otherwise possible.

However, since the IRS issued the AI rule-making at the end of 2020, stakeholders have responded with a unified voice of concern about implementing AI set-asides and the risks involved.

The current IRS rules surrounding AI set-aside conflict with another financial layering, such as Section 8 and HOME. These federal subsidies depend on the ability to re-designate units as needed based on the residents' circumstances in the property; however, under the current AI set-aside rules, a unit's affordability designation is fixed and would not provide the flexibility necessary for projects to utilize these additional subsidies.

There is also the risk that if even one unit is out of compliance, it will result in the entire project losing tax credits. This is particularly important during the first year of the tax credit period.

Treasury is aware of these implementation issues with AI set-asides and is drafting a final rule which is anticipated to be released sometime this fall. Staff is hopeful the new rule may resolve some of the problems and make the AI set-aside more workable and consistent with the existing LIHTC program; however, the extent of the improvement is unknown at this time and may make take several months for interpretation for the new rules to become codified at the state level.

Unfortunately, this rule-making timeline does not align with the FRS leasing timeline, which is already underway. With the set aside in question, it leaves a handful of units in limbo and lease-up stalled.

The FRS tax-credit investor and Oregon Housing and Community Services have already approved the set-aside change for FRS. In addition, HACC staff has reached out to several industry experts, including members of the Housing Advisory Board, and there is consensus that there is too much uncertainty and risk under the current AI guidance and general agreement that changing the LIHTC set-aside for FRS from AI to 40-60 is prudent.

**RECOMMENDATION:**

Staff recommends the Board approve the amended FRS Metro Bond Regulatory and Loan Agreements changing the LIHTC set-aside from IA to 40-60 and authorize Toni Karter, Interim Director of the Housing Authority, to sign on behalf of the Housing Authority Board on the Agreements according to the delegation in Resolution #1951.

**ATTACHMENTS:**

- Amended Regulatory Agreement
- Amended Loan Agreement
- Resolution #1951

Respectfully submitted,



Rodney A. Cook, Director  
Health, Housing, and Human Services

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

**Elliott, Ostrander & Preston, P.C.**  
**Attention: C. Paul Dagle**  
**707 SW Washington Street, Suite 1500**  
**Portland, Oregon 97205**

**FIRST AMENDMENT  
TO  
REGULATORY AGREEMENT**

THIS FIRST AMENDMENT TO REGULATORY AGREEMENT (this “**First Amendment**”) is made and entered into this 1st day of October, 2022, by and between **HOUSING AUTHORITY OF CLACKAMAS COUNTY**, a public body corporate and politic of Clackamas County, Oregon (“**County**”), and **GREEN LINE AFFORDABLE DEVELOPMENT LIMITED PARTNERSHIP**, an Oregon limited partnership (“**Owner**”).

RECITALS

A. County and Owner are the parties to that certain Regulatory Agreement dated as of April 9th, 2021 (the “**Regulatory Agreement**”), pursuant to which County agreed to loan Metro Housing Bond funds to Owner in the amount of \$8,570,000.in connection with an affordable housing project constructed on real property of Owner located at 9730 S.E. Fuller Road, Happy Valley, Oregon, as more fully described on **Exhibit “A”** attached hereto (the “**Property**”). The Regulatory Agreement was recorded in the Official Records of Clackamas County, Oregon on April 9th, 2021 as Instrument No. 2021-037059.

B. County and Owner desire to amend the Regulatory Agreement in the manner described in this First Amendment in order to, among other things, change the Low Income Housing Tax Credit set-aside from the Average Income Test to the 40-60 Test.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Accuracy of Recitals.** The parties hereby acknowledge the accuracy of the Recitals which are incorporated herein by reference.

2. **Counterparts.** This First Amendment may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement. For purposes of this First Amendment, facsimile signatures shall be deemed to be original signatures, and shall be followed by the immediate overnight delivery of original signature pages.

3. **Section 2.1 – Project Requirements, Management.** Section 2.1 is hereby deleted and replaced as follows:

At all times during the Affordability Period, Owner will provide the following Dwelling Units for the Project:

<b>Unit Size</b>	<b>No. of Units</b>	<b>MFI%*</b>	<b>PBV</b>
1-BR, 1-BA	12	30%	12
1-BR, 1-BA	5	60%	
2-BR, 1.5-BA	12	30%	12
2-BR, 1.5-BA	3	30%	3
2-BR, 1.5-BA	47	60%	
2-BR, 1.5-BA	1	0% (Manager)	
3-BR, 1.5-BA	3	30%	3
3-BR, 1.5-BA	2	50%	
3-BR, 1.5-BA	15	60%	
<b>Total</b>	<b>100</b>	<b>50%</b>	<b>30</b>

\*If the Affordability Period is extended pursuant to the Note, MFI for the Dwelling Units below 60% of MFI may be increased up to 60% MFI for years 61 through 90.

2.1.1 Loss of Subsidy: MFI for the Dwelling Units with PBV assistance will be restricted to 50% for as long as the PBV subsidy is in place for such Dwelling Units. If the subsidy becomes unavailable, Owner can request the County authorize an increase in MFI up to 60%. Allowable Rents may be increased subject to rent control limitations as then applicable under State law.

2.1.2 Failure to Perform: If the Project is not performing financially, as demonstrated by a debt-to-coverage ratio less than 1.0, and the County determines that the Project is at risk of falling into disrepair, Owner can request the County to authorize an increase in MFI of Dwelling Units without PBV assistance to up to 60%, subject to the approval of the Equity Investor and Senior Permanent Lender. Allowable Rents may be increased subject to rent control limitations as then applicable under State law.

2.1.3 Extension of Affordability Period: If the Affordability Period is extended pursuant to the terms of the Note, MFI for all of the Dwelling Units below 60% of MFI may be increased up to 60% MFI for years 61 through 90 in the sole discretion of the Owner.

4. Attorney Fees. Upon execution hereof Owner shall reimburse County for its attorney fees in connection with all work related to this First Amendment, and any related amendments to other Metro loan documents for the Project, in the amount of \$2,500.

5. Remaining Terms and Conditions. Except as modified by this First Amendment and except to the extent that such terms may be inconsistent with the provisions of this First Amendment, all of the terms and provisions of the Regulatory Agreement shall remain in full force and effect.

*[The signature pages follow.]*

**SIGNATURE PAGES**

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

**OWNER:**

**GREEN LINE AFFORDABLE DEVELOPMENT LIMITED PARTNERSHIP,**  
an Oregon limited partnership

By: GM Fuller Station LLC,  
an Oregon limited liability company,  
its General Partner

By: Guardian Development LLC,  
an Oregon limited liability company,  
its Manager

By: Guardian Real Estate Services LLC,  
an Oregon limited liability company,  
its Manager

By: Guardian Holding, Inc.,  
an Oregon corporation,  
its Manager

By: \_\_\_\_\_  
Thomas B. Brenneke, President

STATE OF OREGON )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of October, 2022, by Thomas B. Brenneke, the President of Guardian Holding, Inc., the Manager of Guardian Real Estate Services LLC, the Manager of Guardian Development LLC, the Manager of GM Fuller Station LLC, the General Partner of Green Line Affordable Development Limited Partnership on behalf of said Partnership.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**COUNTY:**

**HOUSING AUTHORITY OF CLACKAMAS COUNTY,**  
a public body corporate and politic of Clackamas County, Oregon

By: \_\_\_\_\_  
Authorized Representative

STATE OF OREGON                    )  
  ) SS  
COUNTY OF CLACKAMAS        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of October, 2022, by Toni Karter, in her capacity as Authorized Representative and Interim Executive Director of the Housing Authority of Clackamas County.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My commission expires: \_\_\_\_\_



**EXHIBIT A – LEGAL DESCRIPTION**

Parcel 1, PARTITION PLAT 2020-098, in the County of Clackamas and State of Oregon.

FIRST AMENDMENT  
TO  
LOAN AGREEMENT

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this “**First Amendment**”) is made and entered into this 1st day of October, 2022, by and between **HOUSING AUTHORITY OF CLACKAMAS COUNTY**, a public body corporate and politic of Clackamas County, Oregon (“**County**”), and **GREEN LINE AFFORDABLE DEVELOPMENT LIMITED PARTNERSHIP**, an Oregon limited partnership (“**Owner**”).

RECITALS

A. County and Owner are the parties to that certain Loan Agreement dated as of April 9th, 2021 (the “**Loan Agreement**”), pursuant to which County agreed to loan Metro Housing Bond funds to Owner in the amount of \$8,570,000.in connection with an affordable housing project constructed on real property of Owner located at 9730 S.E. Fuller Road, Happy Valley, Oregon, as more fully described on **Exhibit “A”** attached hereto (the “**Property**”).

B. County and Owner desire to amend the Loan Agreement in the manner described in this First Amendment in order to, among other things, change the Low Income Housing Tax Credit set-aside from the Average Income Test to the 40-60 Test.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Accuracy of Recitals.** The parties hereby acknowledge the accuracy of the Recitals which are incorporated herein by reference.

2. **Counterparts.** This First Amendment may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement. For purposes of this First Amendment, facsimile signatures shall be deemed to be original signatures, and shall be followed by the immediate overnight delivery of original signature pages.

3. **Section 4.5 – Affordable Units.** Section 4.5(b) is hereby deleted and replaced as follows:

**DRAFT OF SEPTEMBER 27, 2022**

At all times during the Affordability Period (\*), Borrower will provide the following units for the Project:

<b>Unit Size</b>	<b>No. of Units</b>	<b>MFI%*</b>	<b>PBV</b>
1-BR, 1-BA	12	30%	12
1-BR, 1-BA	5	60%	
2-BR, 1.5-BA	12	30%	12
2-BR, 1.5-BA	3	30%	3
2-BR, 1.5-BA	47	60%	
2-BR, 1.5-BA	1	0% (Manager)	
3-BR, 1.5-BA	3	30%	3
3-BR, 1.5-BA	2	50%	
3-BR, 1.5-BA	15	60%	
<b>Total</b>	100	50%	30

\*If the Affordability Period is extended pursuant to the Note, MFI for the dwelling units below 60% of MFI may be increased up to 60% MFI for years 61 through 90.

4. **Attorney Fees.** Upon execution hereof Owner shall reimburse County for its attorney fees in connection with all work related to this First Amendment, and any related amendments to other Metro loan documents for the Project, in the amount of \$2,500.

5. **Remaining Terms and Conditions.** Except as modified by this First Amendment and except to the extent that such terms may be inconsistent with the provisions of this First Amendment, all of the terms and provisions of the Loan Agreement shall remain in full force and effect.

*[The signature pages follow.]*

SIGNATURE PAGES

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

OWNER:

GREEN LINE AFFORDABLE DEVELOPMENT LIMITED PARTNERSHIP, an Oregon limited partnership

By: GM Fuller Station LLC, an Oregon limited liability company, its General Partner

By: Guardian Development LLC, an Oregon limited liability company, its Manager

By: Guardian Real Estate Services LLC, an Oregon limited liability company, its Manager

By: Guardian Holding, Inc., an Oregon corporation, its Manager

By: \_\_\_\_\_ Thomas B. Brenneke, President

STATE OF OREGON ) ) SS COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of October, 2022, by Thomas B. Brenneke, the President of Guardian Holding, Inc., the Manager of Guardian Real Estate Services LLC, the Manager of Guardian Development LLC, the Manager of GM Fuller Station LLC, the General Partner of Green Line Affordable Development Limited Partnership on behalf of said Partnership.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

COUNTY:

HOUSING AUTHORITY OF CLACKAMAS COUNTY,  
a public body corporate and politic of Clackamas County, Oregon

By: \_\_\_\_\_  
Authorized Representative

STATE OF OREGON                    )  
  ) SS  
COUNTY OF CLACKAMAS        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
October, 2022, by Toni Karter, in her capacity as Authorized Representative and  
Interim Executive Director of the Housing Authority of Clackamas County.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**DRAFT OF SEPTEMBER 27, 2022**

**EXHIBIT A – LEGAL DESCRIPTION**

Parcel 1, PARTITION PLAT 2020-098, in the County of Clackamas and State of Oregon.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF THE HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON**

In the Matter of Authorizing the Metro  
Bond Funds Loan Financing and Related  
Matters, for the Fuller Station Apartments  
Project



Resolution No. 1951  
Page 1 of 3

WHEREAS, the Housing Authority of Clackamas County ("Authority") works to provide affordable multifamily housing for persons and families of lower income pursuant to Oregon Revised Statutes ("ORS") 456.005 through 456.235; and,

WHEREAS, the Metro Housing Bond sponsored by Metro was approved by voters in the Metro Region in 2018 to provide funding within the Metro Region for Affordable Housing ("**Metro Bond Funds**"); and

WHEREAS, the Authority acting in behalf of Clackamas County, Oregon has been designated as the agency for the County to apply for such Metro Bond Funds and to loan such funds to developers of Affordable Housing; and

WHEREAS, Green Line Affordable Development Limited Partnership (the "**Partnership**") applied to the Authority for a loan of Metro Bond Funds in the amount of Ten Million Dollars (\$10,000,000) (the "**Metro Bonds Funds Loan**") to be used in connection with the development of Fuller Station Apartments, with a property address of 9608 S.E. Fuller Road, Happy Valley, Oregon (the "**Project**"); and

WHEREAS, the Authority has applied to Metro to be allocated Metro Bond Funds in the amount of Ten Million Dollars (\$10,000,000) to be loaned to the Partnership to use in connection with the development of the Project and has received final approval for the award of such Metro Bond Funds; and

WHEREAS, the United States Department of Housing and Urban Development (HUD) requires the approval of the Authority in connection with their consideration and approval of any award of Project Based Section 8 Vouchers; and

WHEREAS, the Authority will apply to HUD for such approval; and

WHEREAS, subject to the approval of HUD, the Authority desires to award 25 Project Based Section 8 Vouchers to the Partnership to be awarded to the Project on its completion; and

WHEREAS, upon receipt of HUD approval, the Authority desires to enter into an Agreement to Enter Into A Housing Assistance Payment Contract (the "**AHAP Contract**") which will provide that upon timely completion of the Project the 25 Section 8 Project Vouchers will be awarded pursuant to the Section 8 Project-Based Voucher Program Housing Assistance Payment Contract (the "**HAP Contract**");

NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY

Section 1. Approve Metro Bond Funds Loan to the Partnership.

BE IT RESOLVED, that the Authority is authorized to negotiate, execute and deliver on behalf of the Authority the Metro Bond Funds Loan Documents listed on the attached **Exhibit A** (whether bearing the name listed or names to similar effect) and such other documents as reasonably may be required in connection with the loan of the Metro Bond Funds all in the form approved by any single Authorized Representative (such approval to be conclusively demonstrated by the signature of any single Authorized Representative on such documents).

Section 2. Approve Award of 25 Project Based Vouchers.

BE IT RESOLVED, that, subject to HUD approval, the Authority is authorized to award twenty-five (25) Section 8 Project Based Vouchers to the Partnership (the "***Project Based Vouchers***"); and

BE IT FURTHER RESOLVED, that the Authority is authorized to negotiate, execute and deliver on behalf of the Authority the AHAP Contract with the Partnership relating to the Project Based Vouchers listed on the attached **Exhibit A** (whether bearing the name listed or names to similar effect) and such other documents as reasonably may be required in connection with the award of the Project Based Vouchers all in the form approved by any single Authorized Representative (such approval to be conclusively demonstrated by the signature of any single Authorized Representative on such documents).

Section 3. Delegation.

BE IT RESOLVED, that the Executive Director of the Authority, the Director of Health, Housing and Human Services, and the Director of Housing Development is each an Authorized Representative, as that term is used in these Resolutions, and each may individually, on behalf of the Authority, and without further action by the Board, finalize the terms of, execute, acknowledge, and deliver the actions and documents authorized herein.

Section 4. General Resolutions Authorizing and Ratifying Other Actions.

BE IT RESOLVED, that any Authorized Representative is authorized to negotiate, execute and deliver on behalf of the Authority such other agreements, certificates, and documents, and to take or authorize to be taken all such other actions any Authorized Representative shall deem necessary or desirable to carry out the transactions contemplated by the foregoing resolutions (such determination to be conclusively demonstrated by the signature of any single Authorized Representative on such document); and

BE IT FURTHER RESOLVED, that to the extent any action, agreement, document or certification has heretofore been taken, executed, delivered or performed by an Authorized Representative named in these Resolutions on behalf of the Authority to carry out the transactions contemplated by the foregoing resolutions, the same is hereby ratified and affirmed.



NOW, THEREFORE, BE IT RESOLVED, that the Chair or one of the Directors may finalize negotiations, execute, acknowledge and deliver the Documents and any other documents and take any actions that are necessary or desirable to complete the Documents, this Resolution and Order.

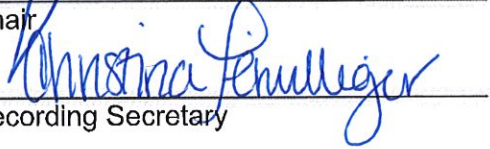
DATED THIS 17th DAY OF DECEMBER, 2020

BOARD OF COMMISSIONERS FOR THE HOUSING  
AUTHORITY OF CLACKAMAS COUNTY



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Chair



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Recording Secretary

## **EXHIBIT A**

### **Metro Funds Loan Documents**

1. Loan Agreement (Fuller Station Apartments)
2. Metro Bond Program Promissory Note (Fuller Station Apartments)
3. Line of Credit Trust Deed, Security Agreement, Fixture Filing and Assignment of Leases and Rents (Fuller Station Apartments)
4. Regulatory Agreement
5. Replacement Cost and Capital Improvements Agreement

### **Project Based Voucher Documents**

1. Agreement to Enter into a Housing Assistance Payment Contract and any applicable Riders.
2. Housing Assistance Payment Payments (HAP) Contract and any applicable Riders