

APPENDIX 3

FINANCIAL CLOSE PROCEDURES AND CONDITIONS

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1. DEFINITIONS AND SECTION REFERENCES

1.1. Definitions. In this Appendix, in addition to the definitions set out in this Project Agreement, the following capitalized terms have the meanings set forth below:

“Construction Cost Index” means the Construction Cost Index for the 20-city average as published by Engineering News-Record, for which the base year is 1913 United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1913 = 100.

“County Conditions Precedent” has the meaning set forth in Section 3.2 of this Appendix.

“Developer Conditions Precedent” has the meaning set forth in Section 3.1 of this Appendix.

“Escrow Agent” means U.S. Bank National Association.

“Financial Close Amendment” shall have the meaning set forth in Section 7.2 of this Appendix.

“Key Financial Event” means a fluctuation in the Benchmark Interest Rates during the Benchmark Interest Rate Protection Period that would result in an upward adjustment to the Capital Charge pursuant to Section 11 of more than 20%, or, in the reasonable opinion of the County, is likely to result in an upward adjustment to the Capital Charge of more than 20%.

“Market Disruption Event” means (i) a general banking moratorium has been declared by either federal or New York authorities having jurisdiction and is in force, (ii) the Benchmark Interest Rates are not available to the market, including for example the applicable Bloomberg screen page is not available or is not publishing such rates and no alternative commercially available source for obtaining such rates at such time has been generally recognized by the financial markets as an accurate and reliable source for the quotation of such rates; (iii) there shall have occurred any outbreak of hostilities or escalation of current hostilities, declaration by the United States of a national or international emergency or war or the occurrence of any other calamity or crisis, the effect of which, in each case, on financial markets of the United States is such that it would materially adversely affect the applicable debt market; (iv) there shall be in force a general suspension of trading on the New York Stock Exchange or any major United States securities exchange, or the establishment of minimum or maximum price or prices on any such major United States securities exchange for trading securities shall have been fixed and be in force; (v) the occurrence of a material disruption in commercial banking or securities settlement, payment or clearance services in the United States, the effect, directly or indirectly of which on the financial markets of the United States that materially adversely affect the market for the applicable debt instruments; and (vi) the market price of the applicable debt instruments, or the market price or sale thereof generally of obligations of the general character of the applicable debt instruments, would be adversely affected because (i) additional material restrictions not in force as of the Effective Date shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange or (ii) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the applicable debt instruments or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, financial institutions.

“Proposal Validity Period End Date” means January 27, 2020.

1.2. Section References. All Section references in this Appendix are to Sections of this Appendix, except Section references explicitly made to Sections or Articles of this Project Agreement.

2. FINANCIAL CLOSE

2.1. Financial Close Conditions. Financial Close will occur upon:

- (a) Satisfaction (or waiver by the County) of each of the Developer Conditions Precedent as identified below in Section 3.1 of this Appendix; and
- (b) Satisfaction (or waiver by the Developer) of each of the County Conditions Precedent as identified in Section 3.2 of this Appendix.

2.2. Closing Checklist and Timeline. Without limiting or otherwise modifying either party's obligations under this Project Agreement in respect of Financial Close:

- (a) No later than five Business Days following the Effective Date, the Developer shall submit to the County for its acceptance, acting reasonably, a closing checklist and timeline identifying all documents, submissions and other actions (including actions of the parties and any required action of a third party) then reasonably anticipated by the Developer to be necessary to achieve Financial Close by the Financial Close Deadline; and
- (b) The parties shall use all reasonable efforts to deliver, respond to and comment on documents, including draft documents, necessary to satisfy the Financial Close Conditions in conformity with the closing checklist and timeline, as accepted by the County in accordance with Section 2.2.(a) above.

2.3. Certifications. Any matter that must be "certified" by a party under this Appendix must be certified in writing by an authorized representative of such party and any such written certification must be in form and substance reasonably acceptable to the party receiving such certification.

3. CONDITIONS PRECEDENT TO FINANCIAL CLOSE

3.1. Developer Conditions Precedent. The Developer shall satisfy the following conditions precedent to Financial Close (each a "**Developer Conditions Precedent**"):

- (a) The Senior Financing Agreements, the equity contribution agreements, the Project Contracts and any amendments or supplements thereto, are in a form and substance reasonably acceptable to the County (the County may only withhold its approval if the relevant document fails to comply with the terms of this Project Agreement, or is otherwise inconsistent with the relevant term sheet provided in the Proposal, as modified on account of the occurrence of Key Financial Events); and the Developer has provided fully executed versions of each such document to the County that are certified by the Developer as being true, complete and accurate copies of the originals;
- (b) The Developer has provided the County with a counterpart of the Lenders' Remedies Agreement and the Project Contractor Collateral Agreements, in each case, (1) executed by an authorized officer of each party thereto other than the County and (2) in the form set forth in the Transaction Form C;

- (c) All conditions precedent to closing and funding the Senior Debt under the Senior Financing Agreements have been met (or otherwise waived) and the Developer has provided the County with a certificate evidencing the same;
- (d) The Developer has delivered: (1) to the Escrow Agent not less than five Business Days prior to the anticipated Benchmark Interest Rate Adjustment Date, (i) an updated unrestricted electronic version of the Initial Base Case Financial Model, which version incorporates any amendments made between the Effective Date and such day, and (ii) the books and documents setting forth all assumptions, calculations and methodology used in the preparation of the financial model and any other documentation necessary or reasonably requested by the County to operate the financial model; and (2) to the County on or before the Financial Close Date, an update to the model audit report previously submitted by the Developer (dated July 30, 2019), which update shall be in compliance with Section 17.2 (Financial Model Updates) of this Project Agreement;
- (e) All representations and warranties of the Developer under this Project Agreement are true and correct in all material respects when made and at the Financial Close Date, and the Developer has delivered to the County a certificate certifying the same;
- (f) On the Financial Close Date, there is no Developer Event of Default (or event that, with the passage of time or the giving of any notice, would become a Developer Event of Default);
- (g) The Developer has provided the County with an insurance binder or copies of certificates of insurance for all Required Insurance required to be in place on or before Financial Close and a certificate from the Developer certifying compliance with the Insurance Requirements as of Financial Close and that all Required Insurance has been obtained and are in full force and effect;
- (h) The Developer has provided the County with such documents and certificates as the County may reasonably request evidencing the organization, existence and good standing of the Developer, the authorization of the entry by the Developer into this Project Agreement and the Project Contracts to which it is a party, all in form and substance reasonably satisfactory to the County;
- (i) The Developer has provided the County with a legal opinion of the Developer's counsel in form and substance customary for project finance transactions; and
- (j) The Developer has executed the escrow agreement in accordance with the requirements set out in Attachment 3A (Financial Model Escrow).

3.2. County Conditions Precedent. The County shall satisfy the following conditions precedent to Financial Close (each a "**County Conditions Precedent**"):

- (a) All representations and warranties of the County under this Project Agreement are true and correct in all material respects when made and, at the Financial Close Date, the County has performed and complied with all applicable material covenants and obligations of the County under this Project Agreement to have been performed or complied with as of the Financial Close Date;
- (b) Subject to Section 3.1(b), the County has executed and delivered to the Developer and each other party thereto the Lenders' Remedies Agreement and the Project Contractor Collateral Agreements;

- (c) The County has cooperated with the Developer in attending meetings requiring the County's participation and providing disclosure information to the Developer about the County;
- (d) The Miami-Dade Board of County Commissioners has adopted a resolution authorizing execution of the Project Agreement and the County has provided a copy of the resolution to the Developer;
- (e) On the Financial Close Date, there is no County Event of Default (or event that, with the passage of time or the giving of any notice, would become a County Event of Default); and
- (f) The County has executed the escrow agreement in accordance with the requirements set out in Attachment 3A (Financial Model Escrow).

4. KEY FINANCIAL EVENTS AND MARKET DISRUPTION EVENTS

4.1. County Rights with Respect to Key Financial Events. If a Key Financial Event occurs, then the County may, in its discretion, by written notice to the Developer:

- (a) Terminate this Project Agreement pursuant to Section 5.1; or
- (b) Take any action pursuant to Section 4.2.

4.2. Mitigation of Key Financial Events Prior to Financial Close. If a Key Financial Event has occurred and the County elects to take action to mitigate the impact of the Key Financial Event, the County may, in consultation with the Developer and upon approval by its Board of County Commissioners, attempt to mitigate the impact of the event by:

- (a) Increasing the Capital Charge by an amount in excess of twenty percent (20%) of the amount of the Capital Charge on the Effective Date;
- (b) Requiring the Developer to introduce alternative sources of debt or debt structures into its financial plan, in which case the County may require the Developer to use reasonable efforts to conduct a timely, transparent financing competition to identify and arrange for the lowest-priced debt financing commercially available on terms reasonably satisfactory to the Developer; provided, that the Developer shall be entitled to recoup from the County the reasonably incurred costs associated with such a funding competition; or
- (c) Taking any other action mutually agreed upon by the County and the Developer, including those which may be proposed by the Developer to mitigate any material adverse change in the Developer's overall risk profile with respect to the Project.

4.3. Developer Rights with Respect to Market Disruption Events. If a Market Disruption Event occurs, then the Developer may, in its discretion, by written notice to the County:

- (a) Terminate this Project Agreement pursuant to Section 5.2 or take any of the following actions:
 - (i) Incorporate alternative sources of debt or debt structures into its financial plan, in which case the County may require the Developer to use reasonable efforts to conduct a timely, transparent financing competition to identify and arrange for the lowest-priced debt financing commercially available on terms reasonably satisfactory to the Developer; provided, however, that the Developer shall be entitled to recoup from the County the reasonably incurred costs associated with such a funding competition; or

- (ii) Take any other action mutually agreed by the County and the Developer, including those which may be proposed by the Developer to mitigate any material adverse change in the Developer's overall risk profile with respect to the Project.

5. TERMINATION PRIOR TO FINANCIAL CLOSE DEADLINE

5.1. County Termination Prior to Financial Close Deadline – Key Financial Events. To the extent that the County makes an election pursuant to Section 4.1(a), then this Project Agreement will terminate upon 15 days' written notice to the Developer and, in such event, the County shall have no right to draw on the Financial Close Security and shall promptly return the Financial Close Security; provided, that the County will suspend its notice of termination, if within 10 days after delivery such notice to the Developer, the Developer confirms to the County in writing that:

- (a) The Developer shall limit the relevant increase in the Capital Charge to 20% or less, without any changes in the Term, or any other changes in the Capital Charge or other Proposal commitments or terms and conditions of this Project Agreement; and
- (b) The Developer shall conduct, at its own cost and expense, a timely, transparent process to identify and arrange for the lowest-priced debt financing commercially available on terms reasonably satisfactory to the Developer;

and provided, further, that the County's notice of termination will remain suspended for a maximum period equal to the lesser of (1) the period during which the Developer diligently pursues such debt financing or (2) 90 days after the date on which the Developer has provided such written confirmation to the County. At the end of such suspension period the County is not entitled to draw on the Financial Close Security and shall promptly return the Financial Close Security to the Developer and the obligations of the parties will be the same as if the Developer's election pursuant to this Section 5.1 had not occurred. If the County terminates this Project Agreement pursuant to this Section 5.1 and the Developer has complied with all of its obligations under this Project Agreement at the time of termination, the County shall pay the Developer the Financial Close Termination Sum in accordance with and as determined pursuant to Appendix 13 (Compensation on Termination).

5.2. Developer Termination Prior to Financial Close Deadline. The Developer may terminate this Project Agreement without forfeiting its Financial Close Security if:

- (a) a Key Financial Event occurs and one of the following occur:
 - (i) The County notifies the Developer that it will not take any action pursuant to Section 4.2;
 - (ii) The County takes action pursuant to Section 4.2 but, after taking into account the effect of such action, the Equity IRR would be less than the Equity IRR would have been had the Key Financial Event not occurred; or
 - (iii) The County does not, within 25 Business Days of receiving a written request from the Developer, notify the Developer of its intent to take any action pursuant to Section 4.2; provided, that the Developer shall not under such circumstances be required to consummate Financial Close until such period shall have lapsed; or
- (b) the Developer exercises its termination right under Section 4.3.

Upon such termination, if the Developer has complied with all of its obligations under this Project Agreement, and so long as the County is not disputing in good faith pursuant to Article 18 (Dispute Resolution) whether the Developer has the right to terminate this Project Agreement, the County, within five Business Days after the County's receipt of notice of such termination, shall return to the Developer the Financial Close Security and shall pay the Developer the Financial Close Termination Sum in accordance with and as determined pursuant to Appendix 13 (Compensation on Termination).

6. IMPLEMENTATION OF COUNTY AND DEVELOPER ELECTIONS

To the extent that the County makes an election pursuant to Section 4.2 or the Developer issues a written notice pursuant to Section 5.1, then:

- (a) If requested by the Developer, the County will extend the Financial Close Deadline by such time as is reasonable given the action that the County elected to take; provided that the Developer extends the expiration date of the Financial Close Security to no earlier than 10 Business Days following the extended Financial Close Deadline; and
- (b) The Developer and the County will proceed in taking all actions required to achieve Financial Close in accordance with the requirements of this Project Agreement.

7. ACHIEVEMENT OF FINANCIAL CLOSE

7.1. Delivery of Base Case Financial Model. The Developer shall deliver to the Escrow Agent, on or before the Business Day following Financial Close, an electronic version of the Base Case Financial Model, which version incorporates any amendments agreed to by the County and the Developer between the Effective Date and the Financial Close Date (including any revision to the Capital Charge pursuant to Section 11), together with the books and documents setting forth all assumptions, calculations and methodology used in the preparation of the Base Case Financial Model and any other documentation necessary or reasonably requested by the County to operate the Base Case Financial Model. The Developer shall ensure that the Base Case Financial Model:

- (a) Is prepared by or on behalf of the Developer in good faith and in accordance with generally accepted standards prevailing for the preparation of similar models in connection with the project financing of major public works projects of a similar value and nature;
- (b) Is audited and verified by an independent recognized model auditor, with a copy of the audit opinion letter provided to the County;
- (c) Is the financial model provided to the Senior Lenders for Financial Close purposes and used as the basis for the decision by the Senior Lenders to enter into the Senior Financing Agreements;
- (d) Fairly discloses all material cost, revenue and other financial assumptions and projections used by the Developer in determining to enter into this Project Agreement; and
- (e) Is treated as Confidential Information in accordance with Section 25.13 (Confidentiality) of this Project Agreement.

7.2. Delivery of Proposed Financial Close Amendment. The Developer shall deliver to the County, on or before the Business Day following Financial Close, proposed revisions to this Project Agreement to reflect any adjustments or amendments which have been accepted or

agreed, as applicable, by the County and the Developer in accordance with Section 11, including the replacement of the Initial Base Case Financial Model as presented in Appendix 17 (Financial Model) with the Base Case Financial Model delivered pursuant to Section 7.1 (upon agreement of the parties, acting reasonably, the “**Financial Close Amendment**”).

7.3. Return of Financial Security and Execution of Financial Close Amendments. Upon the satisfaction of each of the Financial Close Conditions identified in Section 2.1, delivery of confirmation of the Required Insurance in accordance with Section 3.1(g) and agreement among the parties, acting reasonably, as to any Financial Close Amendment, (1) the County and the Developer shall execute a Contract Administration Memorandum specifying the Financial Close Date, which Financial Close Date shall take place on or before the Proposal Validity Period End Date or, if the Developer Conditions Precedent or the County Conditions Precedent have not been satisfied with sufficient time to schedule the Financial Close Date on or before the Proposal Validity Period, then the Financial Close Date shall take place on or after February 1, 2020, (2) the County shall return the Financial Close Security to the Developer within 5 Business Days of execution of the aforementioned Contract Administration Memorandum, and (3) the parties shall enter into the Financial Close Amendment.

8. FAILURE TO ACHIEVE FINANCIAL CLOSE BY FINANCIAL CLOSE DEADLINE

8.1. County Termination for Failure to Achieve Financial Close Deadline. The County may terminate this Project Agreement by written notice to the Developer with immediate effect if all of the following conditions have occurred: (1) no Key Financial Event or Market Disruption Event exists; (2) this Project Agreement has not been terminated pursuant to Section 5; (3) each County Conditions Precedent (other than the conditions specified in Section 3.2(c)) have been satisfied; and (4) any Developer Conditions Precedent is not satisfied or waived in writing by the County on or before the Financial Close Deadline, as such date may be extended under other sections of this Appendix. If the County terminates this Project Agreement under this Section 8.1, the County is entitled to draw and retain the full amount of the Financial Close Security as the sole remedy against the Developer hereunder.

8.2. Developer Termination for Failure to Achieve Financial Close Deadline. If each Developer Conditions Precedent (other than the conditions specified in Sections 3.1(c) and 3.1(e) (in the case of Section 3.1(e), to the extent such Section requires that representations and warranties be correct as at the Financial Close Date; provided that such representations and warranties are correct as at the date when the Developer exercises its rights under this Section 8.2) has been satisfied and any County Conditions Precedent is not satisfied (unless otherwise agreed by the parties) on or before the Financial Close Deadline, then the Developer may terminate this Project Agreement by written notice to the County with immediate effect and the County shall not be entitled to draw on the Financial Close Security. Within 10 days following receipt of termination, the County shall return the Financial Close Security to the Developer and shall pay the Developer the Financial Close Termination Sum in accordance with and as determined pursuant to Appendix 13 (Compensation on Termination).

9. COUNTY CONVENIENCE TERMINATION RIGHT PRIOR TO FINANCIAL CLOSE

The County may terminate this Project Agreement for convenience in accordance with Section 22.2(A) (County Termination Rights) of this Project Agreement at any time during the Financing Period. If the County exercises such right, the County shall return the Financial Close Security to the Developer and shall pay the Developer the Financial Close Termination Sum in accordance with and as determined pursuant to Appendix 13 (Compensation on Termination).

10. POST TERMINATION OBLIGATIONS

If this Project Agreement terminates pursuant to this Appendix, neither party will have any obligation or liability to the other party, except:

- (a) Any County entitlement to draw on the Financial Close Security as and to the extent provided in this Appendix;
- (b) Any obligation of the County to return the Financial Close Security and pay the Financial Close Termination Sum as and to the extent provided in this Appendix and Appendix 13 (Compensation on Termination);
- (c) In respect of any antecedent breach of this Project Agreement (except for any breach contemplated in Section 8.1 or Section 8.2); and
- (d) As provided in Section 3.2 (Survival) of this Project Agreement.

11. REVISION OF THE CAPITAL CHARGE TO REFLECT CHANGES IN BENCHMARK INTEREST RATE RISK

11.1. Changes in Financing Terms. If Developer makes changes to the Benchmark Interest Rate index used or changes in the debt structure (e.g., fixed or variable rate, bank financing or bond financing) prior to Financial Close that constitute a deviation from the assumptions in the Initial Base Case Financial Model, unless such deviation is approved by the County (in its discretion), the County shall provide Benchmark Interest Rate protection in accordance with Section 11.2, only on the basis of the Benchmark Interest Rates and debt structure included in the Initial Base Case Financial Model.

11.2. Benchmark Interest Rate Protection Changes. Benchmark Interest Rate protection changes in any Benchmark Interest Rate shall have the following effect:

- (a) Subject to the County's rights to terminate under this Appendix for a Key Financial Event, the County will bear the risk and have the benefit of 100% of the impact (either positive or negative) on the Capital Charge of changes in any Benchmark Interest Rate included in the Instructions to Proposers, Attachment to Addendum No. 25 and the Benchmark Interest Rate(s) recorded on the Benchmark Interest Rate Adjustment Date which are used in the Base Case Financial Model update, pursuant to Section 11.3.
- (b) The interest rate adjustment will be based on the movement, if any, in the applicable Benchmark Interest Rate.
- (c) On the Financial Close Date, the Developer shall adjust the Initial Base Case Financial Model according to the terms of Section 11.3 (Capital Charge Update Protocol).

11.3. Capital Charge Update Protocol. The parties will use the Initial Base Case Financial Model to calculate the change under Section 11.2, positive or negative, in the Capital Charge. The parties shall make such calculation and produce the Base Case Financial Model in the following manner:

- (a) As a means of mitigating against the negative impact of any changes in Benchmark Interest Rates for any Bonds or Senior Debt which is part of the Developer's financing, as applicable, on the minimum prevailing debt covenants established in the Initial Base Case Financial Model, the Developer shall optimize, to the extent possible, the maturities and make consequential agreed amendments to the Initial Base Case Financial Model.

- (b) The Initial Base Case Financial Model as updated to incorporate any changes resulting from subsection (a), shall be run by the Developer to solve for the lowest possible “interim” Capital Charge, inputting only the changes, if any, in Benchmark Interest Rates as described in Section 11.2, and holding the Initial Base Case Equity IRR constant. As part of this process the Developer will ensure, to be confirmed by the County, that the minimum prevailing debt covenants in the Initial Base Case Financial Model are not breached by adjusting the capital structure.
- (c) The Capital Charge shall be the “interim” Capital Charge resulting from the calculations in Section 11.3(b) above.
- (d) The interim financial model resulting from the calculations in Section 11.3(b) above shall be adjusted to reflect (1) the Capital Charge determined under Section 11.3(c) above, and (2) all other changes in terms of financing between those assumed and indicated in the Initial Base Case Financial Model and those set out in the Senior Financing Agreements as obtained on the Financial Close Date. The resulting financial model shall be the Base Case Financial Model, and the resulting Equity IRR shall be the Base Case Equity IRR.
- (e) Notwithstanding anything in this Appendix to the contrary and without limiting Section 11.1, the Developer shall bear the full risk of changes to any financing terms not explicitly identified within this Section 11.3.

12. REVISION OF THE CAPITAL CHARGE TO REFLECT CHANGES IN DESIGN-BUILD CONTRACT PRICE FOLLOWING THE PROPOSAL VALIDITY PERIOD END DATE

12.1. Financial Close Following the Proposal Validity Period End Date. If (a) Financial Close occurs after the Proposal Validity Period End Date, and (b) the Developer used reasonable commercial efforts to achieve the Developer Conditions Precedent, the Capital Charge shall be adjusted, as part of the Initial Base Case Financial Model update completed pursuant to Section 3.1(d), to reflect the adjustment to the Design-Build Contract Price calculated in accordance with Section 12.2 of this Appendix.

12.2. Calculation of Design-Build Price Adjustments. Subject to Section 12.1 and Section 12.2 of this Appendix, the Design-Build Contract Price will be adjusted to be an amount equal to:

- (a) the Design-Build Contract Price,
multiplied by
- (b) the percentage equal to:
 - (i) the Construction Cost Index published the month prior to the Financial Close Date
divided by
 - (ii) the Construction Cost Index published the month of the Proposal Validity Period End Date.

ATTACHMENT 3A
FINANCIAL MODEL ESCROW

1. ESCROW AGREEMENT FOLLOWING COMMERCIAL CLOSE

1.1. Escrow Agreement. Prior to or on the Financial Close Date, the County and the Developer shall jointly enter into an escrow agreement with the Escrow Agent with respect to the delivery and use of the Financial Model. The agreement shall be in place prior to or commencing on the Financial Close Date and expire upon the date of completion of the Project Agreement. Any and all replacements of the Escrow Agent shall be approved by the County. The escrow agreement shall be in place uninterrupted throughout the Term of the Project Agreement.

1.2. Delivery of Copies. Developer shall deliver copies of the Financial Model and any books and documents setting forth all assumptions, calculations and methodology used in preparation of the Financial Model that Developer claims as a trade secret (1 printed copy and 2 electronic copies) to the Escrow Agent to be held in custody on terms to be agreed between Developer and the County.

1.3. Escrow Agent to Keep Copies. Developer and County shall instruct the Escrow Agent to keep a printed copy and an electronic copy of all versions of the Financial Model.

1.4. Delivery of County Approved Amendments. Following the approval by the County of any amendment to the Financial Model, Developer shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed between Developer and the County from time to time), to the Escrow Agent.

2. USE OF FINANCIAL MODEL

2.1. County License for Use of Financial Model. Developer hereby grants to the County an irrevocable, royalty free perpetual, non-exclusive and transferable license, including the right to grant sub-licenses, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Term of the Project Agreement.

2.2. County Not Liable for Financial Model Errors. Developer acknowledges and agrees that the County shall not be liable to Developer for, and Developer shall not seek to recover from the County, or any County Indemnitee, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.