

**Item # 75<sub>(2)</sub>**

**ADDITIONAL MATERIAL**  
**Regular Meeting**  
**MAY 7, 2019**

**SUBMITTED AT THE REQUEST OF**

**COUNTY ADMINISTRATION**

## **Additional Material**

Attached are the major issues that FPL has in response to Broward County Attorney's Office draft Agreement for FPL to place solar panels on the front façade of the BB&T Center Arena. Also included, in red print, are the County's response to FPL's issues.

Before the County will agree to execute an agreement with FPL, all outstanding issues between FPL, the Arena Operating Company and the Florida Panthers Hockey Club must be resolved.

## BB&T SOLAR ENERGY AGREEMENT ISSUES LIST

May 2, 2019

(comments in black are from FPL in response to County Attorney's draft agreement – **Comments in red are County's position to FPL's response**)

#	Section	Issue
1	1.8	Cell phone chargers are part of the sponsorship agreement only. Global update needed to remove reference. EV chargers may be included in this agreement but terms will need to be updated accordingly (i.e. term for EV charging is only 7 years. <b>Remove from County agreement, since FPL is now saying this benefit is only for the Panthers while their marketing agreement is in force.</b>
2	1.9	Remove requirement to be agreed to in writing. <b>County needs an agreement as to what is Final Completion.</b>
3	2.2	Determination that nuisance or hazard presents a danger to the public health must be in utility's sole discretion <b>Due to the solar panels surrounding the entry of the arena and being on a populated plaza we need to insure any hazard is quickly mitigated for public safety. County Attorney's Office has strong objections to modify this article.</b>
4	3.1	Term is 20 years regardless of whether the operating agreement is termination [team comment <b>The agreement states that the term is for 20 years or until the agreement is terminated for the County.</b>
5	5.1	Signed and sealed engineering plans will not be available within 30 days. Plans should be deemed approved. <b>County can extend the 30 day period, but County will not deem the plans approved until the County actually signs off on the plans</b>
6	7	Remove requirement for emergency access to be upon written approval <b>The proposed agreement with FPL states; in the event of an emergency which poses a threat to the public health and safety, or to the safety of the Arena, that FPL does not need any written approval to have access to the property or the arena. In the case of emergency, FPL shall, by phone or email, provide Operator and Team with notice of the emergency and request approval to have access to the Property and Premises, and FPL shall use all commercially reasonable efforts to minimize any interference with operation at the Property. County Attorney's Office recommends this language remains intact.</b>
7	8	Interference by the County will only be permitted after year 10 and with prior notice to FPL <b>This requirement could impact redevelopment of the BB&amp;T Center property and/or further increase liability to the County.</b>
8	9.1, 9.3	Repair/replacement of "partially" damaged equipment is at FPL's sole discretion. <b>This language is only acceptable if the repair/replacement of partially damage equipment is caused by the County and/or the Panthers.</b> FPL will not pay for any repairs for damage caused by County, Operator or Team's actions, negligence or misconduct. <b>County agrees with this sentence.</b>
9	12	FPL will not be liable for third party actions or County, Operator or Team's actions, negligence or misconduct. <b>The proposed agreement states; each party shall be responsible for liabilities, damages, loses, and expenditures arising from its acts, errors, or omissions. County should not change the language or add any further language to the proposed agreement.</b>

**BB&T SOLAR ENERGY AGREEMENT ISSUES LIST**

May 2, 2019

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- 10 17 Remedies need to be restored and reflect the agreement not to interfere for the first ten years  
**See Item 8**

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  - 11 19 FPL will restore to **substantially** the same condition if necessary to do so (i.e., not if building will be torn down). **See comments on Item 8** FPL will not pay to remove/restore due to County/Team/Operator's default **County assumes the termination fee includes these costs and would not be a default. The County would not require the arena's façade to be repaired if the County would be demolishing the arena in the near future.**

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  - 12 25 As discussed, agreement cannot be contingent. **FPL agrees to a separate MOU for the County to acquire the FPL property on the west side of the Sawgrass Expressway.**

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  - 13 Global Need to confirm all new time periods. See below table.
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Section	Original (Days)	New (Days)	Description
2.2	72*	24*	FPL Secure area of nuisance or hazard (*hours) <b>NO</b>
2.2	45	30	FPL correct any nuisance or hazard <b>NO</b>
5.1	30	45	County/Team/Operator time to review plans; 45 additional days for resubmission <b>Can discuss</b>
5.5	60	30	FPL must correct or remove defective work <b>NO</b>
5.5	60	30	FPL reimbursement of party for corrective work
5.10	60	30	FPL reimbursement of changes <b>Can discuss</b>
8	30	60	County can continue to cure default; up to 120 days (from 90) <b>Can discuss</b>
9	60	15	FPL to send written notice of non-replacement of damaged equipment <b>Can discuss</b>
16	30	60	County ability to cure before triggers a default <b>Can discuss</b>
17	--	30	FPL remedy to terminate changed from at any time to within 30 days <b>Can discuss</b>
17	30	60	County reimburses FPL for invoice <b>OK</b>
21	30	60	FPL notice to assign <b>OK</b>