

ITEM #75

ADDITIONAL MATERIAL

10:00 a.m. Regular Meeting

MAY 7, 2019

SUBMITTED AT THE REQUEST OF

OFFICE OF THE COUNTY ATTORNEY

Additional Material

The Broward County Attorney's Office has drafted the attached agreement ("Agreement") between Broward County and FPL for FPL to place solar panels on the front façade of the BB&T Center Arena. This draft agreement was submitted to FPL on April 29, 2019 for their review. On April 30, 2019 the County met with representatives from FPL to discuss the Agreement, at which time, FPL stated that they have some significant concerns with the Agreement and would get back with the County as to what their major concerns might be at our scheduled conference call on Friday, May 3, 2019.

County Administration will follow up after Friday's meeting with the status of the negotiations and a term sheet of how FPL suggests they may enter into an agreement.

**SOLAR ENERGY AGREEMENT AMONG BROWARD COUNTY, ARENA
OPERATING COMPANY, LTD., FLORIDA PANTHERS HOCKEY CLUB, LTD.,
AND FLORIDA POWER & LIGHT COMPANY FOR CONSTRUCTION,
INSTALLATION, AND OPERATION OF SOLAR ENERGY PROJECTS
AT BROWARD COUNTY CIVIC ARENA**

This Solar Energy Agreement ("Agreement") between Broward County, a political subdivision of the State of Florida ("County"), Arena Operating Company, Ltd., a Florida limited partnership (the "Operator"), Florida Panthers Hockey Club, Ltd., a Florida limited partnership (the "Team"), and Florida Power & Light Company, a Florida corporation ("FPL"), is entered into and effective as of the date the contingency described in Article 25 is satisfied ("Effective Date"). County, Operator, Team, and FPL are sometimes collectively referred to hereinafter as the "Parties" and individually as a "Party."

RECITALS

A. County is the owner of the Broward County Civic Arena, a/k/a BB&T Center ("Arena"), which is located on the property described on Exhibit A attached hereto ("Property").

B. Operator and Team have entered into an Operating Agreement and License Agreement with County regarding the Property and Arena.

C. The Parties desire to advance a solar energy project on a portion of the physical structure of the Arena, as depicted on attached Exhibit B (the "Premises"), to reduce regional greenhouse gas emissions and to expand community outreach regarding the importance of energy conservation and renewable energy initiatives.

D. County has agreed to grant FPL a license to use the Premises on a non-exclusive basis for the purpose of constructing, installing, operating, and maintaining the Equipment (as defined herein) described on Exhibit C, to generate, measure, and transmit solar power subject to the terms of this Agreement (the "Project"), and FPL has agreed, at its sole cost and expense, to construct, install, operate, repair, and maintain the Project.

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

1. **Definitions.**

The terms set forth below, when used in this Agreement, are defined as follows:

1.1 Applicable Laws means County's Home Rule Charter, any and all applicable laws, codes, advisory circulars, rules, regulations, ordinances, or resolutions of any governmental or quasi-governmental entity relating to the Project, Premises, Arena, and Property, or relating to any activities at the Premises, Arena, and Property,

that have been, or may hereinafter be adopted, and as may be amended from time to time, including without limitation all applicable federal, state, County, local and any quasi-governmental agency laws, codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders, and grant agreements.

1.2 Approved Plans means Plans and Specifications (as hereinafter defined) for the Project that include all information and documents required by Section 5 and have received prior written approval from the Contract Administrator, Operator, and Team pursuant to Section 5.

1.3 Board means the Board of County Commissioners of Broward County, Florida.

1.4 Commencement Date for the Project means the date on which the Project becomes operational, which shall be the date on which FPL has obtained any and all approvals, licenses, and permits necessary to operate the Equipment for the Project, and installed the Equipment and connected it to the Property's electric transformer, thereby enabling the Equipment to generate solar power.

1.5 Connecting Equipment means the cables, electrical wiring, wire management systems, electric meters, power distribution boxes, connecting hardware necessary to connect the Solar Equipment with the Inverters or necessary to connect the Inverters with the electric transformer, and any additional equipment necessary to generate and transmit solar power for the Project, except for those items that constitute Solar Equipment.

1.6 Contract Administrator means Broward County's Director of Real Estate Development or the person expressly designated in writing by such Director to serve as the Contract Administrator.

1.7 Days (whether capitalized or uncapitalized) means calendar days, except where expressly limited to business days (Mondays through Fridays, except for legal holidays).

1.8 Equipment means collectively the Solar Equipment, LED lights, Connecting Equipment, controls and Inverters for the Project, and the electric vehicle and cell phone charging stations to be installed by FPL at the Property, all of which as described on attached Exhibit B.

1.9 Final Completion for the Project shall mean the date certified by FPL, and agreed upon in writing by Operator and County, that all conditions and requirements of any permits and regulatory agencies have been satisfied; punch list items have been completed; any documents required by the Approved Plans for this Agreement have been received by County; and the Project has been fully completed in accordance with the Approved Plans.

1.10 Interconnection Area means the portion of the Premises in which FPL's connection line to the Equipment is located.

1.11 Inverters means any inverters necessary to generate and transmit solar power for the Project.

1.12 LEED (Leadership in Energy and Environmental Design) means the rating system for green building practices created by the United States Green Building Council.

1.13 Premises - Defined above.

1.14 Solar Equipment means solar power generating panels and any additional equipment necessary to generate and transmit solar power for the Project, including, without limitation, solar facade, Inverters, interconnection equipment, electrical wiring, underground conduit, collection lines, wire management systems, charging stations, electric meters, metering and switch cabinets, power distribution boxes, and racking systems, but not including Connecting Equipment.

1.15 Subconsultant or Subcontractor means an entity or individual, or combination thereof, providing services or furnishing materials to FPL for all or any portion of FPL's activities or responsibilities under or related to this Agreement that occur on the Property. The term "Subconsultant" shall include all "Subcontractors" and the term "Subcontractor" shall include all "Subconsultants."

1.16 Term shall have the meaning given to such term in Section 3 below, subject to earlier termination as provided in this Agreement.

1.17 Termination Date means the date this Agreement expires or is terminated by a Party as provided in this Agreement.

2. Premises.

2.1 Grant of License. County and Operator hereby grant FPL a nonexclusive license to use the Premises solely for purposes of, constructing, installing, operating, inspecting, maintaining, repairing, removing, and replacing the Equipment in accordance with the Approved Plans at FPL's sole cost, expense, and risk. County and Operator grant FPL and its Subcontractors a nonexclusive license of ingress and egress to the Premises for FPL's operations and activities under this Agreement. After the initial installation of the Equipment, at all times during the Term, the Equipment and the Project shall be ancillary and subordinate to the use and operations of the Premises, Arena, and Property by County, Operator, and Team. Electricity generated as a result of the Equipment shall be used first to satisfy, at no charge or cost to County, Operator, or Team, the electricity needs of the Arena for the operation of six (6) electric vehicle charging stations to be installed by FPL at its sole cost and expense on the Property at locations to be determined by Operator and County, and for cell phone charging stations to be installed by FPL at its sole cost and expense within the Arena at locations to be determined by Operator. After satisfaction of those needs, the electricity generated as a

result of the Equipment can be used by FPL for other purposes. At all times during the Term of this Agreement, the electric vehicle charging stations and cell phone charging stations shall have first priority in the use of the electricity generated by the Equipment.

County and Operator also grant FPL a license for FPL to install, at FPL's sole cost, expense, and risk, signage on the Arena solely for the following purposes: (1) identifying FPL's ownership of the Equipment; (2) instructing parties accessing the Premises to use caution so as not to damage the Equipment; and (3) providing all necessary hazard and safety warnings. The location, size, design, and content of such signage shall be subject to the prior written approval of Contract Administrator and Operator, whose approvals shall not be unreasonably withheld or delayed. All approved signage shall be removed by FPL upon the removal of the Equipment in accordance with the terms of this Agreement.

The Parties acknowledge that the intent of this Agreement is for FPL to perform the Project and provide electricity as described herein at no cost to County, Operator, and Team. No change to the Project shall be effective unless and until the Parties enter into a written amendment specifying such change. The County Administrator is authorized to enter into one or more amendment(s) to this Agreement on behalf of County for any changes to the Project, subject to approval of the form and legal sufficiency by the Office of the County Attorney.

The rights and privileges granted to FPL by this Agreement are only a license to use the Premises, and do not constitute a lease of the Premises, Arena, or the Property, or otherwise convey any interest in the Premises, Arena, or the Property to FPL. Nonexclusive parking will be made available to FPL, its employees, agents, and Subcontractors during construction, installation, operation, inspection, repair, removal, replacement, and maintenance of the Equipment for the purposes described under this Agreement. County and Operator each makes no promise or representation as to the adequacy or sufficiency of such nonexclusive parking.

2.2 Use of Arena. FPL shall use the Premises solely for the purposes described in Section 2.1 and for no other purposes. FPL covenants that during its use of the Premises, FPL, its employees, agents, and Subcontractors shall not engage in any nuisance or hazardous trade or occupation on, in, or upon Premises, the Arena, or the Property. FPL, its employees, agents, and Subcontractors shall not keep in or about the Premises, Arena, or Property any item that would increase the risk of any hazard, fire, or catastrophe, other than would normally occur in connection with the Project, nor shall FPL, its employees, agents, or Subcontractors commit waste upon or damage any portion of the Premises, Arena, or the Property. During the Term, FPL, its employees, agents, and Subcontractors shall not use the Premises, Arena, or Property in any manner which would violate any Applicable Laws or interfere with or adversely affect the operations or maintenance of the Premises, the Arena, or the Property. County or Operator shall provide written notice to FPL of any action that either deems appropriate to remove or eliminate any nuisance or hazard caused by FPL, its employees, agents, or Subcontractors upon or from the Premises, Arena, or Property. FPL shall secure the area of the nuisance or hazard within twenty-four (24) hours following receipt of notice from

County or Operator and shall correct any such nuisance or hazard within thirty (30) days following receipt of such written notice from County or Operator unless, in the opinion of the Party that gave notice, the nuisance or hazard presents a danger to the public health and safety, in which case, FPL, upon receipt of notice, shall immediately commence to correct the nuisance or hazard and diligently prosecute the correction to completion. If FPL fails to secure the area of the nuisance or hazard or to correct any such nuisance or hazard in accordance with the requirements of this section. County and Operator each reserves the right to thereafter take any action it, in its sole discretion, deems necessary to abate such nuisance or hazard. FPL shall reimburse the Party or Parties abating the nuisance or hazard their actual and reasonable costs associated with such abatement within thirty (30) days after FPL's receipt of an invoice from the Party or Parties that abated the nuisance or hazard. Should FPL fail to pay the invoice(s) in full within such thirty (30) day period, FPL shall be in default under this Agreement, and County, Operator, and Team shall each have the right, in addition to any other available remedies at law or in equity, to terminate this Agreement in the manner provided for in this Agreement for termination for default.

2.3 Condition and Use of the Premises. FPL shall secure all necessary permits for the construction, installation, operation, and maintenance of the Project on the Premises, Arena, and Property, and shall operate the Project in compliance with Applicable Laws. FPL shall conduct its own due diligence investigation of the Premises and Arena, and determine in its sole opinion, the suitability of the Premises, Property, and Arena for the Project. Neither County nor Operator makes any representations or warranties as to the condition of the Premises, Arena, or Property, or as to the suitability of any of them for FPL's use under this Agreement. The use of the Premises, Arena, and Property, and all components thereof, is hereby granted to FPL in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**"

2.4 Continuous Operation. Upon its Final Completion, the Project shall be continuously operated by FPL throughout the Term. Project downtime is anticipated only for purposes of maintenance and repair. In any event, the lighting on or behind the Solar Equipment shall not be illuminated between the hours of 12:00 midnight and 8:00 a.m., without written permission from the Operator and Team.

3. Term.

3.1 Term. This Agreement shall commence upon the Effective Date and continue for twenty (20) years after the Commencement Date ("Term").

3.2 Obligations and Liabilities Remain. The expiration or earlier termination of this Agreement does not release FPL from any liabilities or obligations hereunder that accrued on or before the expiration or effective date of termination (as applicable). Upon the expiration or earlier termination of this Agreement, FPL shall cease all operations under this Agreement upon the Premises, Arena, and Property, remove its Equipment, and restore the Premises, Arena, and Property in accordance with Section 19. All rights granted to FPL under this Agreement shall terminate upon the expiration or termination of this Agreement.

4. **Compensation.**

4.1 Starting on the next anniversary of the Effective Date following the Commencement Date for the Project under this Agreement, and thereafter continuing throughout the Term of this Agreement, FPL shall compensate County annually, in advance, on July 15 of each calendar year, the amount of Twenty-five and 00/100 Dollars (\$25.00) per kilowatt (kW) of installed solar capacity on the Premises and Arena. If the Term commences on a date other than July 15, FPL shall pay County upon commencement of the Term an amount equal to the pro rata portion of the applicable compensation for such annual period. In the event this Agreement expires or is terminated at a time other than on the last day of an annual period, the compensation shall be prorated as of the date of expiration or earlier termination for any reason (other than a default by FPL, in which event there shall be no proration) and all compensation paid in advance by FPL that has not yet accrued shall be refunded to FPL by County within thirty (30) days of such expiration or earlier termination. Compensation shall be payable to County at the address specified in Section 22 below.

Other than as set forth in this Agreement, FPL shall not be charged any rent or other fee, and County, Operator, and Team shall not be entitled to any other compensation by FPL under this Agreement whatsoever in connection with FPL's use of the Premises and Arena under this Agreement.

4.2 As additional consideration for FPL's use of the Premises, Arena, and Property, FPL will provide to County all Renewable Energy Certificates, green tags, and carbon credits (collectively, "RECs") generated as a result of FPL's installation and operation of the Equipment on the Premises, Arena, and Property as such RECs become available, which RECs shall become the property of County. County will be responsible for any and all costs associated with certifying the RECs.

5. **Construction and Installation of the Project; Location of Equipment.**

5.1 **Obligations Prior to Project Installation.** Within thirty (30) days after the Effective Date, and before commencing construction or installation of the Project, FPL shall submit to the Contract Administrator, Operator, and Team, for the review and written approval of each of them, a site plan and complete signed and sealed architectural and engineering plans and specifications for installation of the Project. The plans and specification must be certified and signed and sealed, by an architect or an engineer licensed to practice in Florida and must consist of the following: (a) working drawings; (b) technical specifications; (c) construction and installation schedule pre-coordinated with Operator; (d) a list of Equipment and fixtures; and (e) such other information as may be reasonably required by the Contract Administrator, Operator, or Team (collectively "Plans and Specifications"). The Contract Administrator, Operator, and Team shall each have forty-five (45) days from receipt of the Plans and Specifications to approve or object to them in writing. In the event the Contract Administrator, Operator, or Team has objections, FPL shall revise the Plans and Specifications to address the objections and

resubmit the Plans and Specifications to the Contract Administrator, Operator, and Team and those Parties shall each have forty-five (45) days from the date of re-submission to approve or object to the Plans and Specifications. Any failure by the Contract Administrator, Operator, or Team to approve the submitted Plans and Specifications (whether initial or as revised) within the forty-five (45) day period will not be deemed approval of the Plans and Specifications by that Party.

5.2 Plans and Specifications.

(a) Approved Plans. No work may be performed on the Premises, Arena, and Property except pursuant to the Approved Plans. All construction, improvements, and installation of Equipment and any approved signs must be performed in accordance with the requirements of this Agreement and the Approved Plans. No changes may be made to the Approved Plans without the prior written approval of Contract Administrator, Operator, and Team, which approvals will not be unreasonably withheld or delayed.

(b) Equipment in Interconnection Area. The Approved Plans shall require that all Equipment within the Interconnection Area be installed only within the Arena structure.

5.3 Project to Comply with Applicable Laws. The Project must comply with all Applicable Laws. The approval of any Plans and Specifications, or designs for the Project by Contract Administrator, Operator, and Team, is not a representation or warranty by any of those Parties as to the conformity or compliance of the Approved Plans with Applicable Laws, and FPL shall have sole responsibility for the Project's compliance with Applicable Laws at all times.

5.4 Installation of Approved Project. Not later than ninety (90) days after the later of the Contract Administrator's, Operator's, and Team's written approval of the Plans and Specifications and FPL's receipt of all necessary permits and approvals for the Project, FPL shall commence construction and installation of the Project and the Equipment, and diligently prosecute construction and installation of the Project and Equipment to Final Completion in accordance with the approved construction and installation schedule.

5.5 Construction, Installation, Inspection, and Approval. During the construction and installation of the Project, the Contract Administrator and other County personnel, and Operator and its personnel and consultants, shall have access to the Premises, Arena, and Property at all times to ascertain the progress and quality of the construction and to determine if the installation of the Equipment is proceeding in accordance with the Approved Plans and this Agreement. All work not conforming to Approved Plans and this Agreement may be considered defective and rejected by the County, Operator, or Team. FPL shall, at its sole cost and expense, within thirty (30) days following receipt of written notice from the County, Operator, or Team identifying such defective work, either correct all defective work or remove such defective work and replace it with non-defective

work to the satisfaction of the Party that gave notice of the defective work. Should FPL fail or refuse to remove or correct any defective work within such thirty (30) day time period, County, Operator, or Team may cause the defective work to be removed or corrected at FPL's expense. Any costs and expenses incurred by County, Operator, or Team in making such removals or corrections may be charged against the Performance Bond required under Section 6 below if FPL does not reimburse the Party making the removals or corrections for its costs and expenses within thirty (30) days after the date of that Party's invoice for the costs and expenses.

5.6 Permitting and Licensing. County, Operator, and Team shall cooperate with FPL as necessary for FPL to obtain, at FPL's sole cost, all permits, licenses, and approvals necessary to construct and install the Project and the Equipment and to operate such Equipment and to transmit the electricity generated thereby. The Equipment shall be installed by FPL as shown in the Approved Plans. Except as otherwise set forth herein, FPL shall have no right to access or utilize any other portions of Arena or Property. Installation of the Equipment shall comply with all Applicable Laws and shall not result in the imposition or creation of a lien against any real or personal property owned by County.

5.7 Periodically Scheduled Meetings. During construction and installation of the Project, if requested by the Contract Administrator, FPL and its architect, engineer, and Subcontractor shall meet with County and Operator in periodically scheduled meetings to assess the then-current status of the Project.

5.8 Liens, Claims, and Encumbrances. County acknowledges that FPL's interests in the Equipment is and will be encumbered by FPL's existing mortgage and deed of trust with Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company). FPL shall keep the Premises, Arena, and Property free and clear of all liens, claims, and encumbrances relating to the Project or FPL's operations on the Property. If any lien or notice of lien relating to the Equipment or to this Project is filed against the Arena or Property, FPL shall, within thirty (30) days after receipt of notice of the filing thereof, take any and all required actions to cause the same to be removed of record by payment, deposit, bond, or order of a court of competent jurisdiction.

5.9 "As-Built" Plans and Specifications. At FPL's sole cost and expense, within sixty (60) days after Final Completion of the Project, FPL shall provide the Contract Administrator and Operator with a complete set of CAD and PDF format "as-built" plans and specifications. The "as-built" plans and specifications shall include, without limitation, printed reproducible "record" drawings, and any modern storage methods containing a complete set of electronic drawings for the Project. Drawings shall be provided in Autodesk, Inc.'s AutoCAD release 2010 or higher for Windows, and specifications and schedules files shall be provided in Excel, Word, or AutoCAD. FPL, at its sole cost and expense, shall transmit all drawing files and specifications including, but not limited to, xrefs (if not bound), pen settings, CTB, shape, and all other files necessary to properly print, display, revise, or reproduce the as-built drawings, to the Contract Administrator and Operator. At the same time as FPL provides the "as-built" drawings and specifications, FPL shall also provide the Contract Administrator and Operator with

reference copies of all drawing sheets or other CAD and/or PDF format documents intended for hard copy plotting or printing in plot (.plt) version. If Autodesk Revit is used in the production of the Project, FPL shall, at its sole cost and expense, provide the Contract Administrator and Operator with a complete native Revit (.rvt) file including Revit families, in addition to those formats listed above, as well as a full-size PDF of each drawing in Adobe PDF professional version X or later. FPL, at its sole cost and expense, shall obtain and submit to the Contract Administrator and to Operator an updated as-built site survey at the same time as "as-built" plans are submitted to them.

5.10 Approval for Alterations. All material additions, alterations, modifications, and replacements of the Project or any portion or element thereof must comply with the requirements of Sections 5.2, 5.3, 5.5, 5.6, 5.8, and 5.9. Any change to the Approved Plans that requires the issuance of a building permit, or which modifies an existing building permit for the Project, is a material change; but the requirement for issuance of a building permit is not the sole factor for determining whether a proposed change constitutes a material change. For the avoidance of doubt, the mere replacement of a solar panel or other Equipment does not constitute a material replacement or alteration. If any such material addition, alteration, modification, or replacement is made without the approval of County, Operator, and Team, then, upon notice in writing to do so, FPL shall remove the same or cause the same to be changed to the reasonable satisfaction of the Party that gave such notice to FPL. If FPL fails to comply with the notice, the Contract Administrator, Operator, or Team may affect the removal or change of such material addition, alternation, modification, or replacement and FPL shall pay the cost thereof to the Party that affected the removal or change, within thirty (30) days following receipt of that Party's invoice and supporting documentation.

6. Payment and Performance Bonds. Before starting any work or construction, FPL shall procure a valid payment bond and a valid performance bond for the Project in a form approved by the Contract Administrator and Operator. Each bond must be in an amount not less than the amount covering the full amount of the work being performed. Each bond must guarantee to County, Operator, and Team the completion of the work being performed as well as full payment of all suppliers, material suppliers, laborers, or subcontractors employed in the Project.

7. Access.

Access. During the Term of this Agreement, its employees, Subcontractors, agents, and governmental permitting, licensing, and regulatory entities shall have access to the Property Arena, and Premises, upon written approval from Operator and Team, during Operator's operating hours or as otherwise agreed to in writing by Operator and Team, except in the event of an emergency which poses a threat to the public health and safety, or to the safety of the Arena. In cases 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 operations at the Property. The phone numbers and emails for such notification are provided in Section 22 below. FPL shall not interfere

with entry, and shall permit inspection and testing, at all reasonable times, by inspectors of any federal, state, or local agency having jurisdiction under any law, rule, regulation, or order, applicable to the Project, Premises, or Arena, or the operations at the Property.

8. **Unreasonable Interference.** During the Term of this Agreement, neither Operator nor Team shall directly or indirectly cause or allow any of the following to occur ("Interference"):

8.1 Placement of any equipment, structure, or improvements on or over the Solar Equipment, unless such placement is temporary or necessary under any Applicable Laws, or in furtherance of Operator's, Team's operations, or Arena naming sponsor's marketing at the Property;

8.2 Maintenance, or repair of the Premises, Arena, or Property by the Operator or Team in such a way that the Premises can no longer support the Equipment, or the use of the Equipment is materially impaired, unless such impairment is temporary and necessary under any Applicable Laws.

8.3 Unreasonable interference with FPL's access to the Premises.

In the event of any Interference that continues uncured for a period of sixty (60) days after written notice from FPL to Operator and/or Team identifying the Interference, FPL may terminate this Agreement upon thirty (30) days' notice to the other Parties. If the Interference cannot reasonably be cured within said sixty (60) day period and Operator and/or Team has started to cure such Interference within sixty (60) days after notice from FPL, and Operator and/or Team is continuously and diligently prosecuting such cure toward completion, the cure period shall be extended an additional sixty (60) days (for a total of one hundred twenty (120) days from such written notice). If Operator or Team causes such Interference, and should FPL exercise any right of termination set forth in this Agreement, then the Party that caused the Interference shall be liable for any cost that may arise pursuant to Section 18 of this Agreement.

9. **Maintenance; Repair; Replacement; Reinstallation.**

9.1 During the Term of this Agreement, FPL shall operate and maintain the Equipment, the electric vehicle charging stations, and the cell phone charging stations in good working order and in a safe, clean manner. FPL shall promptly repair, or replace, if necessary, any of the Equipment, or portion thereof, cell phone charging stations, and electric vehicle charging stations that suffer partial damage. If the Equipment, is totally damaged or destroyed at any time during the Term of this Agreement, FPL shall have the right, but not the obligation, to elect to repair, replace, or reinstall the Equipment, or any portion thereof, in its original location on the Premises or Property. In such event, FPL shall, within fifteen (15) days of the date damage or destruction to any Equipment occurred, provide written notice to County, Operator, and Team of its decision to make the necessary repairs, replacements, or reinstallations. In the event FPL does not notify County, Operator, and Team within such fifteen (15) day time period as required under

this section, County may terminate this Agreement, which termination will not be deemed a termination for convenience and County will not have any liability for or obligation to pay any amount to FPL, including, but not limited to, the amounts set forth in Section 18.2 of this Agreement. If FPL elects not to repair or replace, at its sole cost, any damage or destruction, any Party may, upon thirty (30) days' written notice to the other Parties, terminate this Agreement. Any such termination by County will not be considered a termination for convenience, and County will have no obligation to pay FPL any sum, including, but not limited to, the amount set forth in Section 18.2. In the event of such termination, FPL, at its sole cost and expense, shall remove all Equipment, cell phone charging stations, and electric vehicle charging stations from the Arena, Premises, and Property and restore the Arena, Premises, and Property in accordance with the requirements of Article 19.

9.2 FPL shall provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required for the Project by any Applicable Laws.

9.3 FPL shall repair, at no expense to County, Operator, or Team, any damage to the Premises, Arena, or Property caused by any reason whatsoever and arising out of the (i) construction, installation, operation, inspection, repair, removal, replacement and maintenance of the Equipment, electric vehicle charging stations, and cell phone charging stations on the Premises, Arena, and Property, or (ii) the operations or activities of FPL, its agents, employees, or Subcontractors and any other persons entering upon or using the Premises, Arena, or Property on behalf of FPL. FPL shall repair or replace as necessary any Equipment, electric vehicle charging stations, and cell phone charging stations damaged as a result of (i) weather conditions; (ii) installation, operation, inspection, repair, removal, replacement and maintenance of the Equipment, cell phone charging stations, or electric vehicle charging stations; or (iii) other causes beyond the control of County, Operator, or Team. All repairs shall be completed to the satisfaction of County and Operator within thirty (30) days after such damage occurs.

9.4 FPL shall conduct, or cause to be conducted, all routine and necessary maintenance of the Equipment.

9.5 If any portion of Arena is destroyed by fire or other casualty, any Party may terminate this Agreement upon thirty (30) days' written notice to the other Parties. In the event of such termination, neither the terminating Party nor the other Parties shall have any obligation to make any payment to FPL pursuant to Section 18.2, and FPL will not have any right to receive any payment pursuant to Section 18.2.

9.6 Except for any casualty to the Premises, Arena, or Property that FPL is responsible to repair as provided in Section 9.3, if the damaged portion of the Premises, Arena, or Property (as the case may be) is repaired or restored by one of the other Parties, FPL shall repair, replace, or reinstall the Equipment, electric vehicle charging stations, and cell phone charging stations in their approved locations. County, Operator, and Team each has no obligation under this Agreement to repair or restore the damaged Premises

or Arena, and in the event none of those Parties elects to repair or restore any of the damaged Premises or Arena to the condition that it or they existed prior to such damage or destruction, and such destruction materially interferes with FPL's operation of the Project, as determined by FPL in its sole discretion, then FPL may terminate this Agreement upon thirty (30) days' written notice to County. If FPL elects for terminate this Agreement, the Parties shall be relieved of further liability or obligation under this Agreement, and FPL will not have a right to the payment of any sum from any of the other Parties as a result of such termination. FPL shall repair or replace any of damaged cell phone charging stations and electric vehicle charging stations, whether such damage is total or partial, in their approved locations within thirty days after the date of casualty.

9.7 If any termination of this Agreement occurs pursuant to this Section 9, and such damage or destruction of any Premises, Arena, or Property is through no fault of County, FPL shall, at its sole cost and expense, comply with the provisions under Section 3.2 above and remove the Equipment in accordance with Section 19 below.

10. **Taxes.** FPL shall pay any personal property tax or any other taxes (other than real property taxes) or fees that are attributable to the Equipment, or installation or placement of same. FPL may challenge, whether in a court, administrative proceeding, or other venue, any personal property or other tax assessments that affect the Property or Arena as a result of the Equipment. If County receives notice of any personal property or other property tax assessment against the Property or Arena that may affect FPL, the Project or the Equipment, and is attributable, in whole or in part, to the Equipment or the Project, County shall provide timely notice of such assessment to FPL, and FPL shall decide whether to consent to or timely challenge such assessment. Further, County shall provide FPL with any documentation in County's possession that is associated with such assessment, and County shall execute such documents as reasonably necessary to effectuate the intent of this section.

11. **Insurance.**

11.1 For the duration of the Agreement, FPL shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit_D_in accordance with the terms and conditions of this article. FPL shall maintain insurance coverage against claims relating to any act or omission by FPL, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

11.2 FPL shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

11.3 Except for professional liability insurance, FPL has the right to meet the

insurance designated in this section through any combination of self-insurance, primary, or excess coverage acceptable to County, Operator, and Team. Should FPL self-insure, then prior to accessing the Premises, Arena and Property, FPL will provide County, Operator, and Team with proof of such self-insurance with reference to publicly available financial statements and annual reports and, upon request, such other publicly available information as County, Operator, or Team may reasonably request to determine the adequacy of self-insurance and compliance with this section. Insurance requirements for professional liability insurance may be satisfied by FPL through its Subconsultant that will sign and seal the plans pursuant to Article 5 only by means of primary coverage, and self-insurance will not be acceptable to County, Operator, and Team. Any satisfaction of professional liability insurance requirements by FPL's Subconsultant(s) shall meet all applicable requirements set forth in this Article 11. The acceptance by County, Operator, or Team of any insurance procured and maintained by a Subconsultant in satisfaction of the FPL's obligations hereunder shall not constitute nor be deemed a waiver of any insurance requirement, or of FPL's obligation to provide and maintain all insurance as required by this Agreement.

11.4 FPL shall require that each Subcontractor maintains insurance coverage that adequately covers the services provided by that Subcontractor on substantially the same insurance terms and conditions required of FPL under this article. FPL shall ensure that all such Subcontractors comply with these requirements and that County, Operator, and Team are named as an additional insureds under the Subcontractors' applicable insurance policies.

11.5 FPL shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by FPL has been completed, as determined by Contract Administrator. FPL, or its insurer, shall provide notice to County, Operator, and Team of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County, Operator, and Team with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). FPL shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

11.6 Notwithstanding anything to the contrary herein, FPL waives any right of recovery against County, Operator, and Team for any loss or damage to the extent the same is required to be covered by FPL's insurance hereunder.

11.7 The Parties hereby grant to each other, on behalf of any insurer providing insurance to either of them, with respect to the Premises, Arena, or the Property, a waiver of any right of subrogation which any insurer of one Party may acquire against the other by virtue of payment of any loss under such insurance, provided that such waiver of the right of subrogation shall not be operative where the effect is to invalidate such insurance coverage.

11.8 FPL's self-insurance does not provide additional insured status or offer a waiver of subrogation.

12. **Liability.** Each Party shall be responsible for liabilities, damages, losses, and expenditures arising from its acts, errors, or omissions. FPL shall be responsible for all liabilities, damages, losses, and expenditures arising out of or resulting from the construction, installation, operation, inspection, repair, removal, replacement and/or maintenance of the Equipment, electric vehicle charging stations, and cell phone charging stations. Each Party's liability to the other Parties under this Agreement shall be limited to direct damages, and shall exclude liability for special, indirect, punitive, or consequential damages. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by County, nor shall anything included herein be construed as County's consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

13. **Equipment to Remain Personal Property of FPL.** The Equipment is and will remain the property of FPL, its successors, or assigns, regardless of its use or manner of attachment to the Premises, Arena, or the Property, and FPL agrees to execute such further documentation as is reasonably necessary to ensure that the Equipment does not constitute, and is not deemed to be, a fixture attached to the Premises, Arena, or Property. County, Operator, and Team will have no right, title, or interest in the Equipment, and no right to purchase or otherwise acquire title to or ownership of the Equipment. County, Operator, and Team each hereby expressly disclaims for itself any right, title, or interest in or to the Equipment, whether arising by lien, by operation of law, or otherwise. Upon expiration or earlier termination of this Agreement, the cell phone charging stations and electric vehicle charging stations shall remain on the Property and in the Arena and become the property of County, and FPL shall execute such written instruments as requested by County to convey any and all interest in the cell phone and electric vehicle charging stations to County free and clear of all liens, encumbrances and other interests.

14. **Default by FPL.** The happening of any one or more of the following events shall be an event of default under this Agreement:

14.1 The failure of FPL to pay all compensation due, or provide the RECs, as set forth in Section 4, or other charge or money obligation herein required to be paid by FPL, and such failure continues for a period of thirty (30) days after written notice of default from the Party entitled to receive payment;

14.2 Except as may otherwise be provided in this Agreement, the failure of FPL to fully perform any other of its covenants under this Agreement and the continuation of such failure for a period of thirty (30) consecutive or more days after written notice of default from County, Operator, or Team; however, if a nonmonetary failure cannot reasonably be cured within said thirty (30) day period and FPL has started to cure such failure within said thirty (30) days and is continuously and diligently prosecuting such cure

toward completion, the cure period shall be extended an additional thirty (30) days, for a total of sixty (60) days from such written notice.

15. **County's, Operator's, and Team's Remedies.** County's, Operator's, and Team's remedies for an event of default by FPL shall include the following:

15.1 Upon an event of default for nonpayment of any compensation or reimbursement, FPL shall pay interest to the Party to whom payment is owed, which shall accrue daily on the unpaid amount at the highest annual rate permitted by Florida law ("Interest").

15.2 Upon an event of default as set forth in Section 14.2 then in addition to, and not by way of limitation of the exercise by County, Operator, or Team of any and all rights and remedies each may have as set forth in this Agreement or at law or in equity, County, Operator, and Team shall each have the right, at its election, then or at any time thereafter, to cure such default or cause such default to be cured, and FPL shall reimburse the Party performing the cure for the actual and reasonable cost and expense incurred in effecting such cure, within thirty (30) days of written demand to FPL.

15.3 If, after written notice from County, Operator, or Team, FPL fails to correct an event of default within the applicable cure period, in addition to any remedies available to County, Operator, and Team under this Agreement and at law and in equity, County, Operator, and Team each have the right to terminate this Agreement and FPL shall, within thirty (30) days after such termination, remove the Equipment and restore the Property, Premises, and Arena in accordance with Section 19. County's, Operator's, and Team's rights and remedies under this Agreement for any default by FPL are nonexclusive and cumulative. In any action or proceeding to enforce any of FPL's obligations under this Agreement, the enforcing Party may recover all costs and expenses, including attorneys' fees and litigation costs, it incurred in connection with such action or proceeding or any appeal therefrom or review thereof.

16. **Default by County, Operator, or Team.** Failure of County, Operator, or Team to comply with any term, provision, or covenant of this Agreement shall be an event of default only where such failure is not cured within sixty (60) days after written notice thereof from FPL to the responsible Party, or if such failure cannot be cured within sixty (60) days, where the responsible Party shall have failed to start to cure such failure within sixty (60) days after written notice from FPL or shall not have continued to diligently prosecute such cure to completion.

17. **FPL's Remedies.** If an event of default by County, Operator, or Team shall have occurred, then in addition to and not by way of limitation of the exercise by FPL of any and all rights and remedies it may have at law or in equity, FPL shall have the right, at its election within thirty (30) days after the date of default, to terminate this Agreement without any penalty or further liability as follows:

17.1 Upon an event of default by County, Operator, or Team as set forth in Section 16 above, and after the expiration of the applicable notice and cure period, in addition to and not by way of limitation of the exercise by FPL of any and all rights and remedies FPL may have at law or in equity, FPL may: (a) cure the default and be reimbursed by the defaulting Party within sixty (60) days following County's receipt of FPL's invoice and supporting documentation of costs and expenses associated with curing the default; (b) terminate this Agreement; and/or (c) exercise any remedy FPL may have at law or in equity. In the event that County fails to timely make such reimbursement payments to FPL as set forth in subsection (b) above, FPL may deduct such amounts owed by County to FPL from compensation due. In any action or proceeding to enforce any of County's obligations under this Agreement, FPL may recover all court costs incurred by FPL in connection with such action or proceeding or any appeal therefrom or review thereof.

Notwithstanding the foregoing, in the event that Operator or Team Interferes or causes Interference with the Equipment, and such Interference is not cured by the responsible Party or Parties within the sixty (60) day time period set forth in Section 8, in addition to the remedies set forth in this section, the responsible Party or Parties shall also be required to reimburse FPL any and all costs incurred or expended by FPL in connection with the removal of the Equipment from the Premises, Arena, and Property. In no event will County be responsible for any damages, costs, expenses, or liabilities arising from any Interference.

17.2 At the time title to the Premises, or any portion thereof, transfers to a condemning authority pursuant to a taking of all or a portion of such Premises sufficient, in FPL's reasonable determination, to render the Premises unsuitable for FPL's use.

18. **Termination.**

18.1 FPL may terminate this Agreement at any time, for convenience, upon delivery of at least sixty (60) days prior written notice to the other Parties. If such termination should occur, then FPL shall remove the Equipment and restore the Premises, Arena, and Property in accordance with Section 19.

18.2 County may terminate this Agreement at any time on or after July 1, 2023, for convenience, upon delivery of at least sixty (60) days prior written notice to the other Parties. On or before the date of termination specified in County's notice, FPL shall comply with the requirements of Section 19. If County elects to terminate this Agreement for convenience, County shall pay FPL the applicable amount set forth below and upon such payment, all of County's financial obligations under this Agreement will be considered to be fully satisfied:

(i) Termination after July 1, 2023 through July 1, 2024 - Seven Hundred Fifty Thousand Dollars (\$750,000.00);

(ii) Termination after July 1, 2024 through July 1, 2025 - Seven Hundred Thousand Dollars (\$700,000.00);

- (iii) Termination after July 1, 2025 through July 1, 2026 - Six Hundred Fifty Thousand Dollars (\$650,000.00);
- (iv) Termination of July 1, 2026 through July 1, 2027 - Six Hundred Thousand Dollars (\$600,000.00);
- (v) Termination after July 1, 2027 through July 1, 2028 - Five Hundred Fifty Thousand Dollars (\$550,000.00);
- (vi) Termination after July 1, 2028 through July 1, 2029 - Five Hundred Thousand Dollars (\$500,000.00);
- (vii) Termination after July 1, 2029 through Jul 1, 2030 - Four Hundred Fifty Thousand Dollars (\$450,000.00);
- (vii) Termination after July 1, 2030 through July 1, 2031 - Four Hundred Thousand Dollars (\$400,000.00);
- (ix) Termination after July 1, 2031 through Jul 1, 2032 - Three Hundred Fifty Thousand Dollars (\$350,000.00);
- (x) Termination after July 1, 2032 through July 1, 2033 - Three Hundred Thousand Dollars (\$300,000.00);
- (xi) Termination after July 1, 2033 through July 1, 2034 - Two Hundred Fifty Thousand Dollars (\$250,000.00);
- (xii) Termination after July 1, 2034 through July 1, 2035 - Two Hundred Thousand Dollars (\$200,000.00);
- (xiii) Termination after July 1, 2035 through July 1, 2036 - One Hundred Fifty Thousand Dollars (\$150,000.00);
- (xiv) Termination after July 1, 2036 through July 1, 2037 - One Hundred Thousand Dollars (\$100,000.00);
- (xv) Termination after July 1, 2037 through July 1, 2038 - Fifty Thousand Dollars (\$50,000.00); or
- (xvi) Termination after July 1, 2038 - No termination fee.

19. **Removal.** Within ten (10) days after expiration of the Term, or the earlier termination this Agreement, and at its sole cost and expense, FPL shall remove the Equipment and repair and restore the Premises, Arena and Property, to the satisfaction of County, Operator, and Team, to the same condition as each existed immediately prior to installation of the Equipment, normal wear and tear excepted. For purposes of this Agreement, the term "repair and restore" means, but is not limited to: (a) repairing cosmetic damage, damage to the Arena's structural elements, electronic equipment and systems, and mechanical equipment and systems; and (b) repairing and restoring any portion of the Arena, Premises, or Property damaged as a result of the installation, use, or removal of the Equipment. FPL shall continue to have the right to reasonable access to the Property and Premises in order to remove the Equipment and to perform its repair and restoration obligations.

20. **Tax Credits, Financial Incentives, Sale of Energy.** Installation and operation of the Equipment on the Premises may result in the availability of federal and/or state tax credits, and other financial incentives (collectively hereinafter "Incentives"). As set forth in Section 4.2 above, County shall be the beneficiary of RECs. Other than RECs, FPL shall be the sole recipient and beneficiary of any Incentives, which shall be distributed,

disbursed, or assigned in FPL's sole discretion. County, Operator, and Team shall have no right to any Incentives, except as otherwise agreed to in writing by FPL, other than RECs, which shall be allocated to County as provided in Section 4. Except as otherwise set forth in Section 2.1, solar power electricity produced by or relating to the Equipment ("Energy"), and the right to utilize and/or sell the Energy, shall be the sole property and right of FPL, and the other Parties shall have no right to utilize Energy, to purchase the Energy from FPL, to sell the Energy, or to engage in any "net metering" involving the Energy without FPL's prior written consent.

21. **Assignment.** FPL may freely assign its interests in this Agreement to an Affiliate of FPL by providing County with sixty (60) days' prior notice. For purposes of this section, "Affiliate" shall mean: (i) any party controlling, controlled by, or under common control with FPL; (ii) any entity in which FPL has management control and owns directly or indirectly at least fifty percent (50%) of the equity interest in such entity; or (iii) any party that acquires more than eighty percent (80%) ownership of all of the assets of FPL. Other than the foregoing, no Party may assign this Agreement without the prior written approval of each other Party, which approval shall not be unreasonably withheld, conditioned, or delayed.

22. **Notices.** In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below, and shall be effective upon mailing or hand delivery. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

To County: Broward County
County Administration
115 S. Andrews Ave, Room 409
Fort Lauderdale, Florida 33301
bhenry@broward.org

with a copy to:

Lary Mahoney
Director of Real Estate Development
115 S. Andrews Avenue, Room 409
Fort Lauderdale, Florida 33301
Phone: 954-357-7357
Email: lmahoney@broward.org

To Operator: Matthew Caldwell, CEO & President
Arena Operating Company, Ltd.
BB&T Center
1 Panthers Parkway
Sunrise, Florida 33323

Phone:
Email:

To Team: Matthew Caldwell, CEO & President
Florida Panthers Hockey Club, Ltd.
1 Panthers Parkway
Sunrise, Florida 33323
Phone:
Email:

To FPL: Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408
Attn: Vice President
Development and External Affairs, Office of Clean Energy
Email: Amy.Wilkes@fpl.com

23. **Miscellaneous.**

23.1 **No Waiver.** Either Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement by such Party. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. Any waiver must be in writing signed by an authorized signatory of the Party.

23.2 **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHTS ANY PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY ANY OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTIES IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

23.3 Public Records. To the extent any other Party is acting on behalf of County as stated in Section 119.0701, Florida Statutes, such Party shall:

- a. Keep and maintain public records required by County to perform the services under this Agreement;
- b. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the records are not transferred to County; and
- d. Upon completion of this Agreement, transfer to County, at no cost, all public records in possession of the Party upon termination of this Agreement or keep and maintain public records required by County to perform the services. If a Party transfers the records to County, that Party shall destroy any duplicate public records that are exempt or confidential and exempt. If the Party keeps and maintains public records upon completion of this Agreement, such Party shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of any Party to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. The Party receiving the request will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that a Party contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT - TRADE SECRET." In addition, the Party must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County for records designated by that Party as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by the Party

that provided the records. Each of the Parties shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials belonging to that Party in response to a records request by a third party.

IF ANY PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THAT PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7357, LMAHONEY@BROWARD.ORG, 115 S. ANDREWS AVE, FORT LAUDERDALE, FLORIDA 33301.

23.4 Severability. If any term of this Agreement is found to be void or invalid, such finding shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

23.5 Joint Preparation. Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

23.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns.

23.7 Publicity. The Parties shall, following reasonable consultation, develop mutually agreeable messages, template language, and graphics for routine press releases and communications. County, Operator, and Team each acknowledges and agrees that FPL shall have the right (i) to issue press releases regarding use of the Equipment on the designated Project sites and to publicize FPL's involvement to FPL's customers and to the public; (ii) after County's prior written approval, to use County's name in FPL's press releases, publicity, and advertising. FPL acknowledges that County shall have the right (i) to issue press releases regarding use of the Equipment and to publicize County's involvement to County customers and to the public; (ii) to use FPL's name in County press releases, publicity, and advertising; and (iii) to display photographs of the Equipment on the designated Project sites in County's advertising and promotional materials. Special events and media opportunities departing from routine communications shall involve coordination and approval by the Parties.

23.8 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference, and a term, statement, requirement, or provision of this Agreement, the term,

statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

23.9 Independent Contractor. FPL is an independent contractor under this Agreement. FPL's construction or installation of the Project on the Premises, Arena, and Property is independent in nature pursuant to its rights under this Agreement, and any services provided by or for FPL in constructing or installing the Project on the Premises, Arena, and Property are subject to the supervision of FPL. Neither FPL nor its employees, contractors, or agents shall act as officers, employees, or agents of County, Operator, or Team. No partnership, joint venture, or other joint relationship is created hereby. County, Operator, and Team do not extend to FPL or FPL's agents any authority of any kind to bind County, Operator, or Team in any respect whatsoever.

23.10 Third-Party Beneficiaries. No Party intends to directly or substantially benefit a third party by this Agreement. Therefore, there are no third-party beneficiaries to this Agreement and no third party shall be entitled to assert a right or claim against either of them.

23.11 Entire Agreement/Amendments. All of the representations and obligations of the Parties relating to the subject matter hereof are contained in this Agreement. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and each other Party or others delegated authority or otherwise authorized to execute same on their behalf.

23.12 Compliance with Laws. The Parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement.

23.13 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits A, B, C, D, and E are incorporated into and made a part of this Agreement.

23.14 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

23.15 Counterparts. This Agreement may be executed in multiple originals and may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same agreement.

23.16 Force Majeure. Each of the Parties (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including, but not limited to, work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies.

23.17 Condemnation. If at any time during the Term, the power of eminent domain shall be exercised or threatened whether by condemnation proceeding or threat or imminence thereof (a "Taking") of the entirety of the Premises or of substantially all of the Premises shall occur so as to render the Premises unusable for the purpose set forth in this Agreement, such Taking shall be deemed to have caused this Agreement to terminate and expire as of the date of such Taking. For purposes of this Agreement, the date of Taking shall be deemed to be the earlier of the date upon which actual possession of the Premises or a portion thereof, as the case may be, is acquired by any lawful power or authority, or the date in which title vests in such lawful power or authority. All monies required to be paid to County by FPL shall be paid up to the date of such Taking. FPL shall in all respects keep, observe, and perform all the terms and conditions of this Agreement up to the date of such Taking. County agrees to promptly notify FPL of any eminent domain proceeding, and FPL, at its sole cost and expense, will be entitled to join such proceeding and to defend FPL's interest in this Agreement affected by such proceeding, and, to the extent permitted by law, to be awarded damages attributable to the value of FPL's unexpired license in the Premises.

23.18 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement.

24. Representations and Warranties.

24.1 Representation of Authority. Operator, Team, County, and FPL each represents and warrants for itself that this Agreement constitutes a legal, valid, binding, and enforceable obligation, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that the Party has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to the Party. Operator, Team, County, and FPL each further represents and warrants for itself that execution of this Agreement is within each of their respective legal powers, and each individual executing this Agreement on a Party's behalf is duly authorized by all necessary and appropriate action to do so and does so with full legal authority.

24.2 Public Entity Crime Act. FPL, Operator, and Team each represent that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represent that its entry into this Agreement will not violate that Act. Each of the above-referenced Parties further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether such Party has been placed on the convicted vendor list.

24.3 Discriminatory Vendor and Scrutinized Companies Lists. FPL, Team, and Operator each represent that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Each of the above-referenced Parties further represent that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

24.4 County Title to Premises. County represents that, to the best of its knowledge, it has good and unencumbered title to the Premises.

25. **Contingency.**

This Agreement is contingent on satisfaction of the following: (a) County and FPL entering into a separate agreement, on terms and conditions acceptable to County (with the County Administrator authorized to determine acceptability), for FPL to convey to County certain real property described in Exhibit E (the "FPL Property"); and (b) delivery and recording of a warranty deed in the public records of Broward County, Florida, conveying fee simple title in the FPL Property from FPL to County. The effective date of this Agreement shall be the date that both of the contingencies described above have been fully performed ("Effective Date"). If County and FPL do not execute the agreement for the conveyance of the FPL Property within sixty (60) days from the date of final execution of this Agreement ("Real Estate Contract"), and the recording of the warranty deed is not recorded within thirty (30) days after the date of execution of the Real Estate Contract, this Agreement shall be null, void, and no force or effect without the requirement of any further action by any of the Parties.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2019, Arena Operating Company, Ltd., Florida Panthers Hockey Club, Ltd., and Florida Power & Light Company, each signing by and through its authorized representative, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 2019

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Signature (Date)

By _____
Jeffrey S. Siniawsky (Date)
Senior Assistant County Attorney

Print Name and Title above

JSS:dp
FPL Solar Energy Agreement
04/22/18
#80025

SOLAR ENERGY AGREEMENT BETWEEN BROWARD COUNTY, ARENA OPERATING COMPANY, LTD., FLORIDA PANTHERS HOCKEY CLUB, LTD., AND FLORIDA POWER & LIGHT COMPANY FOR CONSTRUCTION, INSTALLATION, AND OPERATION OF SOLAR ENERGY PROJECTS AT BROWARD COUNTY CIVIC ARENA

ATTEST:

ARENA OPERATING COMPANY, LTD.

By _____

Printed Name: _____

(SEAL)

Title: _____

_____ day of _____, 2019

SOLAR ENERGY AGREEMENT BETWEEN BROWARD COUNTY, ARENA OPERATING COMPANY, LTD., FLORIDA PANTHERS HOCKEY CLUB, LTD., AND FLORIDA POWER & LIGHT COMPANY FOR CONSTRUCTION, INSTALLATION, AND OPERATION OF SOLAR ENERGY PROJECTS AT BROWARD COUNTY CIVIC ARENA

ATTEST:

FLORIDA PANTHERS HOCKEY CLUB, LTD.

By _____

Printed Name: _____

(SEAL)

Title: _____

_____ day of _____, 2019

SOLAR ENERGY AGREEMENT BETWEEN BROWARD COUNTY, ARENA OPERATING COMPANY, LTD., FLORIDA PANTHERS HOCKEY CLUB, LTD., AND FLORIDA POWER & LIGHT COMPANY FOR CONSTRUCTION, INSTALLATION, AND OPERATION OF SOLAR ENERGY PROJECTS AT BROWARD COUNTY CIVIC ARENA

ATTEST:

FLORIDA POWER & LIGHT COMPANY

By _____

Printed Name: _____

(SEAL)

Title: _____

_____ day of _____, 2019

EXHIBIT A

Property

TO BE ATTACHED

EXHIBIT B

TO BE ATTACHED

Premises

EXHIBIT C

Location of Solar Panels

TO BE ATTACHED