

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 13, 2007

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: Approve Agreement with Hopping, Green & Sams, P.A. for legal services regarding the revised land use plan for Mecca Farms at a rate of \$175-305 per hour, which has been discounted 15%, for a total amount not to exceed \$150,000.

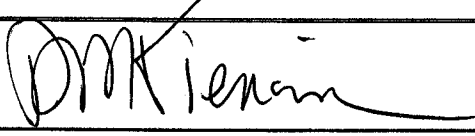
Summary: As the Board of County Commissioners moves forward with a land use strategy for Mecca Farms, it is essential that outside counsel be retained to provide expert legal services to protect the County's interests. Staff is recommending that the County continue to retain Hopping, Green & Sams, P.A. The firm was substantially involved with the Palm Beach County Biotechnology Research Park at Mecca Farms. The firm has vast specific knowledge and a historical perspective of the property. Approval of this item avoids the expenditure of additional funds and delay if another firm is selected.
Countywide (DN)

Background and Policy Issues: The contract provides for the firm to perform all work necessary to assist with the development of a revised land use plan for Mecca that is consistent with and protective of the County's interests, including but not limited to, providing legal services to the County in connection with preparation and adoption of a future land use strategy for the Mecca property to replace the current approvals for the Palm Beach County Biotechnology Research Park, formulating the future land use strategy with particular emphasis on legal requirements for final approval of a revised land use plan and development program for the Mecca Farms property, providing advice and counsel on various planning, zoning and entitlement issues, and attending meetings with various state, regional and local agencies regarding same. Although the representation will be provided in relation to pending litigation regarding prior approvals for Mecca Farms and in anticipation of future litigation, the contract does not include services for participation in any present or future litigation, but does not preclude the parties from agreeing to such services at a future date under an amendment to this contract or under a separate contract.

(Continued on page 3.)

Attachments:

1. Agreement for Legal Services
2. Hopping, Green & Sams, P.A. Disclosure Letter

Recommended by:  2/6/07
County Attorney Date

Approved by: N/A _____
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	150,000	---	---	---	---
Operating Costs	---	---	---	---	---
External Revenues	---	---	---	---	---
Program Income (County)	---	---	---	---	---
In-Kind Match (County)	---	---	---	---	---
NET FISCAL IMPACT	150,000	---	---	---	---
# ADDITIONAL FTE POSITIONS (Cumulative)	---	---	---	---	---

Is Item Included in Current Budget? Yes X No ___

Budget Account No.: Fund 3033 Department 429 Unit B346 Object 6505

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

As used contract, not to exceed \$150,000.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

[Handwritten signatures and dates]
 2-7-07 OFMB Contract Development and Control
 2-7-07
 2-8/07
 2-8/07

B. Legal Sufficiency:

[Handwritten signature] 2/6/07
 County Attorney

This Contract complies with our contract review requirements.

[Handwritten note:] At the time of our review, the contract was not executed and the proof of insurance was not available.

C. Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Policy Issues: (Continued from Page 1.)

Further, pursuant to Rule 4.1-7, Rules Regulating the Florida Bar and Palm Beach County PPM #CW-O-052 pertaining to outside counsel conflicts of interest, Hopping, Green & Sams, P.A. has submitted a disclosure of the firm's representation of various clients, a copy of which is attached to this item. The clients identified were previously disclosed to the County during the firm's work on Mecca Farms. The County Administrator and the County Attorney, pursuant to the applicable County policy, have reviewed the disclosure and have determined that the firm's representation of the identified clients will not adversely affect the firm's responsibility to the County. While there may be clients that could have interests contrary to the County's, for instance, the firm's representation of the Sugar Cane Growers Cooperative of Florida, where the firm may advance lime rock mining legislation during the 2007 Session that the County may not support, staff believes that the firm will not compromise its representation of the County, and recommends that the Board of County Commissioners approve the contract as presented.

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**AGREEMENT BETWEEN PALM BEACH COUNTY AND
HOPPING, GREEN & SAMS, P.A., FOR
LEGAL SERVICES RE: REVISED LAND USE PLAN FOR MECCA FARMS**

THIS AGREEMENT is made and entered into this _____ day of _____, 2007, by and between **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida (hereinafter referred to as "BOARD") and **HOPPING, GREEN, & SAMS, P.A.** (hereinafter referred to as "OUTSIDE COUNSEL").

In consideration of the premises and mutual covenants and agreements expressed herein the parties agree as follows:

1. (a) The BOARD hereby retains the OUTSIDE COUNSEL to provide LEGAL SERVICES regarding the formulation of a revised land use plan for the property commonly referred to as "Mecca Farms."

(b) LEGAL SERVICES shall mean all work necessary to assist with the development of a revised land use plan for the property commonly referred to as "Mecca Farms" that is consistent with and protective of the County's interests, including but not limited to, providing legal services to the County in connection with preparation and adoption of a future land use strategy for the Mecca Farms property to replace the current approvals for the Palm Beach County Biotechnology Research Park, formulating the future land use strategy with particular emphasis on legal requirements for final approval of a revised land use plan and development program for the Mecca Farms property, providing advice and counsel on various planning, zoning and entitlement issues, and attending meetings with various state, regional and local agencies regarding same. Although the representation will be provided in relation to pending litigation regarding prior approvals for

Mecca Farms and in anticipation of future litigation, the present contract does not include services for participation in any present or future litigation, but does not preclude the parties from agreeing to such services at a future date under an amendment to this contract or under a separate contract.

(c) The term of this AGREEMENT shall be effective as of January 20, 2007, and shall terminate when the development approvals referenced in this article reach a final disposition.

(d) It is anticipated that OUTSIDE COUNSEL will attempt whenever possible to achieve cost effectiveness by consolidating meetings, limiting travel, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.

2. (a) The BOARD shall pay OUTSIDE COUNSEL for the LEGAL SERVICES rendered on a per hour basis according to the discounted rates listed on the hourly rate schedule attached as Exhibit A, in a total amount not to exceed \$150,000:

(b) OUTSIDE COUNSEL understands that its LEGAL SERVICES will be capped at \$150,000 and there will be no additions to that amount, without amendment of this AGREEMENT.

(c) OUTSIDE COUNSEL shall notify the BOARD when the billable fees and costs reach ninety (90%) percent of the not-to-exceed amount provided for herein, or \$135,000. Said notification shall be made as soon as is practicable.

(d) Bills shall be submitted to the BOARD for review and approval every thirty (30) days. Payment will be submitted for all approved bills within thirty (30) days of

receipt. Each item shall be set forth separately, specifically describing the work performed, and reflecting the actual time spent on each such matter. Billable hours shall be measured in six (6) minute increments. Compensation of OUTSIDE COUNSEL hours will be for actual time spent providing LEGAL SERVICES related to the cases. Overtime pay at premium rates will not be compensated.

3. (a) The BOARD agrees to reimburse OUTSIDE COUNSEL for any and all reasonable and ordinary expenses and costs incurred during the course of providing the LEGAL SERVICES. The expenses and costs may include, but are not limited to, out-of-pocket expenses, photo copying at a rate of .15 per page, express mail, word processing charges, telefacsimile charges, long distance telephone charges, cellular telephone charges at the rate of .25 per minute, postage and printing. The BOARD will only reimburse OUTSIDE COUNSEL expert witness or consultant fees that have been previously approved in writing by the BOARD. Court filing fees and costs, witness fees, and previously approved travel shall be itemized and invoiced separately.

(b) BOARD shall not be responsible for the cost of any computerized legal research other than the actual billable hourly rate of OUTSIDE COUNSEL.

(c) OUTSIDE COUNSEL covenants and agrees that any other type of billing or time keeping which allows compensation for time not actually spent by OUTSIDE COUNSEL is not permitted under this AGREEMENT. Therefore, it shall be a material breach of the terms of this AGREEMENT for OUTSIDE COUNSEL or anyone on OUTSIDE COUNSEL's behalf to submit for payment any statement of services rendered that either (i)

overstates the amount of time actually spent pursuant to this AGREEMENT, or (ii) includes time spent by any person not affiliated with OUTSIDE COUNSEL.

(d) Each statement of costs and fees represents an implied warranty that the statement sets forth only the actual time spent and only the actual costs incurred. The BOARD may rely on the implied warranty.

(e) All requests for payment of expenses eligible for reimbursement under this AGREEMENT shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expenses were actually incurred and necessary in the performance of the LEGAL SERVICES. Long distance telephone calls may be documented by identifying the person(s)/number(s) called, the date, time, and length of the call, and cost. Photocopy charges shall give a general description of the documents. If duplication of more than ten (10) documents is required, a general description of the category or type of documents copied will be sufficient documentation.

(f) OUTSIDE COUNSEL shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the LEGAL SERVICES for at least three (3) years after termination of this AGREEMENT. The BOARD shall have access to such books, records and documents as required in this subparagraph for the purpose of inspection and/or audit during normal business hours, at the BOARD's expense, upon reasonable written notice.

4. This AGREEMENT may be terminated by either party only upon good cause shown. The BOARD shall provide written notice to OUTSIDE COUNSEL, and termination

shall become effective upon receipt of the notice. OUTSIDE COUNSEL shall provide sixty (60) days written notice to the BOARD. Upon termination by either party, if fully paid in accordance with this AGREEMENT, OUTSIDE COUNSEL shall transfer all work in progress, completed work, and other materials related to the LEGAL SERVICES to the BOARD.

5. (a) OUTSIDE COUNSEL shall provide periodic status reports, either oral or in writing, as requested by the SUPERVISOR or her designee.

(b) OUTSIDE COUNSEL shall deliver to the BOARD for approval and acceptance, and before being eligible for final payment of any amounts due, and owing, all documents and materials prepared by and for the BOARD in the course of providing the LEGAL SERVICES.

(c) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the BOARD or at its expense shall be kept confidential by OUTSIDE COUNSEL and shall not be disclosed to any other party, directly or indirectly, without the BOARD's prior written consent unless required by an order issued by a court or like authority of lawful jurisdiction. All drawings, maps and sketches, and other data developed or purchased under this AGREEMENT or at the BOARD's expense shall be and remain the BOARD's property and may be reproduced and reused solely at the discretion of the BOARD.

(d) OUTSIDE COUNSEL has been advised that the BOARD and all its activities are subject to the Public Records Law (Chapter 119, F.S.) and the Sunshine Law

(Section 286.011, F.S.) OUTSIDE COUNSEL shall observe and comply with the requirements of said laws in performing the services required hereunder.

6. OUTSIDE COUNSEL will maintain in full force and effect, during the life of this AGREEMENT, Standard Professional Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence with the maximum deduction of One Hundred Thousand Dollars (\$100,000.00).

(a) Certificates of Insurance, satisfactory to the BOARD evidencing all such coverages shall be furnished to the BOARD immediately upon execution hereof and before commencement of any services under this AGREEMENT, with complete copies of policies to be furnished upon the BOARD's request. Such certificates of insurance will provide the BOARD with thirty (30) days prior written notice of any cancellation or non-renewal.

(b) Approval of the insurance by the BOARD shall not relieve or decrease liability of OUTSIDE COUNSEL hereunder.

7. OUTSIDE COUNSEL shall indemnify, hold harmless and defend the BOARD, its agents, servants, and employees from and against any and all claims, liability, losses and/or causes of action which may arise by virtue of any intentional or negligent act or omission of OUTSIDE COUNSEL or any agent, member, partner, associate or employee thereof in the performance of the LEGAL SERVICES.

8. OUTSIDE COUNSEL represents that it has, or will secure at its own expense, all necessary personnel required to perform the LEGAL SERVICES as required herein. Such personnel shall not be employees of or have any contractual relationship with the SUPERVISOR. The LEGAL SERVICES shall be performed by David L. Powell and

Gary P. Sams, or under their direct supervision. OUTSIDE COUNSEL may not substitute lead counsel without prior written authorization from the BOARD. Such authorization shall be at the sole discretion of the BOARD. All personnel engaged in performing the LEGAL SERVICES shall be fully qualified and, if required, authorized or permitted under State and local law to perform such services. OUTSIDE COUNSEL warrants that the LEGAL SERVICES shall be performed by skilled and competent personnel to the highest professional standards.

9. OUTSIDE COUNSEL's signature on this AGREEMENT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this AGREEMENT are accurate, complete and current as of the date of this AGREEMENT.

10. (a) OUTSIDE COUNSEL represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the LEGAL SERVICES, as provided in the standards set forth in Part III of Chapter 112, Florida Statutes. OUTSIDE COUNSEL further represents that no person having such a conflicting interest shall be employed by OUTSIDE COUNSEL to perform the LEGAL SERVICES.

(b) OUTSIDE COUNSEL shall promptly notify the BOARD in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence OUTSIDE COUNSEL's judgment or quality of the LEGAL SERVICES. The notice shall identify the prospective business association, interest or circumstance and the nature of work that OUTSIDE COUNSEL

want to undertake and request the BOARD's opinion as to whether the association, interest or circumstance would, in the opinion of the BOARD, constitute a conflict of interest if entered into by the OUTSIDE COUNSEL. The BOARD agrees to notify OUTSIDE COUNSEL of its opinion within thirty (30) days of receipt of notification by OUTSIDE COUNSEL. If, in the opinion of the BOARD, the prospective business association, interest or circumstance would not constitute a conflict of interest by OUTSIDE COUNSEL, the BOARD shall so state in its opinion, and the association, interest, or circumstance shall not be deemed to be a conflict of interest with respect to the LEGAL SERVICES. OUTSIDE COUNSEL further agrees to comply with Palm Beach County PPM #CW-0-052 regarding outside counsel conflicts of interest. Said PPM is incorporated herein by reference and made a part of this contract.

11. OUTSIDE COUNSEL is, and shall be, in the performance of the LEGAL SERVICES an independent contractor and not an employee of the BOARD. All persons engaged in the LEGAL SERVICES performed by OUTSIDE COUNSEL pursuant to this AGREEMENT shall at all times, and in all places, be subject to OUTSIDE COUNSEL's sole discretion, supervision, and control. OUTSIDE COUNSEL shall exercise direct control over the means and manner in which it and its employees perform the work. OUTSIDE COUNSEL does not have the power or authority to bind the BOARD in any promise, agreement or representation other than as specifically provided for in this AGREEMENT.

12. OUTSIDE COUNSEL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for OUTSIDE COUNSEL, to solicit or secure this AGREEMENT and that it has not paid or agreed to pay

any person, company, corporation, individual, or firm, other than a bona fide employee working solely for OUTSIDE COUNSEL, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this AGREEMENT.

13. OUTSIDE COUNSEL warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, ancestry, marital status, sexual orientation or disability.

14. (a) This AGREEMENT shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this AGREEMENT shall be originally filed and later held in Palm Beach County. No remedy herein conferred upon the parties is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or not or hereafter existing at law or in equity, by statute or otherwise. The parties agree that time is of the essence in the performance of all obligations hereunder. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

(b) In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees.

15. As provided in Sections 287.132-133, Florida Statutes, by entering into this AGREEMENT or performing any work in furtherance hereof, OUTSIDE COUNSEL certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder,

have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

16. All written notices required in this AGREEMENT shall be sent by certified mail, return receipt requested. If sent to the BOARD, the notice shall be mailed to:

Palm Beach County Board of County Commissioners
c/o Chief Assistant County Attorney Andrew J. McMahon
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

If sent to OUTSIDE COUNSEL, the notice shall be mailed to:

David L. Powell
Hopping Green & Sams
123 South Calhoun St. (32301)
Post Office Box 6526
Tallahassee, FL 32314

17. The foregoing terms and conditions constitute the entire AGREEMENT between the parties hereto and any representation not contained herein shall be null and void and of no force or effect. Further, this AGREEMENT may be amended only in writing upon mutual consent of the parties hereto.

18. This AGREEMENT supersedes and replaces any prior written or oral agreements entered into by the parties related to this representation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed this AGREEMENT
on the day and year first above written.

WITNESSES:

By: _____

By: _____

**PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS**

By: _____
Commissioner Addie L. Greene, Chairperson

WITNESSES:

By: _____

By: _____

OUTSIDE COUNSEL

By: _____
David L. Powell
For Hopping Green & Sams, P.A.

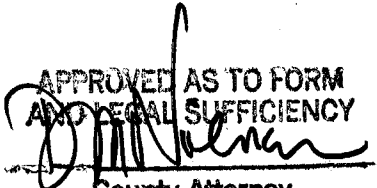
BY  _____
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
County Attorney

EXHIBIT A

2007 Rates for Palm Beach County

<u>Attorney</u>	<u>Standard Rate</u>	<u>15% Discount Rate</u>
Gary P. Sams	\$360	\$305
Frank E. Matthews	\$335	\$285
David L. Powell	\$320	\$275
Dan R. Stengle	\$320	\$275
Susan L. Stephens	\$300	\$255
Gary K. Hunter	\$290	\$250
Eric T. Olsen	\$290	\$250
D. Kent Safriet	\$235	\$200
Doug M. Smith	\$225	\$190
Vinette D. Godelia	\$205	\$175

Hopping Green & Sams

Attorneys and Counselors

Writer's Direct Dial No. (850) 425-2222
Writer's E-Mail: dpowell@hgsllaw.com

Tuesday, February 6, 2007

By Electronic Delivery

Denise Nieman
County Attorney
Palm Beach County
301 North Olive Avenue
West Palm Beach, FL 33401

Re: *Disclosure of Firm Representation of Various Clients*

Dear Denise:

Per your request, this letter will set forth certain representations in or of potential interest to Palm Beach County. Among these are representations of certain institutional clients which are on-going and were disclosed to Palm Beach County during our prior work on the Palm Beach County Biotechnology Research Park at Mecca Farms.

We currently are engaged to represent and provide legal services to:

- æ **Florida Chamber of Commerce and Florida Association of Realtors.** These are long-standing clients for whom our firm provides on-going representation in various legislative and litigation matters. We intend to represent both on property tax legislation to be addressed during the 2007 legislative session.
- æ **Florida Power & Light Company.** This is a long-standing client for whom we provide representation in various matters, including permitting, litigation and legislation. Among the specific projects for which we are assisting this client at the present time are (1) securing regulatory approvals for the proposed West County Energy Center in Palm Beach County, and (2) securing regulatory approvals for the proposed Glades Power Park in Glades County, which may involve ancillary activities within Palm Beach County.
- æ **GL Homes**, the owner of certain real property within the present boundaries of the Central Western Communities Sector Plan Area and intended for ultimate development. Our representation of GL Homes is related to matters outside Palm Beach County and has not involved the Palm Beach County property.
- æ **Lantana Farm Associates, Inc.**, with respect to a Future Land Use Atlas amendment, # 2006-00010 adopted by Ordinance No. 2006-029, for 26 acres on SR 7 and Lantana Road. Our firm has entered an appearance in a pending

Post Office Box 6526 Talahassee, Florida 32314 123 South Calhoun Street (32301) 850.222.7500 850.224.855 fax www.hgsllaw.com

Letter to Denise Nieman
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compliance proceeding on behalf of Lantana Farm Associates, Inc., as a co-party with the County. We are not engaged to represent this client in any other legal matters, including but not limited to any matters relating to Mecca Farms.

æ **Lennar Homes**, which has interests and developments in Palm Beach County. Our representation of Lennar is related to matters outside Palm Beach County.

æ **Roth Farms, Inc., K.W.B. Farms, Inc., and the Western Palm Beach County Farm Bureau**, in litigation related to the Florida Everglades. This representation includes appearing in an enforcement action concerning the Loxahatchee National Wildlife Refuge. The County is not a party to that litigation.

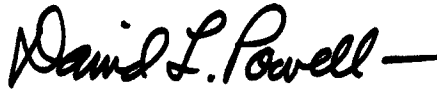
æ **Sugar Cane Growers Cooperative of Florida**. This is a long-standing client for whom we provide representation on various matters, including permitting, litigation and legislation. The legislative representation involves general environmental and land use matters, and may include issues related to lime rock mining expected to be addressed during the 2007 legislative session. This representation does not include representation in any judicial or quasi-judicial proceeding with respect to real property in Palm Beach County.

æ **Ward Waldman Real Estate Services, LLC, & W&W IX, LLC**, with respect to 10.8 acres at the southeast corner of Northlake Boulevard and 112th Terrace North. Principals in Ward Waldman Real Estate Services, LLC, are Rett Waldman and Jim Ward. Principals in W&W IX, LLC, are Jim Ward, Tricia Ward Waldman and Harry Winderman. Our representation involves seeking entitlements, including a Future Land Use Atlas amendment, # 2006-00022, and we are engaged to enter an appearance on behalf of this client in any resulting compliance proceeding before the Florida Department of Community Affairs. We expect that we would do so as a co-party with the County.

To the extent that these representations would result in our firm representing a client directly adverse to Palm Beach County, pursuant to Rule 4-1.7, Rules Regulating the Florida Bar, we respectfully request that the County waive any such conflict and otherwise consent to these representations by counter-signing this letter below per your Policy PPM # DCW-O-052. Please return a copy to me by regular mail.

As always, we appreciate the opportunity to assist Palm Beach County.

Sincerely,



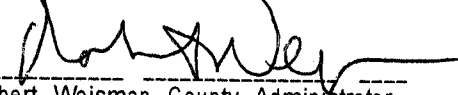
David L. Powell

Hopping Green & Sams

Attorneys and Counselors

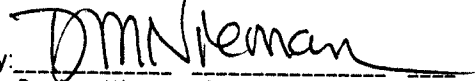
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PALM BEACH COUNTY

By: 

Robert Weisman, County Administrator

Date: 2/6/07

By: 

Denise Nieman, County Attorney

Date: 2/6/07

255697.3

Hopping Green & Sams

Attorneys and Counselors

