



COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month at 5:30 p.m. in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 2/23/2018 Meeting Date: 3/1/2018

Name: Joel Foreman Department: County Attorney

Division Manager's Signature:

Ben Scott

1. Nature and purpose of agenda item:

Request for approval of engagement agreement with Hopping Green & Sams - Bayfield Mitigation credits

2. Recommended Motion/Action:

There is no recommended motion or action.

3. Fiscal impact on current budget.

This item has no effect on the current budget.

MEMORANDUM

To: Board Agenda, March 1, 2018

From: Joel F. Foreman

Re: FEE AGREEMENT – Hopping Green & Sams – Bayfield Mitigation Bank

Date: February 23, 2018

Attached is a fee agreement proposed by the law firm of Hopping Green & Sams to provide assistance to my office and County Staff with matters relating to the Bayfield Mitigation Bank and contractual rights to certain mitigation credits the County acquired from that bank.

A firm bio for Mr. Olsen is attached.

I would like to engage Mr. Olsen and request board approval of this agreement.

Hopping Green & Sams

Attorneys and Counselors

FEE AGREEMENT

I. PARTIES

THIS AGREEMENT is made and entered into by and between the following parties:

A. Columbia County ("Client")
c/o Joel F. Foreman
207 S. Marion Ave.
Lake City, FL 32025

and

B. Hopping Green & Sams, P.A., ("HGS")
119 South Monroe St., Suite 300 (32301)
P.O. Box 6526
Tallahassee, FL 32314

II. SCOPE OF SERVICES

In consideration of the mutual undertakings and agreements contained herein, the parties agree as follows:

- A. The Client agrees to employ and retain HGS as its attorneys and legal representatives for counseling and representation to assist Client in enforcing an agreement to use mitigation credits, or otherwise assist Client in using certain mitigation credits, from the Bayfield Mitigation Bank near Lake City, Florida, and for any related matter as directed by Client.
- B. HGS accepts such employment and agrees to serve as attorneys for and provide legal representation to the Client in connection with those matters referenced above.

III. CLIENT FILES

The files and work product materials (“client file”) of the Client generated or received by HGS will be maintained by HGS in its regular offices. At the conclusion of the representation, the client file will be stored by HGS in accordance with its document retention policies but held no longer than 5 years unless specifically directed otherwise by Client, or unless the client file is requested by Client in which event HGS will return the client file to Client assuming all fees and obligations established in this Agreement have been satisfied in accordance with the terms herein.

IV. FEES

- A. The Client agrees to compensate HGS for services rendered in connection with any matters covered by this Agreement according to the agreed upon hourly billing rates for individual HGS lawyers, plus actual expenses incurred by HGS in accordance with the attached standard Expense Reimbursement Policy (Attachment A, incorporated herein by reference). The hourly rate of the attorney(s) who are initially expected to handle the bulk of Client’s work are Eric Olsen \$435/hour, Doug Smith \$345/hour and Erin Tilton \$255/hour. To the extent other HGS attorneys or law clerks provide work on this matter, those rates will be provided to Client. Paralegals are billed at \$145/hour, legal assistants \$115/hour and the range of hourly rates for HGS attorneys is \$245-\$530.
- B. To the extent practicable and consistent with the requirements of sound legal representation, HGS will attempt to reduce Client’s bills by assigning each task to the person best able to perform it at the lowest rate so long as he or she has the requisite knowledge and experience. HGS’ hourly billing rates are reevaluated annually prior to the beginning of the calendar year and are subject to change each year at that time. Annually revised hourly billing rates will not be put into effect without notice to and consent by Client; however, Client’s consent will not be unreasonably withheld for annual adjustments of up to \$15/hour.
- C. In addition to billing for hourly rates, HGS will include costs and expenses (including interest charges on past due statements) on its billing statements for Client reimbursement in accordance with the attached standard Expense Reimbursement Policy (Attachment A).

V. FLORIDA EXECUTIVE AND LEGISLATIVE BRANCH LOBBYING LAWS

Florida law requires any individual participating in executive or legislative branch lobbying to register as an executive or legislative branch lobbyist and report any fees associated with such representation. To the extent that HGS represents Client on matters before executive branch agencies, or before applicable legislative entities, Client agrees to sign client consent forms required by Florida lobbying law and agrees to registration of HGS attorneys as lobbyists and the reporting of fees associated with such representation.

VI. BILLING AND PAYMENT

The Client agrees to pay HGS monthly billings for fees and expenses incurred within thirty (30) days following receipt of a statement from HGS. HGS shall not be obligated to perform further legal services under this Fee Agreement if any such billing statement remains unpaid longer than thirty (30) days after submittal to and receipt by Client. Non-payment of fees shall be a basis for HGS to immediately withdraw from the representation without regard to remaining actions necessitating attention by HGS as part of the representation.

VII. ATTORNEYS' FEES AND COSTS

In the event of a dispute arising under this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable. Venue of any such action shall be exclusive in the state courts of the Second Judicial Circuit in and for Leon County, Florida.

VIII. TERMINATION

Either party may terminate this Fee Agreement upon providing prior written notice to the other party at its regular place of business. All fees due and payable in accordance with this Agreement shall accrue and become payable pursuant to the terms of this Agreement through the date of termination.

IX. EXECUTION OF AGREEMENT

This Agreement shall be deemed fully executed upon its signing by HGS and the Client. The contract formed between HGS and the Client shall be the operational contract between the parties.

X. ENTIRE CONTRACT

This Agreement constitutes the entire agreement between the parties.

Accepted and Agreed to:

COLUMBIA COUNTY

HOPPING GREEN & SAMS, P.A.

By: _____
Name

By: 
Vice President

Its: _____
Title

Date: January 18, 2018

Date: _____

HOPPING GREEN & SAMS P.A.
EXPENSE REIMBURSEMENT POLICY

The following is Hopping Green & Sams' standard expense reimbursement policy. This policy applies unless a different arrangement has been negotiated based on the unique circumstances of a particular client or matter.

All expenses are billed monthly. Billings ordinarily reflect expenses for the most recent month, except where there are delays in receiving bills from third party vendors.

Interest. For all statements outstanding ninety (90) days past the invoice date, simple interest at a rate of one percent (1%) per month (twelve percent per annum) will be assessed on the outstanding fees and expenses.

Photocopying and Printing. In-house photocopying and printing is charged at \$.25 per page (black & white) and \$.50 per page (color). Outside copying is billed as a pass-through of the outside vendor's charges.

Facsimile. Outgoing facsimile transmissions are charged at \$1.00 per page. There is no charge for incoming faxes.

Postage. Postage is billed at actual cost.

Overnight Delivery. Overnight delivery is billed at actual cost.

Local Messenger Service. Local messenger service is billed at the IRS approved reimbursement rate.

Computerized Legal Research. Charges for computerized legal research are billed at an amount approximating actual cost.

Travel. Travel (including air fare, rental cars, taxicabs, hotel, meals, tips, etc.) is billed at actual cost. Where air travel is required, coach class is used wherever feasible. Out-of-town mileage is billed at the IRS approved reimbursement rate.

Consultants. Unless prior arrangements are made, consultants are ordinarily employed directly by the client. Where consultants are employed by the firm, their charges are passed-through with no mark-up. The client is responsible for notifying the firm of any particular billing arrangements or procedures which the client requires of the consultant.

Other Expenses. Other outside expenses, such as court reporters, agency copies, etc. are billed at actual cost.

Word Processing and Secretarial Overtime. No charge is made for word processing. No charge is made for secretarial overtime except in major litigation matters where unusual overtime demands are imposed.

Attachment A

Hopping Green & Sams

Attorneys and Counselors



Eric T. Olsen

Eric Olsen assists clients across the State of Florida on issues related to environmental regulation. He has been practicing in this area for over 20 years. He primarily focuses on wetland regulation, mitigation banking, stormwater regulation, consumptive use or water use permitting, water supply, and underground injection control.

Eric started in this area as an in-house attorney with the St. Johns River Water Management District. While employed there he worked with the other water management districts to help develop the Environmental Resource Permitting program, statutes and rules governing wetland mitigation banks, and rules and policies affecting the water supply and water use. He also worked on evaluating permit applications and resolving enforcement issues – gaining key understanding of how agency staff evaluate regulatory issues.

Since joining HGS, Eric has represented industry associations and regulated entities before the Florida Legislature and before federal and state regulatory agencies, with the goal of seeking to help keep laws and rules reasonable, and to obtain permits and other authorizations in a timely, cost-efficient manner. He aspires to develop innovative approaches to regulatory problems that satisfy client needs while meeting mandatory agency requirements.

Eric is a lifelong Florida resident. He grew up in Jacksonville and Cocoa, Florida, and worked in Jacksonville before joining HGS in Tallahassee.

Education

- University of Florida College of Law, J.D., with honors, 1989.
- Clemson University, B.A., 1986.

Bar & Court Admissions

- Florida, 1989
- United States District Court, Middle District of Florida, 1990

Professional Affiliations

- Florida Bar, Section on Environmental and Land Use Law.

Experience

- Represented clients before the U.S. Army Corps of Engineers, United States Environmental Protection Agency, and U.S. Fish and Wildlife Service, to obtain permits and solve enforcement issues under section 404 of the Clean Water Act. Demonstrated to Corps that wetland impacts could not be avoided and proposed mitigation was adequate.
- Worked with U.S. Army Corps of Engineers, EPA, and U.S. Fish and Wildlife Service to prepare and execute mitigation banking instruments providing federal approval to many mitigation banks in Florida. Resolved issues relating to financial responsibility and land protection for mitigation banks, and issues involving proper credit award, mitigation bank operation, and proper service area.
- Has obtained consumptive use or water use permits for water utilities, electrical power plants, rock and sand mines, recreational facilities, and agricultural operations. Work on these permits involved resolving issues related to quantity of water needed, interference with other water users, potential environmental impacts, and compliance with established minimum flows and levels.
- Addressed third party objections relating to an Environmental Resource Permit for large land development project in Collier County, thereby allowing the project to be

permitted and proceed.

- Defended lakefront landowner in designation of Lake Disston as an Outstanding Florida Water to ensure designation did not impact development rights.
- Obtained state wetlands, stormwater, and water use permits for a large biofuel agricultural operation using Florida's expedited permitting program.
- Developed and helped enact legislation restricting the ability of water management districts to accept money as wetland mitigation (in-lieu-fee) to prevent unfair competition with private wetland mitigation banks.
- Developed and helped enact legislation providing funding for alternative water supply projects, requiring the water management districts to engage in water supply planning, and providing for the reuse of reclaimed water.
- Successfully defended permit applicant in litigation brought by third-party opponents involving challenge to Underground Injection Control permit associated with electrical power generation facility.
- Developed and helped enact legislation eliminating overlap between injection well construction under the Underground Injection Control program and the water management district water well construction program.
- Involved in drafting and lobbying legislation governing environmental resource permitting, wetland delineation, mitigation banking and water use regulation.
- Former Senior Assistant General Counsel, St. Johns River Water Management District 1990-1999. Worked with statewide inter-agency teams to develop statutes and rules regarding Environmental Resource Permitting, wetland mitigation banking, stormwater regulation, and water use and water supply regulation.

Representative Published Decisions

- *Southwest Florida Water Management District v. Save the Manatee Club*, 773 So.2d 594 (Fla 1st DCA 2000) (assisted in)

Publications & Presentations

- [*Mitigation Banking Under the Florida Environmental Reorganization Act of 1993*](#), 68 Florida Bar Journal 68 (July/August 1994).
- [*Required Rulemaking Under Florida's APA: An Analysis of 'Feasible' and 'Practicable'*](#), 67 Florida Bar Journal 62 (July/August 1993).
- Regularly lectures on the subjects of wetland delineation, wetland permitting, and mitigation banking at Florida Chamber of Commerce environmental permitting courses, Florida Bar presentations, CLE International courses, and National Mitigation Banking Conferences.
- Regularly lectures on the topics of consumptive use permitting and water supply at Florida Chamber of Commerce environmental permitting courses, CLE International courses, and Public Utility Research Center and the Askew Institute, University of Florida, conferences.
- Legislative summaries published in the Florida Bar's Environmental and Land Use

Law Section Reporter.

Awards & Recognition

- Listed in Chambers USA, 2012-2017 Editions.
- Listed in Florida Trend Magazine’s “Up and Coming Legal Elite” for Environmental and Land Use Law
- Named the Best Lawyers 2013 Tallahassee Water Law “Lawyer of the Year”; listed in Best Lawyers in America, for Environmental Law, Litigation – Environmental and Water Law, 2007-2018 Editions.

Practice Areas

Administrative, Consumptive Use Permitting, Energy Facilities Siting & Licensing, Legislative & Government Affairs, State-owned Lands, Water & Wastewater Utilities, Water Resources, Wetlands & Mitigation Banking