

Return this completed form and all attachments to:  
**WV Ethics Commission 210**  
Brooks Street, Ste 300  
Charleston, WV 25301  
Phone: (304) 558-0664  
Or to:  
rachel.y.carpenter@wv.gov

## Disclosure of Lobbying Contracts by State Agencies, Municipalities, Counties, and School Districts



Beginning on July 1, 2022, pursuant to W. Va. Code § 6B-3-10, every state agency, municipality, county, and school district in West Virginia that contracts for lobbying services shall disclose, and when applicable provide copies of, the information requested below to the West Virginia Ethics Commission. If you have questions about completing this form, please contact the Ethics Commission at (304) 558-0664 or email [ethics@wv.gov](mailto:ethics@wv.gov).

This is a public document that will be made available to the public. Please do not include (or redact) confidential information.

### State Agency, Municipality, County, or School District with Lobbying Contract(s)

- ▶ Governmental Agency Submitting Form West Virginia University
- ▶ Address 104 Stewart Hall, PO Box 6205, Morgantown, WV 26506-6205
- ▶ Name of Authorized Representative Rob Alsop, Vice President for Strategic Initiatives

**RECEIVED**

By WV Ethics Commission at 1:55 pm, Jul 14, 2023

### 1. Contract Details

- ▶ Name of party(ies) to the Contract providing Lobbying Services Danielle Waltz (Jackson Kelly PLLC)
- ▶ Effective Date of Contract and Any Applicable Extension Dates February 1, 2022
- ▶ Duration of Contract Month to Month
- ▶ Payment and Reimbursement Terms of Contract \$5000 per month for legal and government relations assistance. Reimbursement for expenses related to work representing WVU.

### 2. Copy of Contract for Lobbying Services

- ▶ Copy of Contract for Lobbying Services Attached \_\_\_\_\_ Yes ☒ No

### 3. Costs for Lobbying Services

►List all costs to be paid or reimbursed, or already paid or reimbursed, for lobbying services associated with or related to the contract for lobbying services, ***including itemized*** expenses such as dinners, meals, or events (attach additional pages if needed). You may wait until July 1, 2023, to file the itemized expenses that are incurred from July 1, 2022, through July 1, 2023.

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### 4. Identities of Individuals or Entities

►List the identities of any individuals or entities (if any) engaging in activities pursuant to the contract for lobbying services that may require the individual or entity to register as a lobbyist (per [W. Va. Code § 6B-3-1](#)). (Do not list lobbyists or lobbying firms if they are already disclosed in question no. 1.)

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On July 1, 2023, and on July 1 of each year thereafter, every state agency, municipality, county, and school district in the state that has contracted for lobbying services in the preceding year shall report to the Ethics Commission. [H. B. 3220 \(2022 Regular Session\)](#)

**EIGHTH AMENDMENT**  
**to the**  
**OUTSIDE COUNSEL AGREEMENT**  
**Between**  
**WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS**  
**on behalf of**  
**WEST VIRGINIA UNIVERSITY**  
**and**  
**JACKSON KELLY PLLC**

This **EIGHTH AMENDMENT** ("Amendment"), is made and entered into this 17th day of September 2019 ("Effective Date"), by and between WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS on behalf of WEST VIRGINIA UNIVERSITY ("University"), and Jackson Kelly PLLC ("Firm") (collectively, the "Parties")

**WHEREAS**, University and Firm entered into the West Virginia University Outside Counsel Agreement commencing on 7/19/2010 ("Agreement").

**WHEREAS**, University and Firm now desire to amend the Agreement as specified herein.

**NOW, THEREFORE**, in consideration of the covenants and conditions herein contained, University and Firm do hereby agree as follows:

1. In the event of any conflict between this Amendment and the Agreement, this Amendment shall control.

2. Section 2 of the Agreement, Contract Term, is amended and restated in its entirety as follows:

The term of the Agreement shall be restated and continue from Effective Date of this Eighth Amendment and shall terminate five (5) years from the date thereof (the "Term"), unless terminated sooner as hereinafter provided. At the end of the Term hereof and each renewal term thereafter, this Agreement may be renewed for one (1) year periods by an exchange of mutual correspondence indicating an intent to renew thirty (30) days prior to the commencement of each renewal term.

3. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Amendment by signing any such counterpart.

4. Unless expressly amended or modified by this Amendment, each and every term and provision of the Agreement shall hereafter remain of full force and effect. The Agreement, as amended and modified by this First Amendment, constitutes the entire understanding of the Parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed this day.

JACKSON KELLY PLLC

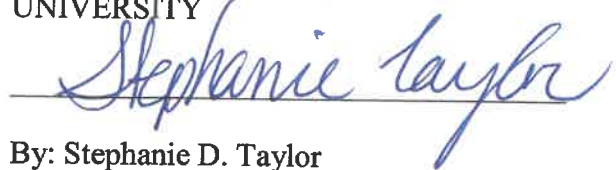


By: Ellen S. Cappellanti

Its: Managing Member

Date: 9/24/19

WEST VIRGINIA UNIVERSITY BOARD OF  
GOVERNORS on behalf of WEST VIRGINIA  
UNIVERSITY



By: Stephanie D. Taylor

Its: General Counsel

Date: 9/30/19

## SEVENTH AMENDMENT

This Seventh Amendment to the Outside Counsel Agreement ("Agreement") dated the 1<sup>st</sup> day of January, 2017 ("Seventh Amendment"), is made and entered into effective as of January 1, 2017 ("Effective Date") by and between the West Virginia University Board of Governors on behalf of West Virginia University ("University") and Jackson Kelly PLLC, with its principal office at P.O. Box 619, Morgantown, WV 26507 ("Firm"). All capitalized terms used in this Seventh Amendment but not defined herein shall have the meaning ascribed to them in the Agreement unless the context of this Seventh Amendment clearly requires otherwise.

**WHEREAS**, University and Firm entered into an Outside Counsel Agreement ("Agreement") dated the 19<sup>th</sup> day of July, 2010 and it is currently in effect; and

**WHEREAS**, University desires and Firm agrees to modify, delete, or add to the Agreement certain terms and conditions relating to compensation for Services performed pursuant to the Agreement;

**NOW THEREFORE**, in consideration of the above and intending to be legally bound, University and Firm hereby agree to the following Seventh Amendment as follows:

A. Delete Section 4.1.1 in its entirety and substitute the following:

**4.1.1 Compensation for Time.** In consideration of full and satisfactory performance of the services hereunder, University shall pay Firm for each hour of work performed pursuant to this agreement. Compensation for time shall be paid only for time actually spent working on University legal matters. The following compensation rates shall apply to this agreement:

Billing Classification	Hourly Rate Range
Members- located in West Virginia	\$285 to \$420
Members- <i>not</i> located in West Virginia	\$280 to \$535
Of Counsel- located in West Virginia	\$160 to \$500
Of Counsel- <i>not</i> located in West Virginia	\$250 to \$390
Associates- located in West Virginia	\$215 to \$305
Associates - <i>not</i> located in West Virginia	\$205 to \$325
Staff Attorneys- located in West Virginia	\$250 to \$260
Paralegals- located in West Virginia	\$135 to \$175
Other- located in West Virginia	\$60 to \$160

All provisions of the Agreement not addressed in this Seventh Amendment are hereby agreed to by the Parties to remain in full force and effect.

**IN WITNESS WHEREOF**, each party hereto has caused its duly authorized representatives to execute this Seventh Amendment on its behalf, effective as of the Effective Date.

JACKSON KELLY PLLC

By: Ellen S. Cappellanti  
Ellen S. Cappellanti  
Title: Managing Member

Date: 2/10/17

THE WEST VIRGINIA BOARD OF GOVERNORS,  
ON BEHALF OF WEST VIRGINIA UNIVERSITY

By: J. Robert Alsop  
J. Robert Alsop  
Title: Vice President for Legal, Government,  
and Entrepreneurial Engagement

Date: 2/10/17

## SIXTH AMENDMENT

This Sixth Amendment to the Outside Counsel Agreement ("Agreement") dated the 1<sup>st</sup> day of January, 2016, ("Sixth Amendment"), is made and entered into effective as of January 1, 2016 ("Effective Date") by and between the West Virginia University Board of Governors on behalf of West Virginia University ("University") and Jackson Kelly PLLC, with its principal office at P.O. Box 619, Morgantown, WV 26507 ("Firm"). All capitalized terms used in this Sixth Amendment but not defined herein shall have the meaning ascribed to them in the Agreement unless the context of this Sixth Amendment clearly requires otherwise.

**WHEREAS**, University and Firm entered into an Outside Counsel Agreement ("Agreement") dated the 19<sup>th</sup> day of July, 2010 and it is currently in effect; and

**WHEREAS**, University desires and Firm agrees to modify, delete, or add to the Agreement certain terms and conditions relating to compensation for Services performed pursuant to the Agreement;

**NOW THEREFORE**, in consideration of the above and intending to be legally bound, University and Firm hereby agree to the following Sixth Amendment as follows:

A. Delete Section 4.1.1 in its entirety and substitute the following:

4.1.1 Compensation for Time. In consideration of full and satisfactory performance of the services hereunder, University shall pay Firm for each hour of work performed pursuant to this agreement. Compensation for time shall be paid only for time actually spent working on University legal matters. The following compensation rates shall apply to this agreement:

Billing Classification	Hourly Rate Range
Members- located in West Virginia	\$285 to \$420
Members- not located in West Virginia	\$280 to \$535
Of Counsel- located in West Virginia	\$160 to \$500
Of Counsel- not located in West Virginia	\$250 to \$390
Associates- located in West Virginia	\$215 to \$305
Associates - not located in West Virginia	\$205 to \$325
Staff Attorneys- located in West Virginia	\$250 to \$260
Paralegals- located in West Virginia	\$135 to \$175
Other- located in West Virginia	\$60 to \$160

All provisions of the Agreement not addressed in this Sixth Amendment are hereby agreed to by the Parties to remain in full force and effect.

**IN WITNESS WHEREOF**, each party hereto has caused its duly authorized representatives to execute this Sixth Amendment on its behalf, effective as of the Effective Date.

JACKSON KELLY PLLC

By:

  
Taunja Willis-Miller

Title: Member

Date:

1/14/16

THE WEST VIRGINIA BOARD  
OF GOVERNORS, ON BEHALF OF WEST  
VIRGINIA UNIVERSITY

By:

  
J. Robert Akse

Title: Vice President for Legal, Government, and  
Entrepreneurial Engagement

Date:

2/4/16

## FIFTH AMENDMENT

This Fifth Amendment to the Outside Counsel Agreement ("Agreement") dated the 1<sup>st</sup> day of January, 2015, ("Fifth Amendment"), is made and entered into effective as of January 1, 2015 ("Effective Date") by and between the West Virginia University Board of Governors on behalf of West Virginia University ("University") and Jackson Kelly PLLC, with its principal office at P.O. Box 619, Morgantown, WV 26507 ("Firm"). All capitalized terms used in this Fifth Amendment but not defined herein shall have the meaning ascribed to them in the Agreement unless the context of this Fifth Amendment clearly requires otherwise.

**WHEREAS**, University and Firm entered into an Outside Counsel Agreement ("Agreement") dated the 19th day of July, 2010 and it is currently in effect; and

**WHEREAS**, University desires and Firm agrees to modify, delete, or add to the Agreement certain terms and conditions relating to compensation for Services performed pursuant to the Agreement;

**NOW THEREFORE**, in consideration of the above and intending to be legally bound, University and Firm hereby agree to the following Fifth Amendment as follows:

A. Delete Section 4.1.1 in its entirety and substitute the following:

**4.1.1 Compensation for Time.** In consideration of full and satisfactory performance of the services hereunder, University shall pay Firm for each hour of work performed pursuant to this agreement. Compensation for time shall be paid only for time actually spent working on University legal matters. The following compensation rates shall apply to this agreement:

Billing Classification	Hourly Rate Range
<b>Members-</b> located in West Virginia	\$285 to \$420
<b>Members-</b> not located in West Virginia	\$280 to \$535
<b>Of Counsel-</b> located in West Virginia	\$160 to \$500
<b>Of Counsel-</b> not located in West Virginia	\$250 to \$390
<b>Associates-</b> located in West Virginia	\$215 to \$305
<b>Associates -</b> not located in West Virginia	\$205 to \$325
<b>Staff Attorneys-</b> located in West Virginia	\$250 to \$260
<b>Paralegals-</b> located in West Virginia	\$135 to \$175
<b>Other-</b> located in West Virginia	\$60 to \$160

All provisions of the Agreement not addressed in this Fifth Amendment are hereby agreed to by the Parties to remain in full force and effect.

**IN WITNESS WHEREOF**, each party hereto has caused its duly authorized representatives to execute this Fifth Amendment on its behalf, effective as of the Effective Date.

JACKSON KELLY, PLLC

By: 

Stephen M. LaCagnin

Title: Member

Date: 12/19/14

THE WEST VIRGINIA BOARD  
OF GOVERNORS, ON BEHALF OF WEST  
VIRGINIA UNIVERSITY

By: \_\_\_\_\_

April Min

Title: Vice President, Legal Affairs

Date: \_\_\_\_\_

#### FOURTH AMENDMENT

This Fourth Amendment to the Outside Counsel Agreement, dated January, 2014, ("Fourth Amendment"), is made and entered into (Date) by and between the West Virginia University Board of University ("University") and Jackson Kelly PLLC, with its principal office at 26507 ("Firm"). All capitalized terms used in this Fourth Amendment shall have the meaning ascribed to them in the Agreement unless the context requires otherwise.

**WHEREAS**, University and Firm entered into an Outside Counsel Agreement on the 19th day of July, 2010 and it is currently in effect; and

**WHEREAS**, University desires and Firm agrees to modify, amend and conditions relating to compensation for Services performed pursuant to the Agreement;

**NOW THEREFORE**, in consideration of the above and in testimony whereof, Firm hereby agree to the following Fourth Amendment as follows:

A. Delete Section 4.1.1 in its entirety and substitute the following:

4.1.1 Compensation for Time. In consideration of full and satisfactory performance of the services hereunder, University shall pay Firm for each hour of work performed pursuant to this agreement. Compensation for time shall be paid only for time actually spent working on University legal matters. The following compensation rates shall apply to this agreement:

Billing Classification	Hourly Rate Range
Members- located in West Virginia	\$275 to \$480
Members- not located in West Virginia	\$285 to \$535
Of Counsel- located in West Virginia	\$240 to \$395
Of Counsel- not located in West Virginia	\$235 to \$480
Associates- located in West Virginia	\$200 to \$300
Associates - not located in West Virginia	\$200 to \$300
Staff Attorneys- located in West Virginia	\$200 to \$215
Paralegals- located in West Virginia	\$120 to \$190
Other- located in West Virginia	\$50 to \$150

All provisions of the Agreement not addressed in this Fourth Amendment are hereby agreed to by the Parties to remain in full force and effect.

**IN WITNESS WHEREOF**, each party hereto has caused its duly authorized representatives to execute this Fourth Amendment on its behalf, effective as of the Effective Date.

JACKSON KELLY, PLLC

By: 

Stephen M. LaCagnin

Title: Member

Date: 03/21/14

THE WEST VIRGINIA BOARD  
OF GOVERNORS, ON BEHALF OF WEST  
VIRGINIA UNIVERSITY

By: 

William H. Hutchens, III

Title: Vice President, Legal Affairs

Date: 3-24-14



### THIRD AMENDMENT

This Third Amendment to the Outside Counsel Agreement ("Agreement") dated the 1<sup>st</sup> day of January, 2013, ("Third Amendment"), is made and entered into effective as of January 1, 2013 ("Effective Date") by and between the West Virginia University Board of Governors on behalf of West Virginia University ("University") and Jackson Kelly PLLC, with its principal office at P.O. Box 619, Morgantown, WV 26507 ("Firm"). All capitalized terms used in this Third Amendment but not defined herein shall have the meaning ascribed to them in the Agreement unless the context of this Third Amendment clearly requires otherwise.

**WHEREAS**, University and Firm entered into an Outside Counsel Agreement ("Agreement") dated the 19th day of July, 2010 and it is currently in effect; and

**WHEREAS**, University desires and Firm agrees to modify, delete, or add to the Agreement certain terms and conditions relating to compensation for Services performed pursuant to the Agreement;

**NOW THEREFORE**, in consideration of the above and intending to be legally bound, University and Firm hereby agree to the following Third Amendment as follows:

A. Delete Section 4.1.1 in its entirety and substitute the following:

4.1.1 Compensation for Time. In consideration of full and satisfactory performance of the services hereunder, University shall pay Firm for each hour of work performed pursuant to this agreement. Compensation for time shall be paid only for time actually spent working on University legal matters. The following compensation rates shall apply to this agreement:

Billing Classification	Hourly Rate Range
<b>Members-</b> located in West Virginia	\$275 to \$480
<b>Members-</b> <i>not</i> located in West Virginia	\$285 to \$535
<b>Of Counsel-</b> located in West Virginia	\$240 to \$395
<b>Of Counsel-</b> <i>not</i> located in West Virginia	\$235 to \$480
<b>Associates-</b> located in West Virginia	\$200 to \$285
<b>Associates -</b> <i>not</i> located in West Virginia	\$200 to \$300
<b>Staff Attorneys-</b> located in West Virginia	\$200 to \$215
<b>Paralegals-</b> located in West Virginia	\$120 to \$200
<b>Other-</b> located in West Virginia	\$50 to \$150

All provisions of the Agreement not addressed in this Third Amendment are hereby agreed to by the Parties to remain in full force and effect.

**IN WITNESS WHEREOF**, each party hereto has caused its duly authorized representatives to execute this Third Amendment on its behalf, effective as of the Effective Date.

JACKSON KELLY, PLLC

By:

  
Stephen M. LaCagnin

Title: Member

Date:

01/13/13

THE WEST VIRGINIA BOARD  
OF GOVERNORS, ON BEHALF OF WEST  
VIRGINIA UNIVERSITY

By:

  
William H. Hutchens, III

Title: Vice President, Legal Affairs

Date:

2-6-13

## SECOND AMENDMENT

This Second Amendment to the Outside Counsel Agreement ("Agreement") dated the 1<sup>st</sup> day of January, 2011, ("Second Amendment"), is made and entered into effective as of January 1, 2011 ("Effective Date") by and between the West Virginia University Board of Governors on behalf of West Virginia University ("University") and Jackson Kelly, PLLC, with its principal office at P.O. Box 619, Morgantown, WV 26507 ("Firm"). All capitalized terms used in this Second Amendment but not defined herein shall have the meaning ascribed to them in the Agreement unless the context of this Second Amendment clearly requires otherwise.

**WHEREAS**, University and Firm entered into an Outside Counsel Agreement ("Agreement") dated the 19th day of July, 2010 and it is currently in effect; and

**WHEREAS**, University desires and Firm agrees to modify, delete, or add to the Agreement certain terms and conditions relating to compensation for Services performed pursuant to the Agreement;

**NOW THEREFORE**, in consideration of the above and intending to be legally bound, University and Firm hereby agree to the following Second Amendment as follows:

A. Delete Section 4.1.1 in its entirety and substitute the following:

4.1.1 Compensation for Time. In consideration of full and satisfactory performance of the services hereunder, University shall pay Firm for each hour of work performed pursuant to this agreement. Compensation for time shall be paid only for time actually spent working on University legal matters. The following compensation rates shall apply to this agreement:

Billing Classification	Hourly Rate Range
Members- located in West Virginia	\$265 to \$465
Members- not located in West Virginia	\$265 to \$525
Of Counsel- located in West Virginia	\$230 to \$380
Of Counsel- not located in West Virginia	\$235 to \$520
Associates- located in West Virginia	\$190 to \$265
Associates - not located in West Virginia	\$190 to \$290
Staff Attorneys- located in West Virginia	\$185 to \$225
Paralegals- located in West Virginia	\$115 to \$190
Other- located in West Virginia	\$50 to \$150

All provisions of the Agreement not addressed in this Second Amendment are hereby agreed to by the Parties to remain in full force and effect.

**IN WITNESS WHEREOF**, each party hereto has caused its duly authorized representatives to execute this Second Amendment on its behalf, effective as of the Effective Date.

JACKSON KELLY, PLLC

By:   
Stephen M. LaCagnin

Title: Member

Date: 01/17/11

THE WEST VIRGINIA BOARD  
OF GOVERNORS, ON BEHALF OF WEST  
VIRGINIA UNIVERSITY

By:   
~~Joe Fisher~~ William H. Hutchens, III

Title: Chief Procurement Officer VP Legal Affairs

Date: 1/30/12

## FIRST AMENDMENT

This First Amendment to the Outside Counsel Agreement ("Agreement") dated the 19th day of July, 2010, ("First Amendment"), is made and entered into effective as of this 1st day of June, 2011 ("Effective Date") by and between the West Virginia University Board of Governors on behalf of West Virginia University ("University") and Jackson & Kelly, PLLC, with its principal office at P.O. Box 619, Morgantown, WV 26507 ("Firm"). All capitalized terms used in this First Amendment but not defined herein shall have the meaning ascribed to them in the Agreement unless the context of this First Amendment clearly requires otherwise.

WHEREAS, University and Firm entered into a Outside Counsel Agreement ("Agreement") dated the 19th day of July, 2010 and it is currently in effect; and

WHEREAS, University desires and Firm agrees to modify, delete, or add to the Agreement certain terms and conditions relating to compensation for Services performed pursuant to the Agreement;

NOW THEREFORE, in consideration of the above and intending to be legally bound, University and Firm hereby agree to the following First Amendment as follows:

A. Delete Section 4.1.2 in its entirety and substitute the following:

4.1.2 Fixed Compensation. As an alternate to or in addition to Section 4.1.1 above, University and Firm may, on a project-by-project basis, agree to a set fixed fee for the full and satisfactory performance of the Services relating to any particular project requested by University. Under no circumstances shall the Fixed Compensation agreed upon by the Parties be exceeded for any particular project unless mutually agreed upon in writing.

All Fixed Compensation representation provided by Firm shall be approved, in writing, by the Vice President for Legal Affairs and General Counsel for the University.

All provisions of the Agreement not addressed in this First Amendment are hereby agreed to by the Parties to remain in full force and effect.

IN WITNESS WHEREOF, each party hereto has caused its duly authorized representatives to execute this First Amendment on its behalf, effective as of the Effective Date.

JACKSON & KELLY, PLLC

By: 

Stephen LaCagnin

Title: Member

Date: 06/02/11

THE WEST VIRGINIA BOARD  
OF GOVERNORS, ON BEHALF OF  
WEST VIRGINIA UNIVERSITY

By: 

Joe Fisher

Title: Chief Procurement Officer

Date: 7-7-11

**West Virginia University**  
**Purchase Change Request**

FY	Buyer	Date	Acct #	P. O Date	Order #
12	P	7-19-2011		7-19-2010	U11JACKKELLY

<b>Document</b> <input type="checkbox"/> Requisition (Cancellation Only) <input type="checkbox"/> Regular Purchase Order <input type="checkbox"/> Contract Purchase Order <input checked="" type="checkbox"/> Open End Contract Purchase Order <input type="checkbox"/> Agreement	<b>Purpose of Change (Check boxes applicable)</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Cancellation  <input type="checkbox"/> Increase/Decrease  <input type="checkbox"/> Unused Balance(\$25.00 Maximum)  <input type="checkbox"/> Freight  <input type="checkbox"/> Renewal  <input type="checkbox"/> Extension Error           </div> <div> <input type="checkbox"/> Error in Total Amount  <input type="checkbox"/> Change of Account  <input type="checkbox"/> Change of Vendor Name/ Address  <input checked="" type="checkbox"/> Other           </div> </div>
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**FILE**

<b>Vendor Name, Address, FEIN, Phone #</b>  Jackson Kelly PLLC PO Box 619 Morgantown WV 26507-0619	<b>Spending Unit Name &amp; Address</b>  West Virginia University Office of VP for Legal Affairs and General Counsel 105 Stewart Hall PO Box 6201 Morgantown WV 26506-6201
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Item#	Quantity	Unit M	Description	Unit Price	Extended Price
			<p align="center"><b>Change Order # 1</b></p> <p>Re: Special Assistant Attorney General (SAAG) Appointment</p> <p>Modify or amend the original agreement as described in the attached 'First Amendment', dated effective June 1, 2011</p> <p>This Agreement shall continue until terminated by either party.</p>		

<b>Reason for Change:</b> Mutually agreed amendment of the terms	Previous Total \$ <u>Open End</u> Increase \$ _____ Decrease \$ _____ New Total \$ <u>Open End</u>
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Approved

*James Bennett*

7/19/2011

Procurement Officer

Date

**RECEIVED**

JUL 25 2011

VICE PRESIDENT  
 FOR LEGAL AFFAIRS  
 WEST VIRGINIA UNIVERSITY

# West Virginia University

Buyer: S Page 1 of 5 Pages

## Purchase Order

Purchase Order No.:

U11JACKKELLY

Date

9/13/2010

Fiscal Year

11

Vendor Name and Address:

Jackson Kelly PLLC  
PO Box 619  
Morgantown, WV 26507-0619

Ship To:

West Virginia University  
105 Stewart Hall  
Morgantown, WV 26506-6024  
Legal Affairs

Mail Invoice and 1 copy to:

West Virginia University  
Payment Services  
PO Box 6024  
Morgantown, WV 26506-6024

### Agreement

This Agreement constitutes the acceptance made by and between West Virginia University  
and Jackson Kelly PLLC  
for providing advisement, assistance and/or representation as needed on varous legal  
matters.

Service beginning July 19, 2010 and extending until terminated by either party . All in  
accordance with standard form of agreement hereto as a part hereof.

FEE: Open end

TRAVEL EXPENSE: \$

OTHER EXPENSE: \$

TOTAL: Open end

Service performed under this contract is to be continued in the  
succeeding fiscal year contingent upon funds being appropriated  
by the Legislature for this service. In the event funds are not  
appropriated for this service, this contract becomes of no effect  
and is null and void after June 30.

  
Procurement Officer

TOTAL: Open end

9-13-2010  
Date



REQ # 10072745

WEST VIRGINIA UNIVERSITY  
OUTSIDE COUNSEL AGREEMENT

WVU OCA No. \_\_\_\_\_

THIS AGREEMENT ("Agreement") is made and entered into by and between West Virginia University Board of Governors on behalf of West Virginia University ("University"), and Jackson Kelly PLLC ("Firm").

RECITALS

- A. University desires to retain Firm to provide certain legal services in support of University's mission; and
- B. Firm represents that it has the ability and expertise needed to perform such services upon the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants, benefits, and undertakings set forth herein, University and Firm agree as follows:

1. SCOPE OF WORK

Firm shall provide to University, on a non-exclusive basis, legal services and representation on various legal matters that may arise from time to time during the term of this Agreement, on a project-by-project basis. ("Services").

2. CONTRACT TERM

This Agreement shall commence on July 19, 2010 and shall terminate as set forth in Section 5 of this Agreement.

3. OBLIGATIONS OF FIRM

3.1 Duties. Firm shall advise, assist, and/or represent University on legal matters as requested by University from time to time. This may include actual representation before a judicial or administrative body; however, Firm understands and agrees that no appearance on behalf of the University in litigation in any capacity, including any appeal, may be made by Firm without the prior approval of University and the issuance of a Special Assistant Attorney General appointment ("SAAG") to Firm by the Attorney General's Office of the State of West Virginia.

3.2 Staff. Firm shall arrange for work to be handled by the most efficient and productive combination of cost and expertise, relying on junior attorneys or legal assistants when possible to minimize cost. Firm may staff the work as deemed appropriate and in the best interest of the representation, provided University is consulted prior to such assignment and consents to same. Firm shall not subcontract Services without prior written consent of University and in compliance with Section 7.2 of this Agreement.

3.3 Reports. Firm shall keep University fully apprised on all matters. All communications in this regard shall be directed to the identified point of contact in the University's Office of the Vice President for Legal Affairs and General Counsel. This Section 3.3 shall not be interpreted to limit Firm's duty to provide full disclosure to University as necessary in Firm's judgment to represent University with due professional care or as required by applicable law or disciplinary rules.

4. COMPENSATION

4.1 Payments to Firm. Firm shall be paid for the Services hereunder in accordance with the following payment structure and schedule:

4.1.1 Compensation for Time. In consideration of full and satisfactory performance of the Services hereunder, University shall pay Firm for each hour of work performed pursuant to this Agreement. Compensation for time shall be paid only for time actually spent working on University legal matters. The following compensation rates shall apply to this Agreement:

Billing Classification	Hourly Rate Range	
	Low	High
Partners	290.	360.
Of Counsel	210.	360.
Associates	165.	235.
Paralegals	115.	150.
[Other]	50.	100.

WEST VIRGINIA UNIVERSITY  
PROCESSING CONTRACT  
PAYMENT SERVICES  
AUG 31 AM 10:03

4.1.2 Fixed Compensation. As an alternative to Section 4.1.1 above, University and Firm may, at the discretion of University, agree in writing to a set fixed fee for the full and satisfactory performance of the Services hereunder. Under no circumstances shall the Fixed Compensation agreed upon by the Parties be exceeded unless mutually agreed upon in writing. Firm agrees that no prepayment or retainer may be requested or paid by University.

If applicable, as total consideration of full and satisfactory performance of the Services hereunder, University will pay Firm the sum of:

\_\_\_\_\_  
(Dollars)

\_\_\_\_\_  
Words

4.1.3 Reimbursement of Expenses. University shall reimburse Firm for all reasonable actual out-of-pocket expenses incurred in the performance of the Services, including costs for long distance telephone services, document delivery, photocopying, filing fees, and charges for transcripts. Charges for transportation, meals, and lodging are expected to be reasonable. Firm shall not incur travel expenses without first obtaining University's approval and first class travel is not authorized. No overtime or special staff or clerical services costs shall be billed unless it is otherwise agreed upon in writing by University prior to the rendering of those services. All reimbursable expenses shall be invoiced at actual cost.

4.2 Invoice for Payment. All invoices for Services and reimbursable expenses shall be submitted to University on a monthly basis. Invoices for work performed at hourly rates shall provide a detailed accounting of the time charged. On each invoice, Firm shall identify: (a) the total due and payable; (b) the name of each partner, of-counsel, associate, paralegal, or other individual being billed; (c) the hourly rate of each; (d) the number of hours worked by each; (e) a reference to the matter worked on; (f) a brief description of the work done, and (g) any reimbursable expenses incurred. Time shall be block billed in increments of .1/hour.

Each invoice submitted must include the Outside Counsel Agreement number listed at the top of this document. The invoices must be submitted to:

West Virginia University  
Office of the Vice President for Legal Affairs and General Counsel  
Attn: Vice President for Legal Affairs and General Counsel and Senior Deputy General Counsel

105 Stewart Hall  
PO Box 6201  
Morgantown, WV 26506-6201

4.3 Payment. Payment shall be made in arrears within thirty (30) calendar days of a properly prepared and uncontested invoice.

4.4 Fund Availability. If performance of this Agreement extends beyond the current fiscal year (ending June 30), Firm acknowledges that financial obligations of University payable after the current fiscal year are contingent upon funds being appropriated, budgeted and or otherwise made available for that purpose. In the event funds are not appropriated, budgeted or otherwise available for these Services, this Agreement becomes void and of no effect after June 30 of the fiscal year in which the Agreement is executed.

## 5. TERMINATION

5.1 Convenience of the University. University reserves the right, in its sole discretion, to terminate this Agreement, in whole or in part, without penalty, upon written notice to Firm. Firm shall, unless otherwise mutually agreed upon in writing, cease all Services immediately, except such Services which are necessary to wind-up, in a cost effective manner, the Services being provided or to prevent prejudice to University's interests. Firm shall be entitled to payment for Services rendered and incurred to the date of such notice of termination including any incurred reimbursable expenses.

5.2 Rights Upon Termination or Expiration. Upon expiration or termination of this Agreement for any reason, Firm shall immediately transfer to University all information and associated work products prepared by Firm or otherwise prepared for University pursuant to this Agreement, in whatever form such information and work products may exist. University is granted the unrestricted right to use, copy, modify, prepare derivative works from, publish and distribute, at no additional cost to University, in any manner University deems appropriate, in its sole discretion, any component of the information, work product, or other deliverable made the subject of this Agreement.

5.3 Remedies. Notwithstanding any exercise by University of its rights of early termination pursuant to this Section 5, Firm shall not be relieved of any liability to University for damages due University by virtue of any breach of this Agreement by Firm.

## 6. CERTIFICATIONS OF FIRM

6.1 Certifications/Warranties. By agreeing to and executing this Agreement, Firm hereby makes the following certifications and warranties:

6.1.1 That each attorney employed or associated with Firm is an attorney in good standing under the laws of the State of West Virginia or other applicable jurisdiction as the Services may require. Firm acknowledges that, in performing Services under this Agreement, Firm and its attorneys must adhere to the rules of professional conduct or responsibility applicable to the jurisdiction(s) in which the attorney is licensed.

6.1.2 That it does not owe any debt or delinquent taxes to the State of West Virginia at the time of execution of this Agreement.

6.1.3 That to its knowledge, no officer or employee of the State has participated in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, as set forth in W.Va. Code § 6B-1-2, et seq. (2010).

## 7. GENERAL TERMS AND CONDITIONS

7.1 Relationship of Parties. The relationship of Firm to University shall be that of attorney and client. Firm shall be solely responsible for the acts of Firm and Firm's agents, employees, subcontractors, or servants during the performance of the Services.

7.2 Subcontracting. Firm shall not transfer, subcontract or assign, by operation of law or otherwise, this Agreement or any obligations hereunder without written consent of University which may be given or withheld in University's sole discretion.

7.3 No Assignment. Neither this Agreement nor the Services to be rendered hereunder may be assigned or transferred.

7.4 Records and Records Retention. Firm shall keep accurate records relating to the Services provided. Unless otherwise directed by University, Firm shall retain all records relating to the provision of Services herein for a period of five (5) years following the termination or completion of this Agreement. Upon request of University, Firm shall allow representatives or designees of University to review and/or audit said records at any reasonable times mutually agreed upon by the parties. Upon request of University, after the expiration of the records retention period, Firm shall return all files and records to University. Barring such request within sixty (60) days of the expiration of the records retention period, Firm may destroy all records in whatever media that are not returned to University, or shall otherwise retain such records in accordance with Firm's own records retention policy or practices.

7.5 Survival. The obligations of Firm identified in this Section 7 shall survive the termination of this Agreement.

7.6 Media Releases or Pronouncements. Firm, its employees, representatives, other agents or subcontractors may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Agreement or the Services to which this Agreement relates or which mentions University without University's prior written approval.

7.7 Written Notice/Delivery. Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent either by registered or certified mail with return receipt requested, facsimile transmission with confirmation of receipt, or by national overnight courier, addressed to the receiving party at the address below:

### For Firm:

Stephen LaCagnin  
Jackson Kelly PLLC  
P.O. Box 619

Morgantown, WV 26507-0619

Phone Number: 304-284-4100  
Fax Number: 304-284-4142

### For University:

West Virginia University  
Office of the Vice President for Legal Affairs and General Counsel  
Attn: Vice President for Legal Affairs and General Counsel and Senior  
Deputy General Counsel

105 Stewart Hall  
PO Box 6201  
Morgantown, WV 26506-6201

Phone Number: (304)293-5841  
Fax Number: (304)293-5752



7.8 Taxes. University shall not directly or indirectly be liable for taxes of any kind. To the extent allowed by law, University shall provide, upon the request of Firm, all applicable tax exemption certificates.

7.9 Jurisdiction; Governing Law. The laws of the State of West Virginia shall govern the interpretation and enforcement of this Agreement. Any claim against University arising out of or related to this Agreement shall be brought in the West Virginia Court of Claims. Any other claim arising out of or related to this Agreement not against University may be brought in any court of competent jurisdiction.

7.10 Changes. Any modification, amendment or supplement to this Agreement shall not be binding on either party unless in writing and duly executed by each of the Parties.

7.11 Severability/Interpretation. In the event that a particular provision in this Agreement is held void or unenforceable under any applicable law, all remaining provisions and the Agreement itself shall continue to be binding on both parties.

7.12 Non-Discrimination. Firm agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

7.13 FERPA. Firm agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA") and University's FERPA Policy found at <http://ferpa.wvu.edu/policy>, including FERPA's limitations on re-disclosure as set forth in 34 C.F.R. § 99.33(a)(2).

7.14 Insurance Required. Firm presently maintains professional malpractice liability insurance in an amount of not less than \$2,000,000.00 per claim/ \$2,000,000.00 aggregate and agrees to maintain at least this amount of insurance coverage during the term of this Agreement. Upon execution of this Agreement, Firm shall provide proof that the required insurance is in effect. Firm shall give thirty (30) calendar days written notice to University in the event the insurance is canceled or a material change is made thereto. Upon request, Firm shall furnish certified copies of such insurance policies. Firm agrees that the insurance required hereunder is not a limitation of liability.

7.15 Entire Agreement. This Agreement represents, in its entirety, the final and complete statement of the parties' agreement with respect to the subject matters covered in this Agreement, and supersedes any prior oral or written representations and/or understandings.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this day.

Firm: Jackson Kelly PLLC

By:

Its:

Date:

Stephen M. LaCegre  
Member  
7/20/10

West Virginia University Board of Governors on behalf of West Virginia University

By:

Its:

Date:

W. H. H. H. H. H.  
VICE PRESIDENT OF LEGAL AFFAIRS / GENERAL COUNSEL  
7-19-10

APPROVED AS TO FORM PRIOR TO  
ACKNOWLEDGEMENT THEREOF, THIS

16th day of June, 2010

DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

By:

Dawn W. W. W.  
DEPUTY ATTORNEY GENERAL