

MAYOR:
John Labriola

TOWN ADMINISTRATOR:
Stephanie Tillerson

TOWN ATTORNEY:
Joseph Wilson



MAYOR PRO TEMPORE:
Michael Heidingsfelder

COUNCIL MEMBERS:
Bradley D. Belt
Russell A. Berner

SPECIAL CALL
WAYS & MEANS COMMITTEE MEETING
Municipal Center Council Chambers
October 24, 2023, 9:00 am

AGENDA

- I. Call to Order:
- II. Pledge of Allegiance
- III. Roll Call:
- IV. Citizens' Comments (Agenda Items Only):
- V. Old Business:
None
- VI. New Business:
 - A. Review and Recommend to the Town Council the Approval of the continuation of Joe Wilson as the Town Attorney for Three Months Starting January 1, 2024, through March 31, 2024, at a rate of \$300/hour. [Tab 1]
- VII. Committee Member's Comments:
- VIII. Citizens' Comments:
- IX. Adjournment:



Tab | 1

WAYS AND MEANS

Agenda Item

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
)

**AMENDMENT TO THE CONTRACT
SERVICES AGREEMENT FOR TOWN
ATTORNEY SERVICES BETWEEN
JOSEPH C. WILSON, IV AND
THE TOWN OF KIAWAH ISLAND**

WHEREAS, the Town of Kiawah Island (“Town”) and Joseph C. Wilson, IV of Wilson Law Firm (“Wilson”) entered into an agreement on November 1, 2022, for the purpose of providing Town Attorney Services for the Town and to render such legal services as are specified in the agreement through December 31, 2023;

WHEREAS, the Town and Willson entered into a subsequent Agreement dated October 24, 2023, attached hereto as Exhibit A (“October 24, 2023 Agreement”), which changed among other terms the rate of compensation for Wilson for the remainder of the contract term through December 31, 2023;

WHEREAS, on December 6, 2023, Wilson provided notice to the Town that Wilson will not seek to renew his contract for 2024, via the Resignation Letter attached hereto as Exhibit B;

WHEREAS, Wilson is willing to continue his work as Town Attorney through the first Town Council meeting held in April of 2024, and the Town desires for him to do so as to allow the Town time to identify a suitable replacement;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto amend the October 24, 2023 Agreement in the following particulars:

1. **EXTENDED TERM:** Section 5 of the October 24, 2023 agreement shall be deleted in its entirety and replaced with the paragraph below:

“5. **TERM AND TERMINATION**

The term of this Agreement shall commence upon signing and continue through the date of the first regularly scheduled Town Council meeting held in April of 2024, and shall terminate immediately thereafter.”

2. **COMPENSATION RATE:** Commencing on January 1, 2024, the compensation rate for Wilson’s duties listed in Section 3(a), and (b) of the October 24, 2023 Agreement shall be Three Hundred Dollars (\$300.00) per hour. The remaining portions of Section 3 of the October 24, 2023 Agreement shall remain unchanged.

In case of conflict between the provisions of the October 24, 2023 Agreement and this Amendment, the provisions of this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on _____ day of December 2023.

WITNESSES

TOWN OF KIAWAH ISLAND

By: John D. Labriola, Mayor

**JOSEPH C. WILSON, IV, WILSON LAW
FIRM**

By: Joseph C. Wilson, IV

DRAFT

**CONTRACT SERVICES AGREEMENT FOR
TOWN ATTORNEY SERVICES
TOWN OF KIAWAH ISLAND**

This amended **CONTRACT SERVICES AGREEMENT FOR TOWN ATTORNEY SERVICES** (the "Agreement") is effective as of **October 24, 2023**. It will apply to all bills from **September 2023 forward**, by and between Joseph C. Wilson, IV of Wilson Law Firm (hereinafter the "Attorney") and the **Town of Kiawah Island, South Carolina** (hereinafter the "Town"). The term "Town" shall also include all boards, commissions, and other bodies of the Town.

RECITALS

- A. On November 1, 2022, the Ways and Means Committee recommended to the Mayor and Council that this proposed Contract Agreement for Municipal Legal Services be considered by the Mayor and Council, which approved this Contract Agreement on November 1, 2022.
- B. That Contract Agreement allowed the Attorney to request a mid-year review if his hours were substantially greater than 50 hours a month and also allowed the Attorney to seek a bonus for those additional hours. The attorney's time through May of 2023 was, on average, substantially greater than 50 hours a month, so in May of 2023, the Attorney requested a review of the Agreement's payment terms. Specifically, in July of 2023, the Attorney asked that an hourly rate of \$200 an hour be adopted rather than a flat rate due to the inability of the parties to predict the amount of time that would be required of Attorney.
- C. Following Attorney's request for the allowed mid-year rate review, the Town has sought to address other terms contained in the existing Agreement, and the Attorney has agreed to consider amending those terms mid-year as well. The Town's first proposal was provided in August of 2023. Since that time, the Town has provided several new versions of a proposed new Agreements.
- D. On August 28, 2023, the Ways and Means Committee recommended to the Mayor and Town Council that the current Contract Services Agreement for Town Attorney Services with Joseph C. Wilson IV, that the compensation rate be amended, which was approved by Town Council on September 5, 2023. However, at that time Council wanted to amend some additional terms to the new Agreement. Attorney agreed to those terms.
- E. On October 3, 2023, the Ways and Means Committee again considered the Agreement for recommendation to the Mayor and Town Council and again identified additional amendments to the Town Attorney Services Contract with Attorney. As a result, Council again tabled consideration of the Amended Agreement.
- F. On October 24, 2023, the Ways and Means Committee approved and recommended additional amendments to the Town Attorney Services Contract with Joseph C. Wilson, IV, to the Mayor and Town Council.

- G. On October 24, 2023, the Town Council reaffirmed the \$200 an-hour approved rate and approved that the Attorney will submit monthly expenses to the Town to be reimbursed. In addition, the Town Council approved keeping the terms and conditions of the executed January 1, 2023, contract intact with only the changes in compensation and monthly expense cost.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN THE PARTIES HERETO AGREE AS FOLLOWS:

1. APPOINTMENT

Town Council hereby appoints Joseph C. Wilson, IV (hereinafter the "Attorney") as the Town Attorney, and hires Attorney to render such legal services as are customarily rendered by such attorneys and as further specified herein, including attending meetings of the Town Council, Board of Zoning and Appeals (BZA), the Planning Commission, and other boards and bodies of Town, and its affiliated agencies, as directed by the Town.

Attorney will personally provide the legal services hereunder.

2. SCOPE OF WORK AND DUTIES

A. The Attorney shall perform any and all work necessary for the provision of Town Attorney services to the Town, including, without limitation, the following:

1. Attend all regularly scheduled and special Town Council meetings and Town Council work sessions.
2. Attend other meetings at Town Hall as required by the Mayor or the Town Administrator.
3. Advise the Town Council; appointed Commissions, Committees, and Boards; Town staff; and other Town officials on all legal matters pertaining to Town business.
4. Prepare, review, and approve as to form, contracts, agreements, resolutions, ordinances, and all other standard Town documents.
5. Prepare such written and oral legal opinions as shall, from time to time, be requested by the Town.
6. Perform such other routine legal services as are required, from time to time, by the Town Council or the Town Administrator.
7. Represent the Town and the Town's officials, officers, and employees in litigation and administrative proceedings as directed by the Mayor. However, it is recognized that Attorney is a solo practitioner with limited litigation support. Thus, some litigation or administrative proceedings may require the retention of outside legal counsel.

8. Make recommendations concerning the selection of outside legal counsel, when necessary, on appropriate matters and supervise such outside legal counsel handling municipal court, transactional or litigation matters on behalf of the Town.

3. COMPENSATION

a. STANDARD MUNICIPAL WORK

The compensation rate for Wilson's performance of all duties listed in section 2(A) above ("Core Duties") shall be Two Hundred Dollars (\$200.00) per hour. Invoices for the performance of Core Duties will include an itemized description of the work performed so that invoiced expenses can be attributed to different tasks approved by the Mayor or the Town Administrator. Invoices will bill the performance of Core Duties in increments of one-tenth of an hour, rounded off to the nearest one-tenth of an hour.

The Town also agrees to reimburse Wilson monthly expenses for payment of general office expenses, including but not limited to copy costs, mail, telephone costs, research service fees, and mileage within the Tri-County area at the federal mileage rate.

At Attorney's request in June of any given year, if Attorney's hours are substantially greater than 50 hours a month, the parties agree to enter into good faith negotiations to adjust compensation based on the amount of work performed.

Attorney is entitled to seek a bonus at the end of the year based on the actual hours expended on legal work for the Town, identification of issues that need to be addressed, quality of work, and other factors.

b. Litigation

In the event that the Attorney appears as counsel of record in any litigation on behalf of the Town, including presuit handling, representation in municipal court or appeals from municipal court, and regulatory or administrative claims, Attorney shall prepare a separate monthly bill for such work and the following rates shall apply for Attorney and will be paid over and above the fixed price compensation for Attorney and any other person contracted or retained by Attorney with consent of Town:

Joseph C. Wilson, IV (and any other partner)	\$250.00 an hour
Associates	\$200.00 an hour
Paralegals	\$100.00 an hour

The Attorney will charge in increments of one-tenth of an hour, rounded off for Litigation activity to the nearest one-tenth of an hour. The minimum time charged

for litigation work will be one-tenth of an hour. Litigation work performed on behalf of the Town will be entered and billed separately with a general description of the work performed and who requested the work.

In addition, Town will pay all expenses incurred by Attorney in any litigation, including, but not limited to, court filing fees, process server fees, expert witness fees, and expenses, investigation costs, court reporter fees, travel expenses, long distance telephone costs, postage, and photocopying charges. The Attorney will not charge for expenses related to office administration, such as secretarial or clerical work. Expenses less than \$1,000.00 will be advanced by the Attorney and then billed to Client. Expenses over \$1,000.00 may be sent directly to the Client for payment at the discretion of the Attorney.

c. Contingency Fee

In litigation wherein the Town is a Plaintiff, the parties to this agreement may negotiate a contingency fee, as opposed to the hourly rate set forth above.

4. **MONTHLY STATEMENTS**

The Attorney will prepare and deliver itemized monthly bills setting out the time expended and expenses for the preceding month; provided, however, the payment for legal services shall be Two Hundred Dollars (\$200.00) per hour, plus, in separate bills, additional fees for any representation of the Town in any lawsuits in which Attorney appears as counsel of record at the request of the Town.

5. **TERM AND TERMINATION**

The term of this Agreement shall be effective from January 1, 2023, through December 31, 2023, and year to year thereafter unless terminated by either party as specifically provided in this Agreement.

The Attorney or the Town may terminate this Agreement at any time upon giving SIXTY (60) days written notice of termination to the other. In the event the Town provides such written notice of termination, the Town in its discretion may elect to pay the Attorney an amount equal to the Attorney's compensation earned for the SIXTY (60) day notice period with the written notice in lieu of having the Attorney continue working for the Town after such written termination notice is received. However, should the Town elect to have the Attorney continue working during the SIXTY (60) day notice period, then the Town shall pay the Attorney the compensation as provided herein through to the termination date.

6. **PROHIBITION AGAINST SUBCONTRACTING, DELEGATING OR ASSIGNMENT**

The Attorney shall not contract with or delegate to any individual or other entity to perform on the Town's behalf, in whole or in part, any of the services required under this Agreement without the prior express approval of the Town. In addition,

neither this Agreement nor any interest therein may be assigned or transferred, voluntarily or by operation of law, without the prior express approval of the Town.

7. CONFLICT OF INTEREST

The Attorney shall at all times, avoid conflicts of interest in the performance of this Agreement. In the event that a conflict arises, the Attorney shall immediately notify the Town following discovery of the conflict. The Attorney shall also file a conflict of interest disclosure statement setting forth any information related to potential conflicts of interest to the extent such disclosure is required by law.

8. INDEPENDENT CONTRACTOR

The Attorney shall perform all services required under this Agreement as an independent contractor of the Town and shall remain at all times as to the Town a wholly independent contractor with only such obligations as are consistent with that role. Neither The Attorney nor the Town shall at any time or in any manner represent that the Attorney or any of its employees or agents are employees of the Town.

9. INSURANCE

The Attorney agrees to carry and keep in full force and effect during the term of this contract Errors and Omissions coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence and shall provide the Town with proof of such coverage in the form of a Certificate of Insurance on an Annual Basis.

10. NON-DISCRIMINATION

The Attorney pledges there shall be no discrimination against or segregation of any person or group on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of services under this Agreement.

11. AMENDMENT

This Agreement cannot be amended unless such amendment is contained in writing signed by both the Town and the Attorney.

12. SEVERABILITY

If any clause or provision herein shall be adjudged invalid or enforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.

13. THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed so as to confer upon any third party the rights of a third party beneficiary.

14. NON-WAIVER

Failure of either party to this Agreement to insist upon strict compliance by the other party with any of the terms or conditions of this Agreement shall not be deemed a waiver of such term or condition or any other terms and conditions of this Agreement.

15. GOVERNING LAW

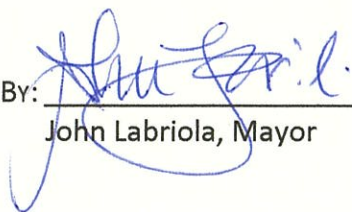
This Agreement shall be governed by and construed in accord with the laws of the State of South Carolina.

16. ENTIRE AGREEMENT


This Agreement contains the entire agreement between the Town and the Attorney with regards to all rights, obligations, terms and conditions related to the Town's contract with the Attorney. This Agreement supersedes any other prior or contemporaneous negotiations or agreements, whether oral or in writing.

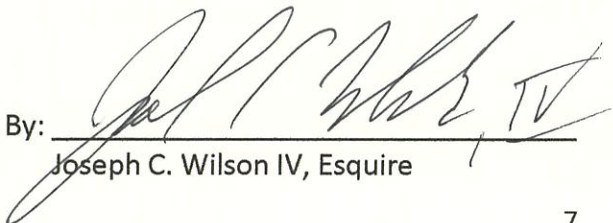
IN WITNESS WHEREOF, the parties hereto have executed or caused their authorized representatives to execute, this Agreement the 24th day of October, 2023, with an effective date of September 1, 2023.

TOWN OF KIAWAH ISLAND

By: 
John Labriola, Mayor

ATTEST:


Petra S. Reynolds, Town Clerk

By: 
Joseph C. Wilson IV, Esquire



JOSEPH C. WILSON, ATTORNEY AT LAW

MUNICIPAL & LITIGATION ATTORNEY

Licensed In SC, GA And FL

PO BOX 178, Folly Beach SC, 29439

c. 843.834.2390

joew@kiawahisland.org

www.follybeachlaw.com

December 6, 2023

VIA EMAIL (stillerson@kiawahisland.org)

Stephanie Tillerson
Town Administrator
Town of Kiawah Island

Re: 2022 Proposed Contract for Attorney Services

Dear Stephanie:

Please accept this letter as notice that I will not be seeking to renew my contract with the Town of Kiawah Island for 2024. I will of course work under my existing contract until it terminates on December 31, 2023.

I recognize that the Town will not be able to issue an RFP and retain a new attorney in December. If council wishes, I am happy to remain as the Town Attorney until a new attorney is appointed and assist in the transition to the new Town Attorney.

For any work performed by me for the Town after December 31, 2023, I will continue to work under the existing contract with an adjusted rate of \$300 an hour for all work performed for the Town (general work and litigation work), plus expenses as set forth in the existing contract. I am also willing to discuss continued work for the Town after a new Town Attorney is appointed if there is interest in that, whether it be for pending litigation, specific issues that I have been working on, or a second opinion.

It was a pleasure and a privilege to represent the Town during my tenure as Town Attorney. The Town is very well represented by a staff that has consistently impressed me with their dedication, qualifications, and ability to serve the residents and visitors to Kiawah. It was a joy working with you and the rest of staff, and I have some reticence about losing all of you as colleagues. I wish you the best, and I hope you will feel free to reach out if you ever need legal advice or just a sympathetic ear.

Kind regards,

Sincerely,

Joseph C. Wilson, IV