



## City Council Agenda Item

**City Council Meeting Date:** April 7, 2020

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Jeff Malawy, City Attorney  
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**SUBJECT:** Legal Representation by Little & Karzai LLP as Insurance Coverage Counsel in *Alcox v. City of Lompoc, et al.*

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### **Recommendation:**

Staff recommends the City Council approve the attached Letter of Engagement with Little & Karzai LLP and direct the City Manager to execute it.

### **Background:**

On March 17, 2017, Joel Alcox filed a complaint against the City of Lompoc and former Lompoc detective Harry Heidt for alleged constitutional violations arising out of Alcox's arrest, prosecution, and incarceration for murder. Alcox was incarcerated from 1986 to 2012, when he was released on a *habeas corpus* petition.

The City maintained insurance coverage during those years, but only three (3) insurance carriers remain in business: Insurance Company of the West (ICW), Insurance Company of State of Pennsylvania (now operating through AIG) (ICSOP), and CSAC-EIA (CSAC).

CSAC has participated in the case, although it has issued a reservation of rights regarding its coverage obligations. Both ICW and ICSOP have denied coverage to date and have not participated in the case.

### **Discussion:**

Due to the continued denials of coverage by ICW and AIG, the City Attorney's Office recommended that the City retain the law firm of Little & Karzai, a firm specializing in insurance coverage for policyholders, on a limited basis to further the efforts to secure insurance coverage from the carriers. Little & Karzai engaged with ICW and ICSOP prior to the February 18, 2020, mediation in the *Alcox* case and has since sent further demand letters to ICW and ICSOP.

Because it is likely that the services of Little & Karzai will continue to be needed to pursue insurance coverage and a settlement of the *Alcox* case, the City Attorney's Office recommends that the City further retain the law firm of Little & Karzai with a not-to-exceed amount of \$25,000.

Little & Karzai is comprised of two attorneys, Eric R. Little and Najwa Karzai. Both attorneys practice almost exclusively in insurance coverage, representing policyholders in a variety of aspects of insurance law, including disputes with insurance carriers. Mr. Little, in particular, has numerous published appellate court cases. Little & Karzai has a strong reputation within the legal community regarding their insurance coverage expertise. Mr. Little previously reviewed the underlying insurance policies and provided the City with a coverage opinion, and then engaged with the insurance carriers directly. He has agreed to undertake the City's representation in the insurance coverage dispute.

**Fiscal Impact:**

The City Manager approved the initial retainer agreement with Little & Karzai LLP, with a "not-to-exceed" amount of \$20,000 in order to retain their services prior to and through the February 18, 2020, mediation. Going forward, the cost of Little & Karzai's negotiations with the insurance carriers is estimated to be an additional \$15,000, although this could increase if there are extensive negotiations, a contentious settlement agreement with the insurer, or an additional mediation. In order to provide the City with control of the costs, Little & Karzai's retainer agreement includes a \$25,000 not-to-exceed amount.

As insurance coverage counsel for the City, the attorneys' fees of Little & Karzai will generally not be recoverable from the insurance carriers. In addition, in the event the City is forced to file a lawsuit or a demand for arbitration against the insurance carriers, then Little & Karzai's attorneys' fees (at least in part) would be recoverable as the "prevailing party" attorneys' fees in litigation only if a court finds that the insurance carriers' conduct was in bad faith. Given the uncertain status of insurance law in this area, this may be difficult for the City to prove in order to recover its attorneys' fees.

If the City decides to file suit or initiate arbitration against the carriers, we will advise the City Council of the estimated cost of doing so at that time.

**Conclusion:**

Little & Karzai, LLP is highly recommended by the City Attorney's Office. Mr. Little has previously reviewed the insurance coverage issues in this case, engaged with the insurance carriers on the City's behalf, and has agreed to continue to represent the City's interests to the fullest extent.

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Respectfully submitted,

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Jeff M. Malawy, City Attorney

Attachment: Letter of Engagement