

**Carson City
Agenda Report**

Date Submitted: 3/12/13

Agenda Date Requested: 3/21/13

Time Requested: Consent

To: Mayor and Supervisors

From: Nick Providenti, Finance Director

Subject Title: For Possible Action: Action to confirm the engagement of Sherman and Howard as bond counsel to Carson City, Nevada in connection with the \$17,500,000, Carson City, Nevada General Obligation (Limited Tax) Refunding Bond, Series 2013A, \$2,800,000, Carson City, Nevada General Obligation (Limited Tax) Refunding Bond, Series 2013B, and \$5,525,000, Carson City, Nevada General Obligation (Limited Tax) Refunding Bond, Series 2013C and servicing as Special Counsel in connection with the official statement of the above bond transactions.

Staff Summary: The agreement between the City and the firm of Sherman and Howard sets forth the role proposed to be served and the responsibilities proposed to be assumed as bond counsel.

Type of Action Requested: (check one)

☐ Resolution

☐ Ordinance

☒ Formal Action/Motion

☐ Other (Specify)

Does this action require a Business Impact Statement: () Yes (XX) No

Recommended Board Action: I move to confirm the engagement of Sherman and Howard as bond counsel to Carson City, Nevada in connection with the \$17,500,000, Carson City, Nevada General Obligation (Limited Tax) Refunding Bond, Series 2013A, \$2,800,000, Carson City, Nevada General Obligation (Limited Tax) Refunding Bond, Series 2013B, and \$5,525,000, Carson City, Nevada General Obligation (Limited Tax) Refunding Bond, Series 2013C and servicing as Special Counsel in connection with the official statement of the above bond transactions.

Explanation for Recommended Board Action: The attached letter will operate as the form of agreement between the City and the firm of Sherman and Howard sets forth the role proposed to be served and the responsibilities proposed to be assumed as bond counsel.

Applicable Statute, Code, Policy, Rule or Regulation: N/A

Fiscal Impact: 2013A Refunding Bonds - \$40,000 - \$45,000; 2013B Refunding Bonds - \$20,000 to \$25,000; 2013C Refunding Bonds - \$30,000 - \$35,000; Special Counsel fee of a not to exceed amount of \$30,000.

Explanation of Impact: Total amount not to exceed amount of \$135,000.

Funding Source: Capital Projects Fund (Fund 210)

Alternatives: Not to confirm Sherman and Howard as bond counsel.

Supporting Material: Engagement Letter

Prepared By: Nick Providenti

Reviewed By: _____

(Department Head)

(City Manager)

: _____

(District Attorney)

: _____

(Finance Director)

Date: _____

Date: 3/13/13

Date: 3/14/13

Date: 3/13/13

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

50 W. LIBERTY STREET, SUITE 1000
RENO, NEVADA 89501
TELEPHONE: 775-323-1980
FAX: 775-323-2339
WWW.SHERMANHOWARD.COM

Sherman & Howard L.L.C.

3960 HOWARD HUGHES PARKWAY
SUITE 500
LAS VEGAS, NEVADA 89169
TELEPHONE: 702-387-6073
FAX: 702-380-2853

March 13, 2013

E-Mail: jstern@sah.com

Nick Providenti
Carson City Finance Director
201 N. Carson, No. 3
Carson City, Nevada 89701

**Carson City, Nevada
General Obligation (Limited Tax) Refunding Bonds
(Additionally Secured by Pledged Revenues)
Series 2013A - \$17,500,000*
2013B - \$2,800,000*
Series 2013C - \$5,525,000***

Dear Nick:

We are pleased to confirm our engagement as bond counsel and special counsel to Carson City, Nevada (the "City") in connection with the above-captioned bonds (the "Bonds"). This letter will operate as the form of agreement between the City and our firm and sets forth the role we propose to serve and the responsibilities we propose to assume as bond counsel and special counsel relating to disclosure matters.

Scope of Services as Bond Counsel. Bond counsel is engaged as a recognized expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of bonds. As your bond counsel, we will prepare or examine all legal proceedings needed preliminary to and in the issuance of the Bonds relating to the validity and enforceability thereof (the sale and final issuance of the Bonds and appropriate closing certificates). All proceedings that we prepare will be prepared in collaboration with you, the City's attorney, the City's financial consultant or underwriter and other authorized representatives of the City. Our services as bond counsel also include an examination of an executed transcript of proceedings and such additional duties as we deem necessary to render our final approving opinion relating to the Bonds and the exclusion of the interest paid on the Bonds (subject to certain limitations which may be expressed in the opinion) from gross income for federal income tax purposes. Our opinion will be addressed to the City and will be executed and delivered by us in written form on the date the Bonds are exchanged for their purchase price (the "Closing"). The opinion will be based on facts and law existing as of its date.

*Preliminary, subject to change

Sherman & Howard L.L.C.

March 13, 2013

Page 2

Our services as bond counsel are limited to those contracted for explicitly herein; the City's execution of this letter constitutes an acknowledgment of those limitations. Specifically, but without implied limitation, our responsibilities do not include any representation by Sherman & Howard in connection with any IRS audit or any litigation involving the City or the Bonds. Neither do we assume responsibility for the preparation of any collateral documents (e.g., environmental impact statements) which are to be filed with any state, federal or other regulatory agency. Nor do our services include financial advice (including advice about the structure of the Bonds, that being the role of the financial consultant) or advice on the investment of funds related to the Bond issue. If such services are requested of us, we suggest that we discuss the nature and extent of those services and an estimate of our fee at the time of the request.

Services as Special Counsel to the Issuer. We are also being retained by you to act as special counsel to the City in connection with the official statement for the bonds (the "Official Statement"). As such, we will provide advice to the City on the applicable legal standards to be used in preparing the official statement or other offering memorandum (the "Official Statement") and meeting the City's disclosure responsibilities. At the conclusion of the transaction we will deliver a letter to you stating that we have assisted the City in the preparation of the Official Statement and that in the course of such assistance, nothing has come to the attention of the attorneys in our firm rendering legal services in connection with our representation which leads us to believe that the Official Statement, as of its date (except for the financial statements, other statistical data and statements of trends and forecasts, and information concerning The Depository Trust Company ("DTC") provided by DTC contained in the Official Statement and its Appendices, as to which we express no view), contains any untrue statement of material fact or omits to state any material fact necessary to make the statements in the Official Statement, in light of the circumstances under which they were made, no misleading.

Attorney-Client Relationship. In performing our services as bond counsel, the City will be our client and an attorney-client relationship will exist between us. We will represent the interests of the City rather than its Board of Trustees, its individual members, or the City's employees. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction.

Conflicts of Interest. Since the Bonds have not yet been marketed, the actual purchasers of the Bonds (the "Purchaser") cannot be identified at this time. We want to advise you that it is likely that the eventual Purchaser will be an underwriter or other financial institution that has been, is currently, or will in the future be a client of this firm with respect to matters other than the proposed Bonds. Under the Nevada Rules of Professional Conduct (the "Rules"), we do not believe that our representation of the City will be either: (i) materially limited by the Purchaser being our client on other matters, or (ii) directly adverse to the Purchaser under these circumstances because (a) the terms of the Bonds, the Official Statement, the authorizing document and our opinion will have been established prior to the acceptance of the low bid for the Bonds from the Purchaser, (b) the terms of said documents will not be modified in any material manner following the sale of the

Sherman & Howard L.L.C.

March 13, 2013

Page 3

Bonds, and (c) all that remains to be completed subsequent to the Bond sale is the delivery of the Bonds to the Purchaser in accordance with the terms of the Official Statement and Notice of Sale.

In addition, our firm sometimes represents, in other unrelated transactions, certain of the financial institutions that may be involved in this Bond transaction, such as underwriters, credit enhancers, and banks that act as paying agents or trustees. We do not believe that any of these representations will materially limit or adversely affect our ability to represent the City in connection with the Bonds, even though such representations may be characterized as adverse under the Rules. In any event, during the term of our engagement hereunder, we will not accept a representation of any of these parties in any matter in which the City is an adverse party. However, pursuant to the Rules, we do ask that you consent to our representation of such parties in transactions that do not directly or indirectly involve the City. Your execution of this letter will signify the City's prospective consent to such adverse representations in matters unrelated to the Bonds while we are serving as bond counsel hereunder.

Proposed Fees. Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing, (ii) the responsibilities we will undertake pursuant to this letter, (iii) the time and labor we anticipate devoting to the financing, and (iv) the skill and experience required to complete the services properly, we estimate that our fee as bond counsel for a series of general obligation refunding bonds (additionally secured by pledged revenues) in the amount of approximately \$17,500,000 is estimated to be between \$40,000 to \$45,000, for a series of general obligation refunding bonds (additionally secured by pledged revenues) in the amount of approximately \$2,800,000 is estimated to be between \$20,000 to \$25,000 and for a series of general obligation refunding bonds (additionally secured by pledged revenues) in the approximate amount of \$5,525,000 is estimated to be \$30,000 to \$35,000. Such fees may vary: (i) if the principal amount of Bonds actually issued differs significantly from the amount stated above, (ii) if material changes in the structure of the financing occur, or (iii) if unusual or unforeseen circumstances arise which require a significant increase in our time or our responsibilities, *e.g.*, if the bonds are issued with unusual features (such as floating interest rate bonds or "put" bonds) or with unusual security (such as a letter of credit). If all of the series of bonds close at the same time, there will be some efficiencies with closing documents, and our bond counsel fees may be lower. In addition to our bond counsel fee, our fee for performing services as special counsel to the City in connection with the Official Statement, at the same time as we perform bond counsel services, will not exceed \$30,000

In the event the transaction is delayed and the Bonds are not delivered at Closing on or before December 31, 2013, it will be necessary for us to repeat and update much of our work and a commensurate increase in our fees will result. Any such revision of our fee as bond counsel would, however, be made only after obtaining your approval by a written amendment to this engagement letter.

Sherman & Howard L.L.C.

March 13, 2013

Page 4

In addition, this letter authorizes us to make disbursements on your behalf, which we estimate will not exceed \$2,000. The City agrees to reimburse us for such disbursements, including travel costs, photocopying, facsimile transmissions, deliveries, filing fees, computer assisted research, and other necessary office expenses (excluding travel costs and deliveries to and from Carson City).

Our fees and expenses are usually paid at Closing out of Bond proceeds. We customarily do not submit any statement until the Closing, unless there is a substantial delay in completing the financing. If, for any reason, the financing is not consummated or is completed without the rendition of our opinion as bond counsel, we will expect to be compensated at our normal hourly rates (currently ranging from \$220 to \$550 depending on personnel) for time actually spent on your behalf, plus disbursements.

Document Retention. At or within a reasonable period after the Closing, we will review the file to determine what materials should be retained as a record of our representation and those which are no longer needed. We will provide you with a copy of the customary transcript of documents after Closing and will return any original documents obtained from you (if a copy is not included in the transcript). We will retain for several years a copy of the transcript and such other materials as correspondence, final substantive work product, documents obtained from you, and documents obtained from third parties. We will not retain such materials as duplicates of the above-described material, or drafts and notes that do not appear needed any longer.

Ordinarily the firm will keep the retained materials until seven years after the final maturity of the Bonds. At the end of that time, unless you advise us in writing to the contrary, we will destroy the bulk of the file. If the file is especially voluminous, we may destroy all or portions of it earlier, as our storage facilities are limited. If you prefer other arrangements for retention or disposition of our files in this matter, please advise us in writing.

Personnel. Jennifer Stern, who is a licensed Nevada lawyer and resident of our Nevada office, will be the principal lawyer involved in performing bond counsel services for you and Maria Harwood, who is a licensed Colorado lawyer and resident of our Denver office, will be the principal lawyer involved in performing special counsel services for you, pursuant to this letter. They will report to and take direction from Nick Providenti, the City's Finance Director. Where appropriate, certain tasks may be performed by other attorneys or paralegals. In addition, Ms. Stern and Ms. Harwood may be assisted in performing these legal services by lawyers in our non-Nevada offices who are not licensed to practice law in Nevada. Generally, these lawyers assist us in matters of federal tax law and federal securities law. We sometimes consult with these lawyers in attempting to resolve questions of municipal law and municipal finance law, and sometimes these lawyers also assist us in legal research and document drafting. In any event, our Nevada lawyers will be responsible for all legal services and legal work rendered to you pursuant to this letter.

Sherman & Howard L.L.C.

March 13, 2013

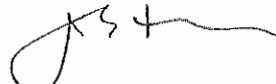
Page 5

Termination of Engagement. Upon delivery of our approving opinion and our letter as special counsel, our responsibilities as bond counsel and special counsel will terminate with respect to the Bonds. At that time, our representation of the City and the attorney-client relationship created by this engagement letter will be concluded. Should the City seek the advice of bond counsel or special counsel on a post-closing matter or seek other, additional legal services, we would be happy to discuss the nature and extent of our separate engagement at that time.

Approval. If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the enclosed original of this letter signed by the officer so authorized, retaining the enclosed copy for your files.

We very much appreciate the opportunity to be of service to the City as bond counsel and special counsel look forward to working with you.

Sincerely,



Jennifer Stern

Accepted this ____ day of _____, 2013.

CARSON CITY, NEVADA

By: _____

Title: _____