



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: 11/17/16

Staff Contact: Nancy Paulson, Chief Financial Officer

Agenda Title: For Possible Action: To confirm the engagement of Sherman & Howard as bond counsel to Carson City, Nevada in connection with the issuance of two installment-purchase agreements. The "QECB Agreement" in the maximum principal amount of \$3,101,538 and the "Tax-Exempt Agreement" in the maximum principal amount of \$1,175,000 in order to finance all or a portion of the cost to acquire, improve, and equip building projects as defined in NRS 244A.019. (Nancy Paulson, npaulson@carson.org)

Staff Summary: The agreement between the City and the firm of Sherman & Howard sets forth the role proposed to be served and the responsibilities proposed to be assumed as bond counsel for the issuance of two installment-purchase agreements to finance the cost of an energy savings performance contract that is funded by guaranteed energy savings. The attached letter will operate as the form of agreement between the City and the firm of Sherman & Howard.

Agenda Action: Formal Action/Motion

Time Requested: 10 minutes

Proposed Motion

I move to confirm the engagement of Sherman & Howard as bond counsel to Carson City, Nevada in connection with the issuance of two installment-purchase agreements. The "QECB Agreement" in the maximum principal amount of \$3,101,538 and the "Tax-Exempt Agreement" in the maximum principal amount of \$1,175,000 in order to finance all or a portion of the cost to acquire, improve, and equip building projects as defined in NRS 244A.019.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

October 1, 2015 - the Board of Supervisors approved contract 1415-123 with Ameresco, Inc. to perform a financial grade energy audit for the Carson City Performance Contract 2015 Project.

June 2, 2016 - the Board of Supervisors held a public hearing and adopted Resolution No. 2016-R-10 authorizing the installment-purchase agreements for the purpose of financing the cost of building projects; directing the Chief Financial Officer to forward materials to the State of Nevada Department of Taxation and authorizing the Chief Financial Officer to execute such installment-purchase agreements.

June 21, 2016 - Pursuant to NRS 350.014, the Carson City Debt Management Commission approved the proposal by the City to enter into installment-purchase agreements in a collective aggregate principal amount not to exceed \$5,300,000.

July 8, 2016 - Pursuant to NRS 350.089, the City received the approval of the State of NV Department of Taxation Executive Director for Resolution No. 2016-R-10.

October 18, 2016 - The City was awarded an allocation of \$3,101,538 of Qualified Energy Conservation Bonds ("QECCBs") from the State Department of Business and Industry.

Background/Issues & Analysis

Applicable Statute, Code, Policy, Rule or Regulation

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: Capital Projects Fund - Issuance costs - \$35,000 to \$38,000 for the "QECCB Agreement" and \$30,000 to \$35,000 for the "Tax-Exempt Agreement".

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: The financing proposal includes a cash contribution from the General Fund of \$149,264 which is expected to be offset by utility rebates upon completion of the project. The proposed fees to Sherman & Howard will be paid from this cash contribution. The issuance costs, debt service, project costs and proceeds from the issuance of the installment-purchase agreements will be added to the City's FY 17 Budget upon confirmation of the final amounts. The project will be accounted for in the Capital Projects Fund.

Alternatives

Not to confirm Sherman and Howard as bond counsel.

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

SHERMAN & HOWARD

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November 7, 2016

Nancy Paulson
Chief Financial Officer
Carson City
201 N. Carson Street, #3
Carson City, NV 89701

\$3,101,538*
Carson City, Nevada
Installment Purchase Agreement
(QECB)

\$1,175,000*
Carson City, Nevada
Installment Purchase Agreement
(Tax-Exempt)

Dear Nancy:

We are pleased to confirm our engagement as bond counsel to Carson City, Nevada (the "City") in connection with the above-captioned installment purchase agreements (the "Agreements"). This letter revises and replaces the letter dated January 27, 2016 and 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.

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 the Agreements. As your bond counsel, we will prepare or examine all legal proceedings needed preliminary to and in the issuance of the Agreements relating to the validity and enforceability thereof (the sale and final issuance of the Agreements and appropriate closing certificates). All proceedings that we prepare will be prepared in collaboration with you, the District Attorney, the City's financial advisor, the purchasers 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 opinions relating to the Agreements. Our opinions will be addressed to the City and will be executed and delivered by us in written form on the

*Preliminary, subject to change

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respective dates the Agreements are exchanged for their purchase price (the “Closing”). The opinion will be based on facts and law existing as of its date.

As bond counsel, we will not assume or undertake responsibility for assisting in the preparation of an Official Statement with respect to the Agreements (the “Official Statement”). Our understanding is the Agreements will be purchased by a bank or other sophisticated investor; therefore, the preparation and distribution of an Official Statement will not be necessary. Also, we will not undertake responsibility for the energy performance contract, that being the role of the District Attorney’s office.

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 L.L.C. in connection with any IRS audit or any litigation involving the City or the Agreements. 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 Agreements, that being the role of the financial advisor, JNA Consulting LLC, or advice on the investment of funds related to the Agreements. 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.

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, 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 these transactions.

Conflicts of Interest. Since the Agreements have not yet been marketed, the actual purchasers of the Agreements (the “Purchasers”) cannot be identified at this time. We want to advise you that it is likely that the eventual Purchasers 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 Agreements. 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 Purchasers being our client on other matters, or (ii) directly adverse to the Purchasers under these circumstances because (a) the terms of the Agreements, the authorizing documents and our opinions will have been established prior to the acceptance of the low bid for the Agreements from the Purchasers, (b) the terms of said documents will not be modified in any material manner following the sale of the Agreements, and (c) all that remains to be completed subsequent to the sale is the delivery of the Agreements to the Purchasers.

In addition, our firm sometimes represents, in other unrelated transactions, certain of the financial institutions that may be involved in this transaction, such as underwriters, credit enhancers, and banks that act as paying agents or trustees. We do not believe that any of these

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representations will materially limit or adversely affect our ability to represent the City in connection with the Agreements, 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 Agreements 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 our fee as bond counsel for the Installment Purchase Agreement (QECCB) in the amount of approximately \$3,101,538 is estimated to be between \$35,000 to \$38,000 and for the Installment Purchase Agreement (Tax-Exempt) in the amount of approximately \$1,175,000 is estimated to be between \$30,000 to \$35,000. Such fees may vary: (i) if the principal amount of the Agreements actually issued differs significantly from the amounts 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.

In the event the transaction is delayed and the Agreements are not delivered at Closing on or before February 1, 2017, it may 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 fees as bond counsel would, however, be made only after obtaining your approval by a written amendment to this engagement letter.

In addition, this letter authorizes us to make disbursements on your behalf, which we estimate will not exceed \$1,000. The City agrees to reimburse us for such disbursements, including travel costs, photocopying, deliveries, filing fees, computer assisted research, and other necessary office expenses, but excluding travel and delivery costs to/from Carson City, Nevada.

Our fees and expenses are usually paid at Closing. 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 opinions as bond counsel, we will expect to be compensated at our normal hourly rates (currently ranging from \$315 to \$620 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

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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 Agreements. 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 Reno office, David K. Lucas, who is a licensed Nevada lawyer and resident of our Denver office, and Ryan Henry, who is a licensed Nevada lawyer and resident of our Reno office, will be the principal lawyers involved in performing bond counsel services for you pursuant to this letter. They will report to and take direction from you. Where appropriate, certain tasks may be performed by other attorneys or paralegals. In addition, they may be assisted in performing these legal services by other 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 and all formal legal opinions will be rendered and executed by Sherman & Howard L.L.C.

Electronic Communications. Although the City and our firm recognize e-mail may not always be a secure method of communication, and could be intercepted and read by persons who are not the intended recipients, the City and the firm agree to the use of unencrypted e-mail for communications made during the course of this engagement, including communications containing confidential information or advice. The City may, however, at any time request us to use a specified more secure or different method of communication for confidential information or advice, including communications about a particular subject, and we will take reasonable measures to implement the request from the City.

Termination of Engagement. Upon delivery of our approving opinions, our responsibilities as bond counsel will terminate with respect to the Agreements. 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 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Lucas". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David K. Lucas

Accepted this ___ day of _____, 2016.

Carson City, Nevada

By: _____
Title: _____