



# STAFF REPORT

**Report To:** Board of Supervisors

**Meeting Date:** 04/20/17

**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 the \$6,000,000 Carson City, Nevada Highway Revenue (Motor Vehicle Fuel Tax) Refunding Bonds Series 2017 and the \$3,840,000 Carson City, Nevada General Obligation (Limited Tax) Medium-Term Bonds Series 2017A. (Nancy Paulson, npaulson@carson.org)

**Staff Summary:** The agreements between the City and the firm of Sherman & Howard set forth the role proposed to be served and the responsibilities proposed to be assumed as bond counsel. The attached letters will operate as the form of the agreements between the City and the firm of Sherman & Howard.

**Agenda Action:** Formal Action/Motion

**Time Requested:** 10 minutes

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## **Proposed Motion**

I move to confirm the engagement of Sherman & Howard as bond counsel to Carson City, Nevada in connection with the issuance of the \$6,000,000 Carson City, Nevada Highway Revenue (Motor Vehicle Fuel Tax) Refunding Bonds Series 2017 and the \$3,840,000 Carson City, Nevada General Obligation (Limited Tax) Medium-Term Bonds Series 2017A.

## **Board's Strategic Goal**

Sustainable Infrastructure

## **Previous Action**

## **Background/Issues & Analysis**

## **Applicable Statute, Code, Policy, Rule or Regulation**

## **Financial Information**

Is there a fiscal impact?  Yes  No

If yes, account name/number: Regional Transportation Fund - Issuance costs - \$40,000 to \$50,000 for the \$6,000,000 Highway Revenue Refunding Bonds. Capital Projects and Fleet Management Funds - Issuance costs - \$35,000 to \$40,000 for the \$3,840,000 GO Medium-Term Bonds .

Is it currently budgeted?  Yes  No

Explanation of Fiscal Impact: The issuance costs will be paid from the bond proceeds.

**Alternatives**

Not to confirm Sherman and Howard as bond counsel.

**Board Action Taken:**

Motion: \_\_\_\_\_

1) \_\_\_\_\_

2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Vote Recorded By)

125

YEARS

SHERMAN & HOWARD

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Jennifer Stern  
Sherman & Howard L.L.C.  
Direct Dial Number: 775.323.1980  
E-mail: [jstern@shermanhoward.com](mailto:jstern@shermanhoward.com)

March 14, 2017

Nancy Paulson  
Chief Financial Officer  
Carson City  
201 N. Carson, No. 3  
Carson City, Nevada 89701

**\$6,000,000\***  
**Carson City, Nevada**  
**Highway Revenue**  
**(Motor Vehicle Fuel Tax)**  
**Refunding Bonds**  
**Series 2017**

Dear Nancy:

We are pleased to confirm our engagement as bond 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.

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

Nancy Paulson  
Chief Financial Officer  
Carson City  
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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.

As bond counsel, we will not assume or undertake responsibility for assisting in the preparation of the Official Statement with respect to the Bonds (the "Official Statement"), nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of the Official Statement. It is our understanding that the City intends to sell the Bonds to a bank or other sophisticated investor, therefore; an Official Statement will not be prepared with respect to the Bonds.

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 us 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.

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 purchaser 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 Bonds, and (c) all that remains to be

Nancy Paulson  
Chief Financial Officer  
Carson City  
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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 the Bonds would be in the range of \$40,000 to \$50,000. Such fee 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).

In the event the transaction is delayed and the Bonds are not delivered at Closing on or before December 31, 2017, 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.

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, facsimile transmissions, deliveries, filing fees, computer assisted research, and other necessary office expenses (excluding travel costs and deliveries to and from Las Vegas).

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

Nancy Paulson  
Chief Financial Officer  
Carson City  
March 13, 2017  
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normal hourly rates (currently ranging from \$375 to \$600 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 offices, will be the principal lawyer involved in performing bond counsel services for you pursuant to this letter. She will be assisted by Ryan Henry, who is also a licensed lawyer and resident of Reno office. They will report to and take direction from you. Where appropriate, certain tasks may be performed by other attorneys or paralegals. In addition, Ms. Stern 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 and all formal legal opinions will be rendered and executed by Swendseid & Stern, a member in Sherman & Howard L.L.C., which is the name under which our Nevada office does business.

Termination of Engagement. Upon delivery of our approving opinion, our responsibilities as bond 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 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.

Nancy Paulson  
Chief Financial Officer  
Carson City  
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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 look forward to working with you.

Sincerely,



Jennifer Stern

JS/bjs  
Encl.

Accepted this \_\_\_ day of \_\_\_\_\_, 2017.

CARSON CITY, NEVADA

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

Title: \_\_\_\_\_

# 125

YEARS

## SHERMAN & HOWARD

50 West Liberty Street, Suite 1000, Reno, Nevada 89501-1950  
Telephone: 775.323.1980 Fax: 775.323.2339

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April 10, 2017

Nancy Paulson  
Chief Financial Officer  
Carson City  
201 N. Carson, No. 3  
Carson City, Nevada 89701

**\$3,840,000\***  
**Carson City, Nevada**  
**General Obligation (Limited Tax)**  
**Medium-Term Bonds**  
**Series 2017A**

Dear Nancy:

We are pleased to confirm our engagement as bond counsel to Carson City (the "City"), in connection with the above-captioned bonds (the "Bonds"). This revised 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.

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 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 advisor 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)



# Sherman & Howard L.L.C.

Nancy Paulson

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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 this date.

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 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 Bonds. 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 of Supervisors, 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 purchaser 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 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 Bonds, and (c) all that remains to be completed subsequent to the sale of the Bonds is the delivery of the Bonds to the Purchaser in accordance with the terms of the Request for Proposals.

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 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

## Sherman & Howard L.L.C.

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Page 3

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 the Bonds in the amount of approximately \$3,840,000 is estimated to be between \$35,000 to \$40,000. Such fee 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, (iii) the Bonds are issued in more than one series, or (iv) 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 a floating interest rate bond or a "put" bond) or with unusual security (such as a letter of credit).

In the event the transaction is delayed and the Bonds are not delivered at Closing on or before December 31, 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 fee 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, facsimile transmissions, deliveries, filing fees, computer assisted research, and other necessary office expenses.

Our fees and expenses are usually paid at Closing out of the proceeds of the Bonds. 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 \$375 to \$600 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 the 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 bonds that do not appear needed any longer.

## Sherman & Howard L.L.C.

Nancy Paulson

April 10, 2017

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

Termination of Engagement. Upon delivery of our approving opinion, our responsibilities as bond 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 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.

**Sherman & Howard L.L.C.**

Nancy Paulson  
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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,



Jennifer Stern

Accepted this \_\_\_ day of \_\_\_\_\_, 2017.

CARSON CITY, NEVADA

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

Title: \_\_\_\_\_