



## STAFF REPORT

**Report To:** Board of Supervisors                      **Meeting Date:** October 7, 2021

**Staff Contact:** Sheri Russell, Chief Financial Officer (SRussell@carson.org)

**Agenda Title:** For Possible Action: Discussion and possible action regarding the engagement of Sherman & Howard, LLC as bond and special counsel to Carson City for a combined not to exceed amount of \$179,500, in connection with the issuance of three general obligation limited tax bonds, additionally secured by pledged revenues - the \$16,690,000 Water and Refunding Bonds, Series 2022A; the \$1,895,000 Sewer (Wastewater) Refunding Bonds, Series 2022B; and the \$8,100,000 Capital Improvement Bonds, Series 2022C. (Sheri Russell, srussell@carson.org)

Staff Summary: The engagement letter will operate as the form of agreement between the City and the firm of Sherman & Howard, LLC. The engagement letter sets forth the proposed roles and responsibilities Sherman & Howard, LLC will assume as the City's bond and special counsel for the issuance of three general obligation bonds which will finance the refunding of the 2012 Water and Wastewater Bonds, and new money for the construction of the Quill Water Treatment Plant Upgrade and the construction of the Emergency Operation Center/Fire Station/Backup Dispatch Center.

**Agenda Action:** Formal Action / Motion                      **Time Requested:** 5 minutes

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### **Proposed Motion**

I move to approve, and authorize the City Manager to execute, the engagement letter with Sherman & Howard, LLC.

### **Board's Strategic Goal**

Sustainable Infrastructure

### **Previous Action**

N/A

### **Background/Issues & Analysis**

The City issues debt from time to time if it makes the most financial sense. Currently, interest rates are very low and there is a great opportunity to refund existing bonds to reduce the City's debt service burden and to issue low-cost general obligation bonds to move projects forward. Projects will be supplemented with American Recovery Plan Act ("ARPA") funding, which has helped to reduce the debt burden. Proceeds from debt should be spent within three years of issuance to avoid repayment of interest earned.

The refunding of the 2012 Series Water and Wastewater Bonds would be \$11,585,000, with projected interest savings of at least \$1 million.

The Quill Water Treatment Plant total project cost is \$11 million. The amount of \$4 million of this project is funded with ARPA funding and system user rates. In addition, the City has submitted a federal appropriation

request of \$1.5 million through its Nevada delegation. The funding still needed is \$5.5 million. Because the status of the federal appropriation request is unknown at this time, the City will be requesting a bond amount of \$7 million.

The Emergency Operation Center/Fire Station/Backup Dispatch Center total project cost is \$11.1 million. The amount of \$3 million of this project is funded with ARPA funding and Capital Project dollars set aside in the Fiscal Year 2022 budget. The City has submitted a federal appropriation request of \$2 million through its Nevada delegation; the funding still needed is \$6.1 million. Because the status of the federal appropriation request is unknown at this time, the City will be requesting a bond amount of \$8.1 million.

The bond issuance process can take between 4 and 6 months to complete and interest rates are not locked in until final issuance; therefore, staff is starting this process as soon as feasibly possible in order to take advantage of the current low interest rates. Grant and Federal awards will be known by final issuance, and final bond issuance amounts will be reduced if federal amounts are awarded.

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

N/A

**Financial Information**

**Is there a fiscal impact?** Yes

**If yes, account name/number:** Debt Service Fund 4107001-504846, Water Fund 5203505-504846, Wastewater Fund 5103205-504846.

**Is it currently budgeted?** No

**Explanation of Fiscal Impact:** The proposed fees to Sherman & Howard, LLC, along with all issuance costs, will be paid from proceeds from the issuance of the general obligation bonds. Once final numbers are known as the City moves closer to bond issuance, the budget will be augmented as necessary to include proceeds, project and issuance costs.

Refunding and Water Issue Counsel Fees	\$45,000
Refunding Wastewater Issue Counsel Fee	\$35,000
Capital Improvement Bonds Issue Counsel Fees	\$38,000
Two Official Statement Preparation Fees	\$60,000
Travel, Photo Copies, other Costs	\$1,500
Total Not to Exceed Amount	\$179,500

**Alternatives**

Do not approve the engagement letter with Sherman & Howard, LLC.

**Attachments:**

[Sherman Howard Engagement Letter \(revised\).pdf](#)

**Board Action Taken:**

Motion: _____	1) _____	Aye/Nay
	2) _____	_____
		_____
		_____
		_____

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(Vote Recorded By)

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# SHERMAN & HOWARD

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**Ryan Henry**  
**Sherman & Howard L.L.C.**  
**Direct Dial Number: 775.784.0234**  
**E-mail: rhenry@shermanhoward.com**

September 23, 2021

Sheri Russell  
Chief Financial Officer  
Carson City  
201 N. Carson Street  
Carson City, Nevada 89701

**\$16,690,000\***  
**Carson City, Nevada**  
**General Obligation (Limited Tax)**  
**Water and Refunding Bonds**  
**(Additionally Secured by Pledged Revenues)**  
**Series 2022A**

**\$1,895,000\***  
**Carson City, Nevada**  
**General Obligation (Limited Tax)**  
**Sewer Refunding Bonds**  
**(Additionally Secured by Pledged Revenues)**  
**Series 2022B**

**\$8,100,000\***  
**Carson City, Nevada**  
**General Obligation (Limited Tax)**  
**Capital Improvement Bonds**  
**(Additionally Secured by Pledged Revenues)**  
**Series 2022C**

Dear Sheri:

This engagement letter confirms our engagement as bond counsel and special counsel to Carson City, Nevada (the "City") in connection with the above-captioned bonds (collectively, 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 the Bonds.

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

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\*Preliminary, subject to change  
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September 23, 2021

Page 2

District 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 each series of the Bonds and the exclusion of the interest paid on each series of the Bonds (subject to certain limitations which may be expressed in the opinion) from gross income for federal income tax purposes. Our opinion for each series of Bonds will be addressed to the City and will be executed and delivered by us in written form on the date each series of the Bonds are exchanged for their purchase price (the "Closing"). Each opinion will be based on facts and law existing as of its 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 advisor) 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.

Scope of Services as Special Counsel. We will also be retained by you to act as special counsel to the City in connection with each Official Statement for the Bonds. As such, we will provide advice to the City on the applicable legal standards to be used in preparing each 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 each 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 each 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 each 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 each Official Statement, in light of the circumstances under which they were made, not misleading.

Attorney-Client Relationship. In performing our services as bond and special 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.

September 23, 2021

Page 3

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 of each series of Bonds 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 each series of the Bonds, the Official Statement(s), the authorizing document and our opinion for each series of Bonds will have been established prior to the acceptance of the low bid for each series of the Bonds from the applicable Purchaser, (b) the terms of said documents will not be modified in any material manner following the sale of each series of the Bonds, and (c) all that remains to be completed subsequent to the bond sale(s) is the delivery of the Bonds to the applicable 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 and possibly special 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 Series 2022A will not exceed \$45,000, for Series 2022B will not exceed \$35,000 and for Series 2022C will not exceed \$38,000. Our fee as special counsel to the City will not exceed \$30,000 per Official Statement (as long as we are serving as bond counsel on this transaction). Our current understanding is that there will be one Official Statement for Series 2022A/2022B and one Official Statement for Series 2022C, which would result in a total special counsel fee of not to exceed \$60,000. Such fees may vary: (i) if the principal amounts of the 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.

September 23, 2021

Page 4

The amount of our fees would be determined after each series of the Bonds is issued and would be based on the amount of time, effort, etc. attorneys at this firm expend in performing services in connection with applicable Bond issues.

In the event the transaction is delayed and the Bonds are not delivered at Closing on or before December 31, 2022, 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 and special 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 \$1,500. The City agrees to reimburse us for such disbursements, including travel costs, photocopying, deliveries, filing fees, computer assisted research, and other necessary office expenses.

Our fees and expenses will be paid at Closing out of the proceeds of each series of the Bonds. Our fees for bond counsel and special counsel services for the Bonds are contingent upon the issuance of each series of the Bonds. If a series of Bonds is not issued, we understand that we will not be paid for our work as bond counsel or special counsel with respect to that series of Bonds.

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.

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

September 23, 2021

Page 5

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. Ryan Henry, 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. David Lucas, who is a licensed Nevada lawyer and resident of our Denver office, will be the principal lawyer in performing special counsel services for you pursuant to this letter. They will report to and take direction from you, the City's Chief Financial Officer and the City Manager. Where appropriate, certain tasks may be performed by other attorneys or paralegals. In addition, they 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 licensed Nevada lawyers will be responsible for all legal services and legal work rendered to you pursuant to this letter.

Termination of Engagement. Upon delivery of our approving opinions, 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 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 sometimes do not receive signed engagement letters back from clients for various reasons, but the client still wishes for us to serve as their counsel. Accordingly, so that we may begin work on this matter soon per your instructions, if you do not return a signed letter to us or inform us of any comments or objections to this letter, we will consider this letter and the referenced fee arrangement to govern our relationship unless you and we agree otherwise in writing.

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



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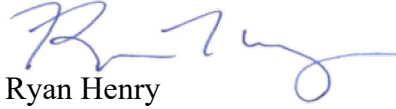
# SHERMAN & HOWARD

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September 23, 2021

Page 6

Sincerely,



Ryan Henry

Accepted this \_\_\_ day of \_\_\_\_\_, 2021.

CARSON CITY, NEVADA

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

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