



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** January 19, 2023

Staff Contact: Sheri Russell-Benabou, Chief Financial Officer

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 not to exceed amount of \$84,500 in connection with the issuance by Carson City of its \$5,550,000 General Obligation (Limited Tax) Infrastructure Sales Tax Bonds (Additionally Secured by Pledged Revenues), Series 2023. (Sheri Russell-Benabou, srussell@carson.org)

Staff Summary: The attached 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 a general obligation bond which will finance the William Street Corridor Capital Project.

Agenda Action: Formal Action / Motion **Time Requested:** Consent

Proposed Motion

I move to approve the engagement letter, as presented.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

N/A

Background/Issues & Analysis

The City issues debt from time to time when debt issuance makes the most financial sense. Currently interest rates are rising, but not to an unreasonable bond rate. Bond rates react more slowly, as opposed to bank loans, so the City has opted to issue a Bond, which will include the preparation of a preliminary official statement. Proceeds from debt should be spent within three years of issuance, to avoid repayment of interest earned.

The City is pursuing the issuance of a general obligation bond not to exceed the amount of \$5,550,000 to fund the balance of the William Street Corridor Project that remains unfunded. The total project costs are \$22,240,787. The City received federal appropriation of approximately \$2 million and \$9.3 million from a Rebuilding American Infrastructure with Sustainability and Equity ("RAISE") federal grant. In addition, \$5,540,787 is available through Redevelopment, Water, Wastewater and Stormwater Funds for their portions of this project, leaving a remaining project balance of \$5,400,000. The bond issuance costs of approximately \$150,000 are included in the total not to exceed amount requested. The City has been able to reduce the amount borrowed based on the federal appropriation and grants received.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115(1)(b)

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Sales Tax Infrastructure Fund 3100615-504600.

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 the 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.

Alternatives

Do not approve the engagement letter with Sherman & Howard, LLC and/or provide alternative direction to staff.

Attachments:

[Sherman & Howard Engagement Letter.pdf](#)

Board Action Taken:

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

(Vote Recorded By)

Sherman & Howard_{LLC}

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December 19, 2022

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

\$5,550,000*
Carson City, Nevada
General Obligation (Limited Tax)
Infrastructure Sales Tax Bonds
(Additionally Secured by Pledged Revenues)
Series 2023

Dear Sheri:

This engagement letter amends our previous letter dated August 11, 2022 and confirms 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 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 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 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

*Preliminary, subject to change

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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.

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.

Scope of Services as Special Counsel. We will also be retained by you to act as special counsel to the City in connection with the Official Statement for the Bonds. As such, we will provide advice to the City on the applicable legal standards to be used in preparing 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, 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.

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

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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 completed subsequent to the sale of the Bonds 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 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 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 the Bonds in the amount of approximately \$5,550,000 is estimated to be between \$49,000 to \$54,000. Our fee as special counsel to the City is estimated to be \$30,000. 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, 2023, 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 \$500.00. The City agrees to reimburse us for such disbursements,

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including travel costs, photocopying, facsimile transmissions, 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 the Bonds. Our fees for bond counsel and special counsel services for the Bonds are contingent upon issuance of the Bonds. If the Bonds are not issued, we understand that we will not be paid for our work as bond counsel or special counsel with respect to the 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 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 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. 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

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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.

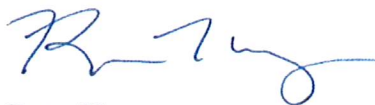
Termination of Engagement. Upon delivery of our approving opinion, our responsibilities as bond counsel to the City will terminate with respect to the Bonds and upon delivery of our special counsel letter, our responsibilities as special counsel to the City will terminate with respect to the Bonds, and 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.

Sincerely,



Ryan Henry

Accepted this ___ day of _____, 202__.

CARSON CITY, NEVADA

By: _____

Title: _____