

**FIFTH AMENDMENT TO CONTRACT FOR SERVICES OF INDEPENDENT
CONTRACTOR**

DATED AS OF MAY 6, 2020

This FIFTH AMENDMENT TO CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR (this “Fifth Amendment”) is intended to amend, supplement, and revive the “Contract for Services of Independent Contractor, Bond Counsel for the City of Fernley, Installment Purchase Agreement Refunding” (the “Original Contract”), as amended by the Amendment to Contract for Services of Independent Contractor, dated as of June 26, 2014 (the “First Amendment”), the Second Amendment to Contract for Services of Independent Contractor, dated as of July 15, 2015 (the “Second Amendment”), the Third Amendment to Contract for Services of Independent Contractor, dated as of July 6, 2016 (the “Third Amendment”) and the Fourth Amendment to Contract for Services of Independent Contract, dated as of July 20, 2016 (the “Fourth Amendment” and collectively, the “Amendments”), between SHERMAN & HOWARD L.L.C. and the CITY OF FERNLEY, NEVADA (the “City” and together with Sherman & Howard L.L.C., the “Parties”).

WHEREAS, the Original Contract and the Amendments were previously approved by the City Council of the City; and

WHEREAS, the provisions of the Original Contract may be modified in writing signed by all Parties pursuant to Section 32 of the Original Contract; and

WHEREAS, the Parties intend to contract with one another again regarding the City’s issuance of the “City of Fernley, Nevada, General Obligation (Limited Tax) Water and Sewer Refunding Bonds, Series 2020” (the “2020 Bonds”); and

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Original Contract, as amended by the Amendments.

NOW, THEREFORE, for and in consideration of the mutual covenants and the representations herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. Intent and Purpose. Unless specifically and expressly amended by the terms of this Fifth Amendment, the Parties intend that the terms of the Original Contract, as amended by the Amendments, remain undisturbed and are hereby ratified and confirmed.

Section 2. For all purposes of the Original Contract, as amended by the Amendments, the following terms and conditions are hereby expressly amended, supplemented, revived, and/or restated as follows:

A. Attachment A to the Original Contract, as amended by the Amendments shall be updated and replaced in all respects with the Engagement Letter attached hereto as Exhibit “A” and dated April 14, 2020.

D. Contract Term. Section 3 of the Original Contract, as amended by the Amendments, is hereby restated in its entirety as follows:

3. CONTRACT TERM. This Contract shall be effective from May 6, 2020 to December 31, 2020, subject to appropriation.

E. Scope of Work and Consideration. Section 6 of the Original Contract, as amended by the Amendments, is hereby restated in its entirety as follows:

6. SCOPE OF WORK AND CONSIDERATION. The parties agree that Contractor will provide the services specified in paragraph (5) at a Fee Schedule outlined in Attachment A: Engagement Letter, dated April 14, 2020.

a. The City will pay the contractor a not-to-exceed (NTE) amount of \$45,000 for services in Attachment A in connection with the 2020 Bonds.

b. The City will pay the Contractor a not-to-exceed (NTE) amount of \$1,000 for disbursements in Attachment A in connection with the 2020 Bonds based on actual expenses and materials.

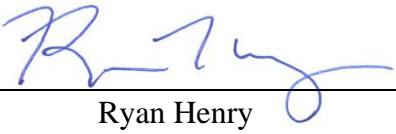
c. Contractor will provide invoices for all payments due under this contract, and the invoices will be settled after the closing on the 2020 Bonds.

Section 3. Execution in Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Ryan Henry executed this Amendment for and on behalf of Sherman & Howard L.L.C.; and the Mayor of the City and the City Clerk have executed this Amendment for and on behalf of the City and affixed the seal of the City hereto:

SHERMAN & HOWARD L.L.C

By: 
Ryan Henry

[S E A L]

CITY OF FERNLEY, NEVADA

Attest:

By: _____
Kimberly Swanson, City Clerk

By: _____
Roy Edgington, Mayor

Approved as to Form:

By: _____
Brandi Jensen, City Attorney

EXHIBIT A

(ENGAGEMENT LETTER DATED APRIL 14, 2020)

SHERMAN & HOWARD

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Telephone: 775.323.1980 Fax: 775.323.2339

3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169
Telephone: 702.387.6073 Fax: 702.990.3564

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Ryan Henry
Sherman & Howard L.L.C.
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E-mail: rhenry@shermanhoward.com

April 14, 2020

Denise Lewis
City Treasurer/Finance Director
City of Fernley, Nevada
595 Silver Lace Blvd., Suite 117
Fernley, NV 89408

\$12,289,000*
City of Fernley, Nevada
General Obligation (Limited Tax)
Water and Sewer Refunding Bonds
(Additionally Secured by Pledged Revenues)
Series 2020

Dear Denise:

We are pleased to confirm our engagement as bond counsel to the City of Fernley, 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 Attorney, the City's municipal advisor 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

*Preliminary, subject to change.

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City Treasurer/Finance Director
City of Fernley, Nevada

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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 and 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 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.

Our firm sometimes represents, in other unrelated transactions, certain of the financial institutions that may be involved in this Bond transaction, such as the Purchasers, who is also acting as the escrow bank, 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 in the amount of approximately \$12,289,000 is estimated to be between \$40,000 to \$45,000. Such

Denise Lewis
City Treasurer/Finance Director
City of Fernley, Nevada

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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 floating interest rate bonds or "put" bonds) or with unusual security (such as a letter of credit).

The amount of our fees would be determined after the Bonds are issued and would be based on the amount of time, effort, etc. attorneys at this firm expend in performing services in connection with the bond issue.

In the event the transaction is delayed and the Bonds are not delivered at Closing on or before December 31, 2020, it may be necessary for us to repeat and update much of our work and a commensurate increase in our fees may 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 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 \$395 to \$670 depending on personnel) for time actually spent on your behalf, plus disbursements.

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.

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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. Ryan Henry, who is a licensed Nevada lawyer will be the principal lawyer involved in performing bond counsel services for you pursuant to this letter. He will report to and take direction from you, the City Treasurer/Finance Director. Where appropriate, certain tasks may be performed by other attorneys or paralegals. In addition, Mr. Henry 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 opinion 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.

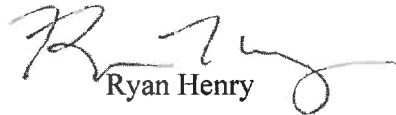
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We sometimes do not receive signed engagement letters back from clients for various reasons, but the client still wishes for us to serve as their counsel. Accordingly, so that we may begin work on this matter soon per your instructions, if you do not 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 look forward to working with you.

Sincerely,


Ryan Henry

Accepted this 15th day of April, 2020.

CITY OF FERNLEY, NEVADA

By: Denise Lewis
Title: 4/15/2020