



CITY OF LODI  
COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with Baumbach & Piazza, Inc., of Lodi, for Topographic Survey Work for Harney Lane Grade Separation Project and Appropriating Funds (\$24,000)

**MEETING DATE:** August 21, 2013

**PREPARED BY:** Public Works Director

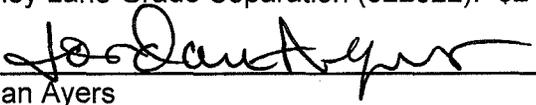
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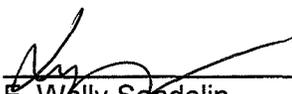
**RECOMMENDED ACTION:** Adopt resolution authorizing City Manager to execute Professional Services Agreement with Baumbach & Piazza, Inc., of Lodi, for topographic survey work for Harney Lane Grade Separation project and appropriating funds in the amount of \$24,000.

**BACKGROUND INFORMATION:** On November 14, 2011, the City entered into a Professional Services Agreement with Baumbach & Piazza, Inc., to perform topographic survey work as part of the Harney Lane Grade Separation Project. Baumbach & Piazza, Inc., completed the survey work as described in its scope of work and its contract was completed. Since that time, the Harney Lane Grade Separation Project has expanded the limits of work and is requiring more topographic survey work to be completed. The Public Works Department is recommending the Council adopt a resolution authorizing the City Manager to execute a Professional Services Agreement with Baumbach & Piazza, Inc., for topographic survey work for the Harney Lane Grade Separation in the amount of \$24,000. The agreement, scope of services and fee estimate are provided in Exhibit A.

**FISCAL IMPACT:** Not applicable.

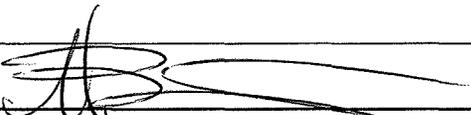
**FUNDING AVAILABLE:** Requested Appropriation:  
Harney Lane Grade Separation (322022): \$24,000

  
\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

FOR   
\_\_\_\_\_  
F. Wally Sandelin  
Public Works Director

Prepared by Chris Boyer, Assistant Engineer  
FWS/CB/pmf  
Attachment

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APPROVED:   
\_\_\_\_\_  
Konradt Bartlam, City Manager

**AGREEMENT FOR PROFESSIONAL SERVICES**

**ARTICLE 1  
PARTIES AND PURPOSE**

**Section 1.1 Parties**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2013, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and BAUMBACH & PIAZZA, INC. (hereinafter "CONTRACTOR").

**Section 1.2 Purpose**

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for Topographic Survey Work for the Harney Lane Grade Separation Project (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

**ARTICLE 2  
SCOPE OF SERVICES**

**Section 2.1 Scope of Services**

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

**Section 2.2 Time For Commencement and Completion of Work**

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

**Section 2.3 Meetings**

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

**Section 2.4 Staffing**

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

**Section 2.6 Term**

The term of this Agreement commences on August 26, 2013 and terminates upon the completion of the Scope of Services or on August 25, 2014, whichever occurs first.

## **ARTICLE 3 COMPENSATION**

### **Section 3.1 Compensation**

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

### **Section 3.2 Method of Payment**

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

### **Section 3.3 Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

### **Section 3.4 Auditing**

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4**  
**MISCELLANEOUS PROVISIONS**

**Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

**Section 4.2 ADA Compliance**

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**Section 4.3 Indemnification and Responsibility for Damage**

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

**Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

**Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

**Section 4.6 Insurance Requirements for CONTRACTOR**

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

**Section 4.7 Successors and Assigns**

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

**Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY:                   City of Lodi  
                                  221 West Pine Street  
                                  P.O. Box 3006  
                                  Lodi, CA 95241-1910  
                                  Attn: Chris Boyer

To CONTRACTOR:   Baumbach & Piazza, Inc.  
                                  323 W. Elm Street  
                                  Lodi, CA 95240

**Section 4.9 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

**Section 4.10 CONTRACTOR is Not an Employee of CITY**

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

**Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase.

Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

**Section 4.12 Confidentiality**

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Severability**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**Section 4.19 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.20 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

**Section 4.21 Federal Transit Funding Conditions**

If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit D apply to this Agreement. In the event of a conflict between the terms of this Agreement or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

\_\_\_\_\_  
RANDI JOHL-OLSON  
City Clerk

\_\_\_\_\_  
KONRADT BARTLAM  
City Manager

APPROVED AS TO FORM:  
D. STEPHEN SCHWABAUER, City Attorney  
JANICE D. MAGDICH, Deputy City Attorney

BAUMBACH & PIAZZA, INC.

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



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

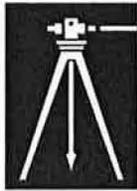
Name:  
Title:

- Attachments:**
- Exhibit A – Scope of Services**
  - Exhibit B – Fee Proposal**
  - Exhibit C – Insurance Requirements**
  - Exhibit D – Federal Transit Funding Conditions (if applicable)**

**Funding Source:** 322022  
(Business Unit & Account No.)

Doc ID:WP\Projects\PSAs\Baumbach Piazza\_HutchinsSignal

CA:rev.07.2013



**BAUMBACH & PIAZZA, INC.**

CIVIL ENGINEERS • LAND SURVEYORS

www.bpengineers.net

323 W. Elm Street  
Lodi, CA 95240-2003  
Phone (209) 368-6618  
Fax (209) 368-6610

July 3, 2013

City of Lodi  
Attn: Wally Sandelin  
Lodi City Hall  
221 West Pine Street  
Lodi, CA 95241

**Agreement for Professional Services**

Dear Wally,

In accordance with your request I am pleased to present this agreement to provide the topographic survey services associated with the Harney Lane Grade Separation as requested. The total cost for the services listed below shall not exceed **\$24,000.00**. This letter serves as our proposal and scope for services as follows:

**Scope of Services Included:**

- Topographic Survey
  - a. Field work necessary to provide supplemental topographic survey information for proposed signal project site located on Hutchins Street, south of Harney Lane.
    - Topography to include cross-sections of Harney Lane, extending 800 feet west of Hutchins Street, cross-sections of the future location of the driveway from Maggio Circle to Valley Iron Works, cross-sections of Stockton Street, extending 250 feet south of Harney Lane, and cross-sections of Harney Lane, extending 450 feet east of Stockton Street.
    - Topographic base mapping shall show existing grades with accuracy within 0.05 feet. Horizontal and vertical control for topographic maps shall be tied to City of Lodi GPS Control Network (37 RS 40). Vertical control will be tied to the San Joaquin County benchmark system.

**Proposed Fee and Method of Payment:**

Based on the understanding of your requirements, the not-to-exceed breakdown of the fees required for these services are as follows:

a. Topographic Survey .....\$ 24,000.00

Our proposed services will be performed on a time and materials basis and shall be billed semi-monthly.



## EXHIBIT C

**Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- |   |  |
|---|--|
| 1. <u>COMPREHENSIVE GENERAL LIABILITY</u> | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u> |
| \$1,000,000 Ea. Occurrence                | \$1,000,000 Bodily Injury - Ea. Person       |
|   | \$1,000,000 Bodily Injury - Ea. Occurrence   |
| \$2,000,000 Aggregate                     | \$1,000,000 Property Damage - Ea. Occurrence |

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

NOTE: (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement  
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.  
  
(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement  
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Severability of Interest Clause  
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Change in Coverage Endorsement  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

**Compensation Insurance** The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240. A Waiver of Subrogation against the City of Lodi is required.

NOTE: No contract agreement will be signed nor will **any** work begin on a project until the proper insurance certificate is received by the City.

1. AA# \_\_\_\_\_  
 2. JV# \_\_\_\_\_

**CITY OF LODI  
 APPROPRIATION ADJUSTMENT REQUEST**

TO: Internal Services Dept. - Budget Division  
 3. FROM: Rebecca Areida-Yadav 5. DATE: 7/30/2013  
 4. DEPARTMENT/DIVISION: Public Works

**6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW**

	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	322		3205	Fund Balance	\$ 24,000.00
B. USE OF FINANCING	322	322022	7323	Harney Ln Grade Separation	\$ 24,000.00

**7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET**

Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.

Professional Services Agreement with Baumbach & Piazza for pre-construction engineering surveying for the Harney Lane Grade Separation project

If Council has authorized the appropriation adjustment, complete the following:

Meeting Date: \_\_\_\_\_ Res No: \_\_\_\_\_ Attach copy of resolution to this form.

Department Head Signature: Alway Sandoz

**8. APPROVAL SIGNATURES**

\_\_\_\_\_  
 Deputy City Manager/Internal Services Manager Date

Submit completed form to the Budget Division with any required documentation.  
 Final approval will be provided in electronic copy format.

RESOLUTION NO. 2013-154

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING  
AND AUTHORIZING THE CITY MANAGER TO EXECUTE A  
PROFESSIONAL SERVICES AGREEMENT WITH BAUMBACH &  
PIAZZA, INC., OF LODI, FOR TOPOGRAPHIC SURVEY WORK  
FOR THE HARNEY LANE GRADE SEPARATION PROJECT AND  
FURTHER APPROPRIATING FUNDS

=====

WHEREAS, on November 14, 2011, the City entered into a Professional Services Agreement with Baumbach & Piazza, Inc., to perform topographic survey work as part of the Harney Lane Grade Separation Project. Baumbach & Piazza, Inc., completed the survey work as described in its scope of work and its contract was completed; and

WHEREAS, the Harney Lane Grade Separation Project has expanded the limits of work and is requiring more topographic survey work to be completed; and

WHEREAS, staff recommends the City Manager execute a Professional Services Agreement with Baumbach & Piazza, Inc., for the topographic survey work for the Harney Lane Grade Separation.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve a Professional Services Agreement for topographic survey work for the Harney Lane Grade Separation Project with Baumbach & Piazza, Inc., of Lodi, California, in the amount of \$24,000; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the agreement; and

BE IT FURTHER RESOLVED that funds in the amount of \$24,000 be appropriated for the project from the Harney Lane Grade Separation account.

Dated: August 21, 2013

=====

I hereby certify that Resolution No. 2013-154 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 21, 2013, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katakian, Mounce, and Mayor Nakanishi

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL-OLSON  
City Clerk