ORDINANCE NO. \_\_\_\_\_\_\_\_\_\_

BILL NO. 25 - 2013

**ORDINANCE**

AN ORDINANCE OF THE CITY OF BETHLEHEM, NORTHAMPTON AND LEHIGH COUNTIES, PENNSYLVANIA, AUTHORIZING THE ISSUANCE OF ITS FEDERALLY TAXABLE GENERAL OBLIGATION NOTE, SERIES C OF 2013 (“SERIES C NOTE”) IN THE PRINCIPAL AMOUNT OF $1,765,000 PURSUANT TO THE RULES AND REGULATIONS OF THE LOCAL GOVERNMENT UNIT DEBT ACT (THE “ACT”); THE PROCEEDS OF THE SERIES C NOTE SHALL BE ISSUED FOR THE PURPOSE OF REFUNDING A PORTION OF THE DEBT OF THE BETHLEHEM AUTHORITY GUARANTEED WATER REVENUE BONDS SERIES OF 2004 (“2004 Bond”); DETERMINING THAT THE SERIES C NOTE SHALL BE SOLD AT PRIVATE SALE; DETERMINING THAT THE DEBT, AS EVIDENCED BY THE SERIES C NOTE, SHALL BE NONELECTORAL DEBT; FIXING THE FORM, NUMBER, DATE, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES AND FINAL MATURITY THEREOF, TOGETHER WITH PREPAYMENT PRIVILEGES; ACCEPTING A PROPOSAL FOR THE PURCHASE OF THE SERIES C NOTE; MAKING COVENANT FOR THE PAYMENT OF THE DEBT SERVICE ON THE SERIES C NOTE; PROVIDING FOR THE FILING OF THE REQUIRED DOCUMENTS; DESIGNATING A PAYING AGENT FOR THE SERIES C NOTE; SETTING FORTH THE METHOD AND PLACE OF PAYMENT OF THE SERIES C NOTE; ESTABLISHING A SINKING FUND; PROVIDING FOR THE APPOINTMENT OF A SINKING FUND DEPOSITORY FOR THE SERIES C NOTE; AND AUTHORIZING THE EXECUTION, SALE AND DELIVERY THEREOF; AUTHORIZING APPROPRIATE OFFICERS TO FILE UNDER SECTION 8110 OF THE LOCAL GOVERNMENT UNIT DEBT ACT WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, INCLUDING PROCEEDINGS UNDER SECTION 8024 OR 8026 OF THE ACT; PLEDGING THE CITY’S FULL FAITH, CREDIT AND TAXING POWER; AUTHORING RESTRUCTURING OF THE 2010A NOTE; AUTHORIZING PAYMENT FOR PURPOSES OF CURRENTLY REFUNDING A PORTION OF THE MATURING 2004 BOND PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE.

WHEREAS, the City of Bethlehem, Northampton and Lehigh Counties, Pennsylvania (the “City”), is a Local Government Unit, as defined in the Pennsylvania Local Government Unit Debt Act, as codified by the Act of December 19, 1966, P.L. 1158, No.177 commonly referred to as Title 53, Part VII, Subpart B of the Pennsylvania Consolidated Statutes, as amended (the “Act”); and

WHEREAS, the Bethlehem Authority (the “Authority”) is the financing arm of the City of Bethlehem’s water system, servicing over 115,000 customers in eastern Pennsylvania; and

WHEREAS, from time to time in this Ordinance the City of Bethlehem and the Bethlehem Authority shall be referred to collectively as (the “City”), unless expressly delineated separately; and

WHEREAS, the Bethlehem Authority sold its Guaranteed Water Revenue Bonds Series of 2004 (the “2004 Bonds”) for the purpose of maintaining and servicing the City’s water services. A portion of the 2004 Bonds, in the principal amount of $3,700,000 has a maturity date of November 15, 2013 (the “2013 Maturity”); and

WHEREAS, the City issued a General Obligation Note Series A of 2010 in the principal amount of $8,100,000 (the “2010 Note”); and

WHEREAS, the purpose of the Series C Note is to provide funds to currently refund a portion of the 2013 Maturity and pay certain costs of issuance of the Series C Note (the “Refunding Project”); the Refunding Project is to substitute notes for bonds in accordance with Section 8241(b)(5) of the Act by providing for the payment of a portion of the 2013 Maturity as part of the Refunding Project, in accordance with section 8249 of the Act; and

WHEREAS, in accordance with the Act, the City Council of the City of Bethlehem (“Council”) has determined that the estimated cost of the Refunding Project is approximately $1,765,000; and

WHEREAS, Council has decided to implement the aforementioned decision through the authorization, issuance and sale of its General Obligation Note Series C 2013 (“Series C Note”) in the amount of $1,765,000. The proceeds of the sale thereof, less payment of the costs of issuance, will be used to currently refund the 2013 Maturity; and

WHEREAS, Council has determined it is in the City’s best interest to avoid increasing the overall indebtedness of the City, and to implement that determination, simultaneous with the issuance of the Series C Note, the 2010A Note will be restructured and reduced by $1,765,000 to balance the current anticipated Series C Note; and

WHEREAS, the Council, in contemplation of the authorization, issuance and sale of the Series C Note, has determined that the Series C Note shall be offered for private sale, by invitation, in accordance with Section 8161 of the Act. Council believes this course of action is in the best interest of the City, and has designated Concord Public Financial Advisors, Inc., as its Financial Advisor (the “Financial Advisor”) to obtain quotations from banking institutions for the prospective purchase of the Series C Note; and

WHEREAS, the Council, has received and reviewed a written proposal, which shall constitute a Loan Agreement (the “Loan Agreement”), for the purchase of the Series C Note, at private sale, in accordance with this Ordinance, from Lafayette Ambassador Bank (the “Bank”), which it desires, upon recommendation of the Financial Advisor to accept; and

WHEREAS, the Debt Service Schedule for Series C Note is attached hereto and incorporated herein as **“Exhibit A**”; and

WHEREAS, Council desires to award the Series C Note to the Bank at private sale and accept the terms in the Loan Agreement in the form submitted; to authorize the issuance of non-electoral debt in the principal amount of the Series C Note; and to take appropriate action and to authorize such action, all in accordance with the provisions of the Act.

NOW, THEREFORE, BE IT RESOLVED, by the Council, as follows:

Section 1. Bethlehem City Council does authorize and direct the issuance of its General Obligation Note, Series C of 2013 pursuant to this Ordinance for the purpose defined in Section 2 below. The Series C Note will be an obligation of the City payable from its general revenues.

Section 2. The purpose of the issuance and sale of the Series C Note is to refund a portion of the 2013 Maturity. It is hereby stated that the realistic useful life of the projects financed or refinanced by the 2004 Bonds was at least 20 years and the Series C Note shall mature prior to the end of the useful life of the projects originally financed.

Section 3. Simultaneous with the issuance of the Series C Note, the 2010A Note shall be reduced by $1,765,000 as outlined by this Ordinance. This reduction of debt will serve to effectively carry out Council’s determination to not increase the overall indebtedness of the City. The net result being no increase in the principal amount of debt incurred by the City.

Section 4. The Series C Note shall be sold at private sale by invitation, which the Council hereby determines is in the best interest of the City.

Section 5. The Council has determined that the debt shall be non-electoral debt.

Section 6(a). The Council shall issue, execute and deliver the Series C Note to the Bank under the terms and conditions set forth in the Loan Agreement at a closing (the “Closing”) in the principal amount of $1,765,000, bearing interest at the rate of \_\_\_\_\_\_\_% per annum (interest payable semiannually on June 15, 2014 and at maturity on December 15, 2014, at which time the entire principal amount shall be due and payable to the Bank in full).

(b) The City may elect to draw down less than the maximum permitted principal amount of the Series C Note at Closing, in which case the amount so drawn shall be the principal amount thereof and the amortization schedule shall be reformed accordingly. In all events, the amortization shall conform to the requirements of the Act.

(c) The Series C Note shall be subject to the prepayment in whole or part as provided in the form of the Series C Note.

Section 7. The Council accepts the proposal of the Bank for purchase of the Series C Note, which Series C Note shall be and is awarded to the Bank, in accordance with the terms of the Loan Agreement, at private sale by invitation, at a dollar price of 100% of the principal amount thereof at Closing, together with accrued interest from the date thereof to the date of delivery thereof, if any, the Bank having submitted its proposal in accordance with provisions of the Act. Appropriate officers of the City are authorized and directed to execute the Loan Agreement. The Series C Note is attached hereto and incorporated herein as **Exhibit B.**

Section 8. The Council does hereby designate, the Bank, with principal trust offices in Bethlehem, Pennsylvania, or its successors in interest or nominee-affiliate, as the “Paying Agent” for purposes of the Series C Note.

Section 9. The principal of and premium, if any, and interest on the Series C Note shall be payable by account transfer, check or draft of the Paying Agent mailed or delivered.

Section 10. The Series C Note shall be executed in the name of and on behalf of the City by the signatures or facsimile signatures of the Mayor and the President of the Council, and the official seal of this City or a facsimile thereof shall be affixed thereunto, attested by the signature or facsimile signature of the City Clerk.

Section 11. City covenants to and with the registered owner(s) of the Series C Note, from time to time, pursuant to this Ordinance, that the City shall include the amount of the debt service thereon for each fiscal year of the City in which such sums are payable, in its budget for each such fiscal year, an appropriation for any said debt service. City shall pay or shall cause to be paid the principal of the Series C Note and the interest thereon on the dates and place and in the manner stated therein, according to the true intent and meaning thereof; and, for such budgeting, appropriation and payment, this City shall and does pledge, irrevocably, its full faith, credit and taxing power. As provided in the Act, the foregoing covenant of this City shall be enforceable specifically.

Section 12. Pursuant to Section 8221 of the Act, a sinking fund for the Series C Note specifically to be known as the “Sinking Fund, General Obligation Note, Series C of 2013”, or the “2013C Note Sinking Fund” which sinking fund shall be administered in accordance with the Act. From the funds deposited in the 2013C Note Sinking Fund, the Paying Agent is hereby authorized and directed to pay the principal of and interest on the Series C Note, and the City hereby covenants that such monies, to the extent required, will be applied to such purpose, as follows: the Paying Agent shall pay all interest and principal on the Series C Note, as and when the same shall become due and payable.

Section 13. The City appoints the Bank as the Sinking Fund Depository with respect to the 2013C Note Sinking Fund created pursuant to Section 12 of this Ordinance.

Section 14. The Mayor of the City is authorized and directed to contract with the Bank for its services as Sinking Fund Depository and as Paying Agent in connection with the Series C Note, and is authorized and directed to execute on behalf of the City at the appropriate time, a Paying Agent Agreement with the Bank in its capacity as Paying Agent for the Series C Note. The Mayor and the Business Administrator are authorized to approve payment at closing on the sale of the Series C Note of all costs and expenses incidental to such issuance and sale.

Section 15. The following terms and conditions, if applicable, shall apply to the Series C Note:

(a) If the City fails to provide the Paying Agent with sufficient funds to enable the Paying Agent to pay the principal and interest on the Series C Note when due, or if the City, through the Paying Agent, fails to make such payments when due, or if the City fails to perform any other covenant or condition contained in this Ordinance and running to the benefit of the holder or registered owner of the Series C Note, or contained in the Act as applicable to the Series C Note, such failure shall constitute a default by the City and the registered owner of the Series C Note shall be entitled to all the rights and remedies provided by the Act in the event of default.

(b) With respect to the Series C Note, when the Series C Note is paid in full by the City or the Paying Agent, pursuant to the terms and conditions of this Ordinance, the Series C Note shall be cancelled and destroyed by the Paying Agent. Upon destruction, the Paying Agent shall furnish the City with a Certificate of Destruction.

(c) The Series C Note shall be deemed to be no longer outstanding if provision for payment at maturity or redemption, when said redemption is irrevocably undertaken, shall have been made in a manner authorized under Section 8250(b) of the Act.

(d) With respect to the Series C Note hereunder, the City may, from time to time, and at any time, enact a supplemental ordinance in order to: (1) cure any ambiguity or defect in this ordinance, or any supplemental ordinance, or (2) confer upon the owner of the Series C Note any additional rights, powers, remedies, authority, or security that may be lawfully granted to or conferred upon it. This Ordinance may also be amended from time to time, except with respect to the interest payable upon the Series C Note, or with respect to the date of payments and maturity of the Series C Note. If this Ordinance is amended for a permitted purpose, a certified copy of the same shall be filed with the Paying Agent following approval in writing by the owner of the Series C Note, unless provision for payment or redemption of the Series C Note has been made prior to the effective date thereof as provided in subsection (c) above.

Section 16. The President or Vice President of City Council, together with the City Clerk are authorized and directed as appropriate, to prepare, certify and file the debt statement required by Section 8110 of the Act; to prepare and file, as required with the Department of Community and Economic Development (“DCED”) of the Commonwealth of Pennsylvania, statements required by Section 8024 or 8026 of the Act, which are necessary to qualify certain non-electoral debt and lease rental debt of the City and, if necessary, the debt which will be evidenced by the Series C Note to be issued hereunder as subsidized or self-liquidating debt, if applicable; to prepare, execute and to file the application with the DCED, together with a complete and accurate transcript for the proceedings relating to the incurring of debt, of which debt the Series C Note, upon issue, will be evidence, as required by Section 8111 of the Act; to pay or cause to be paid to DCED all proper filing fees required by the Act in connection with the foregoing; and take all other necessary, proper and required action.

Section 17. The City declares that the debt to be incurred by the issuance of the Series C Note, together with all other applicable indebtedness of the City, is not in excess of any limitation imposed in Section 8022 of the Act.

Section 18. The proper officers of the City, as defined by Third Class City Code are authorized and directed, after DCED has certified its approval pursuant to Section 8111 of the Act, to deliver the Series C Note, upon execution thereof as provided for herein, to the Bank after receipt of proper payment of the balance due or the amount then to be drawn thereon, and to pay the payment of costs of issuance and comply with the Loan Agreement requirements, including fees due and payable to the Bank.

Section 19. The proceeds of the sale of the Series C Note, after payment of the costs of issuance, shall be invested in legal investments for the City until such time as it is appropriate to use the proceeds to refund the portion of the 2004 Bonds as outlined in Section 2 above. The Business Administrator, or his designee, is authorized to arrange for appropriate investments under this Section.

Section 20. In the event that a Court of competent jurisdiction shall find any clause or clauses, provision or provisions, section or sections, sentence or sentences of this Ordinance invalid, the remaining clauses, provisions, sections and sentences of this Ordinance shall remain in full force and effect.

Section 21. This Ordinance shall be effective as prescribed in Section 8003(c) of the Act.

Sponsored by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PASSED finally by Council this day of , 2013.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

President of Council

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Clerk

This Ordinance approved this day of , 2013.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

MayorCERTIFICATION

I hereby certify that the foregoing document is a true and correct copy of Ordinance \_\_\_\_\_\_\_\_\_\_\_\_ passed by Bethlehem City Council on September 17, 2013.

Certified this 17th day of September, 2013.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cynthia Biedenkopf

City Clerk

**EXHIBIT A**

**DEBT SERVICE SCHEDULE**

**EXHIBIT B**

**GENERAL OBLIGATION NOTE SERIES C OF 2013**

**CITY OF BETHLEHEM**

**LEHIGH AND NORTHAMPTON COUNTIES, PENNSYLVANIA**

GENERAL OBLIGATION NOTE, SERIES C OF 2013

CITY OF BETHLEHEM (the “City”), a local government unit under the Local Government Debt Act of the Commonwealth of Pennsylvania, as hereinafter defined, for value received, hereby promises to pay to Lafayette Ambassador Bank, a banking institution registered to do business within the Commonwealth of Pennsylvania with its principal corporate offices in Bethlehem, Pennsylvania (the “Bank”), or its successors or assigns, on or before November 15, 2014, upon surrender hereof, the principal sum of One Million Seven Hundred Sixty-Five Thousand Dollars ($1,765,000), and to pay interest on said principal sum at the rate of ( %) per annum, payable on June 15, 2014 and December 15, 2014 in accordance with the attached debt service schedule, or if this Note shall be prepaid, until the date of such prepayment, principal due in full on or before December 15, 2014.

The principal of and interest on this Note shall be payable at the principal office of the Bank, or any successor or assignee, in any coin or currency of the United States of America, which, at the time of payment, is legal tender for payment of public and private debts, to the registered owner on the payment dates outlined in the attached debt service schedule.

The Note has been authorized for issuance in accordance with the provisions of the Local Government Unit Debt Act (the “Act”) of the Commonwealth of Pennsylvania and by virtue of an Ordinance of the City, duly enacted September 17, 2013 (the “Ordinance”). The Act, as such, shall have been in effect when the Note was authorized, and the Ordinance shall constitute a contract between the City and registered owner, from time to time, of the Note.

The Note constitutes a general obligation of the City, payable from its general revenues. The Note is issued for the purpose of providing monies to currently refund a portion of the Water Revenue Bonds issued in 2004 by the Bethlehem Authority (the “2004 Bonds”).

The City has covenanted, in the Ordinance, to and with registered owners, from time to time, of the Note that shall be outstanding, that the City: (a) shall include the amount of debt service for the Note payable in fiscal year 2014, (b) shall appropriate such amounts from its general revenues, or designated revenues, for the payment of such debt service and (c) shall duly and punctually pay or cause to be paid from the sinking fund established under the Ordinance or any other of its revenues or funds, the principal of the Note and the interest thereon on the dates and place and in the manner stated therein, according to the true intent and meaning thereof; and, for such budgeting, appropriation and payment, the City has pledged and does pledge, irrevocably, its full faith, credit and taxing power.

The City shall have the right to prepay any amount hereunder at any time and from time to time, in whole or in part without penalty. Any prepayment in whole or in part shall include accrued interest and all other sums then due under the Note. No partial prepayment shall affect the obligation of the City to make any payment of principal or interest due under this Note on the regularly scheduled payment date until this Note has been paid in full. Any partial prepayment of principal shall be applied in the inverse order of maturity and shall not postpone or reduce any regularly scheduled payment of principal and interest.

If the Bank shall merge or change its identity or assign this Note, the Bank shall give written notice of such action to the City, which notice shall direct the City to make payments hereunder henceforth to the appropriate successor or assignee. Such notice shall be effective if given not less than fifteen (15) days prior to any date for the payment of principal and interest thereunder, or for the prepayment of principal, if notice of prepayment shall have been given to the Bank.

Reference is hereby made to the Ordinance and to the Loan Agreement between the City and the Bank for a statement of the nature, extent and manner of enforcement of the security, the terms and conditions under which the Ordinance may be amended or modified, the rights of the holder of the Note in respect to such security, and the terms and conditions under which the Note is issued. The City has established with the Bank a sinking fund for the Note and has made provision for the deposit therein from its general revenues, of amounts sufficient to pay, and from which the Bank, as paying agent and sinking fund depository, is required to pay, the principal of and interest on the Note as the same shall become due and payable.

It is hereby certified that: (a) all acts, conditions and things required to be done, to happen or to be performed as conditions precedent to and in issuance of this Note or in creation of the debt of which this Note is evidence have been done, have happened or have been performed in due and regular form and manner, as required by law; and (b) the debt represented by this Note, together with any other indebtedness of the City, is not in excess of any limitation imposed by the Act upon the incurring of debt by the City.

IN WITNESS WHEREOF, the City has caused this Note to be executed in its name by the signature of the President of City Council and its seal to be affixed hereto, attested by the City Clerk, all as of this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2013.

CITY OF BETHLEHEM

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John B. Callahan, Mayor

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Eric R. Evans, President

Bethlehem City Council

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Clerk

(SEAL)

CERTIFICATE OF REGISTRATION NOTICE.

NO WRITING HEREON EXCEPT

BY PAYING AGENT ON BEHALF OF THE MAKER

It is hereby certified that the foregoing Note is registered as to principal and interest as follows:

Name of Address of Date of Paying Agent’s

Registered Owner Registered Owner Registration Authorized Signature

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the within Note, and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

attorney to transfer said Note on the books of the within named Maker, with full power of substitution in the premises.

Tax ID No.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTICE: The signature on this assignment must correspond with the name as it appears upon the fact of the within note in every particular, without alteration or any

change whatsoever.

**EXHIBIT C**

**CERTIFICATE OF ENACTMENT**

CERTIFICATE OF ENACTMENT

I, the undersigned, City Clerk of the City of Bethlehem, Lehigh and Northampton Counties, Commonwealth of Pennsylvania (the “City”), certify that:

The foregoing is a true and correct copy of the Ordinance which was duly enacted by affirmative vote of a majority of all members of the Council of the City at a meeting duly held on the 17th day of September, 2013; said Ordinance duly has been recorded in the Minute Book of the Council of the City; notices with respect to enactment of said Ordinance have been published as required by law; and said Ordinance has not been amended, altered, modified, or repealed as of the date of this certificate.

I further certify that, the total number of members of the Council of the City is seven (7); the vote of the members of the Council upon said Ordinance was called and duly recorded upon the minutes of said meeting; and members of Council voted upon said Ordinance in the following manner:

Jean Belinski \_\_\_\_\_\_\_\_\_\_\_

David T. DiGiacinto \_\_\_\_\_\_\_\_\_\_\_

Karen D. Dolan \_\_\_\_\_\_\_\_\_\_\_

Robert J. Donchez \_\_\_\_\_\_\_\_\_\_\_

Eric R. Evans \_\_\_\_\_\_\_\_\_\_\_

Michael D. Recchiuti \_\_\_\_\_\_\_\_\_\_\_

J. William Reynolds \_\_\_\_\_\_\_\_\_\_\_

IN WITNESS WHEREOF, I set my hand and affix the official seal of the City, this 17th day of September, 2013.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cynthia Biedenkopf

City Clerk

(SEAL)