CITY COUNCIL AGENDA ITEM

Date: July 7, 2016

To: Brian Kischnick, City Manager

From: Mark F. Miller, Director of Economic and Community Development
Steven J. Vandette, City Engineer
R. Brent Savidant, Planning Director

Subject: Private Agreement – Contract for Installation of Municipal Improvements
Sandalwood Crossing - Project No. 15.916.3

History

MJC 5215 Rochester LLC proposes to develop Sandalwood Crossings located on the west side of Rochester north of Long Lake. The subject property is controlled by a Consent Judgment that permits a 12-unit attached condominium project and an existing house and relocated garage.

Troy Planning Commission recommended preliminary site plan approval on May 12, 2015.

Site grading and utility plans for this development were reviewed and recently approved by the Engineering Department. The plans include municipal improvements, which will be constructed by MJC 5215 Rochester LLC on behalf of the City of Troy including: sanitary sewer, storm sewer, water main, detention, paving, sidewalks, soil erosion and landscaping. The required fees and refundable escrow deposits in the form of a Performance Bond and 10% Cash, that will assure completion of the municipal improvements, have been provided by MJC 5215 Rochester LLC (see attached Private Agreement).

Financial

See attached summary of required deposits and fees for this Private Agreement.

Recommendation

Approval of the Contract for Installation of Municipal Improvements (Private Agreement) is recommended.

City Of Troy

Contract for Installation of Municipal Improvements
(Private Agreement)

Project No.: **15.916.3**	Project Location: **SE 1/4 Section 10**
Resolution No:	Date of Council Approval:

This Contract, made and entered into this **14th** day of **March**, **2016** by and between the City of Troy, a Michigan Municipal Corporation of the County of Oakland, Michigan, hereinafter referred to as "City" and **MJC 5215 Rochester LLC** whose address is **46600 Romeo Plank Rd, Suite 5, Macomb, MI 48044** and whose telephone number is **586-263-1203** hereinafter referred to as "Owners", provides as follows:

FIRST: That the City agrees to permit the installation of **sanitary sewer, storm sewer, water main, detention, paving, sidewalks, soil erosion and landscaping** in accordance with plans prepared by **Land Development Consulting Services, Inc** whose address is **46600 Romeo Plank Rd, Suite 2, Macomb, MI 48044** and whose telephone number is **586-868-2350** and approved prior to construction by the City in accordance with City of Troy specifications.

SECOND: That the Owners agree to provide the following securities to the City prior to the start of construction, in accordance with the Detailed Summary of Required Deposits & Fees (attached hereto and incorporated herein):

Refundable escrow deposit equal to the estimated construction cost of $ **285,919.00**. This amount will be deposited with the City in the form of (check one):

Cash/Check	☐	
Certificate of Deposit & 10% Cash	☐	
Irrevocable Bank Letter of Credit & 10% Cash	☐	10% Cash 28,592.00
Performance Bond & 10% Cash	☒	

Refundable cash deposit in the amount of $ **43,352.00**. This amount will be deposited with the City in the form of (check one):

Cash ☐ Check ☐

Non-refundable cash fees in the amount of $**23,678.00**. This amount will be paid to the City in the form of (check one):

Cash ☐ Check ☐

Said refundable escrow deposits shall be disbursed to the Owners after approval by the City. The City reserves the right to retain a minimum of ten (10) percent for each escrowed item until the entire site/development has received final inspection and final approval by all City departments. Refundable cash deposits shall be held until final approval has been issued. Disbursements shall be made by the City within a reasonable time, after request for refund of deposits is made by the Owners.

City Of Troy

Contract for Installation of Municipal Improvements
(Private Agreement)

THIRD: The owners shall contract for construction of said improvement with a qualified contractor. Owners, or their agents, and contractor(s) agree to arrange for a pre-construction meeting with the City Engineer prior to start of work. All municipal improvements must be completely staked in the field under the direct supervision of a registered civil engineer or registered land surveyor, in accordance with the approved plans. Revisions to approved plans required by unexpected or unknown conflicts in the field shall be made as directed by the City.

FOURTH: Owners agree that if, for any reason, the total cost of completion of such improvements shall exceed the sums detailed in Paragraph SECOND hereof, that Owners will immediately, upon notification by the City, remit such additional amounts in accordance with Paragraph SECOND hereof. In the event the total cost of completion shall be less than the sums as detailed in Paragraph SECOND hereof, City will refund to the Owners the excess funds remaining after disbursement of funds.

FIFTH: Owners agree to indemnify and save harmless City, their agents and employees, from and against all loss or expense (including costs and attorneys' fees) by reason of liability imposed by law upon the City, its agents and employees for damages because of bodily injury, including death, at any time resulting therefrom sustained by any person or persons or on account of damage to property, including work, provided such injury to persons or damage to property is due or claimed to be due to negligence of the Owner, his contractor, or subcontractors, employees or agents, Owner further agrees to obtain and convey to the City all necessary easements and/or right-of-way for such public utilities as required by the City Engineer.

City Of Troy

Contract for Installation of Municipal Improvements
(Private Agreement)

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate on this 23RD day of FEBRUARY, 2016.

OWNERS
MJC 5215 ROCHESTER LLC
By:

Scot J MOCERI, Authorized Representative

Please Print or Type

CITY OF TROY

By:

Dane M. Slater, Mayor

Please Print or Type

M. Aileen Dickson, City Clerk

STATE OF MICHIGAN, COUNTY OF ~~OAKLAND~~ MACOMB

On this 23rd day of February, A.D.2016, before me personally appeared SCOT J. MOCERI, AUTHORIZED REP, MJC 5215 ROCHESTER LLC known by me to be the same person(s) who executed this instrument and who acknowledged this to be his/her/their free act and deed.

Barbara A. Klonke

NOTARY PUBLIC, ~~Oakland~~ MACOMB County, Michigan

My commission expires: 6/23/2019

BARBARA A. KLONKE
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MISSION EXPIRES Jun 23, 2019
IN COUNTY OF MACOMB

Detailed Summary of Required Deposits & Fees
Sandalwood South - 15.916.3
12 Units - Section 10

ESCROW DEPOSITS or PERFORMANCE BOND:

Sanitary Sewers	$30,090
Water Mains	$41,646
Storm Sewers	$80,989
Pavement - CONCRETE	$56,640
Grading	$27,400
Detention Basin	$15,000
Monuments and Lot Corner Irons	$150
Temporary Access Road	$1,000
Deceleration and/or Passing Lane - MAJOR ROAD	$6,600
Sidewalks - ON SITE	$5,400
Sidewalks - OFF SITE	$6,804
Street Light	$7,000
Deposit for the Repair of Damage to Existing Public Streets Used for Access	$7,200
TOTAL ESCROW DEPOSITS or PERFORMANCE BOND (REFUNDABLE):	**$285,919**

10% for Performance bond $28592.00

PAID
JUL 01 2016
CITY OF TROY
TREASURER'S OFFICE

CASH FEES (NON-REFUNDABLE):

Water Main Testing and Chlorination (PA2)	$650
Street Name and Traffic Signs (SUB 4)	$223
Testing Services (SUB 11)	$4,289
Engineering Review and Inspection (PA 1)	$20,958
Less Initial Engineering Review Fee (Public & Private)(1.1%)	-$2,442
(PA 3) TOTAL CASH FEES (NON-REFUNDABLE):	**$23,678**

CASH DEPOSITS (REFUNDABLE):

Deposit for Maintenance & Cleaning of Ex. Public Streets Used for Access	$2,400
Landscape Deposit	$6,460
Punchlist & Restoration Deposit	$31,367
Deposit for Repair, Replacement or Maintenance of SESC	$3,125
(PA 3) TOTAL CASH DEPOSITS (REFUNDABLE):	**$43,352**

Stormwater detention for this development will be provided by:
New Onsite Private Pond
Engineer: Land Development Consulting Services, Inc
Developer: MJC

Performance Bond

North American Specialty Insurance Company

Bond No. 2182534

KNOW ALL MEN BY THESE PRESENTS:

That MJC 5215 Rochester LLC, 46600 Romeo Plank, Ste. 5, Macomb Twp., MI 48044
(Insert name and address, or legal title, of contractor)

as Principal, hereinafter called Contractor, and North American Specialty Insurance Company, a New Hampshire Corporation,as Surety, hereinafter called Surety, are held and firmly bound unto City of Troy, 500 W. Big Beaver Road, Troy, MI 48084
(Insert name and address, or legal title, of owner)

as Obligee, hereinafter called Owner in the amount of

Two Hundred Eighty-five Thousand Nine Hundred Nineteen And No/100THS Dollars ($285,919.00)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated

entered into a Contract with Owner for Site Improvements at Sandalwood South 15.916.3, 12 Units - Section 10

in accordance with drawings and specifications prepared by

(Insert full name and title)

which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligation thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid for submission to Owner for completing the Contract in accordance with its terms and conditions, and upon determination by Owner and Surety of the lowest responsible bidder, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which Contractor ceases work on the Contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed this 3rd day of March, 2016

MJC 5215 Rochester LLC
(Principal) (Seal)

MICHAEL A. CHILO MANAGER
(Title)

North American Specialty Insurance Company

By
Jennifer A. Gareffa (Attorney-in-Fact)

BND 143 REV (05/95)

NAS SURETY GROUP

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Manchester, New Hampshire, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Schaumburg, Illinois, each does hereby make, constitute and appoint:

ROBERT TROBEC, KATHLEEN M. IRELAN, JENNIFER A. GAREFFA,

IAN J. DONALD, JEFFREY A. CHANDLER and ALAN P. CHANDLER

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION ($50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:

"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."

NORTH AMERICAN SPECIALTY INSURANCE COMPANY CORPORATE SEAL 1973 NEW HAMPSHIRE

By _____
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company

By _____
Michael A. Ito, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company

WASHINGTON INTERNATIONAL INSURANCE COMPANY CORPORATE SEAL NEW HAMPSHIRE

IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 5th day of October, 2015.

North American Specialty Insurance Company
Washington International Insurance Company

State of Illinois
County of Cook ss:

On this 5th day of October, 2015, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Michael A. Ito, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.

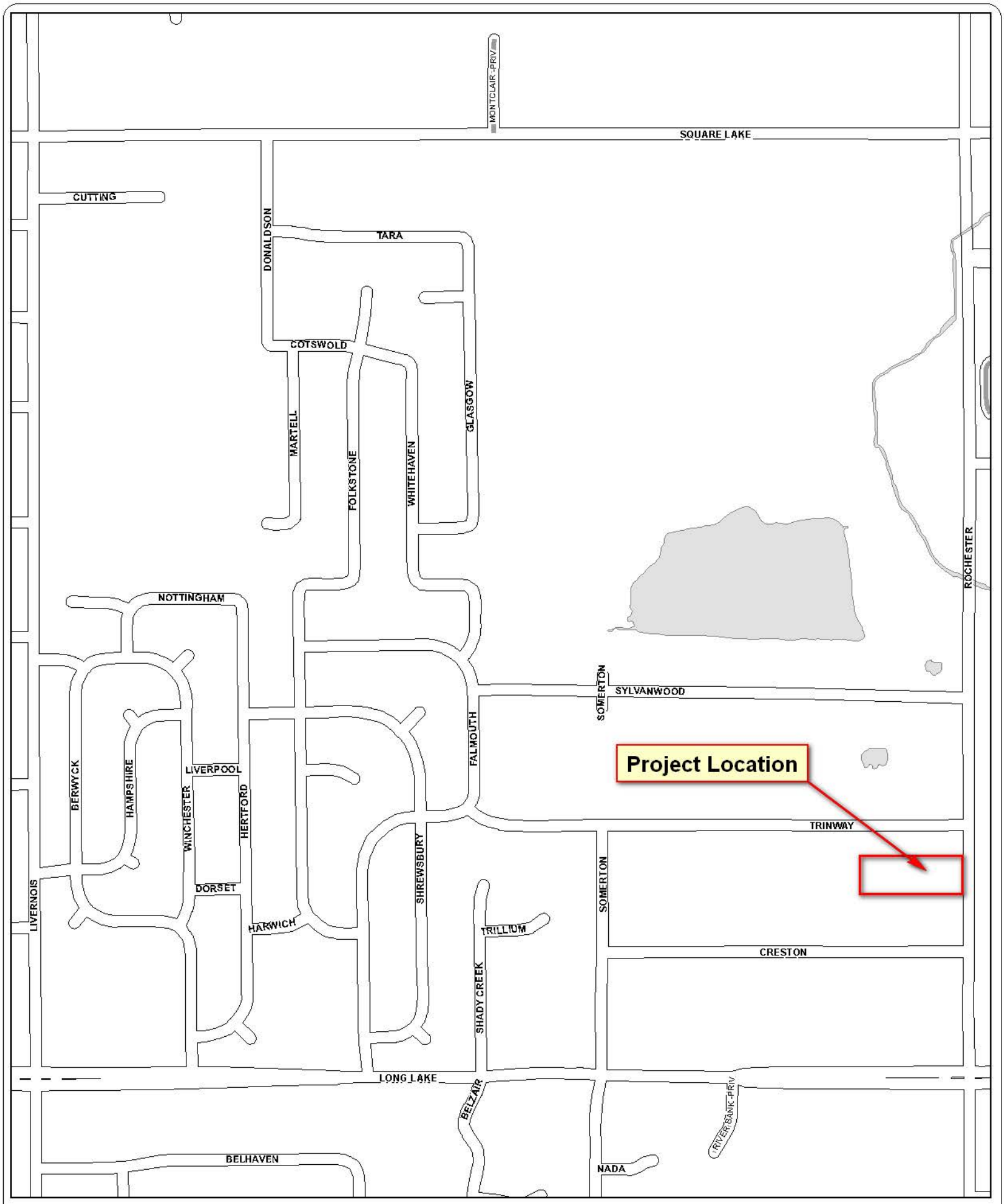
OFFICIAL SEAL
M KENNY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12/04/2017

M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 3rd day of March, 2016.

Jeffrey Goldberg, Vice President & Assistant Secretary of
Washington International Insurance Company & North American Specialty Insurance Company



Legend

Private

Do Not Salt

Street Map

Section 10

City of Troy

Date: 10/28/2015