

City Of Torrington

ENGINEERING DEPARTMENT
(860) 489-2234



140 Main Street • City Hall
Torrington, CT 06790-5245
Fax: (860) 489-2550

MEMORANDUM

To: Honorable Mayor Elinor Carbone and City Council Members

From: Paul Kundzins, P.E. - Deputy Public Works Director / City Engineer

Date: July 18, 2022

RE: Cost Sharing Memorandum of Understanding between the City of Torrington and the Town of Harwinton for The Rehabilitation of Bogue Road Over The Naugatuck River CTDOT Bridge NO. 05059

I respectfully request City Council accept the recommendation of the Deputy Public Works Director / City Engineer to authorize the Mayor to act on the behalf of the City regarding the execution of a cost sharing Memorandum of Understanding (MOU) between the City of Torrington and the Town of Harwinton, for the project The Rehabilitation of Bogue Road Over The Naugatuck River CTDOT Bridge NO. 05059 BID # RBB 027-150622.

The MOU is based on the fully executed Agreement dated February 1, 2005 titled "Agreement Between the City of Torrington and the Town of Harwinton Concerning the Bogue Road Bridge Over the Naugatuck River. The agreement was for the joint municipal restoration and repair of the Bogue Road Bridge.

By Connecticut General Statute 13a-100 as identified in the agreement, each municipality agrees to pay for its share of the Bogue Road Bridge restoration and repair work out of local funds raised by taxation or readily available grant funds, and has agreed to appropriate the funds necessary to pay its share of the Project.

The project is funded by the City of Torrington Pavement Management Program Bond Fund and the Town of Harwinton according to State Statute 13a-100 cost sharing formula. The City of Torrington share will be 85.26% and Town of Harwinton share will be 14.74% of the total design, inspection and construction costs.

Thank you for your consideration.


Paul Kundzins, P.E.
Deputy Public Works Director / City Engineer

cc: Pennie Zucco, Purchasing Agent
Ray Drew, Public Works Director

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF TORRINGTON
AND THE
TOWN OF HARWINTON
CONCERNING THE
BOGUE ROAD BRIDGE OVER THE NAUGATUCK RIVER

This Memorandum Of Understanding, by and between the City Of Torrington ("Torrington"), a municipal corporation with its principal place of business at 140 Main Street, Torrington, Connecticut 06790 acting herein by Elinor Carbone, its Mayor, and the Town Of Harwinton ("Harwinton"), a municipal corporation with its principal place of business located at 100 Bentley Drive, PO Box 66, Harwinton, Connecticut 06791 acting herein by Michael Criss, its First Selectman, concerns the Bogue Road Bridge (Conn DOT Bridge No. 05059), over the Naugatuck River (hereinafter referred to as the "Bogue Road Bridge").

WHEREAS, Torrington and Harwinton fully executed on February 1, 2005 an Agreement titled "Agreement Between the City of Torrington and the Town of Harwinton Concerning the Bogue Road Bridge Over the Naugatuck River. (hereinafter the "Agreement")

WHEREAS, said Agreement was for the joint municipal restoration and repair of the Bogue Road Bridge.

WHEREAS, by Connecticut General Statutes identified in said Agreement, each municipality has agreed to pay for its share of the Bogue Road Bridge repair work out of local funds raised by taxation or readily available grant funds, and has agreed to appropriate the funds necessary to pay its share of the Project; and

WHEREAS, the said Agreement states both municipalities may agree to keep said Agreement in force to cover the long-term maintenance and future repair of the Bogue Road Bridge.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

The terms of said Agreement shall continue in force for future bridge repairs however the Project Cost shall be revised accordingly based on present-day accepted proposal(s) or bid(s) and the expense thereof shall be apportioned between both municipalities according to the current total revenue received yearly from direct taxation in each of such towns, as averaged for the three fiscal years next preceding.

Section 8A-9E of the Agreement shall be amended as follows:

- A. Torrington Tax Revenues. The "amount of revenue raised yearly by direct taxation as averaged for the three (3) fiscal years next preceding" by the City of Torrington is calculated as follows:

FYE 2019 = \$91,925,308, FYE 2020 = \$93,355,002, FYE 2021 = \$94,827,795
Total \$ 280,108,105.00 divided by 3 = \$ 93,369,368.33(A)

B. Harwinton Tax Revenues. The "amount of Revenue raised yearly by direct taxation as averaged for the three (3) fiscal years next preceding" by the Town of Harwinton is calculated as follows:

FYE 2019 = \$ 15,922,603.73, FYE 2020 = \$16,208,007.38, FYE 2021 = \$16,278,512.27
Total \$48,409,123.38 divided by 3 = \$16,136,374.46 (B)

C. Statutory Apportionment. The statutory apportionment of the Total Project cost is as follows:

\$93,369,368.33 (A) + \$16,136,374.46 (B) = \$109,505,742.79 (C)

D. Torrington's Share of the Project Cost. The City of Torrington's statutory share of the Total Project cost is calculated as follows:

\$ 93,369,368.33 (A) / \$109,505,742.79 (C) = 0.8526 or 85.26% (D)

E. Harwinton's Share of the Project Cost. The Town of Harwinton's statutory share of the Total Project cost estimate is calculated as follows:

\$16,136,374.46 (B) / \$109,505,742.79 (C) = 0.1474 or 14.74% (E)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this

_____ day of _____, 2022.

CITY OF TORRINGTON

By: _____
Elinor Carbone, Duly Authorized
Its Mayor

Witness

Witness

TOWN OF HARWINTON

By: _____
Michael Criss, Duly Authorized
Its First Selectman

Witness

Witness

traveled portion of the state highway shall remain with the town; and any liability for neglect or default of maintenance of such portion of the town road shall be in accordance with section 13a-149. When a town road passes over or under a state highway right-of-way, the responsibility for maintenance of the road shall remain with the town; and any liability for neglect or default of such maintenance shall be in accordance with section 13a-149.

(1967, P.A. 209, S. 1-3; P.A. 77-78; P.A. 90-342, S. 4, 5.)

History: P.A. 77-78 added the words “or intersects” in Subsec. (c); P.A. 90-342 added provision in Subsec. (a) providing the local traffic authority with jurisdiction over any portion of a town road within an easement.

Cited. 21 CA 633.

[\(Return to Chapter Table of Contents\)](#) [\(Return to List of Chapters\)](#) [\(Return to List of Titles\)](#)

Sec. 13a-100. Expense of bridges between towns. Necessary bridges between towns, except when otherwise specially provided by law, shall be built and kept in repair by such towns, and the expense thereof shall be apportioned between them according to the total revenue received yearly from direct taxation in each of such towns, as averaged for the three fiscal years next preceding.

(1949 Rev., S. 2119; 1958 Rev., S. 13-4; 1963, P.A. 226, S. 100.)

History: 1963 act replaced previous provisions: See title history.

What constitutes a bridge. 26 C. 583; 44 C. 25; 64 C. 568.

[\(Return to Chapter Table of Contents\)](#) [\(Return to List of Chapters\)](#) [\(Return to List of Titles\)](#)

Sec. 13a-100a. Maintenance of pedestrian walkways on bridges. The person required to maintain any bridge constructed over any section of the National System of Interstate and Defense Highways located within this state, which bridge (1) is constructed or undergoes major reconstruction, as determined by the Commissioner of Transportation, on or after October 1, 2000, and (2) has a defined pedestrian walkway, shall install and maintain fencing along such walkway to prevent pedestrians from throwing objects from such walkway onto the highway below. The bridge located between the Legislative Office Building and the State Capitol Building shall not be subject to the provisions of this section.

(P.A. 00-184, S. 1.)

[\(Return to Chapter Table of Contents\)](#) [\(Return to List of Chapters\)](#) [\(Return to List of Titles\)](#)

Sec. 13a-101. Bridges over artificial watercourses. Any bridge or passageway over any artificial watercourse on a highway which it is not the duty of the commissioner to maintain shall be constructed and maintained by the person owning or controlling such watercourse and shall be of such width and carrying capacity as are approved by the board of selectmen of the town, provided, if at any time the board of selectmen finds that any such existing bridge or passageway has become insufficient to permit the traveling public to use it with safety, the board of selectmen shall cause such bridge or passageway to be reconstructed so as to make it sufficient or shall cause a new sufficient bridge or passageway to be constructed. The town and the person owning or controlling the watercourse shall each pay an equitable portion of the cost of reconstructing such existing bridge or passageway or of constructing a new sufficient bridge or passageway, which equitable apportionment shall be based upon the respective needs of the town and the person for such change in such bridge or passageway, and the board of selectmen may enter into an agreement with such person determining the portion to be paid by each,

City Of Torrington



CORPORATION COUNSEL
140 Main Street
Torrington, CT 06790

Tel.: (860) 489-2526
Fax: (860) 489-2541
email: a_vasko@torringtonct.org

January 27, 2005

Michael Rybak, Esq.
93 West Street
P.O. Box 338
Litchfield, CT 06759-0338

RE: Torrington / Harwinton Bogue Road Bridge Agreement

Dear Mike:

Enclosed please find the fully-executed copy of the above referenced agreement.

Yours truly,

Albert G. Vasko
Corporation Counsel

AGV:ef

Enc.

**AGREEMENT
BETWEEN THE
CITY OF TORRINGTON
AND THE
TOWN OF HARWINTON
CONCERNING THE
BOGUE ROAD BRIDGE OVER THE NAUGATUCK RIVER**

THIS AGREEMENT, made and entered into at Torrington and Harwinton, Connecticut by and between the CITY OF TORRINGTON (hereinafter referred to as "Torrington"), a municipal corporation located in the County of Litchfield, State of Connecticut, and the TOWN OF HARWINTON (hereinafter referred to as "Harwinton"), a municipal corporation located in the County of Litchfield, State of Connecticut, concerning the Bogue Road Bridge (Conn DOT Bridge No. 05059), over the Naugatuck River (hereinafter referred to as the "Bogue Road Bridge").

WITNESSETH, THAT,

WHEREAS, Torrington and Harwinton have agreed to undertake the joint municipal restoration and repair of the deck of the Bogue Road Bridge over the Naugatuck River as shown on a set of plans entitled "Deck Repairs – Bogue Road Bridge over Naugatuck River, Prepared by Taconic Engineering, dated August 12, 2004 (hereinafter referred to as the "Project"); and

WHEREAS, Section 13a-99 of the Connecticut General Statutes, Revised to 2003, provides: "Towns shall, within their respective limits, build and repair all necessary highways and bridges..."; and

WHEREAS, Section 13a-100 of the Connecticut General Statutes, Revised to 2003, provides: "Necessary bridges between towns, except when otherwise specially provided by law, shall be built and kept in repair by such towns, and expense thereof shall be apportioned between

them according to the total revenue received yearly from direct taxation in each of such towns, as averaged for the three fiscal years next preceding;" and

WHEREAS, Section 7-148cc of the Connecticut General Statutes, Revised to 2003, provides: "Two or more municipalities may jointly perform any function that each municipality may perform separately under the provisions of the general statutes or of any special act, charter or home rule ordinance. Each participating municipality shall approve any agreement entered in- to pursuant to this section in the same manner as an ordinance is approved in such participating municipality or, if no ordinances are approved by such participating municipality, in the same manner as the budget is approved. The terms of each agreement shall establish a process for withdrawal from such agreement and shall require that the agreement be reviewed at least once every five years by the body that approved the agreement to assess the effectiveness of such agreement in enhancing the performance of the function that is the subject of the agreement. ..."; and

WHEREAS, the Bogue Road Bridge crosses the Naugatuck River which forms the municipal boundary line between Harwinton on the east side and Torrington on the west side; and

WHEREAS, each town maintains its own highway approach to the Bogue Road Bridge and its section of the Bridge to the centerline of the Naugatuck River; and

WHEREAS, Torrington and Harwinton have decided not to apply to the State of Connecticut, Department of Transportation, for TEA-21 grant funds for the Project in view of the size of the Project and in the interest of expediting the work in the current construction season; and

WHEREAS, each municipality has agreed to pay for its share of the Project out of local funds raised by taxation or readily available grant funds, and has agreed to appropriate the funds necessary to pay its share of the Project; and

WHEREAS, this Agreement must be approved by the Board of Selectmen, Board of Finance and town meeting of the Town of Harwinton and the Board of Councilmen of the City of Torrington;

NOW, THEREFORE, in consideration of these presents and the mutual obligations contained herein, the City of Torrington and the Town of Harwinton hereby agree as follows:

1. PURPOSE. The purpose of this Agreement is to carry out the joint municipal reconstruction and rehabilitation of the Bogue Road Bridge over the Naugatuck River, including engineering, construction inspections, restoration and repair of the deck of the Bogue Road Bridge, to meet current state and federal design and load capacity requirements.

2. TERM. The term of this Agreement shall commence upon the duly authorized execution of this Agreement by the Board of Selectmen, Board of Finance and a town meeting of the Town of Harwinton, and the Mayor of the City of Torrington, and shall continue until the completion and close-out of the Project; provided, however, such Agreement shall continue in effect in the event of claims or litigation pending at that time until such claims or litigation are finally resolved. This Agreement shall be null and void if it is not completely approved by the appropriate public agencies in each municipality by January 31, 2005.

3. RENEWAL AND WITHDRAWAL.

A. Renewal. This Agreement shall be reviewed periodically by the Board of Selectmen of the Town of Harwinton and the City Council of the City of Torrington to assess its effectiveness as required by the Connecticut General Statutes, Revised to 2003, Section 7-148cc.

It is anticipated that the Project covered by this Agreement shall be concluded within a reasonable time, and the Agreement will not need to be reviewed and reauthorized, unless both municipalities agree to keep this Agreement in force to cover the long-term maintenance and future repair of the Bogue Road Bridge.

B. Withdrawal. Either municipality may withdraw from this Agreement only with the approval of its legislative or governing body, and only for just cause, i.e. the other municipality's failure to appropriate or to pay its share of the estimated Project cost, or other just cause such as severe material or labor shortage, war, national emergency or natural disaster. In such event, the withdrawing municipality shall give ninety (90) days prior written notice to the other municipality, and if the withdrawal is not mutually agreed or for "just cause," the withdrawing municipality shall be obligated to reimburse the remaining municipality's local share of the Project cost actually expended or legally incurred by the remaining town as of the effective date of the withdrawal.

4. LEAD MUNICIPALITY. It is agreed that the City of Torrington shall be the lead municipality for the Project for all purposes, including but not limited to: (a) retaining the services of a Connecticut licensed professional engineer to design, developing bid specifications, preparing a time line and funding schedule, and supervising construction of the Project; (b) soliciting bids, interviewing bidders, and awarding a construction contract or contracts for construction of the Project; (c) inspecting, accepting or rejecting work and materials required for the Project; (d) reviewing and submitting itemized invoices and reasonably required supporting documentation to the Town of Harwinton for its share of the total Project cost; (e) maintaining all records associated with the Project including records required by any state and federal grant programs and participating in the final close-out of the Project; (f) appropriating the necessary

funds for the project; (g) ensuring that the general contractor and all subcontractors selected to construct the Project comply with all applicable federal and state administrative and statutory requirements, including, but not limited to, OSHA, prevailing wage, nondiscrimination and minority contractor, retainage, payment and bond performance requirements, and securing all necessary federal, state and local permits for the Project; and (h) executing all documents and doing all acts necessary or convenient to accomplish the Project.

5. PARTICIPATING MUNICIPALITY. It is agreed that the Town of Harwinton shall cooperate and participate in the Project by (a) assisting the City of Torrington in the design, preparation, inspection and construction of the Project; (b) appropriating its share of funds for the Project; (c) reimbursing its share of the total Project cost within thirty (30) days of receipt of itemized invoices and supporting documentation from the City of Torrington; and (d) providing its full participation, cooperation and support as necessary and convenient to accomplish the Project.

6. PROJECT BUILDING COMMITTEE. In order to facilitate the Project, coordinate the respective obligations of the two municipalities, and resolve claims and disputes, there shall be a Bogue Road Bridge Project Committee consisting of the Chief Elected Official of each municipality, the City or Town Engineer of each municipality, the Project Engineer, (if other than the City or Town Engineer), the Torrington Highway Supervisor and the Harwinton Highway Supervisor. The Project Committee shall meet as necessary, and shall have the full authority to (a) accept, reject or compromise claims, (b) participate in mediation and arbitration, and (c) defend, prosecute or settle claims and litigation in the names of both municipalities. Any decision by the Project Committee (except as to any intermunicipal dispute) shall be binding on both municipalities.

7. PROJECT COST.

A. The Engineering cost estimate for the Project is as follows:

(a) Evaluation and testing as of 6/11/04	\$ 3,854.00
(b) Engineering consultant design services	<u>\$ 9,000.00</u>
(c) Estimated design engineering cost	\$12,854.00

B. The Construction cost estimate for the Project is as follows:

(a) Construction inspection services	\$ 2,360.00
(b) Bridge deck repair work	\$50,000.00
(c) Traffic control	<u>\$ 5,000.00</u>
(d) Estimated Construction Cost	\$57,360.00
(e) Project contingency (10%)	<u>\$ 7,021.00</u>

C. The Total Project cost estimate is as follows: (A+B)	\$77,235.00
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8. PROJECT FUNDING.

A. Torrington Tax Revenues. The “amount of revenue raised yearly by direct taxation as averaged for the three (3) fiscal years next preceding” by the City of Torrington is calculated as follows:

F/Y 2000 =	\$46,137,013.
F/Y 2001 =	\$48,636,375
F/Y 2002 =	\$50,288,830
$\$145,062,218 \div 3 =$	\$48,354,072

B. Harwinton Tax Revenues. The “amount of Revenue raised yearly by direct taxation as averaged for the three (3) fiscal years next preceding” by the Town of Harwinton is calculated as follows:

F/Y 2000 =	\$ 8,683,808
F/Y2001 =	\$ 9,062,711
F/Y 2002 =	\$ 9,622,327
$\$27,368,846 \div 3 =$	\$ 9,122,948

C. Statutory Apportionment. The statutory apportionment of the Total Project cost estimate is as follows: $\$48,354,072(A) + \$9,122,948 (B) = \$57,477,020 (C)$

D. Torrington’s Share of the Project Cost. The City of Torrington’s statutory share of the Total Project cost estimate is calculated as follows: $\$48,354,072 (A) \div \$57,477,020 (C) = 0.8413$ or 84.10 % (D)

E. Harwinton’s Share of the Project Cost. The Town of Harwinton’s statutory share of the Total Project cost estimate is calculated as follows: $\$9,122,948 (B) \div \$57,477,020 (C) = 0.1587$ or 15.90% (E)

9. INDEMNIFICATION AND INSURANCE. Each municipality agrees to indemnify and save harmless and other municipality, and its officials and employees, pursuant to Connecticut General Statutes, Revised to 2003, Sections 7-101a and 7-465, for any and all claims, demands, suits, liabilities or judgments, including attorneys fees and costs, arising from, or related to, construction of the Project; provided, however, this provision shall not be deemed to expand or otherwise alter the nature or scope of municipal liability to third parties or limit in anyway the nature or scope of municipal defenses. Each municipality shall provide adequate insurance to cover such liability and indemnification, and each municipality agrees to waive its

right of subrogation as against the other municipality, its officials and employees, for claims arising out of, or related to, construction of the Project.

This provision shall survive the completion of the Project and termination of this Agreement, and shall remain in effect until all relevant statutes of limitation have expired.

10. RECORDS AND AUDITS.

A. Records. The City of Torrington agrees to keep all books, records, accounts, statements, invoices, change orders, plans, surveys, contracts, job logs, photographs, videos, DVD's, compliance documentation, correspondence and other memoranda concerning the design and construction of the Project, and the records thereof shall be available for inspection and copying the Town of Harwinton during normal business hours at no cost.

B. Audit. The City of Torrington agrees that it will have its financial records concerning the Project audited at the close of each fiscal year, and shall provide copies of such audits, including copies of the Project Engineer's reports, to the Town of Harwinton, as required by Connecticut General Statutes, Revised to 2003, Sections 4-230 to 4-236, and 7-396a.

11. DISPUTE RESOLUTION. All claims, demands, disputes, controversies and differences which may arise between the City of Torrington and the Town of Harwinton concerning the Project or this Agreement shall first be submitted to the Project Committee for resolution. If the Project committee cannot resolve the matter, then the matter shall be submitted to the Court-annexed arbitration program at the Litchfield Superior Court (or the next closest Superior Court if such program is no longer available at the Litchfield Superior Court) to be decided in accordance with the rules and procedures of the program, the cost of which shall be borne equally by the parties.

12. PROPERTY RIGHTS. Each municipality agrees to secure within its municipal boundary, and at its own expense, any rights of way, highway and slope rights, drainage and utility easements, temporary construction easements, and all other property rights required for the Project. If either municipality is unable to secure such necessary property rights through negotiation and purchase, each municipality agrees to acquire such rights expeditiously by condemnation. The cost of acquiring such rights within the boundaries of each municipality shall be borne by that municipality.

13. NOTICES. All notices under this Agreement shall be sent by certified mail to:

CITY OF TORRINGTON
c/o Edward Fabbri, P.E. City Engineer
City Hall
140 Main Street
Torrington, CT 06790

and to:

TOWN OF HARWINTON
c/o Marie M. Knudsen, First Selectman
Town Hall
100 Bentley Drive
Harwinton, Ct 06791

14. AMENDMENTS AND DETAILS. This Agreement may be amended in writing as approved by the Harwinton Board of Selectmen and the Torrington City Council; provided, however, any increase in excess of appropriations shall be subject to the provisions of Connecticut General Statutes, Revised to 2003, Section 7-348. The Chief Elected Official of each municipality shall have the authority to specify further operational and procedural details within the general framework of this Agreement by means of a "Memorandum of Understanding" signed by both of them and attached hereto, the terms of which shall be incorporated herein by reference.

15. MISCELLANEOUS. The provisions of this Agreement shall be liberally construed as a whole to carry out its intent. The captions of this Agreement are for reference purposes only. The provisions of this Agreement are severable, i.e. the invalidity of one provision shall not affect the remaining provisions. This Agreement shall be recorded in the Land Records of each municipality.

Dated at Torrington, Connecticut this ___ day of _____, 2004.

WITNESSED:
(as to all)

Jayne Martignone

CITY OF TORRINGTON

[Signature]
By: Owen J. Quinn, Mayor

STATE OF CONNECTICUT)
) ss: Torrington
COUNTY OF LITCHFIELD)

On this the 1ST day of FEBRUARY, ²⁰⁰⁵~~2004~~, before me, ALBERT G. VASILE the undersigned officer, personally appeared Owen J. Quinn, Mayor of the City of Torrington, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged the he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand.

[SEAL]

[Signature]
Commissioner of Superior Court
Notary Public
~~My Commission Expires:~~

Approved by the Board of Finance of the City of Torrington on: _____, 2004.

Approved by the City council of the City of Torrington on: JANUARY 3, ~~2004~~ ²⁰⁰⁵

ATTEST:

[CITY SEAL]

[Signature]
Joseph Quartiero, City Clerk

Dated at Harwinton, Connecticut this 30th day of November, 2004.

WITNESSED BY
(As to all)

Michael D. Rybak
MICHAEL D. RYBAK

Loda Sheehan
Loda Sheehan

TOWN OF HARWINTON

Marie M. Knudsen
By: Marie M. Knudsen, First Selectman

Joseph J. Scarpelli
By: Joseph J. Scarpelli, Selectman

Francis J. Chairamonte
By: Francis J. Chairamonte, Selectman

Its Board of Selectmen, duly authorized

STATE OF CONNECTICUT)
) ss: Harwinton
COUNTY OF LITCHFIELD)

On this the day of November 30, 2004, before me, Michael D. Rybak the undersigned officer, personally appeared Marie M. Knudsen, First Selectman, Joseph J. Scarpelli, Selectman and Francis J. Chairamonte, Selectman of the Town of Harwinton, known to me (or satisfactorily proven) to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand.

Michael D. Rybak
Michael D. Rybak
Commissioner of Superior Court

Approved by the Board of Finance of the Town of Harwinton on: August 12, 2004.

Approved by a duly warned town meeting of the Town of Harwinton on: November 30, 2004.

ATTEST:

Patricia K. Williamsen
Patricia K. Williamsen, Town Clerk

[TOWN SEAL]