E-13

TOWN OF HARRISON
VILLAGE OF HARRISON
ATTORNEY'S OFFICE

MEMORANDUM

TO: Mayor Belmont

FROM: Chris Cipolla, Deputy Village Attorney cmc

DATE: March 30, 2012

SUBJECT: **Sluice Gate Agreement**

The enclosed Agreement has been reviewed by the Law Department and is acceptable for your signature. A memo should be prepared from your office to the Town Clerk asking that the Agreement be put on the Town Board Agenda for the April 19th meeting. A resolution must be passed for you to sign the enclosed.

Please let me know if you have any questions.

This **AGREEMENT** ("Agreement") made this 14th day of February, 2012, by and between

CITY OF RYE, a municipal corporation of the State of New York, having an office and place of business at the Rye City Hall, 1051 Boston Post Road, Rye, New York 10580 (hereinafter referred to as "the City" or as "Rye"); and

VILLAGE OF RYE BROOK, a municipal corporation of the State of New York, having an official place of business at the Village Office, 938 King Street, Rye Brook, New York 10573 (hereinafter referred to as "the Village" or as "Rye Brook"); and

TOWN OF HARRISON, a municipal corporation of the State of New York, having an official place of business at the Town Office, 1 Heineman Place, Harrison, New York 10528 (hereinafter referred to as "the Town" or as "Town of Harrison");

WHEREAS, in order to work cooperatively in the process of addressing flood control opportunities in the Blind Brook watershed, and,

WHEREAS, pursuant to a December 17, 2008 joint application (the "Joint Application") submitted by the City of Rye with the Village of Rye Brook as a project partner for funding under the Westchester County Flood Action Program, for the installation of Sluice Gate and related work at the Bowman Avenue Spillway (the "Project") on Tax Lot 141.26-1-2 in accordance with plans to be approved by the Village

of Rye Brook, which would cost an estimated $2,221,020 as identified on Schedule "A", City of Rye Sluice Gate Flood Mitigation Project Estimated Costs, annexed hereto and made a part hereof; and

WHEREAS, an agreement dated February 6, 2010 was entered by the County of Westchester and the City of Rye whereby Westchester County will provide 50% of the Project funding up to $1,083,550; and

WHEREAS, an additional agreement for funding which would offset the total Sluice Gate Project cost was approved on November 18, 2009 for a NYS Capital Assistance Program ("CAP") grant in the amount of $400,000 to be administered by the Dormitory Authority of the State of New York ; and

WHEREAS, at the April 15, 2009 meeting of the Rye City Council, a resolution was adopted pursuant to the State Environmental Quality Review Act ("SEQRA") adopting a Negative Declaration for the Joint Application and committing up to $546,840 towards the local share of the Project funding, and

WHEREAS, previously at the March 10, 2009 Rye Brook Village Board meeting, a resolution was adopted pursuant to SEQRA and committed up to $136,710 towards the local share of the Project funding, and

WHEREAS, the Rye Brook share of the Joint Application is up to $136,710 of the Project cost and requires the adoption of a inter-municipal agreement for the installation, operation and maintenance of the Sluice Gate structure and equipment as defined by the classification of the Bowman Spillway as a Class B "intermediate hazard" dam as defined by NYS Department of Environmental Conservation Regulation Part 673, and

WHEREAS, part of Said Sluice Gate on the Bowman Avenue Spillway is located in the Town of Harrison.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the parties agree as follows:

A. **The City's Responsibilities**

1) The City shall construct, maintain and operate the Sluice Gate Project at the Bowman Avenue Spillway site as required by this Agreement made between the Village, the Town and the City.

2) The Sluice Gate Project shall be operated in accordance with the terms and conditions stated by Schedule "B", Bowman Avenue Dam – Sluice Gate Operation annexed hereto and made a part hereof. No modification of the operations identified in Schedule "B" shall be made without notification to the Village of Rye Brook and the Town of Harrison. The City shall not modify or interfere with the operation of the Sluice Gate Project at the Bowman Avenue Spillway site without a written recommendation from a professional engineer. No modification shall have a negative impact on the flooding of any properties in the Village of Rye Brook and the Town of Harrison compared to current pre-construction conditions.

3) The Sluice Gate Project shall be inspected and maintained in accordance with the tables identified in Schedule "C" Sluice Gate Inspection and Operation/Maintenance, annexed hereto and made a part hereof. The City shall not modify or interfere with the inspection or maintenance of the Sluice Gate Project at the Bowman Avenue Spillway site without a written recommendation

from a professional engineer. No modification shall have a negative impact on the flooding of any properties in the Village of Rye Brook and the Town of Harrison compared to current pre-construction conditions. No modification of the schedule identified in Schedule "C" shall be made without notification to the Village of Rye Brook and the Town of Harrison and the City of Rye shall provide all inspection and maintenance reports to the Village of Rye Brook and the Town of Harrison within seven (7) business days from the date of inspection.

4) The City of Rye shall provide the Village of Rye Brook and the Town of Harrison with "read-only" web access to all data on the SCADA system. This shall include but not be limited to, access to data consisting of water surface elevations at Stage Stations 1, 2 and 3 as well as rainfall amount per the rain gauge on site and elevation of the Sluice Gate. This access will be provided through a secure Virtual Private Network (VPN) connection on the Internet using a standard web browser. Any cost for equipment, installation, maintenance and training of personnel for this access will be included in the total Project cost.

5) The City shall comply with all applicable federal, state and local laws, rules and regulations and shall fully perform all duties and obligations to maintain the structure in proper working order.

6) The City of Rye will complete the installation and accept the maintenance and operation of the Sluice Gate at Bowman Avenue and, after acceptance of same, bill the Village for up to $136,710 of the Project costs associated with the initial construction bid(s) for the Project. Any reductions in total actual Project cost shall proportionally lower the local share for the Project cost for both

municipalities (i.e. 80% Rye City / 20% Rye Brook). The Village accepts the obligation to pay its share within 45 days of notification of amount due. THERE SHALL ABSOLUTELY NOT BE ANY COST DUE OR PAYABLE BY THE TOWN OF HARRISON, FOR ANY PURPOSE WHATSOEVER, INCLUDING WITHOUT LIMITATION CONSTRUCTION OR MAINTENANCE.

7) In the event the City receives notification from the County, NYS CAP or any other source, that might affect the ability of the City or the Village to meet the grant funding as obligated, the City shall immediately inform the Village and the Town by the best available means and shall also, within three business days, inform the Village and the Town in writing, as to the status of the Project funds provided.

8) The City agrees: (a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the Village or the Town, the City shall indemnify and hold harmless the Village and the Town, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the errors, omissions or unlawful or negligent acts hereunder by the City or third parties under the direction or control of the City; and (b) to provide defense for and defend, at its sole expense, such claims, demands or causes of action directly or indirectly arising out of this Agreement, as described in subsection (a) above, and to bear all other costs and expenses related thereto.

B. **The Village's Responsibilities and the Town's Responsibilities:**

1) Provided that the City is acting in accordance with the terms and conditions stated by Schedule "B" annexed hereto, or as modified in accordance with the City of Rye's responsibilities under this Agreement, neither the Village nor the Town shall interfere with the operation of the Sluice Gate at the Bowman Avenue Site.

2) The Village and the Town shall be notified by the City of Rye of any modification of the inspection, operations and maintenance identified in Schedules "B" and "C" and shall have the right to inspect any records kept by the City concerning the inspection, operation and maintenance of the Sluice Gate and its mechanical devices at the Bowman Avenue Spillway site.

3) The Village and the Town shall comply with all applicable federal, state and local laws, rules or regulations and shall cooperate with the City in every reasonably way for the purpose of assisting the City to comply with the said Agreement made between the Village, the Town and the City.

4) The Village Agrees: (a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the City, the Village shall indemnify and hold harmless the City, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the errors, omissions or unlawful or negligent acts hereunder by the Village or third parties under the direction or control of the Village; and (b) to provide defense for and defend, at its sole expense, such claims, demands or causes of action directly or

indirectly arising out of this Agreement, as described in subsection (a) above, and to bear all other costs and expenses related thereto.

C. **Term:** The term of this Agreement shall commence on upon receiving site plan approval of the Project from the Village of Rye Brook and the Town of Harrison and shall continue unless terminated as hereinafter provided.

1) Upon the removal of the mechanical Sluice Gate by the City, this Agreement will be deemed to have been terminated automatically within twenty (20) days after the City has informed the Village and the Town in writing of the removal of the Sluice Gate.

2) This Agreement may be terminated at any time by mutual agreement of the parties or, for any reason, upon thirty (30) days written notice by any party to the other parties.

3) Upon termination, all payments owing to the City for the Village's proportional share of work completed shall be immediately due and payable by the Village.

D. **Assignment and Subcontracting:** Any purported delegation of duties or assignment of rights under this contract by either party without express written consent of the other party is void. No party may subcontract any part of its work or duties under this contract without express written consent of the other parties.

E. **No Discrimination:** The parties shall not discriminate against any person on the basis of age, race, creed, color, national origin, sex, disability, genetic predisposition or carrier status, or marital status in the performance of this Agreement.

F. **Notices:** All notices of any nature referred to in this Agreement shall be in writing and sent by registered or certified mail postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the City:

City Manager
Rye City Hall
1051 Boston Post Road
Rye, New York 10580

with a copy to:

City Engineer
Department of Public Works
141 Oakland Beach Avenue
Rye, New York 10580

To the Village:

Village Administrator
Village of Rye Brook
983 King Street
Rye Brook, New York 10573

To the Town of Harrison:

Town Engineer
1 Heineman Place
Harrison, NY 10528

or to such other addresses as the party may designate by notice.

G. **Entire Agreement:** This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly

authorized representative of each of the parties. This Agreement shall not be enforceable against any party until executed by the designated official of all parties.

H. **Governing Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the City, the Town and the Village have caused this Agreement to be executed.

CITY OF RYE

By:_____
Scott D. Pickup
City Manager

VILLAGE OF RYE BROOK

By:_____
Joan L. Feinstein
Village Mayor

TOWN OF HARRISON

By: _____
Ronald W. Belmont
Supervisor

SCHEDULE "A"

City of Rye
Sluice Gate Flood Mitigation Project
Estimated Costs

Description	Unit	QTY	Unit Price	Amount
Mobilization	LS	1	$20,000	$20,000
Clearing and Grubbing	LS	1	5000	$5,000
Remove Existing Logs	LS	1	3500	$3,500
Rock Excavation (No explosives)	CY	10	300	$3,000
Sluice Gate (Installed)	LS	1	900000	$900,000
Controls/Automation/Electrical	LS	1	100000	$100,000
Miscellaneous Concrete	CY	4	1500	$6,000
Railing	FT	250	18	$4,500
Access Road with Trash Rack	LS	1	325000	$375,000
Restoration	LS	1	10000	$10,000
Erosion and Sediment Control	FT	1200	8	$9,600
Subtotal				$1,436,600
20% Contingency				$287,320
Total Construction Cost				$1,723,920
Engineering and Permitting				$347,100
Construction Inspection				$150,000
TOTAL PROJECT COST				$2,221,020

SCHEDULE "B"

BOWMAN AVENUE DAM - SLUICE GATE OPERATION.

Sluice Gate Operation

The operation of the slide gate can be fully automated or based on the National Weather Service forecasts. The schematic shown on Figure 1 shows the initial full automatic sequence of the gate operation. The National Weather forecasts operation assumes that a frequency storm rainfall, under certain conditions, will produce approximately the same frequency runoff.

Under this assumption, the operation of the gate will be the following:

Table 1 – Sequence of Operation. Weather Service Forecasts

Predicted Rainfall (in/24 hours)	Bottom Slide Gate Elevation (ft-NAVD)
3.5	38.4
4.5	38.4
5.0	39.7
6.0	42.0
7.0	44.0
7.5	47.0

Both operations are strictly based on hydrologic and hydraulic calculations. It will be also possible from a remote location to manually set the bottom of the slide gate at a desired elevation.

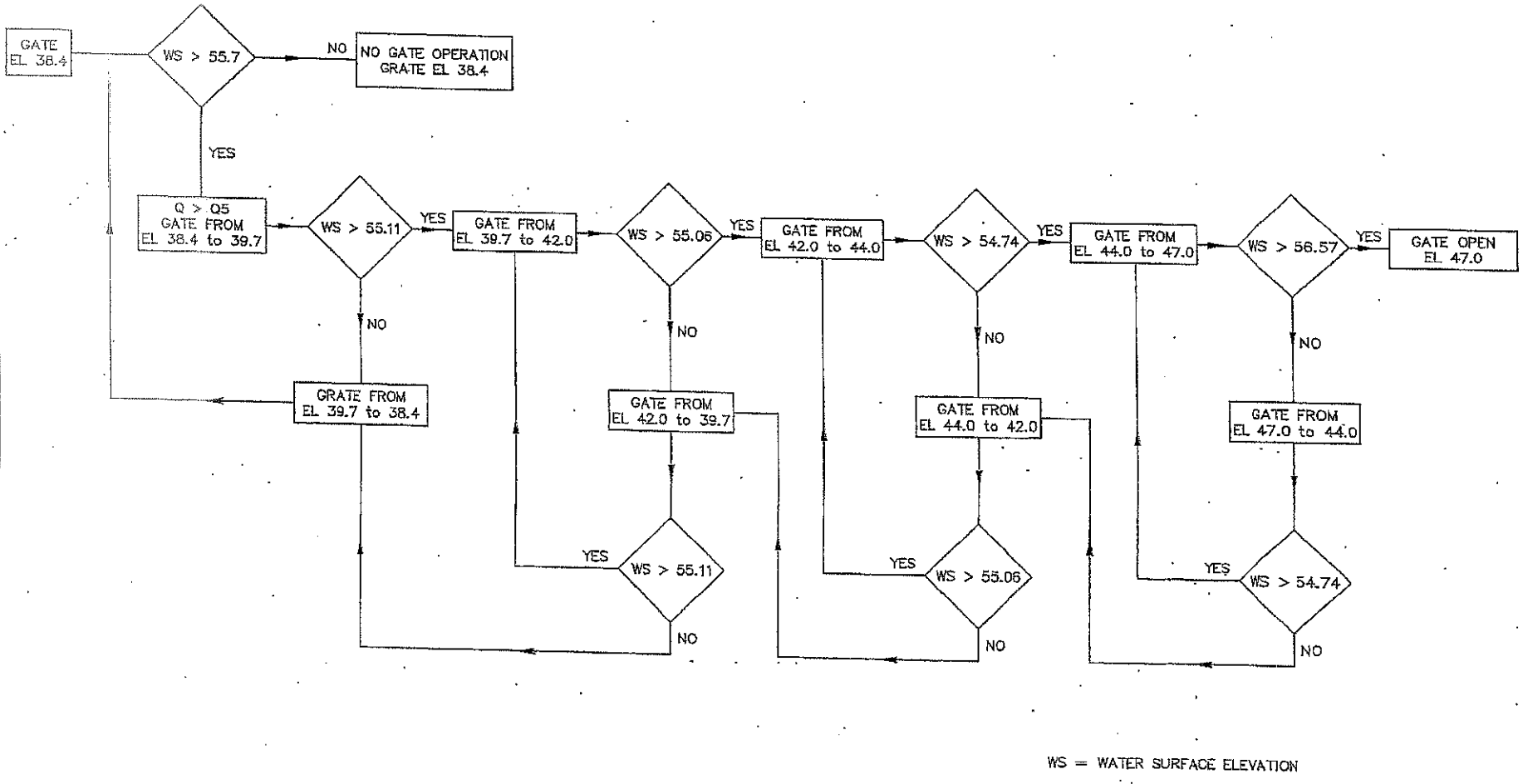
In any type of gate operation it is suggested a thorough analysis and correlation between the amount of rainfall as indicated by the rain gauge located at the site and measured water surface/discharge of the Blind Brook at the pond entrance and upstream and downstream of the dam.

It is anticipated that the operation will be in the future optimized to account on field stage/discharge measurements and future flood control mitigations on the Blind Brook. The measurements will be done at three stage stations. The locations are shown on Figure 2. Water surface elevations will be automatically measured at these locations and discharges interpolated on stage/discharge rating curves.

Stage –Discharge Curves

The relationship between the water-surface stage (water level) and stream flows is known as stage-discharge relation or rating curve. The traditional and simple way to gather information on current discharges upstream and downstream of the dam is to measure the water level with gauges and to use the stage/discharge relationship to estimate the flow discharge.

Rating curves were calculated at three locations on Blind Brook where also stage stations were proposed. These locations are: Location 1 approximately 200 feet downstream of Bowman Dam, Location 2 just upstream of the dam and Location 3 at approximately 85 feet downstream of the end of a training wall by 500 Westchester Avenue building. The rating curves are shown on Figure 3, Figure 4 and Figure 5.



WSP · SELLS

BOWMAN DAM SLIDE GATE INSTALLATION
SUGGESTED SEQUENCE OF OPERATION

FIGURE NO.
1

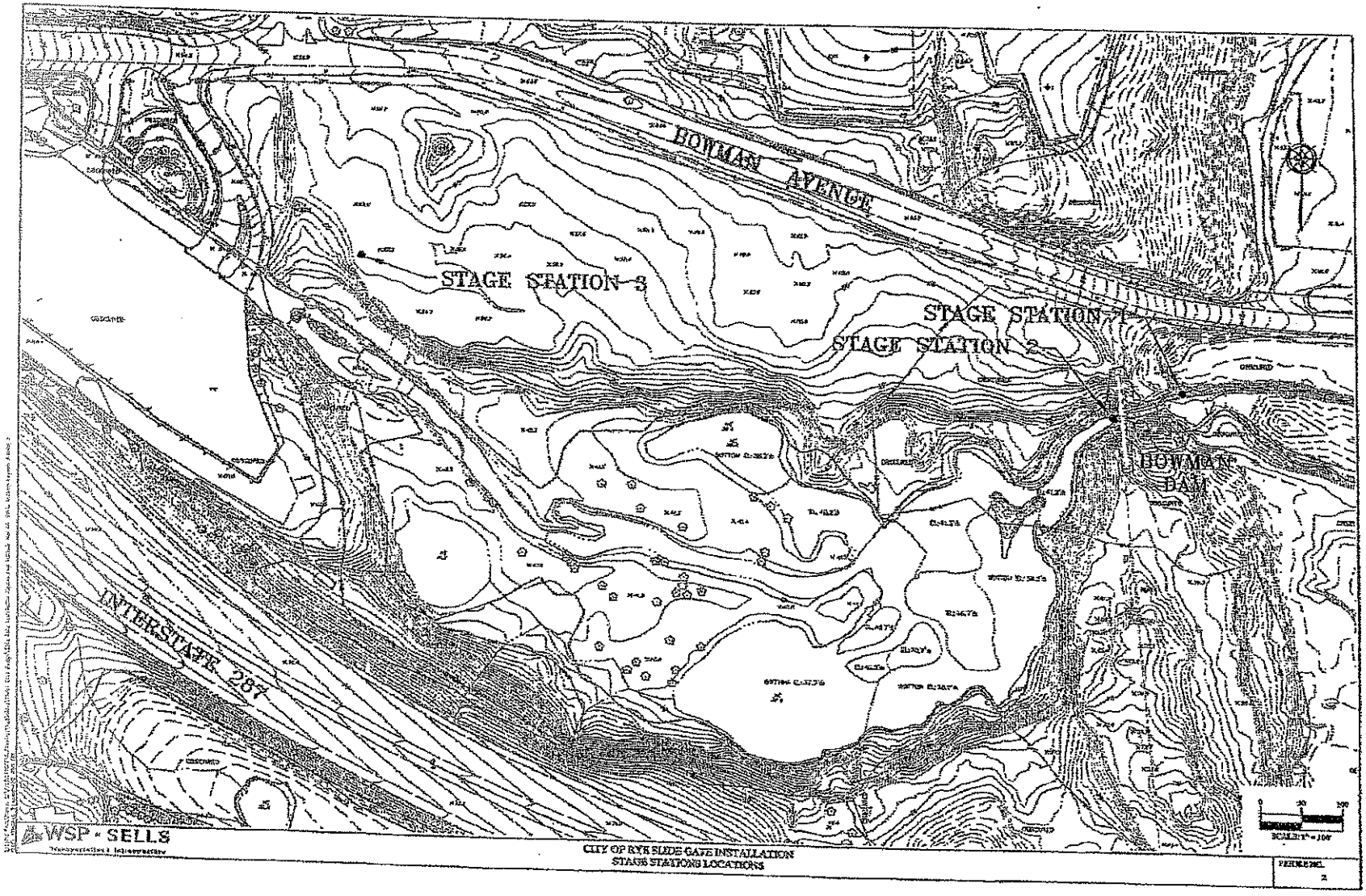

BOWMAN AVENUE
STAGE STATION 3
STAGE STATION 2
STAGE STATION 1
BOWMAN DAM
INTERSTATE 287
WSP · SELLS
CITY OF RYE SLIDE GATE INSTALLATION
STAGE STATIONS LOCATIONS

Figure 3 – Unmeasured Rating Curve at Location 1

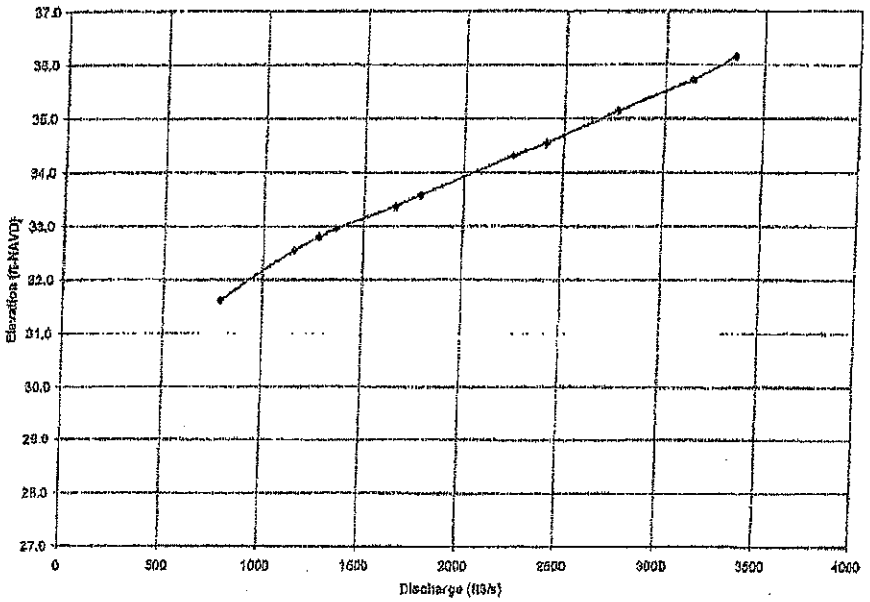


Figure 4– Unmeasured Rating Curve at Location 2. Bottom Gate Elevation 38.4

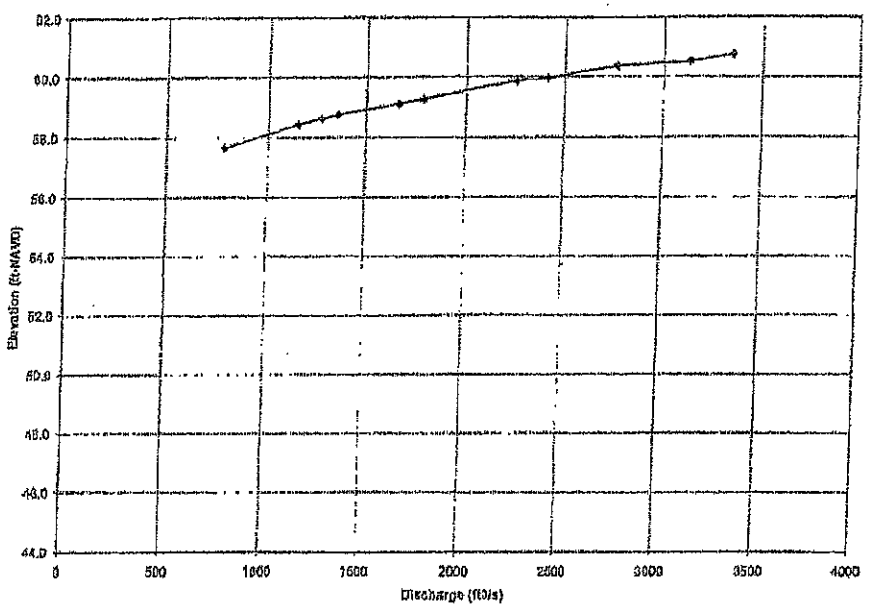
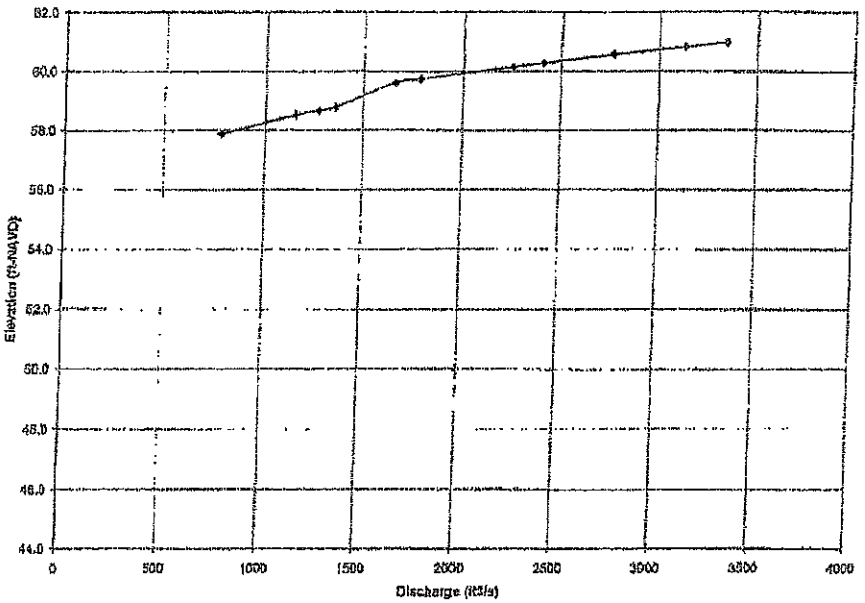


Figure 5 – Unmeasured Rating Curve at Location 3. Bottom Gate Elevation 38.4



The calculated rating curves were developed considering the bottom of the gate at the elevation 38.4. This elevation is at the lowest possible position of the gate and coincides

with the existing bottom of the railroad ties obstructing the Bowman Dam orifice. By raising the gate, the bottom of the dam's orifice will increase and the rating curves shown on Figure 4 and Figure 5 will modify.

The unmeasured rating curves were developed using backup data of the Flood Insurance Study (FIS) profiles obtained from the Federal Emergency Management (FEMA) and supplemented with surveyed cross sections in the three locations areas. The water surface profiles were calculated using the U.S. A.C.O.E. HEC-RAS software model. The calculations are based on Bernoulli equation, which is performed step by step from downstream (FIS section 20203) of the modeled reach to the cross section of the gauging stations and further upstream.

Starting water surface elevations at the Section 20203 were obtained from available HEC-RAS models developed in the Flood Insurance and other WSP-SELLS studies. A wide range of discharges were input in the model. The pairs of discharge and calculated water surface elevations were plotted. The rating curves shown on Figure 3, Figure 4 and Figure 5 will be required to be calibrated. Using the elevations obtained at the gauging stations, approximate discharges will be interpolated from the rating curves.

Under less favorable conditions, in-place calibration is necessary to establish the extent of the departures from standard methods of developing head-discharge relationship. The site does not offer locations feasible to utilize an artificial control of such a shape that head-discharge relationship can be determined without calibration (discharge formulae). It is mandatory that these theoretical (initial approximation) curves will be optimized in the future by discharge measurements. The optimization of the rating curves are not part of this project.

The traditional way to gather information on a watercourse discharge is to measure the water level with gauges and to use the rating curves to estimate the discharge. However, several difficulties with stage-discharge curves have been recognized. For example, in some cases, the relation between stage and discharge is not unique. The water slope, in fact, produces different discharges for the same stage. Variable backwater, rapidly changing discharge and flow to or from an overbank areas result in looped or non-unique ratings.

The field data required for computation of discharge include cross sections in the vicinity of the gauging stations, selection of roughness coefficients and the geometry of the dam. No ideal gauging stations locations are available at the site. Many discharge measurements are necessary at each station to define the stage-discharge relationship throughout the entire range of stage. The stability of a stage-discharge relationship is directly related to the stability of the streambed. Boulder, gravel and sand in the streambed are likely to shift. Therefore, periodic measurements are then necessary to define changes in the stage-discharge relationship. As many as a minimum of 10 discharge measurements per year are recommended.

Recording Stages

The stage data will be collected at the stage stations. Stage is the height of water in a watercourse above the thalweg which can be considered the reference elevation. The recording stage 1 and 3 consists of stilling wells installed on the face of an existing concrete abutment (Station 1) or a well dug along the riverbank (Station 3). Station 2 is located just upstream of the dam on the steel crossover. Water enters the well through

inlet pipes. The water in the well rises to the same level as the river. The recording equipment records the water level in the well/watercourse. The gate will be automated using a Supervisory Control and Data Acquisition (SCADA). The intent of the system is to control the sluice gate openings either based on water surface elevations at the dam or based on predicted rain depth from the National Weather Service. The system provides both remote and at the gate control and monitoring capabilities. System alarms, statuses, operational setpoints, trending and graphic representation will be accomplished with SCADA System software. The software will be provided with an alarm notification function that will call proper authorities in the event of an emergency. The SCADA system will consists of several components which make up the system. A programmable Logic Controller (PLC) will be located in the control panel adjacent to the dam. This will provide the control functions for the automated sluice gate as well as gather data for the SCADA system. The open and close commands will be wired from the PLC to the gate control panel as well as the gate position and alarms. The redundant water level transmitters at the dam will be wired to the PLC. The ultrasonic level transmitters located upstream and downstream of the dam will be connected via wireless communications to the PLC. The existing Rain Gauge will also be connected to the PLC for monitoring the rain rate.

The PLC will be connected to a PC with the SCADA software installed at the central monitoring location with a high speed Ethernet connection. Based on available connection at the dam, an appropriate communication will be chosen between Cellular Modems, High Speed Internet (Cable Modem or DSL Modem) or a dedicated T1 line. The SCADA system will be connected to the Internet allowing remote monitoring from anywhere there is an Internet connection. Using a standard browser, the system status can be monitored via the Internet provided proper security passwords. The Internet connection will be provided with a firewall with inscription to prevent any un-authorized access to the system.

Discharge Measurements

It is recommended that the City will utilize the velocity-area method or the dilution method for the discharge measurements. Measurement of discharge by dilution determines the degree of dilution by flowing water of an added tracer solution. This method will be utilized when the water is shallow, when the velocities are extremely high or when there is excessive turbulence. The velocity-area method is described below.

The depth of flow in the cross section is measured at verticals with a rod or sounding line. As the depth is measured, observations of velocities are obtained with a current meter at one or more points in the vertical. The measured widths, depths and velocities allow the computation of discharge for each segment of the cross section.

The sites selected for measurements do not have to be exactly where the gauge is and ideally should have the following characteristics:

- Velocities are larger than 0.5 ft/s
- The velocities are parallel to one another
- The bed of the channel is regular and stable
- The depth of flow is greater than 1 ft
- There is no aquatic growth

Measurement of cross sections

Observation verticals should be located to best define the variation in elevation of the stream bed and the horizontal variation in velocity. In general, the interval between any two verticals should not be greater than L/20 of the total width and the discharge between any two verticals should not be more than 10% of the total discharge.
Normally, the distance between verticals is determined from a graduated tape or beaded wire temporarily stretched across the watercourse. The depth may be read directly on a graduated rod set on the stream bed if measurement is by wading.

Measurement of velocity
Velocity of flow at a point is usually measured by counting revolutions of a current-meter rotor during a short-time period measured with a stop-watch. Two types of current-meter rotors are in general use: the cup type with vertical shaft and the propeller type with a horizontal shaft. Both types use a make-and-break contact to generate an electric pulse for indicating the revolutions of the rotor. Optical, non-contact type counters are also in use with cup type meters.
When the water is low, the current meter will be held in the desired position by means of wading rod. When the water is deep, it will be positioned by suspending it from a wire or rod from a cableway. The mean velocity in each vertical will be determined.

The discharge of a segment will be:

$Q=((v1+v2)/2)X((d1+d2)/2)^b$ where

v1 and v2 are the mean velocities at 2 consecutive verticals
d1 and d2 are the vertical depths measured at verticals 1 and 2 and
b is the horizontal distance between verticals 1 and 2

The total discharge will be computed by summation of the discharges from each segment. Ample information regarding measuring discharges shall be obtained from the USGS "Measurement and Computation of Streamflow: Volume I. Measurement of Stage and Discharge".

Accuracy
Accuracy of discharge measurements depends on the reliability of the meter rating, on the condition of flow and the number of observations of depth and velocity obtained. Measurements are normally made by observing the depth and the velocity at two points in 20 to 25 verticals in the cross section. It was determined that for this type of measurement under the flow conditions usually encountered, the standard error at the 95% confidence level is about 5%.

SCHEDULE "C"

Bowman Avenue Dam - Inspection			
Inspection Type	Frequency	Items to Inspect/Monitor*	Personnel
Informal (after storm events)	As needed, after storm event	Sluice gate orifice/ Spillway/Debris	City of Rye Personnel
Informal	3 months	Sluice gate assemblies/ Actuators/ Generator/ Instrumentation/ Debris/ Vandalism	City of Rye Personnel
Maintenance	Annually	*In addition to the above items:* Access Roadway/ Erosion/ Sediment build-up/ Vegetation/ Generator system/ Process instrumentation and controls	City of Rye Personnel / Engineer
Technical	4 years	Safety Inspection	Engineer
Technical	10 years	Engineering Assessment	Engineer

** Inspection/maintenance of sluice gate assemblies, generator system and process instrumentation and controls shall be performed in accordance with manufacturers maintenance manual*

Bowman Avenue Dam – Operation / Maintenance	
Item	Frequency
Remove debris build up	After event
Review data / assess gate performance / optimize (as req'd)	After event, as req'd
Lubricate / maintain sluice gate assemblies and actuators	As needed*
Lubricate / maintain back-up generator system	As needed*
Process instrumentation and controls preventative and corrective maintenance including hardware and software maintenance	As needed*
Remove sediment build up	Annually
Remove vegetation overgrowth	Annually
Repair access roadway	Every 7-10 years
Patch concrete dam / seal cracks	Every 7-10 years
Repair steel crossover bridge	25 years

** Maintenance frequency in accordance with manufacturers recommendation*

On a motion made by Trustee Brown and seconded by Trustee Marrow, the following resolution was adopted.

CONSIDERING A PROPOSED SITE PLAN APPLICATION REGARDING THE INSTALLATION OF A SLUICE GATE ON BOWMAN AVENUE

WHEREAS, the City of Rye and the Village of Rye Brook participated in a March 2008 Flood Mitigation Study (the "Study") of the Bowman Avenue Dam Site and Lower Pond prepared by Chas. H. Sells, Inc. to analyze flood damage reduction measures and to identify certain projects that may assist in flood mitigation; and

WHEREAS, in this Study, Chas. H. Sells, Inc. recommended that the City of Rye and the Village of Rye Brook consider the implementation of a sluice gate (the "Project") at the Bowman Avenue dam on property owned by the City of Rye; and

WHEREAS, the City of Rye and the Village of Rye Brook have received grant assistance to offset the $2.2M total estimated cost of the Project; and

WHEREAS, on April 15, 2009 the City Council of the City of Rye approved a Resolution declaring itself to be Lead Agency for this Project pursuant to the New York State Environmental Quality Review Act ("SEQRA") based on its review of the Full Environmental Assessment Form ("EAF"), the criteria listed in 6 NYCRR 617.7(C), and other records, and adopted a Negative Declaration; and

WHEREAS, on September 13, 2011 the Village Board of Trustees approved an Inter-municipal Agreement ("IMA") for the construction, operation and maintenance of the sluice gate project and authorizing the contribution of up to $136,710 in Village funds towards this Project; and

WHEREAS, on September 16, 2011 the Village received a site plan application by the City of Rye ("Applicant") to improve the existing Bowman Avenue Spillway with the installation of a new electrically-controlled sluice gate, back-up power generator, and a maintenance access driveway, on property owned by the City of Rye but located within the Village of Rye Brook and the Town/Village of Harrison along the south side of Bowman Avenue and designated as Section 141.26, Block 1, Lot 2 on the Town of Rye Tax Map in the R-10 Zoning District and the Bowman Avenue Scenic Roads Overlay District ("Property"); and

WHEREAS, due to the applicant's status as a municipality, the Village Board of Trustees considered a host of factors pursuant to *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338, 533 N.Y.S.2d 702 (1988), to determine whether it is in the best interests of the public for the Application of the City of Rye to be subject to the Village of Rye Brook's local land use regulations; and

WHEREAS, on September 27, 2011, the Board of Trustees resolved that the subject application shall be subject to the Village of Rye Brook's local land use regulations to the extent set forth in its September 27, 2011 Resolution; and

WHEREAS, on September 27, 2011, the Board of Trustees resolved to retain approval authority for the City of Rye's applications for approval of a Site Plan, Steep Slopes Permit and a Permit to Perform Regulated Activities in a Wetland; and

WHEREAS, on September 27, 2011, the Board of Trustees referred the application to the Village of Rye Brook Planning Board for Report and Recommendation; and

WHEREAS, the Planning Board reviewed the application at its October 13, 2011, November 10, 2011 and January 12, 2012 meetings and referred a positive Report and Recommendation to the Board of Trustees on January 12, 2012; and

WHEREAS, the Board of Trustees has reviewed the following plans and application materials:

1. Site Plan Application and Checklist
2. Exterior Building Permit Application
3. Environmental Assessment Form (EAF) Parts 1, 2, and 3
4. Letter to the City of Rye Engineering Department from the Village Building Inspector dated August 8, 2011
5. Letter to the Rye Brook Board of Trustees regarding construction management from WSP Sells, Briarcliff Manor, N.Y. dated December 21, 2011
6. Letter to the Planning Board from WSP Sells, Briarcliff Manor, N.Y. dated November 10, 2011
7. Letter to the Planning Board from WSP Sells, Briarcliff Manor, N.Y. dated October 26, 2011
8. Letter to the Village from the Westchester County Planning Board dated October 31, 2011
9. Letter to the Village Building Inspector from WSP Sells, Briarcliff Manor, N.Y. dated September 16, 2011
10. Tree Condition Assessments prepared by SavATree Consulting Group, Bedford Hills, N.Y. dated November 7, 2011
11. Engineer's Plans, prepared by WSP-Sells, Briarcliff Manor, N.Y.:

Sheet Number	Sheet Title	Dated
1 of 26	*Title Sheet/Index*	October 2011
2 of 26	*General Notes/Legend/Quantities*	October 2011
3 of 26	*Project Location Plan*	January 2012
4 of 26	*Site Plan*	October 2011
5 of 26	*Restoration Landscape Plan*	January 2012
6 of 26	*Landscape Details*	January 2012
7 of 26	*Tree Preservation/Protection Plan 1*	January 2012
7A of 26	*Tree Preservation/Protection Plan 2*	January 2012
8 of 26	*Construction Details*	October 2011
9 of 26	*Sluice Gate Details*	October 2011
10 of 26	*Mechanicals and Controls Pad*	October 2011
11 of 26	*Stage Station Location 1*	October 2011
12 of 26	*Stage Station Location 2*	October 2011
13 of 26	*Stage Station Location 3*	October 2011
1 of 1	*Overall Existing Plan*	October 26, 2011
1 of 1	*Construction Management Plan*	December 16, 2011
1 of 1	*Deed Plotting with Topography and Proposed Work Locations*	January 6, 2012;

and

WHEREAS, the Village Planning Consultant, Village staff, Planning Board and Board of Trustees reviewed the information, submitted comments and made recommendations regarding the site plan, the landscape plan, zoning, grading, tree protection, storm water management, erosion and sediment control and the construction management plan, and the plans were revised according to the comments; and

WHEREAS, on November 22, 2011 a public hearing was opened on the subject application and continued to December 13, 2011 and January 24, 2012, at which time all persons interested were given an opportunity to speak on behalf of or

in opposition to said application and the Village Board closed the public hearing on January 24, 2012; and

WHEREAS, the Board of Trustees has considered the wetland permit standards set forth at Village Code § 245-8(A) and recognizes the Applicant has proposed to provide sufficient restoration of the wetland buffer proposed to be disturbed; and

WHEREAS, the Board of Trustees has considered the steep slopes work permit standards set forth at Village Code §213-6 and recognizes the Applicant has eliminated all proposed extremely steep slopes (35% or greater) so that the maximum proposed slopes are now 30% or less and sufficient slope stabilization is proposed; and

WHEREAS, the Board of Trustees is familiar with the site and all aspects of the project.

NOW, THEREFORE, BE IT RESOLVED, that the Village of Rye Brook Board of Trustees hereby grants, on the recommendation of the Village Superintendent of Public Works/Engineer and the Village Planning Board, the Applicant's request for a waiver from the requirement of Village Code §209-3(c)(2)(b) that a standard topographic survey for the entire property be submitted with the application; and be it

FURTHER RESOLVED, for the reasons stated herein, that the Village of Rye Brook Board of Trustees hereby approves the site plans listed herein to improve the existing Bowman Avenue Spillway with the installation of a new electrically-controlled sluice gate, back-up power generator, and a maintenance access driveway, for property known and designated on the tax map of the Village of Rye Brook Section 141.26, Block 1, Lot 2, shown on the set of plans listed above, upon the following condition:

1. The 17 proposed replacement trees required pursuant to Chapter 235 of the Village Code shall be revised to the satisfaction of the Village Engineer/Superintendent of Public Works to be a mix of at least three native, non-invasive, hardwood tree species.

2. Prior to the issuance of a building permit the Applicant shall obtain from the Village Superintendent of Public Works/Engineer approval of the Construction Management Plan and the Erosion and Sediment Control Plan; and be it

FURTHER RESOLVED, that the Board of Trustees hereby grants a Permit to Perform Regulated Activities in a Wetland for property known and designated on the tax map of the Village of Rye Brook as Section 141.26, Block 1, Lot 2, shown on the set of plans listed above, subject to the following conditions:

1. The Wetland Permit shall be valid for a period of one year from the date of this resolution, however, an extension of an original permit may be granted upon written request to the Board of Trustees by the original permit holder or his/her legal agent at least 90 days prior to the expiration date of the original permit.

2. The written Wetland Permit issued pursuant to this approval shall contain the following conditions pursuant to Section 245-11(B) of the Village of Rye Brook Code:

    a. Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by the approval authority, the

Advisory Council on Environmental Conservation, the Village Engineer or their designated representatives.

b. All permits issued under this chapter shall be void and of no effect after one year from the date of issue thereof, unless the work for which the permit was issued has been actually commenced and not been abandoned during that period. In such cases, the applicant may reapply for a wetlands permit from the approval authority in accordance with the provisions of this chapter. If the work for which the permit was issued has commenced within one year from the date of issuance of the permit, such permit may be renewed by the approval authority in accordance with the renewal provisions set forth at § 245-5(B)(7) of the Village Code.

c. The permit holder shall provide written notification to the Village Engineer of the date on which the regulated activity is to begin at least five business days in advance of such date.

d. The approval authority's permit shall be prominently displayed at the project site during the undertaking of any of the activities authorized by the permit.

e. The boundaries of the regulated activity and all wetlands and watercourses shall be stated and appropriately marked in the field so as to make the boundaries visible.

f. The permit, including all conditions, shall be binding on all successors and assignees of the permit holder; and be it

FURTHER RESOLVED, that for the reasons stated herein, the Village of Rye Brook Board of Trustees hereby grants a Steep Slopes Work Permit for property known and designated on the tax map of the Village of Rye Brook as Section 141.26, Block 1, Lot 2, shown on the set of plans listed above, subject to the following condition:

1. The Applicant shall be responsible for maintaining, repairing and monitoring the stability of the steep slopes to the design standards intended, requirements of the Village Code and to the satisfaction of the Village Superintendent of Public Works/Engineer and/or consultants.

TRUSTEE BROWN	**AYE**
TRUSTEE MARROW	**AYE**
TRUSTEE REDNICK	**AYE**
TRUSTEE ROSENBERG	**ABSENT**
MAYOR FEINSTEIN	**AYE**

State of New York
County of Westchester
Village of Rye Brook } ss.:

I hereby certify that this is the Resolution adopted by the Board of Trustees of the Village of Rye Brook which was duly passed by said Board on January 24, 20 12.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Village of Rye Brook, this 25 day of January, 20 12.

Christopher J. Bradbury, Village Clerk

On a motion made by Trustee Marrow and seconded by Trustee Rednick, the following resolution was adopted.

CONSIDERING ENTERING INTO AN INTERMUNICIPAL AGREEMENT WITH THE CITY OF RYE AND THE TOWN/ VILLAGE OF HARRISON FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A SLUICE GATE

WHEREAS, the City of Rye and the Village of Rye Brook submitted an application to the Westchester County Flood Action Program for a Sluice Gate project at the Bowman Avenue Spillway and funding for this program was awarded with a Rye Brook local share of $136,710.00, representing 20% of the municipal share for the project with a total budget of $2,221,100.00; and

WHEREAS, on April 15, 2009 the City Council of the City of Rye approved a Resolution declaring itself to be Lead Agency for this Project pursuant to the New York State Environmental Quality Review Act ("SEQRA") based on its review of the Full Environmental Assessment Form ("EAF"), the criteria listed in 6 NYCRR 617.7(C), and other records, and adopted a Negative Declaration; and

WHEREAS, the Sluice Gate project is located on property owned by the City of Rye but located partially in the Village the Rye Brook and partially in the Town/ Village of Harrison; and

WHEREAS, the City of Rye is currently pursuing Site Plan approval, a Permit to Perform Regulated Activities in a Wetland and a Steep Slopes Permit from the Village of Rye Brook Board of Trustees; and

WHEREAS, the Town/ Village of Harrison has issued all necessary approvals for that portion of the Sluice Gate project within the Town/ Village of Harrison; and

WHEREAS, an Intermunicipal Agreement concerning the construction, maintenance and operation of the Sluice Gate was previously entered into between the City of Rye and the Village of Rye Brook following the Village of Rye Brook Board of Trustees' September 13, 2011 approval of the Intermunicipal Agreement; and

WHEREAS, the City of Rye, Village of Rye Brook and Town/ Village of Harrison desire to add the Town/ Village of Harrison as a party to the Intermunicipal Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees of the Village of Rye Brook hereby rescinds its September 13, 2011 approval of the Intermunicipal Agreement between the City of Rye and the Village of Rye Brook; and

BE IT FURTHER RESOLVED, that the Board of Trustees of the Village of Rye Brook hereby approves the Intermunicipal Agreement between the City of Rye, Village of Rye Brook and Town/ Village of Harrison for the construction, maintenance and operation of the proposed Sluice Gate; and

BE IT FURTHER RESOLVED, that the Mayor and Village Administrator are authorized to sign and execute any and all documents necessary to accomplish the purpose of this resolution.

TRUSTEE BROWN	**AYE**
TRUSTEE MARROW	**AYE**
TRUSTEE REDNICK	**AYE**
TRUSTEE ROSENBERG	**ABSENT**
MAYOR FEINSTEIN	**AYE**

State of New York
County of Westchester
Village of Rye Brook } ss.:

I hereby certify that this is the Resolution adopted by the Board of Trustees of the Village of Rye Brook which was duly passed by said Board on January 24, 20 12.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Village of Rye Brook, this 25 day of January, 20 12.

Christopher J. Bradbury, Village Clerk