

**RESOLUTION NO. 661 -2012, AUTHORIZING AN  
INTERMUNICIPAL AGREEMENT WITH THE TOWN OF ISLIP  
FOR USE OF A TOWN RECHARGE BASIN IN THE VICINITY  
OF CR 7, WICKS ROAD AND WILLIAMS STREET, TOWN OF  
ISLIP**

**WHEREAS**, the County of Suffolk, through the Department of Public Works, has requested to install drainage pipe which will discharge highway stormwater into a Town of Islip recharge basin in the vicinity of CR 7, Wicks Road and Williams Street, for the purpose of alleviating highway flooding in this vicinity; and

**WHEREAS**, in exchange for allowing the Suffolk County Department of Public Works to install this drainage pipe for discharge of highway stormwater into the Town of Islip recharge basin and expanding the capacity of said recharge basin at this location, the Suffolk County Department of Public Works will maintain this recharge basin; and

**WHEREAS**, the County of Suffolk will progress this project through Capital Program Number 5539, which is funded via Suffolk County Resolution No. 706-2011; and

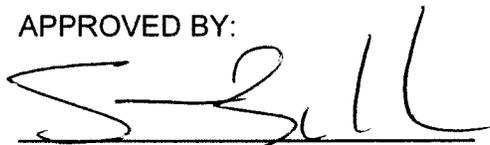
**WHEREAS**, it is in the best interests of the County of Suffolk and the Town of Islip to share resources in order to alleviate flooding on CR 7, Wicks Road in the Town of Islip; now, therefore be it

**1<sup>st</sup>** **RESOLVED**, that pursuant to New York General Municipal Law, §119-o, the County Executive or his designee is authorized to enter into an intermunicipal agreement with the Town of Islip that will allow the Suffolk County Department of Public Works to install drainage pipe for the purpose of discharging highway stormwater into a Town of Islip recharge basin at CR 7, Wicks Road and Williams Street in exchange for the Suffolk County Department of Public Works maintaining and expanding this recharge basin; and be it further

**2<sup>nd</sup>** **RESOLVED**, that this Legislature, being the lead agency under the State Environmental Quality Review Act (SEQRA), Environmental Conservation Law Article 8, hereby finds and determines that this law constitutes a Type II action, pursuant to Section 617.5 (C) (20) and (27) of Title 6 of New York Code of Rules and Regulations ("NYCRR"), in that the resolution pertains to routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment; since this resolution is a Type II action, the Legislature has no further responsibilities under SEQRA.

DATED: AUG 07 2012

APPROVED BY:

  
County Executive of Suffolk County

Date: 8-16-2012

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**INTERMUNICIPAL AGREEMENT**

**This Agreement ("Agreement")** made between the **County of Suffolk ("County")**, a municipal corporation of the State of New York, having its principal offices at the County Center, Riverhead, New York 11901, acting through its duly constituted **Department of Public Works ("Department")**, located at 335 Yaphank Avenue, Yaphank, New York 11980 and the **Town of Islip ("Town")**, a municipal corporation of the State of New York, having its principal offices at 655 Main Street, Islip, NY 11751.

The parties hereto desire to enter into an intermunicipal agreement allowing Suffolk County to utilize the existing Town recharge basin property on the south side of Williams Street for the disposal of stormwater collected by a new Wicks Road drainage system, for the mutual benefit of residents of the County and the Town, as more fully set forth and described below.

- Term of Agreement:** Shall be as set forth in Exhibit A attached.
- Total Cost of Agreement:** Shall be at no cost to the Town unless as provided herein. The cost of the project shall be borne by the County as set forth in Exhibits A and D, as Capitol Project No. 5530
- Terms and Conditions:** Shall be as set forth in Exhibits A through D, attached.

**In Witness Whereof**, the parties hereto have executed this Agreement as of the latest date written below.

**TOWN OF ISLIP**

**COUNTY OF SUFFOLK**

By: \_\_\_\_\_  
Thomas D. Croci

By: \_\_\_\_\_  
Chief Deputy County Executive

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Hereby certifies under penalties of perjury that that I am an officer of the Town of Islip, that I have read and am familiar with sec. A5-7 of Article V of the Suffolk County code, and that the Town of Islip meets all requirements to qualify for exemption thereunder.

Name \_\_\_\_\_  
Date \_\_\_\_\_

**Approved as to Legality:**  
**Dennis Cohen**  
**Suffolk County Attorney**

**Approved:**  
**Department of Public Works**

By: \_\_\_\_\_  
Thomas C. Young  
Assistant County Attorney

By: \_\_\_\_\_  
Gilbert Anderson, P.E.  
Commissioner

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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**Exhibit D**  
Map and Plan dated October 31, 2011

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**Exhibit A**  
**General Terms and Conditions**

**Whereas**, Williams Street in Brentwood, Town of Islip, New York 11751, is a dedicated road maintained by the Town of Islip and the Town is the owner in fee of property immediately adjacent to Williams Street which has facilities and is used as a Recharge Basin, with both more particularly shown on a map attached hereto as Exhibit D, and hereinafter referred to as "Williams Street" and "Recharge Basin," respectively; and

**Whereas**, the County is the owner in fee of County Road 7, Wicks Road, a portion of which is located in Brentwood and runs adjacent to Williams Street, more particularly shown on a map attached hereto as Exhibit D, and said portion is hereinafter referred to as "Wicks Road"; and

**Whereas**, the County, through the Department, has requested permission to install drainage equipment and facilities along Williams Street with discharge to the Recharge Basin and expand the Recharge Basin, to assist in alleviating an existing drainage problem along Wicks Road for the benefit of the nearby residents and motorists; and

**Whereas**, the Town has agreed to the installation of such drainage equipment by the County for the term of this Agreement, in exchange for the reasonable maintenance of the Recharge Basin by the County, as well as the County making certain improvements, as set forth herein, to the Recharge Basin; and

**Whereas**, it is in the interests of the taxpayers of the County and the Town to combine efforts in the undertaking of important governmental services and functions that directly benefit nearby residents and motorists; and

**Whereas**, County Project No 5539 provides the monies for the work to be performed as specified in this Intermunicipal Agreement.

**Whereas**, pursuant to Suffolk County Resolution No. \_\_\_\_ - \_\_\_\_, the County is authorized to enter into this Agreement (See Exhibit B); and

**Whereas**, pursuant to Town of Islip Resolution No. \_\_\_\_ - \_\_\_\_, the Town of Islip is authorized to enter into this Agreement (See Exhibit C); and

**Whereas**, both the County and the Town desire to enter into this Agreement, in accordance with Section 119-o of the New York General Municipal Law.

**Now, Therefore**, the parties hereto agree as follows:

**1. Term of Agreement**

The term of this Agreement shall commence upon the last date of execution of this Agreement and remain in full force and effect for a period of five (5) years. At the

expiration of five years, and any extended five year term thereafter, the term may be extended as herein provided: The Department shall notify the Town, in writing, at least 30 days prior to the expiration date, either (a) that it requests, with the approval of the Town, that the term of the Agreement be extended for an additional five (5) years, or (b) that it intends not to extend the Agreement, in which case the Agreement shall expire. If the Department fails to notify the Town as herein provided, it shall be deemed that the Department intends to extend the term of this Agreement.

## **2. Consideration**

In consideration of the Town allowing the County to install drainage equipment and facilities within Williams Street and diverting runoff to the Recharge Basin, the County agrees to reasonably maintain the Recharge Basin, and make certain improvements to the Recharge Basin in accordance with the site map, construction plan and specifications set forth in Exhibit D attached hereto and made a part hereof. It is expressly agreed by the parties that the terms of this Agreement will be at no cost to the Town except as provided herein.

## **3. Project and Compliance**

### **County Obligations**

The County shall furnish to the Town all information required, and obtain any and all permits that permit the County, or its contractor, to install all necessary drainage equipment and facilities that run from Wicks Road along Williams Street to, and discharging into, the Recharge Basin.

The County shall assume all reasonable maintenance of the Recharge Basin for the term of this Agreement upon the completion of the installation of the drainage equipment and facilities. Reasonable maintenance shall mean the removal of debris and silt within the Recharge Basin fence line, as needed, and maintenance of the drainage pipes and structures installed by the County.

The County shall make certain improvements to the Recharge Basin, as more fully described and in accordance with the site map and construction plan dated October 31, 2011, which is attached hereto and incorporated into this Agreement as Exhibit D.

The County shall, upon review and approval of hydraulic calculations prepared by the Town or its agents, allow the Town to connect existing or future drainage facilities to the proposed drainage system that will discharge to the Williams Street Recharge Basin. These calculations shall clearly indicate that stormwater flows contributed by any additional drainage facilities into the Williams Street/Wicks Road Drainage System do not exceed the hydraulic capacity of this system when subjected to a ten-year design storm event (five (5) inches over 24 hours). Any additional drainage facilities installed by the Town and connected to the Williams Street/Wicks Road Drainage System shall be maintained by and at the cost to the Town.

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### **Town Obligations**

The Town shall permit and allow the County to have unrestricted access to Williams Street to enable the County to install drainage equipment and facilities within Williams Street to be discharged into the Recharge Basin; and to enable the County to maintain such drainage equipment and facilities for the term of this Agreement. Nothing contained herein shall deny or restrict the Town's right to access to the Recharge Basin or limit the Town's ownership interest therein nor shall anything set forth in this agreement limit the Town's interest in or right of use of Williams Street.

The Town shall allow the drainage equipment and facilities installed within Williams Street, and the discharge of the runoff into the Recharge Basin, to remain and continue for the term of this Agreement, unless terminated pursuant to paragraph 5 below or as otherwise provided for in this agreement. Notwithstanding any provision of this agreement under no circumstance shall the County be required to remove any piping or structures installed by the County.

The Town shall not unreasonably withhold the issuance of any and all permits, licenses and other approvals, necessary for the County to install drainage equipment and facilities running from Wicks Road, along Williams Street, to the Recharge Basin and shall assist the County in obtaining any and all necessary permits, licenses and other approvals.

### **4. Insurance**

The County shall maintain in full force and effect, throughout the term of this Agreement: 1) General Liability Insurance with liability limits of TWO MILLION DOLLARS (\$2,000,000) per occurrence for bodily injury and TWO MILLION DOLLARS (\$2,000,000) per occurrence for property damage; 2) Automobile Bodily Injury and Property Damage Insurance with limits of TWO MILLION DOLLARS (\$2,000,000) per occurrence; 3) Contractor's Equipment Insurance in the amount of TWO MILLION DOLLARS (\$2,000,000); 4) Worker's Compensation and New York State Disability Insurance for all of its employees, agents and sub-contractors, in accordance with New York State Law. Since the County has a self-insurance program under which it acts as a self-insurer for all of the above-required coverage, the County shall provide self-funded coverage, declaration pages, and certificates or other evidence of such self-insurance in lieu of insurance issued by insurance companies, prior to the execution of this Agreement. Said certificate shall: 1) name the Town as additional insured by endorsement and on the declaration page; 2) provide for the Town as Certificate Holder; and 3) further provide that the Certificate Holder shall be notified thirty (30) days prior to any cancellation, nonrenewal or material change of action.

The Town shall maintain in full force and effect, throughout the term of this Agreement: 1)

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General Liability Insurance with liability limits of TWO MILLION DOLLARS (\$2,000,000) per occurrence; 2) Automobile Bodily Injury and Property Damage Insurance with limits of TWO MILLION DOLLARS (\$2,000,000) per occurrence for bodily injury and TWO MILLION DOLLARS (\$2,000,000) per occurrence for property damage; 3) Contractor's Equipment Insurance in the amount of TWO MILLION DOLLARS (\$2,000,000); 4) Worker's Compensation and New York State Disability Insurance for all of its employees, agents and sub-contractors, in accordance with New York State Law. The Town shall furnish to the County, prior to the execution of this agreement, declarations from each policy of insurance. If the Town has a self-insurance program under which it acts as a self-insurer for any or all of the above-required coverage, the Town shall provide self-funded coverage, declaration pages, and certificates or other evidence of such self-insurance in lieu of insurance issued by insurance companies, prior to the execution of this Agreement. Said certificate shall: 1) name the County as additional insured by endorsement and on the declaration page; 2) provide for the County as Certificate Holder; and 3) further provide that the Certificate Holder shall be notified thirty (30) days prior to any cancellation, non-renewal or material change of action.

## 5. Termination

This Agreement may be terminated in whole or in part in writing by the County or the Town, in the event of failure by the Town or the County to fulfill its obligations, respectively, under this Agreement. The County or the Town shall have the right to terminate this Agreement at any time and for any reason deemed to be in their best interest, provided that no such termination shall be effective unless the other party is given thirty (30) calendar days written notice of termination. Upon the giving of such notice by either party, the County shall promptly discontinue and cease and desist from performing any maintenance to the Recharge Basin, piping and structures installed by the County. Notwithstanding any provision of this agreement under no circumstance shall the County be required to remove any piping or structures installed by the County.

## 6. Notices and Contact Persons

### a. Operational Notices

Any communication, notice, claim for payment, report or other submission necessary or required to be made by the parties regarding this Agreement shall be in writing and shall be given to the County or the Town or their designated representative at the following address or at such other address that may be specified in writing by the parties and must be delivered as follows:

**For the Department:**

By Registered or Certified Mail in Postpaid Envelope or by Nationally Recognized Courier Service

William Hillman, P.E., Chief Engineer  
Department of Public Works  
335 Yaphank Avenue

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Yaphank, New York 11980

and

**For the Town of Islip:**

By Registered or Certified Mail in Postpaid Envelope or by Nationally Recognized Courier Service

Thomas Owens, Commissioner  
Department of Public Works  
Town Hall West  
401 Main Street  
Islip, NY 11751

**b. Notices Relating to Termination, Indemnification or Litigation**

Any communication or notice regarding termination or litigation shall be in writing and shall be given to the parties, or their designated representative, at the following addresses, or at such other addresses that may be specified in writing by the parties and must be delivered as follows:

**For the County:**

By Registered or Certified Mail in Postpaid Envelope or by Nationally Recognized Courier Service

Gilbert Anderson, P.E., Commissioner  
Department of Public Works  
335 Yaphank Avenue  
Yaphank, NY 11980

and

Dennis Cohen  
County Attorney  
Suffolk County Department of Law  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
Hauppauge, New York 11788

and

**For the Town of Islip:**

By Registered or Certified Mail in Postpaid Envelope or by Nationally Recognized Courier Service

Thomas Owens, Commissioner  
Department of Public Works

Town Hall West  
401 Main Street  
Islip, NY 11751

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and  
Robert L. Cicale  
Acting Town Attorney  
Town Hall  
655 Main Street  
Islip, NY 11751

### c. Changes in Contact Persons

Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contact person(s) or his or her designated successor(s).

Notices shall be deemed to have been duly given (i) if mailed by registered or certified mail, upon the seventh business day after the mailing thereof; or (ii) if by nationally recognized overnight courier service, upon the first business day subsequent to the transmittal thereof. "Business Day" shall be defined as any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County

### 7. Indemnification

The County agrees that it shall, to the greatest extent permitted by law, protect, indemnify and hold harmless the Town and its officers, employees, contractors, and agents from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts or omissions or the negligence of the County in connection with the services described or referred to in this Agreement. The County shall defend the Town, its officers, employees, contractors and agents, in any suit, including appeals, or at the Town's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of the County, in connection with the services described or referred to in this Agreement.

The Town agrees that it shall, to the greatest extent permitted by law, protect, indemnify and hold harmless the County and its officers, employees, contractors, and agents from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts or omissions or the negligence of the Town, in connection with the services described or referred to in this Agreement. The Town shall defend the County, its officers, employees, contractors and agents, in any suit, including appeals, or at the County's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of the Town, in connection with the services described or referred to in this Agreement.

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### **8. Independent Contractor**

It is expressly agreed that the status of the Town and the County hereunder are that of independent contractors. Neither the Town nor any person hired by the Town shall be considered an employee of the County for any purpose whatsoever. Likewise, neither the County nor any person hired by the County shall be considered an employee of the Town for any purpose whatsoever.

### **9. Assignment of Agreement**

Neither the Town nor the County shall assign, transfer, convey, sublet or otherwise dispose of this Agreement, or any of its right, title or interest therein, or its power to execute this Agreement, or assign all or any portion of its obligations under the terms of this Agreement, to any other person or corporation, without the prior consent in writing, and any attempt to do any of the foregoing without such consent shall be of no effect.

### **10. Severability**

It is expressly agreed that if any term or provision of this Agreement and any amendment hereto, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Agreement and any amendment hereto, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Agreement and any amendment hereto shall be valid and shall be enforced to the fullest extent permitted by law.

### **11. Entire Agreement**

It is expressly agreed that this instrument represents the entire agreement of the parties and that all previous understandings are merged in this Agreement.

### **12. Modification of Agreement**

No modification of this Agreement shall be valid unless written in the form of an Addendum or Amendment signed by both parties.

### **13. Disclaimer**

This Agreement shall not be construed to inure to the benefit of third parties.

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#### **14. Authority**

This Agreement is subject to the adoption of a resolution by the Legislature of the County authorizing the County to enter into this Agreement, and subject to the adoption of a resolution by the Town Board of the Town authorizing the Town to enter into this agreement, and said resolutions are included in and made part of Exhibit "B" and "C," respectively.

#### **15. Gratuities**

The Town represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York State or of any political party, with the purpose or intent of securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement, and that the signer of this Agreement has read and is familiar with and in compliance with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

#### **16. Living Wage**

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

**End of text for Exhibit A**

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**Exhibit B**  
**Suffolk County Resolution**





SUFFOLK COUNTY  
County Legislature  
RIVERHEAD, NY



*This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on August 7, 2012 and that the same is a true and correct transcript of said resolution and of the whole thereof.*

*In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.*

*Tim Laube*

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Clerk of the Legislature

Intro. Res. 1646

Res. No. 661

August 7, 2012

**Motion:**  
 Romaine, Schneiderman, Browning, Muratore, Anker  
 Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

**Co-Sponsors:**  
 Romaine, Schneiderman, Browning, Muratore, Anker  
 Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

**Second:**  
 Romaine, Schneiderman, Browning, Muratore, Anker  
 Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

| LD | Legislator               | Yes | No | Abs | NP | R |
|----|--------------------------|-----|----|-----|----|---|
| 1  | Edward P. ROMAINE        |     |    |     |    |   |
| 2  | Jay H. SCHNEIDERMAN      |     |    |     |    |   |
| 3  | Kate M. BROWNING         |     |    |     | /  |   |
| 4  | Thomas MURATORE          |     |    |     |    |   |
| 5  | Kara HAHN                |     |    |     |    |   |
| 6  | Sarah S. ANKER           |     |    |     |    |   |
| 7  | Rob CALARCO              |     |    |     |    |   |
| 9  | Ricardo MONTANO          |     |    |     |    |   |
| 10 | Thomas CILMI             |     |    |     |    |   |
| 11 | Thomas F. BARRAGA        |     |    |     |    |   |
| 12 | John M. KENNEDY, JR.     |     |    |     |    |   |
| 13 | Lynne C. NOWICK          |     |    |     |    |   |
| 15 | DuWayne GREGORY          |     |    |     |    |   |
| 16 | Steven H. STERN          |     |    |     |    |   |
| 17 | Lou D'AMARO              |     |    |     |    |   |
| 18 | William SPENCER          |     |    |     |    |   |
| 14 | Wayne R. HORSLEY, D.P.O. |     |    |     |    |   |
| 8  | William J. LINDSAY, P.O. |     |    |     | /  |   |
|    | Totals                   | 16  | —  | 2   | —  | — |

**MOTION**

Approve  
 Table: \_\_\_\_\_  
 Send To Committee  
 Table Subject To Call  
 Lay On The Table  
 Discharge  
 Take Out of Order  
 Reconsider  
 Waive Rule \_\_\_\_\_  
 Override Veto  
 Close  
 Recess

APPROVED  FAILED \_\_\_\_\_  
 No Motion \_\_\_\_\_ No Second \_\_\_\_\_

**RESOLUTION DECLARED**

ADOPTED  
 NOT ADOPTED

*Tim Laube*

Roll Call \_\_\_\_\_ Voice Vote

Tim Laube, Clerk of the Legislature