



**THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK**

Date: November 17, 2021

Sponsored by Council Members: Scaringi, Riley, Friedman, Burns, Strawn, Scanlon, Resciniti

Introduced by Committee: MPA

RESOLUTION

entitled

A RESOLUTION AUTHORIZING THE MAYOR
TO ENTER INTO A LEASE AGREEMENT WITH
THE CITY OF BINGHAMTON WATER STREET
DEVELOPMENT CORPORATION FOR THE
NEW WATER STREET PARKING GARAGE

WHEREAS, the City of Binghamton wishes to enter into a lease agreement with the City of Binghamton Water Street Development Corporation for the proposed Water Street Parking Garage to be constructed at 183 Water Street, Binghamton, New York, Tax Parcel No. 160.40-2-3 (the "Premises"); and

WHEREAS, the terms of the proposed lease agreement are attached hereto.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby:

RESOLVE that the Mayor of the City of Binghamton, or his designee, is hereby authorized to enter into a lease agreement, approved as to form and content by the Office of Corporation Counsel, with the City of Binghamton Water Street Development Corporation for the Water Street Parking Garage to be constructed on the Premises.

I HEREBY CERTIFY that the above described funds
are unencumbered and available

Chuck Shager, Comptroller

Introductory No. R21-92

Permanent No. R21-92

Sponsored by City Council Members:
Scaringi, Riley, Friedman, Burns, Strawn, Scanlon,
Resciniti

A RESOLUTION AUTHORIZING THE MAYOR TO
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CITY OF BINGHAMTON WATER STREET
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WATER STREET PARKING GARAGE

The within Ordinance was adopted by the Council of
the City of Binghamton.

Date 11/17/21

City Clerk Michelle L. Mesera

Date Presented to Mayor

Date Approved 11/18/21

Mayor [Signature]

	Ayes	Nays	Abstain	Absent
Councilman Scaringi	✓			
Councilwoman Riley		✓		
Councilwoman Friedman				
Councilman Burns	✓			
Councilman Strawn	✓			
Councilman Scanlon	✓			
Councilwoman Resciniti	✓			
Total	5	2	0	0

Code of the City of Binghamton

Adopted Defeated

5 Ayes 2 Nays 0 Abstain 0 Absent

I hereby certify the above to be a true
copy of the legislation adopted by the
Council of the City of Binghamton at a
meeting held on 11/17/21. Approved
by the Mayor on 11/18/21.

[Signature]

CITY OF BINGHAMTON

AND

CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION

CONSTRUCTION AND LEASE AGREEMENT

DATED AS OF November __, 2021

CONSTRUCTION AND LEASE AGREEMENT

THIS CONSTRUCTION AND LEASE AGREEMENT (hereinafter the "Agreement"), dated as of the ___ day of November, 2021, by and between the CITY OF BINGHAMTON, a municipal corporation duly organized and validly existing under the laws of the State of New York, with offices at 38 Hawley St., Binghamton, New York 13901 (the "City") and the CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION, a public benefit local development corporation duly existing under the laws of the State of New York, with offices at 38 Hawley Street, Binghamton, New York 13901 (the "LDC").

WITNESSETH:

WHEREAS, the LDC is the contract vendee of certain real property located at 183 Water St., Binghamton, New York, Parcel ID # 160.40-2-3, consisting of approximately .90 acres, and the site of the former Water Street Parking Garage (the "Property"); and

WHEREAS, the City wishes to construct a five floor public parking garage with 549± parking spaces on the Property (the "Project"), with the potential for third party construction of 122 Apartments in the air space over the parking garage; and

WHEREAS, LDC wishes to lease the Property to the City; and

WHEREAS, during the term of the lease, the City will receive all income from the Project and be responsible for all costs and expenses associated with construction and operation of the Project, including the debt service on the bond to be paid either to the LDC or directly to the holder of the bond; and

WHEREAS, this Agreement was approved by the City of Binghamton by Resolution R21-XXX, dated, November __, 2021.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows:

1. GRANTING CLAUSE. The LDC hereby leases to the City, and the City hereby leases from LDC, a leasehold interest in the Property.
2. WARRANTY OF TITLE. To the best of its knowledge, the LDC has good and marketable title to the Property and forever warrants that, in the event of an adverse claim against any portion of the Property, the LDC shall diligently pursue removal of such claim.
3. CONSTRUCTION COSTS. The LDC agrees to pay for all construction cost of the Project. The City, in its discretion, may pay for any enhancements to the Project.

4. TERM. The term of the lease will be co-terminus with the useful life of the Project (the "Lease Term").

5. RENT and INCOME. The City will pay the LDC, for use and occupancy of the Property, rent in the amount of One Dollar (\$1.00) per year.

6. TAXES. N/A.

7. INCOME AND OPERATION OF THE PROJECT. The City will receive all income from the Project and be responsible for all costs and expenses associated with operation, maintenance, and repair of the Project, including, but not limited to, the debt service on the LDC bond, replacements, structural repairs, utilities, management fees, and insurance.

8. LEASE EXPIRATION AND TRANSFER. The parties agree that at the expiration of the Lease Term the LDC will transfer the Project and the Property to the City in its "AS IS" condition for one dollar (\$1.00).

9. HOLD HARMLESS AND INSURANCE. During the Lease Term, the City hereby releases the LDC from, agrees that the LDC shall not be liable for, and agrees to indemnify, defend and hold the LDC and its executive director, directors, officers, members, employees, agents, and their personal representatives or respective successors and assigns, harmless from and against any and all (i) liability for loss or damage to the Project/Property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project/Property or arising by reason of, or in connection with, the occupation or the use thereof or the presence on, in or about the Project/Property or as a result of a breach by the City of its representations or agreements contained herein or in this Agreement, or (ii) liability arising from or expense incurred by the City's financing, construction, equipping, owning and leasing of the Project including, without limiting the generality of the foregoing, all causes of action and attorney fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, with the City having the right to control the defense of any such claims or actions. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the LDC, or its executive director, directors, officers, members, employees, agents, and their personal representatives or respective successors and assigns and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to any willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law.

During construction of the Project, the parties shall require the developer and/or contractor to provide liability, builders' risk, workers' compensation insurance and such other insurance as may be advisable naming the LDC and City as additional insureds on a primary non-contributory basis, as applicable.

10. CONTINUITY OF INTERESTS. It is hereby acknowledged that the LDC and City have a continuity of interest in that the LDC consists of the Directors appointed by the

Mayor of the City of Binghamton and City Council. The parties herein waive any conflict of interest.

11. NOTICES. All notices, demands or communications required to be given under this Agreement shall be by personal service.

To the LDC: Chairman, City of Binghamton Water Street Development Corporation
City of Binghamton
38 Hawley St.
Binghamton, 13901

To the City: Pres. City Council
Binghamton City Council
City of Binghamton
38 Hawley St.
Binghamton, 13901

With a copy to: Corporation Counsel
City of Binghamton
38 Hawley St.
Binghamton, 13901

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section.

12. NO RECOURSE; SPECIAL OBLIGATION.

The obligations and agreements of the LDC and the City contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the LDC and the City, and not of any director, officer, member, manager, employee, agent or their personal representatives or respective successors and assigns of the LDC or the City in his/her individual capacity, and the directors, officers, members, managers, employees, agents or their personal representatives or respective successors and assigns of the LDC or the City shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

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IN WITNESS WHEREOF, the City and the LDC have caused this Construction and Lease Agreement to be executed in their respective names, all as of the date first above written.

CITY OF BINGHAMTON

By: _____ Date: _____
Name: Richard C. David, Mayor

CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION

By: _____ Date: _____
Name: _____, Chairman