



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

Date: September 6, 2023

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

Introduced by Committee: PW/Parks

**RESOLUTION**

*entitled*

A RESOLUTION AUTHORIZING THE MAYOR  
TO ENTER INTO A PRESERVATION  
COVENANT WITH NYS OFFICE OF PARKS,  
RECREATION AND HISTORIC  
PRESERVATION FOR THE RESTORATION  
AND RELOCATION OF THE ROSS PARK  
CAROUSEL

WHEREAS, the Mayor of the City of Binghamton wishes to enter into a preservation covenant with the NYS Office of Parks, Recreation and Historic Preservation for the completion of work related to the Ross Park Carousel Restoration and Relocation Project; and

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 an agreement, approved as to form and content by the Office of Corporation Counsel, with the NYS Office of Parks, Recreation and Historic Preservation for the completion of the Ross Park Carousel Restoration and Relocation Project as set forth in the agreement attached hereto.

Introductory No. R23-71

Permanent No. R23-70

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

A RESOLUTION AUTHORIZING THE MAYOR TO  
ENTER INTO A PRESERVATION COVENANT  
WITH NYS OFFICE OF PARKS, RECREATION  
AND HISTORIC PRESERVATION FOR THE  
RESTORATION AND RELOCATION OF THE  
ROSS PARK CAROUSEL

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

Date 9/6/23

Jain Faulkner  
City Clerk

Date Presented to Mayor  
9/7/23

Date Approved  
J M M

Mayor

	Ayes	Nays	Abstain	Absent
Councilwoman Resciniti	✓			
Councilwoman Riley	✓			
Councilwoman Friedman	✓			
Councilman Burns	✓			
Councilman Strawn	✓			
Councilman Scanlon	✓			
Councilman Scaringi	✓			
<b>Total</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>0</b>

Code of the City of Binghamton

Adopted  Defeated

7 Ayes 0 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 9/6/23. Approved by the Mayor on 9/7/23 JM

**NYS Office of Parks, Recreation and Historic Preservation  
Environmental Protection Fund  
City of Binghamton Ross Park Historic Carousel Restoration and Relocation  
PRK01-C52710GG-1290000  
EPF-HP-#152710**

PRESERVATION COVENANT

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **City of Binghamton** (hereinafter referred to as the "CONTRACTOR" or "GRANTOR") with offices at **38 Hawley Street Binghamton, New York 13905** and **THE PEOPLE OF THE STATE OF NEW YORK**, acting by and through their Commissioner of Parks, Recreation and Historic Preservation (hereinafter referred to as the "STATE" or "GRANTEE") having an address at **Albany, New York 12238** (For USPS Mail) with offices at **625 Broadway, Albany, New York 12207** (For Physical Delivery).

WITNESSETH:

WHEREAS, pursuant to the Environmental Protection Act, Title 9 of Article 54 of the Environmental Conservation Law, the STATE administers a program providing grants to municipalities and not-for-profit corporations to restore and develop historic properties which are <<eligible OR listed>> on the National or State Registers of Historic Places; and

WHEREAS, the CONTRACTOR has title to certain historic real property along with the improvements located thereon, which is more particularly described in a deed from **Erastus and Amelia Ross** to the CONTRACTOR dated July 8, 1875, and recorded on August 16, 1875 in the **Broome** County Clerk's Office, in Liber **98** of Deeds at Page **383**, and more particularly described in **Exhibit A attached here and made a part hereof**, referred to as the HISTORIC PROPERTY; and

WHEREAS, the CONTRACTOR has been awarded **\$500,000** for the **restoration and relocation of the Ross Park Carousel**, with an address at **60 Morgan Road Binghamton, NY 13903**, such award being conditioned on the satisfaction of certain duties and obligations.

NOW, THEREFORE, in consideration of the receipt of the State funds mentioned above, the CONTRACTOR does hereby covenant and agree to the following restrictions in relation to the HISTORIC PROPERTY.

1. Scope of Covenant. This restriction shall be binding on the CONTRACTOR in relation to the interior and exterior of the structures on the HISTORIC PROPERTY as well as the grounds thereof, hereinafter referred to as the SUBJECT PROPERTY.
2. Covenant Running with the Land. This restriction constitutes a covenant running with the land, and all successive future owners shall have the same obligations as the CONTRACTOR for as long as the restriction is in effect.
3. Purpose. The purpose of this restriction is to maintain the SUBJECT PROPERTY to secure the preservation of a historic resource and to ensure that a public benefit is derived from the expenditure of public funds.
4. Public Access. The CONTRACTOR agrees to permit the public to have access to the SUBJECT

PROPERTY as follows: During Open Hours of Ross Park Zoo. If applicable the CONTRACTOR shall submit verification of such access to the STATE.

5. Term of Restriction. This restriction shall be binding upon the CONTRACTOR for 25 years from the date of the recording of this instrument.

6. Maintenance Required. The SUBJECT PROPERTY shall be kept and maintained in reasonably good order, condition and repair and in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995, The Secretary of the Interior's Standards and Guidelines for Archeological Documentation, The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes or any other applicable Secretary of the Interior's Standards (collectively referenced as "STANDARDS").

7. Alterations to SUBJECT PROPERTY.

(a) Before plans for any proposed construction, alteration or demolition affecting the SUBJECT PROPERTY are finalized, the CONTRACTOR will provide such information to the STATE as will reasonably inform the STATE as to the work to be performed, the scope of the work, details of the treatment and materials and application, along with any other documentation requested by the STATE that is reasonably needed to define the nature and character of the work to be performed and the anticipated period of time in which the work is estimated to be completed. The provisions of this paragraph shall not apply if the changes are clearly of a minor nature and not affecting architectural, archeological or historic values of the SUBJECT PROPERTY.

(b) Secretary of the Interior's Standards. No alteration work affecting the SUBJECT PROPERTY shall commence until the CONTRACTOR has received written certification from the STATE that all work is anticipated to be in substantial conformance with the STANDARDS.

8. Damage or Destruction to SUBJECT PROPERTY.

(a) As early as practicable after damage or destruction to the SUBJECT PROPERTY, whether caused by the CONTRACTOR or through a cause beyond the CONTRACTOR'S control, the CONTRACTOR will notify the STATE in writing of such damage or destruction. The notice will include (1) an assessment of the nature and extent of the damage; (2) an estimate of the restoration/reconstruction work necessary to return the SUBJECT PROPERTY to the condition existing at the time of completion of the State-funded work, along with any plans and specifications prepared for the work required; and (3) a description of any emergency work already completed. The CONTRACTOR shall restore/reconstruct the SUBJECT PROPERTY according to paragraph seven of this agreement, if in the opinion of the STATE the purpose and intent of this restriction will thereby be served. In no case will the required cost of any restoration/reconstruction be more than the amount of State funds expended on the SUBJECT PROPERTY.

(b) If the STATE has determined that it is not feasible to restore/reconstruct the SUBJECT PROPERTY, and the SUBJECT PROPERTY has been so damaged that the qualities that resulted in its being listed on the National or State Registers of Historic Places have been lost, the STATE will take steps to remove the SUBJECT PROPERTY from the National or State Registers. If the SUBJECT PROPERTY is removed, the STATE will notify the CONTRACTOR in writing that the restriction is null and void.

(c) If destruction is determined to be due to a deliberate act of the CONTRACTOR or caused by the gross negligence of the CONTRACTOR, the CONTRACTOR may be required to repay to the STATE an amount equal to one and one-half times the State funds expended on the SUBJECT PROPERTY.

9. Violations. In the event of a violation of any provision of this covenant the STATE may, at its option, and following reasonable notice to the CONTRACTOR, exercise any or all of the following remedies:

(a) declare the grant forfeited and demand the return of all funds disbursed under the grant agreement.

(b) declare the grant forfeited and demand the return of all funds disbursed under the grant agreement plus a penalty equal to 1/2 of the amount of the grant.

(c) enter the SUBJECT PROPERTY, correct any violation of the terms of this covenant, restore the SUBJECT PROPERTY to its prior condition, and hold the owner or any successor in interest responsible for the cost thereof.

(d) institute suit to enjoin such violations and, if appropriate, require the restoration of the SUBJECT PROPERTY to its prior condition.

In addition to the remedies set forth above, the STATE shall have all legal and equitable remedies to enforce the CONTRACTOR'S obligations under this agreement, and in the event the CONTRACTOR or any successor in interest is found to have violated such obligations, the CONTRACTOR or such successor shall reimburse the STATE for any costs and expenses incurred in connection with the enforcement of this agreement, including court costs and attorney's fees.

10. CONTRACTOR'S Rights to Use. Except as provided in paragraph four of this agreement, nothing in this covenant shall be construed to convey to the public a right of access or use of the property and the CONTRACTOR, its heirs, successors and assigns shall retain the exclusive right to such access and use.

11. Amendment. This covenant may also be modified in accordance with the common and statutory laws of the State of New York applicable to the modification of covenants running with the land. To this end, GRANTOR and the GRANTEE shall mutually have the right, in their sole discretion, to agree to amendments to this covenant.

12. Waivers. A waiver of any breach of any covenant, term, condition or limitation of this agreement shall not constitute a waiver of any other or any later breach of any covenant, term, condition or limitation, nor shall it otherwise prevent the enforcement of such breach.

13. Severability. The parties to this agreement agree that all covenants, easements and restrictions in this agreement shall be severable, and that should any covenant, easement or restriction in this agreement be declared invalid or unenforceable, the remaining covenants, easements and restrictions shall not terminate.

14. Binding Upon Successors. The foregoing representations, covenants, terms and conditions are expressly understood as being binding upon the CONTRACTOR, all heirs, executors, administrators, assigns and successors of the CONTRACTOR and all other persons whatsoever, real or artificial, having or claiming any interest in the SUBJECT PROPERTY and, together with this paragraph, shall be inserted in all instruments which dispose of any interest in the SUBJECT PROPERTY, but whether or not so inserted, shall be deemed by all persons to have been inserted.

15. Recording of Covenant. The STATE shall record this instrument in the County Clerk's Office and shall provide the CONTRACTOR with proof of such recording.

16. The CONTRACTOR shall not sell, lease or otherwise convey the SUBJECT PROPERTY, in whole or in part, unless it shall have first received the written approval of the STATE.

IN WITNESS WHEREOF, the CONTRACTOR and the STATE have hereunto set their hands the day and year first above written.

**City of Binghamton**

Signed \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**The People of the State of New York through the Commissioner of Parks, Recreation and Historic Preservation**

By: \_\_\_\_\_

Roger Daniel Mackay

Its: Deputy Commissioner for Historic Preservation

Whenever the CONTRACTOR does not have clear title to the property, all persons having or claiming interest in the property, including but not limited to joint owners and mortgagees, must execute this agreement. Additional pages may be affixed as necessary, including additional acknowledgement blocks.

Signed \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Signed \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

**City of Binghamton**

STATE OF NEW YORK )

) SS.:

County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public, State of New York

**The People of the State of New York through the Commissioner of Parks, Recreation and Historic Preservation**

STATE OF NEW YORK )

) SS.:

County of Rensselaer )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared **Roger Daniel Mackay**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public, State of New York

**Additional Interested Party**

STATE OF NEW YORK )

) SS.:

County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public, State of New York

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Exhibit A

Ross Park Boundary Map  
EPF Project #228772 Ross Park Trail

