RESOLUTION NO. 1546

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE A BARN FACILITY USE AGREEMENT BETWEEN THE CITY OF FIFE AND THE FIFE HISTORICAL SOCIETY REGARDING OPERATION OF THE DACCA BARN

WHEREAS, on April 9, 2003, the City and the Historical Society entered into a Facilities Use Agreement ("2003 Agreement") for the construction, operation and funding of a Fife History Museum at the former residential structure owned by the City located at 2820 54th Avenue East, Fife, Pierce County, Washington, and

WHEREAS, since the execution of the 2003 Agreement, the Historical Society has completed the renovation of the barn structure on the property into a community amenity available for public and private use and rental; and

WHEREAS, operation and use of the barn structure was not addressed in the 2003 Agreement, and the parties wish to enter into a separate Barn Facility Use Agreement to govern the parties' respective rights and responsibilities regarding the barn structure located at 2820 54th Avenue East, Fife, Pierce County, Washington; and

WHEREAS, the City and the Historical Society have negotiated the attached Barn Facility Use Agreement to provide for the operation and management of the Dacca Barn; now, therefore

BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute on behalf of the City, the City of Fife and Fife Historical Society Barn Facility Use Agreement attached hereto as Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 26th day of March, 2013.

Robert D. Cerqui, Mayor

Attest:

for Carol Etgen, City Clerk

CITY OF FIFE AND FIFE HISTORICAL SOCIETY
BARN FACILITY USE AGREEMENT

1. Date and Parties.

This Agreement is dated for reference purposes the 1st day of April, 2013, and is entered into by the Fife Historical Society, a Washington non-profit corporation ("Historical Society"), and the City of Fife, a Washington municipal corporation ("City").

2. General Recitals.

2.1 On April 9, 2003, the City and the Historical Society entered into a Facilities Use Agreement ("2003 Agreement") for the construction, operation and funding of a Fife History Museum at the former residential structure owned by the City located at 2820 54th Avenue East, Fife, Pierce County, Washington.

2.2 Since the execution of the 2003 Agreement, the Historical Society has completed the renovation of the barn structure on the property into a community amenity available for public and private use and rental.

2.3 Operation and use of the barn structure was not addressed in the 2003 Agreement. The parties wish to enter into this Barn Facilities Use Agreement to govern the parties' respective rights and responsibilities regarding the barn structure located at 2820 54th Avenue East, Fife, Pierce County, Washington.

3. Facility Location.

The facility that is subject to this Agreement is located on the property identified as 2820 54th Avenue East, Fife, Pierce County, Washington, and legally described in Exhibit 1 attached hereto ("Dacca Property"), and consists of the renovated barn structure and adjoining patio area ("Dacca Barn" or "Barn").

4. Facilities Ownership.

The Dacca Barn is owned by the City of Fife. Entering into this Agreement shall not affect that ownership. All improvements to the Dacca Barn and surrounding grounds shall be and remain the City's property, regardless of the source of funds.

5. Property Improvements.

The Historical Society shall obtain the City's written consent before making any improvements to the Dacca Barn, which consent will not be unreasonably withheld. If such consent is given, no work shall be done without first obtaining a building permit from the City (for work that

requires a building permit) and all other applicable permits. The City shall apply for and obtain all required City permits. The Historical Society will work with the City Manager or designee to make sure all information, plans, and documentation necessary to process the applications are timely submitted. The City will waive the permit fees for any required City permits.

6. Maintenance.

The Historical Society shall, at its own cost, be responsible for the maintenance of the interior of the Barn, including the maintenance of the HVAC, plumbing, and electrical systems. The City shall be responsible for maintenance of the grounds around the Barn, including sidewalk, patio and walkway maintenance and repair, and maintenance of the Barn exterior, including roof maintenance and repair. Maintenance by the Historical Society of the Barn shall include: (1) ensuring that the barn interior, restrooms, kitchen and other building amenities are kept in clean, safe, and sanitary working condition; (2) that all food is properly stored, food waste properly disposed of, and all food preparation and food service areas are cleaned immediately after any event; and (3) that the barn is in clean, safe, and sanitary condition prior to each scheduled use. The City shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description, whatsoever, to the Barn except as provided herein.

7. Funding.

The Historical Society shall be responsible for providing its own revenue and obtaining its own funding necessary to perform its duties and obligations under this Agreement. Given that the Dacca Barn is a tourism-related facility, the Historical Society is encouraged to apply to the City annually for use of lodging tax revenues under Chapter 67.28 RCW. However, the City does not by this Agreement guarantee any funding to the Historical Society, nor does this Agreement in any way restrict the Historical Society from soliciting or accepting from any other person or legal entity contributions, gifts, services or mitigation money as allowed by law.

8. Three Year Plan.

On or before September 1, 2013, the Historical Society shall submit to the City for approval, a three year improvement plan that sets forth a proposed schedule of improvements for the Barn for the ensuing three calendar years, the estimated cost of each proposed improvement, and a plan for funding each proposed improvement that clearly identifies sources of funds for such improvements. The initial three year plan shall include provisions for utilizing the Historical Society's current reserves as attributed to Lodging Tax allocation from the City. The Historical Society shall provide to the City for approval a revised and extended three year plan before July 1st of each year. No improvements shall be approved by the City under paragraph 5 above, unless included in an approved three-year improvement plan. The three year plan may be combined with the three year plan required under the City of Fife and Fife Historical Society Facilities Use Agreement dated April 1, 2013.

9. Maintaining Tax Exempt Status

The Historical Society, at all times during the Agreement Term, shall maintain, in good standing, its certification by the U.S. Internal Revenue Service that the Historical Society is an Internal Revenue Code Section 501(c)(3) not for profit organization, and its exemption with Washington State Department of Revenue as an artistic or cultural organization and maintain such certification and exemption for the remainder of the Agreement Term.

10. Agreement Term.

Subject to the termination provisions in Section 17, the Agreement Term shall commence on the first day of April, 2013, and end on the 31st day of December, 2015. It may be renewed for additional three year terms upon written consent of both parties within the three months prior to the expiration of the then-current term or for such additional terms as may be agreed upon by written consent.

11. Use of Dacca Barn.

11.1 The Dacca Barn shall be made available for use by the public on a reservation basis.

11.2 The Historical Society shall be responsible for all scheduling and booking of the Dacca Barn.

11.3 The Historical Society shall establish and implement a reasonable fee schedule for use of the Dacca Barn to generate monies to support the Historical Society's primary mission (as set forth in Exhibit 2 attached hereto), and may require a reasonable damage deposit and other conditions from users. The fee schedule shall be subject to the approval of the City Manager or his/her designee.

11.4 Persons or entities reserving the Dacca Barn shall sign a rental agreement, on a form approved by the City Manager or his/her designee. The rental agreement shall include a waiver of liability and hold harmless in favor of the City and Historical Society. If use shall exceed 75 persons, or if alcoholic beverages will be served, proof of liability insurance (including an endorsement for liquor liability if alcoholic beverages are to be served) shall be required.

11.5 The Historical Society shall develop reasonable rules and regulations for Dacca Barn use, subject to the approval of the City Manager or his/her designee.

12. Dacca Barn Security.

12.1 The Historical Society shall ensure that all doors, windows, and gates giving access to the Dacca Barn are secured when the Dacca Barn is not in use, and shall provide the City with keys for the Dacca Barn.

12.2 In addition to other obligations of the City under the Agreement, the City shall provide and maintain a security alarm system and a wi-fi connection for the Dacca Barn.

13. Dacca Barn Promotion and Advertising.

The Historical Society may market and advertise the Dacca Barn in conjunction with the Fife History Museum operations. All promotion and advertising materials for the Dacca Barn by the Historical Society shall require the approval of the City Manager or his/her designee.

14. Use of Dacca Barn by the City.

The City shall have full use of the Dacca Barn for the Fife Harvest Festival each year, and shall have priority use of the Dacca Barn for the annual Easter Egg Hunt, Easter Egg Flashlight Hunt, Car Show, Fit in Fife, Mommy-Son Sports Day, and Movies in the Park, provided the City schedules the events with the Historical Society at least six months in advance. All other use by the City shall be on an as-available basis. All use of the Dacca Barn by the City shall be scheduled through the Historical Society. The City and Historical Society shall meet each November and May to schedule City events. The City shall be responsible for all setup for and cleanup after City use of the Dacca Barn. No fee shall be charged by the Historical Society for the City's use of the Dacca Barn.

15. Facilities Use Fee.

The services to be provided by the Historical Society under this Agreement provide a service to the City and to the City's residents. Accordingly, the good and faithful performance of those services shall be deemed adequate consideration for this Agreement. There shall be no fees charged by the City for the use of the Barn by the Historical Society. The Historical Society is responsible for paying for all utility service to the Barn including, but not limited to electrical, garbage, sanitary sewer, stormwater and domestic water service to the Barn during the Agreement Term.

16. Reporting Requirements.

The Historical Society shall provide written quarterly reports to the City Manager of actual Barn usage, including time and date of each usage, purpose of usage, number of people in attendance, and copies of rental agreements (if specifically requested). Prior to the end of the second quarter of each year, the Historical Society shall provide the City Council an annual report, including a statement of financial condition and a projected annual budget for the subsequent calendar year.

17. Termination.

17.1 In the event of material breach by the Historical Society of any of the obligations of Historical Society contained herein, including, but not limited to the Historical Society failing to

adequately provide the services required under the terms of this Agreement, the City may, at its option, terminate this Agreement by providing the Historical Society 90 days written notice of its intent to terminate.

17.2 In the event of material breach by the City of any of the obligations contained herein, the Historical Society retains any and all lawful and equitable remedies available under the law and at its option terminate this Agreement by providing the City 90 days written notice of its intent to terminate.

17.3 In the event the Historical Society is unable to obtain the funding necessary to perform its duties and obligations under this Agreement, the Historical Society may, at its option, terminate this Agreement by providing the City 90 days written notice of its intent to terminate.

18. Redelivery of Facilities.

At the expiration or sooner termination of this Agreement, the Historical Society shall peaceably and quietly quit and surrender to City the Barn in good order and condition, subject to the other provisions of this Agreement. Upon the termination of this Agreement, Historical Society shall execute such deeds or other instruments as may be required to convey any interest which it may have in the Barn. The Historical Society shall, prior to the effective date of termination of this Agreement, remove from the Barn all personal property owned by the Historical Society, except property that the City has agreed in writing to accept.

19. Abandonment of Buildings.

Historical Society shall not vacate or abandon the Barn at any time during the term hereof. If the Historical Society shall abandon, vacate or surrender the Barn, or be dispossessed by process of law, or otherwise, any personal property belonging to Historical Society left in the Barn shall also be deemed to be abandoned at the option of the City.

20. Insurance.

The Historical Society shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Historical Society's operation and use of the Dacca Barn. The Historical Society's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Historical Society to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

20.1 Minimum Scope and Amounts of Insurance. The Historical Society shall obtain insurance of the types described below:

a. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on the Historical Society's Commercial General Liability

insurance policy. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

b. Liquor Liability insurance in the amount of $1,000,000 each occurrence. The City is to be named as an additional insured on Liquor Liability insurance. Host liquor liability coverage may be substituted when alcohol is consumed and not sold on premises with the prior written approval of the City.

c. Property insurance shall be written on an all risk basis. Property insurance shall be written covering the full value of Historical Society's property and improvements with no coinsurance provisions.

20.2 Other Insurance Provisions. The Historical Society's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Historical Society's insurance and shall not contribute with it.

20.3 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

20.4 Verification of Coverage. The Historical Society shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Historical Society.

20.5 Waiver of Subrogation. The Historical Society and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

20.6 Notice of Cancellation. The Historical Society shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

20.7 Failure to Maintain Insurance. Failure on the part of the Historical Society to maintain the insurance as required shall constitute a material breach of the Agreement, upon which the City may, after giving five business days notice to the Historical Society to correct the breach, terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

21. Compliance with Laws.

The Historical Society shall comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Barn, the improvements thereon, or any activity or condition on or in the Barn.

22. Damage to and Destruction of Improvements.

The damage, destruction or partial destruction of any structure or other improvement which is a part of the Barn, shall not reduce or diminish Historical Society's obligations hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of any such structure or improvement, Historical Society shall, at its own expense, promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction. Without limiting such obligations of Historical Society, it is agreed that the proceeds of any insurance covering such damage or destruction shall be made available to Historical Society for such repair or replacement.

23. Historical Society's Duty to Keep Building Free of Liens.

Historical Society shall keep the Barn and the Dacca Property and every part thereof, free and clear of any and all mechanic's, materialmen's, and other liens for or arising out of or in connection with any work or construction, by, for or permitted by Historical Society on or about the Dacca Property, or any obligations of any kind incurred by Historical Society. The Historical Society shall at all times promptly and fully pay and discharge any and all claims on which any such lien may or could be based, and shall indemnify City and the Dacca Property against all such liens and claims or liens and suits or other proceedings pertaining thereto.

24. Indemnification of City

The Historical Society shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the Historical Society's use of the Dacca Barn, or from the conduct of the Historical Society's business, or from any activity, work or thing done, permitted, or suffered by the Historical Society in or about the premises, except such injury or damage as shall have been caused by the negligence, action, or conduct of the City and its representatives, agents, and assigns. In the event such injury or damage is caused by the concurrent negligence, action or conduct of the Historical Society and the City, the Historical Society's liability hereunder shall be only to the extent such injury or damage was caused by the negligence, action or conduct of the Historical Society.

25. Assignment/Subcontracting.

The Historical Society shall not assign or subcontract its right or the performance of any of its duties or responsibilities under this Agreement or any portion thereof without the City's prior

written consent. The City reserves the right to reject, without cause any such assignment or subcontract.

26. Independent Contractor.

The Historical Society is an independent contractor with respect to the services provided hereunder. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto, or between the City and any persons hired by the Historical Society to perform services required to be provided by the Historical Society hereunder. Neither shall this create an agency relationship. The Historical Society retains the right to determine the method and manner in which it fulfills its obligations set forth herein.

27. Notices.

27.1 All notices, demands or other writings in this Facilities Use Agreement provided to be given or made or sent, shall be deemed to have been fully given or made or sent, when made in writing and deposited in the United States Mail, certified and postage prepaid, mailed in Pierce County, Washington, and addressed as follows:

TO CITY:
City Manager
City of Fife
5411 23rd St. E.
Fife, WA 98424

TO HISTORICAL SOCIETY:
Fife Historical Society
2820 54th Avenue East
Fife, WA 98424

27.2 The address to which any notice, demand or other writing may be given or made or sent, as above provided, may be changed by written notice given by such party to the other party as above provided.

28. Nondiscrimination.

The Historical Society may not discriminate in providing use of the Dacca Barn, or in hiring or conditions of membership, directly or indirectly, on the basis of race, color, creed, religion, national origin, sex, age, or the presence of any sensory, mental, or physical handicap.

29. Political Activity Prohibited.

None of the funds, materials, property, or services provided directly or indirectly by the City shall be used for any political activity or to further the election or defeat of any candidate for public office.

CITY

HISTORICAL SOCIETY

30. Disputes.

Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

31. Attorneys Fees.

In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

32. Modification.

This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

33. Memorandum Recording.

The parties, by executing this Agreement, authorize the City Manager to record with the Pierce County Auditor's Office a document entitled Memorandum of Agreement which shall specify the Agreement's term and the name of the Parties hereto.

34. Signatory Authority.

The City Manager was authorized to execute this agreement on behalf of the City pursuant to the terms of Resolution No. 1546, passed by the Fife City Council on the 26th day of March, 2013. The Historical Society President and Secretary were authorized to execute this agreement on behalf of the Historical Society pursuant to the terms of Resolution No. 1546, passed by the Historical Society Board of Directors on the 3rd day of April, 2013.

CITY OF FIFE:

By:_____
David K. Zabell
City Manager

ATTEST:

By: _____
Carol Etgen, City Clerk

HISTORICAL SOCIETY:

By:_____
Louise Hospenthal, President

_____
Secretary

APPROVED AS TO FORM:

_____
Loren D. Combs, City Attorney

STATE OF WASHINGTON)
) ss.
County of Pierce)

I certify that I know or have satisfactory evidence that Louise Hospenthal and _____ are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath, stated that they were authorized to execute the instrument and acknowledged it as the President and Secretary of Fife Historical Society to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

_____
NOTARY PUBLIC
Print Name: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
County of Pierce)

I certify that I know or have satisfactory evidence that David K. Zabell is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Fife to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

_____
NOTARY PUBLIC
Print Name: _____
My appointment expires: _____

EXHIBIT 1

Legal Description

Parcel No. 0320128701

LOT 2 OF CITY OF FIFE SHORT PLAT NO. PLT99-00001 RECORDED APRIL 29, 1999 UNDER PIERCE COUNTY AUDITOR'S RECORDING NO. 9904295006.

CITY

HISTORICAL SOCIETY

EXHIBIT 2

The mission of the Fife Historical Society, pursuant to Article I, Section 2 of its Bylaws, is as follows:

A. GENERAL PURPOSES. To promote and encourage historical research; to acquire, by purchase, gift, devise, or otherwise, the title to, or custody and control of, historic spots and places; to operate and manage the Fife History Museum; to preserve and protect buildings and sites of historic interest; to collect and preserve records, relics, and other things of historic interest; to mark places of historic interest with suitable monuments and markers; to foster and promote public knowledge of and interest in local and national history.

B. ANCILLARY PURPOSES. To do everything necessary, proper, advisable or convenient for the accomplishment of the purposes hereinabove set forth, and to do all other things incidental to them or connected with them that are not forbidden by the Act, by other laws, or by these Articles of Incorporation.

C. LIMITED NON-PROFIT CORPORATE PURPOSES. This corporation is organized exclusively for charitable, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law.)