Ordinance No. 3852

(Amending or Repealing Ordinances)

CFN= 1305 – Kent Events Center
Passed – 8/7/2007
Public Facilities District Information
ORDINANCE NO. 3852

AN ORDINANCE of the City of Kent, Washington, providing for the creation, powers and governance of a public facilities district to provide for the design, construction, ownership, operation, and/or financing of a regional center, comprised of a multi-purpose arena for hockey and other public uses.

RECITALS

A. Chapter 35.57 RCW (the "City PFD Act") authorizes the City of Kent ("the City") to create a public facilities district coextensive with the boundaries of the City for the purposes, among others, of constructing, owning, operating and/or financing regional centers.

B. A regional center is defined in RCW 35.57.020 as a convention, conference, or special events center (consisting of facilities available to the public and used for community events, sporting events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations or performances) or any combination of such facilities, and related parking facilities, serving a regional population, constructed, improved or rehabilitated at a cost equal to or greater than $10,000,000, including debt service.

C. The City Council of the City of Kent has determined that it is in the best interest of the City and its citizens to provide for the design, construction, ownership, operation and/or financing of a regional center, for the sole purpose of pursuing the design, construction, ownership, operation, and/or financing of specifically, a special events center that includes a multi-purpose arena for hockey and other public uses, together with related parking facilities ("Special Events Center"), individually or in cooperation with other governmental and/or private entities as allowed by law, located within the City to provide needed public
facilities to serve a regional population and to serve local and regional business, community, family entertainment, youth, performance sport, recreation and athletic organizations, to promote economic development and to further the revitalization of business, financial and commercial interests within the City.

D. As authorized by the City PFD Act and RCW 82.14.390, and subject to certain restrictions, a public facilities district created by a City located in a county with a population greater than one million may create a public facilities district, when the city has a total population of less than 115,000 but greater than 80,000 and commences construction of a regional center prior to July 1, 2008, and such a public facilities district may impose solely for regional center purposes, a 0.033 percent sales and use tax that is deducted from the amount of the sales and use tax otherwise required to be collected and paid over to the Washington State Department of Revenue under Chapter 82.08 and 82.12 RCW.

E. According to the Washington State Office of Financial Management's population figures as of April 1, 2005, the population of the City of Kent is 84,920.

F. The City Council has determined that it is in the best interest of the City and its citizens to create a public facilities district to assist the City in the financing of a viable Special Events Center project and for the public facilities district board of directors to serve in an advisory capacity to the operations of a viable Special Events Center project located within the City of Kent, with the construction, ownership and operation of that Special Events Center to be carried out by the City of Kent on behalf of the City and the public facilities district.

THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Creation and Purpose Pursuant to Chapter 35.57 RCW (the "City PFD Act"), there is hereby created a public facilities district which shall be called the City of Kent Special Events Center Public Facilities District (the "District") coextensive with the boundaries of the City, as those boundaries are
changed from time to time, with the powers and authority set forth by law and
below. The District is established for the sole purpose of pursuing the design,
construction, ownership, operation and/or financing of a regional center comprised
of a Special Events Center, individually or in cooperation with any other
governmental and/or private entities as allowed by law.

As provided by RCW 35.57.010(4), the District is a municipal corporation,
an independent taxing "authority" within the meaning of Article VII, section 1 of
the state Constitution and a "taxing district" within the meaning of Article VII,
section 2 of the state Constitution.

SECTION 2. - Board of Directors. The Board of Directors (the "Board")
shall consist of five directors ("Directors"). The Directors of the Board shall be
selected and appointed by the City Council consistent with RCW 35.57.010(3)(a).
Of the initial Directors, for the purpose of determining the length of terms of the
initial members of the Board, the City Council shall designate by resolution which
initial member will be appointed for a one-year term, which will be appointed for a
two-year term, which will be appointed for a three-year term, and which have
been appointed for four-year terms. Thereafter, all Directors shall be appointed to
four-year terms of office.

SECTION 3. - Organizational Meeting. The District shall be deemed
established as of the date of the appointment of the initial Directors of the Board.
Within ten (10) days of such date the Mayor or her designee shall hold an
organizational meeting of the District's initial Board, giving at least three (3) days'
advance notice to each of the Directors, unless waived in writing. At such
meeting, the Board shall organize itself, may appoint officers, and shall select the
District's place of business. However failure to hold an organizational meeting
within the 10-day period set forth above shall not render a subsequent
organizational meeting invalid.

The Mayor, the Finance Director of the City and their designees are
authorized and directed to take any and all additional actions as may be necessary
or desirable to accomplish the organization of the District.

SECTION 4. - Organization. The District shall adopt and maintain rules of
procedure and governance of its activities through bylaws duly adopted by the
District Board. The power to alter, amend, or repeal the bylaws and adopt new bylaws shall be vested in the District Board, except the bylaws shall be consistent with this ordinance and the Interlocal Agreement entered into with the City.

SECTION 5. - Powers, Duties, and Limitations. For the purpose of providing for the design, construction, ownership, operation and/or financing of a Special Events Center, the District shall have the powers, duties, and limitations specified by the City PFD Act, RCW 82.14.390 and other applicable law, that are consistent with this ordinance and any interlocal agreement it enters into with the City. The Finance Director of the City shall serve as Treasurer of the District, pursuant to the interlocal agreement substantially in the form attached as Exhibit A and incorporated herein by reference, as such interlocal agreement may be amended from time to time (the "Interlocal Agreement"). It is the intention of the City that the primary role of the District shall be to assist in the financing of the Special Events Center and to serve in an advisory capacity in regards to the operation of the Special Events Center, and that the design, construction, ownership, and operation of the Special Events Center and any other regional center projects shall be carried out by the City, on behalf of the City and the District, pursuant to the Interlocal Agreement between the City and the District.

To assist in financing the design, acquisition, and construction of the Special Events Center, the District shall also have the authority to issue revenue bonds or general obligations bonds consistent with RCW 35.57.030, RCW 35.57.090 and other applicable provisions of state law, but only in such principal amounts as may be approved by the City. All such bonds and or liabilities of the District shall be satisfied exclusively from the assets, properties, credit, or services of the District unless the City expressly agrees to pay for or to guarantee such obligations pursuant to a financing and contingent loan agreement with respect to such obligations. Without prior approval by the City Council, the District shall not participate in or carry out the design, construction, ownership, operation and/or financing of any regional center or other facility other than a Special Events Center.

SECTION 6. - Interlocal Agreement. The City desires to facilitate the creation and operation of the District. Accordingly, the City Council approves the City’s execution of the Interlocal Agreement. The Mayor is authorized to execute
an agreement substantially in the form of Exhibit A, together with such other modifications as she deems consistent with the purposes of this ordinance.

SECTION 7. – Severability. If any section, sentence, clause, or phase of this ordinance should be held invalid or unconstitutional by a court of competent jurisdiction such invalidity or unconstitutionality shall not affect the validity of the constitutionality of any other section, sentence, clause, or phrase of this ordinance.

SECTION 8. – Effective Date of ordinance - Ratification of Prior Acts. This ordinance shall take effect and be in force from and after its passage and five days following its publication as required by law. Any action taken consistent with the authority of this ordinance, after its passage but prior to its effective date or the effective date of the formation of the District, is ratified, approved, and confirmed.

Suzette Cooke, Mayor

Brenda Jacober, City Clerk

Foster Pepper PLLC

APPROVED: 7 day of August, 2007.
I hereby certify that this is a true copy of Ordinance No. 3852 passed by the city council of the city of Kent, Washington, and approved by the mayor of the city of Kent as hereon indicated.

Brenda Jacobo (SEAL)
BRENDA JACOBER, CITY CLERK

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PUBLIC FACILITIES
DISTRICT FORMATION
EXHIBIT A

FORM OF INTERLOCAL AGREEMENT
INTERLOCAL AGREEMENT
FOR DEVELOPMENT OF SPECIAL EVENTS CENTER

This Interlocal Agreement ("Agreement") is entered into by and between the City of Kent, a city duly organized and existing under and by virtue of the laws of the state of Washington (the "City") and the Kent Special Events Center Public Facilities District, a municipal corporation duly organized and existing under and by virtue of the laws of the state of Washington, established by the City of Kent (the "District").

RECITALS

1. The City Council of the City (the "City Council"), by Ordinance No. _______, effective __________, 2007, established the District for City purposes, pursuant to Chapter 35.57 RCW, to assist in the design, construction, ownership, financing and operation of a regional center defined under RCW 35.57.020 (a "Regional Center"), specifically, as a multi-purpose arena for hockey and other public uses, together with related parking facilities (a "Special Events Center"); and

2. The City and the District have determined to proceed with the development of a Special Events Center to serve a regional population and to serve local and regional business, community, family entertainment, youth, performance sport, recreation and athletic organizations, to promote economic development and to further the revitalization of business, financial and commercial interests within the City; and

3. The District has imposed or will impose, under the authority of RCW 82.14.390, a Sales and Use Tax at the rate of 0.033 percent of the selling price or value of any article sold or used within the corporate limits of the District (which limits are coextensive with the boundaries of the City) to support the development of the Special Events Center; and

4. Money received by the District under the authority of RCW 82.14.390 must be used for the acquisition, financing, design, construction, operation and maintenance of a Regional Center and related parking facilities as defined by RCW 35.57.020 and must be matched with an amount, from other public or private sources, equal to 33 percent of the amount collected by the District under RCW 82.14.390; and

5. The City has previously retained consultants and a general contractor/construction manager to proceed with the design and construction of a Special Events Center to be located on City-owned property, and the City has also negotiated the terms of a long-term license agreement with Thunderbird Hockey Enterprises, LLC for the use of the Special Events Center for Western Hockey League games; and

6. The District desires to participate jointly with the City in the development of the Special Events Center, specifically, to provide financing for part of the cost of that facility; and

7. The City and the District have the authority to enter into interlocal agreements under chapter 39.34 RCW for joint and cooperative action, including provisions to finance joint or cooperative undertakings, multi-purpose community centers, regional centers and other facilities and to provide for services to be provided by one government to another; and
8. The City and the District have the authority, pursuant to applicable provisions of state law, including chapters 35.57 RCW and RCW 82.14.390, to jointly acquire, design, construct, own, remodel, maintain, equip, re-equip, repair, finance and operate a Regional Center, including related parking facilities; and these agencies propose to use one or more interlocal agreements to make effective and efficient use of the powers and authorities granted to them to construct, own and operate Regional Centers such as the Special Events Center to serve the City and adjacent regional areas; and

9. The District desires to make ongoing project payments to the City to contribute to the cost of the joint construction and operation of the Special Events Center, and alternatively the City may request that the District issue bonds or other obligations, payable from District taxes, to contribute to the cost of construction of the Special Events Center;

NOW, THEREFORE, the City and the District enter into this Agreement which outlines the responsibilities and commitments of each Party in the development of the Special Events Center:

A. DEFINITIONS

For the purposes of this Agreement, the terms defined in this Section shall have the following meanings:

Agreement is this Interlocal Agreement entered into among the City and the District under the authority of chapter 39.34 RCW for the development of the Special Events Center as a Regional Center.

City is the city of Kent, a municipal corporation of the state of Washington.

District is the Kent Special Events Center Public Facilities District, a municipal corporation established by the City of Kent by Ordinance No. ___ adopted by the City Council pursuant to the authority of chapter 35.57 RCW.

Special Events Center is a multi-purpose arena for hockey and other public uses approved by the City, together with related parking facilities, to be located north of and adjacent to James Street in Kent between 5th Ave. South and the Union Pacific Railroad right-of-way.

Develop or Development includes any one or more of the following: acquisition of, construction of, ownership of, remodeling, maintaining, equipping, re-equipping, repairing, financing, and operating the Special Events Center as specified herein and undertaken by the Parties as agreed to in this Agreement according to the powers conferred upon the Parties under chapter 35.57 RCW and RCW 82.14.390.

Local Match is the amount of money or in-kind contributions derived from public or private sources required by RCW 82.14.390(4) to match the amount of Sales and Use Taxes received and utilized by the District for the development of a Regional Center.

Parties means the City and the District.

Regional Center, as defined in RCW 35.57.020, means a convention, conference, or special events center, or any combination of facilities, and related parking facilities, serving

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a regional population and constructed at a cost of more than Ten Million Dollars ($10,000,000), including debt service.

Sales and Use Taxes are the taxes imposed, received and applied by the District pursuant to the authority of RCW 82.14.390 for the development of a Regional Center.

B. DEVELOPMENT OF THE SPECIAL EVENTS CENTER

The Parties intend to jointly develop the Special Events Center, in accordance with this Agreement, as a multipurpose regional, tourism-related facility, meeting the definition of a Regional Center under RCW 35.57.020. The Special Events Center is intended to serve as a Regional Center serving the City, the District and their respective residents, as well as serving a broader population in the region and the state, all consistent with chapter 35.57 RCW.

The City, on behalf the Parties, shall commence construction of the Special Events Center as a Regional Center prior to January 1, 2009. The City shall, on behalf of itself and the District, be the agency with the primary responsibility for the development of the Special Events Center as a Regional Center, as defined by RCW 35.57.020, and shall finance (with District assistance), acquire, design, construct, own, operate and maintain the Special Events Center, and otherwise administer its development and operation for the benefit of itself and the District, all subject to the limitations set forth herein.

B.1. Site Acquisition, Development and Ownership.

a. The City has acquired all real property necessary to serve as a site for the Special Events Center. Title to Special Events Center property shall be in the City, which shall hold that property and the Special Events Center on behalf of and for the benefit of the Parties. For purposes of any legal proceedings to which the City and the District may be parties, this Agreement shall serve as a joint defense agreement and the Parties and their attorneys may jointly share confidential information which shall be nondisclosable to others.

b. The City shall, on behalf of the Parties, acquire the approvals necessary and shall take such other actions as may be required to enable the site to be suitable for use as a Special Events Center.

c. The City shall develop the Special Events Center, and shall own and operate the Special Events Center for and on behalf of the Parties. The District's interest in the Special Events Center shall terminate and revert to the City upon the retirement, redemption or defeasance of the bonds described in Section C, the final distribution to the District of Sales and Use Taxes, the termination of the District's obligation to make project payments to the City, or when mutually agreed between the District and the City, consistent with applicable law. The District's ownership interests in the Special Events Center also shall be transferred to the City if the District ceases to exist; provided that any District obligations with respect to the Special Events Center shall have been retired or fully provided for, or, if not, that the City shall assume all remaining obligations of the District related to the Special Events Center.

d. The District's Board of Directors may, upon the City's request, advise the City on the operation of the Special Events Center. The City may from time to time request that the Board provide such advice on specific topics of concern.
B.2. **Administration of This Agreement: Responsibilities of the Parties.**

a. No separate legal entity will be established to conduct the joint and cooperative undertaking of the Parties. Pursuant to RCW 39.34.030(4)(a), the City, and specifically the Mayor of the City, shall serve as the administrator responsible for administering the joint and cooperative undertaking.

b. The City shall provide a meeting place for the District's board of directors and shall provide staff support for District meetings. The City shall advance costs to the District to provide for professional services, insurance, supplies, staff support, record-keeping, treasury, financial and other materials and services reasonably requested from the City by the District. Upon the City's request, the District shall reimburse the City for City expenses advanced by the City for professional services, insurance, supplies, staff support, record-keeping, treasury, financial and other materials and services requested from the City by the District, except to the extent the City determines that any such services are to constitute a portion of the matching funds required under RCW 82.14.390.

c. The Finance Director of the City shall serve as Treasurer of the District. The Finance Director, on the District’s behalf, shall prepare, maintain, and provide financial reports to the City and to the District’s board of directors, at such times and in such form as the Mayor and the District’s board may require.

d. Subject to applicable law, the District shall not act to dissolve itself or otherwise eliminate its obligations pursuant to this agreement before the retirement, redemption or defeasance of the bonds described in Section C, the final distribution to the District of Sales and Use Taxes, and the termination of the District’s obligation to make project payments to the City.

C. **FINANCING OF THE SPECIAL EVENTS CENTER**

C.1. **General Obligations and Revenue Obligations.**

a. The total cost of design and construction of the Special Events Center is currently estimated to be approximately Seventy-eight Million Six Hundred Thousand and 00/100 Dollars ($78,600,000.00) At the City's option a portion of the cost of design and construction of the Special Events Center may be financed by either general obligation bonds and/or revenue bonds of the City. The City may issue general obligation bonds secured by the full faith and credit of the City, and may issue either general obligation bonds or revenue bonds payable in whole or in part from intergovernmental project payments from the District to the City from the proceeds of the Sales and Use Taxes. Upon written request of the City, if the City executes a financing and contingent loan agreement with the District to support the District's obligations, the District shall issue either general obligation bonds and/or revenue bonds in amounts sufficient to provide for all or part of the cost of the design and construction of the Special Events Center. Long-term obligations may be issued up to the maximum term allowed by law. The obligations issued by the City for the development of the Special Events Center may be in one or more series and may be tax-backed general obligations, revenue obligations or a combination thereof. District general obligation bonds shall pledge the Sales and Use Taxes and the full faith and credit of the District. The type and amount of bonds or other obligations issued by the City and/or the District shall be determined by the City, in consultation with the District’s Board of Directors.
b. The District shall impose the Sales and Use Taxes authorized by RCW 82.14.390 to finance part of the cost of the joint acquisition, design, construction, operation and maintenance of the Special Events Center. If requested by the City, the District shall promptly (and in no event at least monthly) remit the proceeds of those taxes, as intergovernmental project payments, to the City for the purposes set forth in this Agreement.

c. If determined to be advantageous to the financing of the Special Events Center, the City may at its option execute a contingent loan agreement with the District, under which the City will agree to make loans to the District in the event that insufficient Sales and Use Taxes are available to provide for debt service on District general obligation bonds.

C.2. Local Match.

The City will provide for the contribution of 33 percent Local Match, as required by RCW 82.14.390(4), with respect to the Sales and Use Taxes levied and received by the District and contributed to the City pursuant to this Agreement. It is anticipated that such match will be provided by City general funds and City revenues from the ownership and operation of the Special Events Center.


The Parties acknowledge and agree that the City or District, as appropriate, may pledge this Agreement, as well as all Sales and Use Tax received from the District, to the payment of bonds, short-term notes or other obligations issued to finance the Special Events Center. Such pledges will be material to the offer and sale of the bonds, and will be disclosed to potential purchasers and purchasers of bonds issued by the City or the District, respectively. The Parties consider this Agreement to be a binding contract and acknowledge that lenders to the City, including bondowners, holders of short-term notes and financial institutions providing credit support for such bonds or other obligations, will rely on the terms of this Agreement, including the pledge by the District to make the monthly payments described in Section C.1.b, in deciding to make loans to the City or in purchasing bonds or short-term notes for the funding of the development of the Special Events Center, or in providing credit support for such bonds, notes or other obligations. The Parties acknowledge that lenders to the District, including bondowners, holders of short-term notes and financial institutions providing credit support for such bonds or other obligations, will rely on the terms of this Agreement, including the pledge by the City to make loans to the District under any contingent loan agreement under Section C.1.c, in deciding to make loans to the District or in purchasing bonds or short-term notes for the funding of the development of the Special Events Center, or in providing credit support for such bonds, notes or other obligations. Each of the Parties acknowledges that its commitment under this agreement constitutes a valid and binding enforceable, contractual commitment by that Party.

Obligations issued by each Party, and disclosure documents related thereto, shall contain a statement to the effect that those obligations shall be payable solely from sources expressly pledged. However, each Party acknowledges that with respect to obligations issued by the other Party, it may be treated as an "obligated person" for the purposes of Securities and Exchange Commission Rule 15c2-12(b)(5), and each Party agrees to make an appropriate written undertaking for the benefit of owners of bonds, consistent with the requirements of that SEC rule.

C.4. Limitation on Additional Projects.
Without the City’s written concurrence, the District shall not impose any taxes or engage in the development, financing, ownership or operation of any Regional Center or other facility other than the Special Events Center. Further, upon the City’s reasonable request, the District shall impose such taxes or fees to support the Special Events Center as the District may be authorized to impose under applicable law. The District also agrees that it will not amend Article V ("Purpose") of its bylaws without approval by the City Council.

D. INDEMNIFICATION

To the extent permitted by law, the City shall indemnify, defend and hold harmless the District, its officers and agents from all claims, losses, suits, actions, legal or administrative proceedings, costs, attorneys’ fees, litigation costs, expenses, damages, penalties, fines, judgments or decrees by reason of any death, injury or disability to or of any person or party, including employees, and/or damage to any property or business, including loss of use (collectively “damages”) caused by any negligent act, error or omission of the City or its officials, officers, employees, agents, contractors or subcontractors (the “City’s Functionaries”), when acting within such designated capacity, arising out of the development, financing, acquisition, design, construction, ownership, operation, or maintenance of the Special Events Center.

The City’s obligation shall include, but not be limited to, defending all claims alleging damages from any negligent action, error or omission or breach of any common law, statutory or other delegated duty by the City and the City’s Functionaries. The District will provide information to the City, and the City will provide information to the District, regarding all claims.

To the extent permitted by law, the District shall indemnify the City, its officers and agents from all claims, losses, suits, actions, legal or administrative proceedings, costs, attorneys’ fees, litigation costs, expenses, damages, penalties, fines, judgments or decrees by reason of any death, injury or disability to or of any person or party, including employees, and/or damage to any property or business, including loss of use (collectively “damages”) caused by any negligent act, error or omission of the District its officials, officers, employees, agents, contractors or subcontractors other than the City (the “District’s Functionaries”), when acting within such designated capacity, arising out of the development, financing, acquisition, design, construction, ownership, operation, or maintenance of the Special Events Center.

The City agrees to acquire and maintain insurance in form and amounts as it determines is consistent with the coverage of comparable Special Events Center facilities and undertakings related to said facilities as contemplated under this Agreement and to name the District as an additional named insured. Such insurance may, without limitation, include self-insurance and/or pool insurance. If a license agreement or other agreement with a user of the Special Events Center provides that the licensee must obtain specified insurance and name the City as an additional insured, the City will use reasonable efforts to have the District also named as an additional insured.

E. SUPPLEMENTAL DOCUMENTS

The Parties agree to complete and execute all supplemental documents necessary or appropriate to fully implement the terms of this Agreement.
F. DURATION OF AGREEMENT

This Agreement shall continue in full force and effect until the later of: the retirement, redemption or defeasance of the bonds described in Section C, the final distribution to the District of Sales and Use Taxes, or the termination of the District's obligation to make project payments to the City.

G. GOVERNING LAW; VENUE

This Agreement is governed by, and shall be construed in accordance with, the laws of the State of Washington. Except as otherwise required by applicable law, any legal action under this Agreement shall be brought in the Superior Court of the State of Washington in and for King County.

H. SEVERABILITY

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

I. AMENDMENTS

This Agreement may not be effectively amended, changed, modified, altered, or terminated except by an instrument in writing duly executed by the City and the District (or their successors).

J. NO RIGHTS CREATED IN THIRD PARTIES

The terms of this Agreement are not intended to establish nor to create any rights in any persons or entities other than the City and the District and the respective successors and assigns of each.

K. EFFECTIVE DATE

This Agreement is dated and is effective as of the later date of execution by each of the two parties, as indicated below.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers and representatives as of the day indicated below.

CITY OF KENT

Suzette Cooke, Mayor

Date:

KENT SPECIAL EVENTS CENTER
PUBLIC FACILITIES DISTRICT

Chair

Date: