Ordinance No. 3863

(Amending or Repealing Ordinances)

CFN= 1305 – Kent Events Center
Contingent Loan and Support Agreement – Authorization
AN ORDINANCE of the City of Kent, Washington, approving the issuance of special events center sales tax bonds and special events center revenue bonds by the Kent Special Events Center Public Facilities District and authorizing the execution and delivery of a contingent loan and support agreement are related documents and authorizing certain other actions in connection therewith.

RECITALS

A. The City Council of the City of Kent (the "City") determined that 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 (as defined in chapter 35.57 020 of the Revised Code of Washington ("RCW")) that includes a multi-purpose arena for hockey and other public uses, together with related parking facilities (the "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.

B. The City Council 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 within the City.

C. By Ordinance No. 2852, enacted by the City Council on August 7, 2007, and in accordance with RCW 35.57, the City of Kent created the City of Kent Special Events Center Public Facilities District, a Washington public facilities district duly organized and existing under the laws of the State of Washington (the
“District”) to assist in the design, construction, ownership, operation, and/or financing of regional centers as defined in RCW 35.57.020.

D. The Washington Interlocal Cooperation Act (RCW 39.34) authorizes a public agency of the State of Washington to contract with a public facilities district to perform any governmental service, activity, or undertaking which each entity is authorized to perform.

E. The City and the District entered into an Interlocal Agreement for Development of Special Events Center, dated September 14, 2007, to provide for the financing, design, construction, ownership, and operation of the Special Events Center.

F. RCW 35.57.040(1)(d) and RCW 82.14.390, subject to certain restrictions, authorize the District, for a period of up to 25 years, to impose a 0.033 percent (0.033 of 1%) 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 Chapters 82.08 and 82.12 RCW, the proceeds of which taxes are required to be used for the financing, design, construction, operation, and maintenance of the Special Events Center.

G. RCW 35.57.030, subject to certain restrictions, authorizes the District to issue general obligation bonds with a maturity of up to 30 years to provide the Special Events Center, and RCW 35.57.080, subject to certain restrictions, also authorizes the District to issue revenue bonds with a maturity of up to 30 years to fund the revenue-generating facilities comprising the Special Events Center.

H. RCW 67.28.120 also authorizes the City individually or jointly with any other municipality to acquire and to operate tourism-related facilities, including public stadium facilities, convention center facilities, and performing arts center facilities.

I. Pursuant to RCW 67.28.080(1), the “acquisition” of tourism-related facilities includes, but is not limited to, acquisition, construction, and paying or securing the payment of all or any portion of general obligation bonds, revenue
bonds, or other obligations issued or incurred to acquire and construct tourism-related facilities such as the Special Events Center.

J. RCW 67.28.150 and RCW 67.28.160 also grant to the City the power to issue general obligation bonds and revenue bonds to carry out the purposes of Chapter 67.28 RCW, including acquisition and construction of tourism-related facilities such as the Special Events Center.

K. The City has requested that the District issue, and the District has agreed to issue, its Special Events Center sales tax bonds and Special Events Center revenue bonds in one or more series in an estimated aggregate principal amount of $62,700,000 (collectively, the “Bonds”) to pay for a portion of the capital costs of the Special Events Center.

L. The City and the District intend to enter into a Contingent Loan and Support Agreement Regarding Financing for Kent Special Events Center substantially in the form attached hereto as Exhibit A and incorporated herein by reference (the “Contingent Loan and Support Agreement”) to provide, among other things, for the gross revenue of the Special Events Center to be made available by the City to the District for the payment of debt service on the District’s revenue bonds, for the payment by the City of operation and maintenance expenses of the Special Events Center to the extent required if revenues of the Special Events Center are not sufficient for that purpose, and for the provision by the City of credit support for the Bonds to permit the District to obtain financing for the capital costs of the Special Events Center at the lowest interest rates available.

M. The City Council finds and determines that City’s participation in the financing of the Special Events Center will enable the District to obtain financing at the lowest interest rates available and, because of the mutual economic investments to be made in the Special Events Center by the City and the District, will benefit both the District and the City, therefore has determined that it is appropriate and in the best interests of the City and its citizens to execute the Contingent Loan and Support Agreement.
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Approval of Issuance of Bonds and Contingent Loan and Support Agreement. The City requests that the District issue and approves the issuance of the District's Bonds to pay for a portion of the capital costs of the Special Events Center. The Contingent Loan and Support Agreement, attached as Exhibit A, is approved, and the Mayor is authorized to execute it in substantially the form set forth as Exhibit A, together with such modifications as she deems appropriate and consistent with its purpose. The Mayor is authorized to make such additional adjustments to the provisions of the Contingent Loan and Support Agreement as may be approved by the District and as she deems to be consistent with the purposes of this Ordinance.

SECTION 2. - Pledge In Support of City Obligations under Contingent Loan and Support Agreement. To the extent that circumstances specified in the Contingent Loan and Support Agreement obligate the City at a future time to lend money to the District or advance money directly to the fiscal agent for the District's Bonds, currently The Bank of New York (the "Fiscal Agent"), on behalf and for the account of the District if required to pay the Bonds in connection with the financing by the District of the Special Events Center, that obligation to lend money to the District or advance money directly to the Fiscal Agent on behalf and for the account of the District in the amounts, at the times and in the manner described in the Contingent Loan and Support Agreement shall be absolute and unconditional, and shall not be subject to any defense, including without limitation any breach by the District of the Contingent Loan and Support Agreement, diminution by setoff, counterclaim, abatement, or otherwise, and the City pledges its full faith, credit, and resources irrevocably for the payment to the Fiscal Agent, on behalf and for the account of the District, of the Bonds in accordance with the Contingent Loan and Support Agreement. The City pledges that if required by circumstances specified in the Contingent Loan and Support Agreement, the City shall include in its budget for each relevant fiscal year during the term of the Contingent Loan and Support Agreement and to appropriate an amount equal to the amount, if any, reasonably anticipated to be required to be advanced by the
City to the Fiscal Agent on behalf and for the account of the District under the terms of the Contingent Loan and Support Agreement.

**SECTION 3. - Authorization to Act and Enter into Agreements.** The Mayor and any other officer of the City is authorized, jointly and severally, to do any and all things and to execute and deliver any and all documents, agreements, and certificates and other instruments which they may deem necessary or advisable in order to carry out, give effect to, and comply with the terms and intent of this Ordinance (including, without limitation, a continuing disclosure undertaking in connection with the issuance of the District’s Bonds for the purposes of Rule 15c2-12 of the Securities and Exchange Commission) and any other documents executed and delivered pursuant to the authority granted in this Ordinance.

**SECTION 4. - Acting Officers Authorized.** Any actions of the City required by this Ordinance to be taken by the Mayor may be in the absence of such person be taken by the duly authorized acting Mayor.

**SECTION 5. - Ratification of Prior Acts.** All acts prior to the effective date of this Ordinance and consistent with its terms are ratified and confirmed.

**SECTION 6. - Effective Date.** This Ordinance shall be in full force and effect from and after its passage and five days following its publication as required by law.

ATTEST:

BRENDA JACOBER, CITY CLERK

SUZETTE COOKE, MAYOR
APPROVED AS TO FORM:

[Signature]
FOSTER PEPPER PLLC

APPROVED: 11 day of December, 2007.

I hereby certify that this is a true copy of Ordinance No. 3863 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent, Washington as hereon indicated.

[Signature]
BRENDA JACOBER, CITY CLERK

CONTINGENT LOAN AND SUPPORT AGREEMENT - AUTHORIZATION
EXHIBIT A

FORM OF CONTINGENT LOAN AND SUPPORT AGREEMENT
CONTINGENT LOAN AND SUPPORT AGREEMENT
REGARDING FINANCING
FOR KENT SPECIAL EVENTS CENTER

BY AND BETWEEN

THE CITY OF KENT

AND

THE CITY OF KENT SPECIAL EVENTS CENTER PUBLIC FACILITIES DISTRICT
CONTINGENT LOAN AND SUPPORT AGREEMENT
REGARDING FINANCING
FOR KENT SPECIAL EVENTS CENTER

THIS CONTINGENT LOAN AND SUPPORT AGREEMENT (this "Agreement") is
dated as of the ____ day of __________, 2007, and is made by and between THE CITY OF
KENT, WASHINGTON (the "City"), and THE CITY OF KENT SPECIAL EVENTS CENTER
PUBLIC FACILITIES DISTRICT (the "District").

RECITALS

WHEREAS, Chapter 35.57 020 of the Revised Code of Washington ("RCW") provides
that a public facilities district may acquire, construct, own, remodel, maintain, equip, repair,
finance, and operate one or more regional centers, and

WHEREAS, the City has previously determined that the acquisition and operation of
such a regional center is in the interest of the City, and by Ordinance No. 3853 passed on August
7, 2007 (the "District Formation Ordinance"), established the District pursuant to 35.57 RCW,
to assist in the design, construction, ownership, operation and/or financing of a regional center as
defined in RCW 35.57.020 as a convention, conference or special events center, and related
parking facilities, serving a regional population (the "Special Events Center"), and

WHEREAS, the Washington Interlocal Cooperation Act (RCW 39.34) authorizes a
public facilities district to contract with any other public agency of the State of Washington (the
"State") to perform any governmental service, activity or undertaking which each entity is
authorized to perform, and

WHEREAS, the City and the District previously entered into an Interlocal Agreement for
Development of Special Events Center dated September 14, 2007 ("Interlocal Agreement No.
1"), pursuant to the Washington Interlocal Corporation Act in connection with the development
and operation of the Special Events Center; and

WHEREAS, the City began construction of the Special Events Center in July, 2007, with
available funds of the City;

WHEREAS, pursuant to state law, the District Formation Ordinance and Interlocal
Agreement No 1, for the purpose of providing for part of the cost of joint development of the
Special Events Center, the District is authorized to issue revenue bonds or general obligation
bonds in principal amounts approved by the City consistent with RCW 35.57.030, 35.57.090 and
other applicable provisions of state law, and

WHEREAS, all such bonds of the District will be satisfied exclusively from the assets,
revenues and credit of the District except and to the extent the City expressly agrees to make a
loan to the District to provide for the payment of such obligations, and

WHEREAS, under Interlocal Agreement No. 1 and Resolution No 2007-1 of the Board
of Directors of the District adopted on September 14, 2007 (the "PFD Tax Resolution"), the
District imposed the sales and use taxes authorized by RCW 35.57.040(1)(d) and RCW 82.14.390 at the rate of 0.033% of the selling price in the case of a sales tax or the value of the article used in the case of a use tax (the "Sales Tax") and agreed to set aside the proceeds of such Sales Tax either to be paid to the City for the purpose of providing for part of the cost of designing, constructing, owning and operating the Special Events Center, and/or to provide part of the debt service on District bonds or obligations issued to provide for part of such costs, and

WHEREAS, the City has requested that the District issue (i) its Special Events Center Sales Tax Bonds, 2007, in an original principal amount not to exceed [___] (the "Sales Tax Bonds") payable from the Sales Tax, and (ii) its Special Events Center Revenue Bonds, 2007, Series A, and Special Events Center Revenue Bonds, 2007, Series B (Taxable), in an original aggregate principal amount not to exceed [___] (the "Revenue Bonds") payable from Special Events Center Revenues, to pay for a portion of the capital costs of the Special Events Center, and

WHEREAS, the District intends to issue its Sales Tax Bonds and Revenue Bonds to pay for a portion of the capital costs of the Special Events Center; and

WHEREAS, the District has requested that the City provide credit support to the District to permit the District to obtain financing for the capital costs of the Special Events Center at the lowest interest rates available; and

WHEREAS, the City is willing to provide credit support for the District's Sales Tax Bonds and Revenue Bonds and to pay operation and maintenance expenses of the Special Events Center as provided in this Agreement, and the City Council of the City by Ordinance No. ______ has authorized the City to enter into this contingent loan and support agreement;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows

Section 1. Definitions and Interpretation.

1.1 Definitions. As used or referred to in this Agreement, unless the context otherwise requires, the following terms shall have the meanings given to them in the Recitals of this Agreement

- Agreement
- City
- District
- District Formation Ordinance
- Interlocal Agreement No. 1
- PFD Tax Resolution
- RCW
- Revenue Bonds
- Sales Tax
- Sales Tax Bonds
- Special Events Center
- State
In addition, unless the context requires otherwise, the terms defined in this section shall, for all purposes of this Agreement, have the meanings specified herein, to be equally applicable to both the singular and plural forms of any of the terms defined herein.

“Bonds” means (i) the Revenue Bonds and the Sales Tax Bonds and (ii) any note, bond or other obligation issued from time to time to refinance any obligations described in clause (i) or (ii), so long as the latest maturity date of any obligation issued to refinance the Sales Tax Bonds is not later than the latest maturity date of the Sales Tax Bonds, the latest maturity date of any obligation issued to refinance the Revenue Bonds is not later than the date that is thirty years after the issue date of the Revenue Bonds, and the aggregate principal amount of Bonds outstanding at any time does not exceed [$62,700,000].

“Fiscal Agent” means the fiscal agent of the State, initially The Bank of New York.

“Operation and Maintenance Expenses” means all reasonable expenses incurred in causing the Special Events Center to be operated and maintained in good repair, working order and condition, including without limitation management fees or other payments to third parties payable in respect of the operation of the Special Events Center, personnel costs; the cost of ordinary maintenance and repair, utilities; supplies; food and beverage service and supply costs; equipment purchase and lease payments, administrative expenses, the costs of advertising, marketing and business promotion, deposits, premiums, assessments or other payments for insurance; taxes and assessments, all as determined in accordance with generally accepted accounting principles applicable to the City and its operations. The term “Operation and Maintenance Expenses” does not include any depreciation of or capital expenditure for the Special Events Center.

“Project” means the design and construction of the Special Events Center.

“Sales Tax Revenue” means all the money received by the District from the Washington State Department of Revenue on account of the Sales Tax imposed by and collected for the District.

“Special Events Center Revenues” means all revenue, earnings and money received by the City from or on account of the operation and/or ownership of the Special Events Center, including but not limited to license fees received by the City from Thunderbird Hockey Enterprises, LLC (the “Team”), pursuant to the License Agreement dated August 7, 2007 (the “License Agreement”), by and between the City and the Team, facility fees, concession revenues, advertising revenues, suite license revenues, club seat revenues, parking revenues and naming rights revenues.

1.2 Interpretation  Unless otherwise clear from the context of the terms, words or phrases, the following principles govern the interpretation of terms, words and phrases used in this Agreement.

(a) Sections, paragraphs and clauses mentioned by number only without reference to another document are those so numbered that are contained in this Agreement.
(b) Captions, titles or headings preceding any article, section or subsection herein, and any table of contents or index attached hereto, are solely for convenience of reference and are not part of this Agreement and shall not affect its meaning, construction or effect.

(c) Terms such as “herein,” “hereunder,” “hereby,” “hereto” and “hereof” refer to this Agreement as a whole and not to any particular section hereof unless so indicated, “heretofore” and “hereafter” mean before and after the date of this Agreement.

(d) Words importing any gender include masculine, feminine and neuter genders, where applicable.

(e) Words importing the singular number include the plural number, and vice versa, where applicable.

Section 2. Reaffirmation of Past Commitments  Except to the extent supplemented or expressly provided in this Agreement, all obligations of the City and the District set forth in Interlocal Agreement No. 1 shall remain in full force and effect.

Section 3. City Contingent Loan Commitment for Bonds.

3.1 City Contingent Loan Commitment for Bonds. In the event that the District is unable to timely provide for the payment of principal of or interest on any Bonds, the City shall loan the District the amount necessary to make such timely payment. The District agrees to borrow the amounts described above from the City pursuant to this Agreement and to apply those amounts immediately for the purpose of meeting its obligations under the Bonds. The District shall transfer the proceeds of each City loan directly to the Fiscal Agent to be applied to the payment of debt service on the Bonds. The City on behalf of the District may transfer those loan amounts directly to the Fiscal Agent. In the event that the District has not timely transferred to the Fiscal Agent sufficient amounts to make a debt service payment on any Bonds, or the District has informed the City that there is a reasonable possibility that the District may not be able to timely and fully provide for a debt service payment when due, the City shall transfer to the Fiscal Agent the amount of the deficiency or expected deficiency. The total amount of funds to be loaned by the City pursuant to this Section 3.1 shall not exceed the principal amount of the Bonds plus interest due and unpaid thereon. The obligation of the City to advance funds to the District in the amounts, at the times and in the manner described herein shall be absolute and unconditional and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. The full faith, credit and resources of the City are pledged irrevocably for the payment to the Fiscal Agent of the amounts described herein.

3.2 District Repayment to City for Amounts Loaned pursuant to Contingent Loan Commitment If the City lends money to the District pursuant to this Section 3.2 if the City lends money to the District pursuant to this Section 3, the District shall repay the principal amount or amounts loaned as revenues for that purpose become available consistent with Section 4, below, and the outstanding principal amount of any such loan shall bear interest at a rate set by the City’s Finance Director on the date a loan is made, based on the then-current yield of the City’s pooled investments. The rate of interest shall be revised each year during the budget process based on the then-current yield of the City’s
pooled investments, and effective on the same date that the City’s interfund loan interest rate is adjusted for all City interfund loans.

3.3 District Disclosure Documents. The District may, in disclosure documents related to the Bonds, describe this Agreement and the City’s contingent commitment under Section 3.1, above. However, those disclosure documents shall contain a statement to the effect that the Bonds are payable solely from the specified sources and other money of the issuer legally available therefor, and from the transfer of the funds by the City to the Fiscal Agent, but that the Bonds are not obligations of the City.

Section 4. Priority of Payments from Sales Tax Revenue, Special Events Center Revenues (“Flow of Funds”).

4.1 Sales Tax Revenue. The District shall transfer or cause to be transferred to the Finance Director of the City, as ex officio Treasurer of the District, all Sales Tax Revenue for deposit in the Public Facilities District Sales Tax Revenue Fund. Sales Tax Revenue shall be allocated and applied to the following purposes in the priority set forth below, and the following “flow of funds” for the Sales Tax Revenue shall supplement and supersede the provisions of Section C 1 of Interlocal Agreement No 1 to the extent of any inconsistency:

First. to make the required deposits to the Sales Tax Bond Debt Service Fund for the payment of interest due on the Sales Tax Bonds,

Second. to make the required deposits to the Sales Tax Bond Debt Service Fund for the payment of principal of the Sales Tax Bonds due at maturity or upon mandatory sinking fund redemption prior to scheduled maturity;

Third. to repay principal of and interest on any loans made by the City to the District under Section 3.2 in respect of payments of principal of or interest on the Sales Tax Bonds;

Fourth. if and only to the extent the Special Events Center Revenues available from the flow of funds under Section 4.2 are not sufficient to pay such expenses, payment of Operation and Maintenance Expenses, and

Fifth. to provide for costs of and reserves for long term capital repairs of and replacements to the Special Events Center, and for other lawful District purposes, including, at the option of the City, payment of principal of and interest and any redemption premium on the Revenue Bonds, in no particular order of preference and all as determined by the City in consultation with the District. The reservation of the optional right to apply Sales Tax Revenue to the payment of debt service on the Revenue Bonds shall not be deemed a pledge by the District or the City to apply those tax revenues in that manner.

4.2 Special Events Center Revenues The City for itself and on behalf of the District shall collect and deposit all Special Events Center Revenues and interest earnings thereon in the Public Facilities District Special Events Center Revenue Fund. Special Events
Center Revenues shall be allocated and applied to the following purposes in the priority set forth below, and the following “flow of funds” for those Special Events Center Revenues shall supplement and supersede the provisions of Section C.3 of Interlocal Agreement No. 1 to the extent of any inconsistency:

First, to make the required deposits to the Revenue Bond Debt Service Fund for the payment of interest due on the Revenue Bonds;

Second, to make the required deposits into the Revenue Bond Debt Service Fund for the payment of principal of the Revenue Bonds at maturity or upon mandatory sinking fund redemption prior to scheduled maturity;

Third, to repay principal of and interest on any loans made by the City to the District under Section 3.2 in respect payments of principal of or interest on the Revenue Bonds;

Fourth, to pay Operation and Maintenance Expenses; and

Fifth, to provide for costs of and reserves for long term capital repairs of and replacements to the Special Events Center, and for other lawful District purposes, including, at the option of the City, payment of principal of and interest and any redemption premium on the Sales Tax Bonds, in no particular order of preference and all as determined by the City in consultation with the District.

Any amounts received by the City or the District as governmental grants or private contributions for the Special Events Center shall be deposited in a special capital account in the Public Facilities District Special Events Center Revenue Fund and be used for the construction, renewal and replacement of facilities comprising the Special Events Center, unless another use is required by the terms of any such governmental grant or private contribution.

Section 5. City Responsible for Operation and Maintenance of Special Events Center.

5.1 Operation and Maintenance of Special Events Center. The City for itself and on behalf of the District shall take all actions necessary to (i) operate or cause the Special Events Center to be operated in a manner consistent with commercially reasonable, industry practices and standards for facilities similar to the Special Events Center and in accordance with the License Agreement, (ii) maintain or cause the Special Events Center to be maintained in compliance with all applicable legal requirements and promptly remedy (or contest in good faith) any violations thereof, and (iii) maintain or cause the Special Events Center to be maintained in lawful order and in good operating condition and repair, reasonable wear and tear excepted, and not commit or suffer any unreasonable waste with respect thereto.

5.2 Payment of Operation and Maintenance Expenses. The City shall pay or cause to be paid all Operation and Maintenance Expenses from the following sources of funds and in the following order: (1) Special Events Center Revenues to the extent available from the
flow of funds under Section 4.2; (2) Sales Tax Revenue to the extent available from the flow of funds under Section 4.1, and (3) any other City money legally available therefor.

5.3 District Not Responsible for Operation and Maintenance of the Special Events Center. It is understood that the District shall have no responsibility for the operation or maintenance of the Special Events Center or for the acts of the City, its employees, agent, users of the Special Events Center or its or their officers, directors, managers, members or shareholders, or any party acting by, through or on behalf of any such parties. Except to the extent provided by Section 4.1(c), the District shall not be responsible for payment of Operation and Maintenance Expenses and no District funds shall be applied to payment of Operation and Maintenance Expenses.

5.4 Fees, Rates and Charges for Use of Special Events Center. From and after the completion of the Special Events Center, subject to the terms of the License Agreement, the City for itself and on behalf of the District shall cause fees, rates and charges to be fixed, maintained and collected for the use of the services and facilities and all commodities sold, furnished or supplied by or through the Special Events Center, which fees, rates and charges shall be adjusted from time to time as necessary, so that such fees, rates and charges will be at optimal levels to produce total Special Events Center Revenues that will at all times be at least sufficient for the District to make any payments required to be made on account of its Revenue Bonds as and when the same shall become due and payable.

5.5 District Administrative Expenses. The City shall pay or reimburse the District for its administrative expenses and other costs reasonably incurred in connection with the financing of the Special Events Center, including compliance by the District with continuing disclosure requirements and post-issuance compliance with federal tax requirements in respect of the Bonds, as well as in connection with the District’s collection of Sales Taxes and maintenance of the District in good standing as a public facilities district under chapter 35 57 RCW or any successor law.

5.6 Sale, Transfer or Disposition of the Special Events Center. Neither the City nor the District will sell, transfer or otherwise dispose of (each such sale, transfer or other disposition a “transfer”) any interest in the real or personal properties, facilities or other part of the Special Events Center unless the conditions of paragraph (1) are satisfied and the transfer is consistent with one or more of the subparagraphs of paragraph (2), as follows:

(1) The transfer (other than a transfer to the District) (A) is carried out in a bona fide, arm’s-length transaction, and (B) the consideration received for the transfer is equal to the fair market value of the portion of the Special Events Center transferred, for which purpose “fair market value” means the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the willing buyer and willing seller each acting prudently and knowledgeably, and

(2) The transfer is consistent with one or more of the following:

(A) the facilities or property to be transferred are not material to the operation of the Special Events Center, or shall have become unserviceable, inadequate,
obsolete or unfit to be used in the operation of the Special Events Center or are no longer necessary, material or useful to the operation of the Special Events Center; or

(B) the Special Events Center Revenues received from the operation of those facilities or property to be transferred during the twelve full calendar months before the transfer was less than 10% of total Special Events Center Revenues received during that same period, or

(C) the District and the City receive a report from an independent, professional consultant or consulting firm having at least five years of experience in evaluating the financial operations and performance of governmentally-owned, revenue-producing enterprises to the effect that, in his, her, or its professional opinion, upon the transfer of the portion of the Special Events Center to be transferred and the use of proceeds of the transfer as proposed by the City, the Special Events Center will retain its operational integrity and the District will be in compliance with the “coverage” requirement applicable to its Revenue Bonds during the five fiscal years following the fiscal year in which the transfer is to occur.

The proceeds of any transfer shall be used (i) to promptly redeem, or irrevocably set aside for the redemption of, the District’s outstanding Revenue Bonds, and/or (ii) to provide for all or part of the cost of capital improvements and/or additions to or expansions of the Special Events Center and/or for other regional center or tourism-related facilities authorized under chapters 35.57 and 67.28 RCW.

Section 6. District Covenants.

6.1 Reporting Requirements The District shall provide the City (at the notice address set forth in Section 9.4) with a quarterly report summarizing actual financial activity and financial expectations for the following four quarters.

6.2 Restriction on Issuance of Additional Parity Bonds. The District shall not issue the Bonds in aggregate principal amounts in excess of $_______ payable from Sales Tax Revenue, or in excess of $_______ payable from Special Events Center Revenues, except as otherwise approved by the City’s Finance Director. The amount, terms and conditions of the Bonds must be as approved by the City’s Finance Director. So long as the City is not in default of its obligations under this Agreement, the District shall not (1) issue any bonds or other obligations payable from the sales and use tax authorized by RCW 82 14.390, other than the Sales Tax Bonds, without the City’s prior written approval, or (2) borrow money or incur any obligations, without the City’s prior written approval.

Section 7. Defaults.

7.1 Remedies of City on District Default Upon the occurrence of a default by the District in its obligations hereunder (a “District Default”), the City may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the City may deem most effectual to protect and
enforce any of its rights or interests hereunder. In the event of a District Default, the City may, without limiting any of its other remedies hereunder, require the District to redeem or defease the Bonds.

7.2 Remedies of District Upon City Default. Upon the occurrence of a default by the City in its obligations to make loans to the District hereunder (a “City Default”), the District may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the District may deem most effectual to protect and enforce any of its rights or interests hereunder.

7.3 No Remedy Exclusive. No remedy conferred upon or reserved to either party by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, and either party hereto shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement, or otherwise.

7.4 No Implied Waiver. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. For the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

Section 8. Compliance with Continuing Disclosure Requirements. To meet the conditions of paragraph (d)(2) of United States Securities and Exchange Commission (“SEC”) Rule 15c2-12 (the “Rule”), as applicable to a participating underwriter for the Bonds, the City undertakes for the benefit of holders of the Bonds to provide to each NRMSIR and the SID (as those terms are defined in the Rule), the following annual financial information: (i) annual financial statements for the City prepared (except as noted in the financial statements) in accordance with generally accepted accounting principles applicable to governmental units, as such principles may be changed from time to time, which statements need not be audited, except, however, that if and when audited financial statements are otherwise prepared and available to the City they will be provided; (ii) statements of authorized, issued and outstanding general obligation debt of the City; (iii) statements of assessed valuation of property within the City subject to ad valorem taxation for the fiscal year, and (iv) the ad valorem regular property tax levy rate and regular property tax levy rate limit for the fiscal year.

Such annual financial information shall be provided not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City’s fiscal year ending [December 31, 2007] It may be provided in a single or multiple documents, and may be incorporated by reference to other documents that have been filed with each NRMSIR and the SID, or, if the document incorporated by reference is a “final official statement” with respect to obligations of the City, that has been filed with the MSRB.
The City's obligations under this undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this undertaking shall terminate if those provisions of the Rule which require the City to comply with this undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of nationally recognized bond counsel or other counsel familiar with federal securities laws delivered to the City and the District, and the District provides timely notice of such termination to each NRMSIR or the MSRB and the SID. To the extent authorized by the SEC, the City may satisfy this undertaking by transmitting the required filings using http://www.disclosureusa.org (or such other centralized dissemination agent as may be approved by the SEC).

Section 9. Miscellaneous.

9.1 Termination. This Agreement shall terminate only upon the repayment or defeasance of all of the Bonds and the repayment of any obligations owed by the District to the City under this Agreement, [or to a credit enhancement provider].

9.2 Governing Law; Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State and shall be liberally construed to carry out the purposes hereof. 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.

9.3 Joint Exercise of Powers; Administrator. The City's and the District's actions and obligations under this Agreement are declared to be a joint exercise of powers, privileges and authority under RCW 39.34.030 and RCW 67.28.120. The Board of Directors of the District and the Kent City Council shall each designate a person to jointly administer this Agreement. There shall be no joint board with respect to this Agreement.

9.4 Notices. Except as otherwise provided herein, all notices, consents or other communications required hereunder shall be in writing, delivered as follows:

To the City:
Mayor
City of Kent
220 Fourth Avenue South
Kent, WA 98032

With a copy to:
Finance Director
City of Kent
220 Fourth Avenue South
Kent, WA 98032
To the District: Chair, Board of Directors
The City of Kent Special Events Center Public Facilities District
[220 Fourth Avenue South]
[Kent, WA 98032]

With a copy to:
Finance Director
City of Kent
Ex Officio Treasurer of the District
220 Fourth Avenue South
Kent, WA 98032

9.5 **Binding Effect** This Agreement shall inure to the benefit of and shall be binding upon the City and the District and their successors.

9.6 **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.

9.7 **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 in title).

9.8 **No Rights Created in Third Parties** The terms of this Agreement are not intended to establish or to create any rights in any persons or entities other than the City and the District and the respective successors and assigns of each.

9.9 **Execution in Counterparts.** This document may be executed in counterparts, and all such counterparts so executed constitute one agreement binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

9.10 **Effective Date.** This Agreement shall be come effective upon its full execution.
ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the City and the District have caused this Agreement to be executed by their duly authorized officers.

CITY OF KENT

By ____________________________
Mayor

ATTEST:
__________________________________
Finance Director

Approved as to Form:
__________________________________

THE CITY OF KENT SPECIAL EVENTS CENTER PUBLIC FACILITIES DISTRICT

By ____________________________
Chair

ATTEST:
__________________________________
Treasurer

Approved as to Form:
__________________________________

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