AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PURCHASING AND BONDING POLICY.

WHEREAS, Kirkland Municipal Code ("KMC") Section 3.85.230 relates to the public works project bonding and retainage policies of the City of Kirkland ("City"); and

WHEREAS, KMC Section 3.85.230(a)(2) generally requires that City public works project contractors post performance and payment bonds equal to 100% of the public works project contract; and

WHEREAS, KMC Section 3.85.230(b) allows City public works project contractors to choose, in lieu of the posting of performance and payments bonds, to instead allow the City to retain a certain specified percentage of the public works project contract amount until final acceptance and project close-out for contracts valued below a specified threshold amount; and

WHEREAS, KMC Section 3.85.230(a)(2) also requires that sureties issuing performance and payment bonds maintain specified minimum bonding company ratings; and

WHEREAS, Senate Bill ("SB") 5734 enacted by the Washington legislature in 2017 controls various public works purchasing and bonding policies of public entities including cities; and

WHEREAS, SB 5734 provides that cities may require that public works project contractors post performance and payment bonds equal to 100% of the public works project contract amount for all contracts in an amount equal to or less than $150,000; and

WHEREAS, SB 5734 provides that cities, at the request of a contractor, may choose, in lieu of the posting of performance and payments bonds, to instead retain 10% of the public works project contract amount until final acceptance and project close-out related to contracts in an amount equal to or less than $150,000; and

WHEREAS, SB 5734 further provides that the recovery of any unpaid wages and benefits must be the first priority for any actions filed against retainage held by a city; and

WHEREAS, RCW 60.28.011 requires that sureties issuing performance and payment bonds maintain minimum A.M. Best financial strength rating as long as the minimum rating does not exceed A-.

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:
Section 1. Kirkland Municipal Code Section 3.85.230 is amended to read as follows:

3.85.230 Bonding policy

(a) For all public works contracts, the following minimum bonding requirements shall be met for each procurement:

(1) A bid deposit in the form of a bid bond, cashier's check or certified check in an amount equal to at least five percent of the total bid must be enclosed with the submitted sealed bid if the bid is in excess of sixty-five thousand dollars or in excess of forty thousand dollars if only a single craft or trade is involved with the public works or the public works project is for street signalization or street lighting.

(2) A performance bond and a payment bond for one hundred percent of the total contract price shall be received from the successful contractor prior to contract execution for all contracts except as otherwise provided for in this section in excess of thirty-five thousand dollars. The surety issuing the bond must have an A. M. Best financial strength rating of A- A+VII or better. If the surety does not have an A. M. Best rating of at least A- A+VII, the city's risk/safety analyst is to be consulted prior to approval.

(b) On public works contracts of one hundred and fifty thirty-five thousand dollars or less, at the option of the contractor, the city may, in lieu of a performance and payment bond, retain ten fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and settlement of any liens fixed under Chapter 60.28 RCW, whichever is later. The recovery of unpaid wages and benefits must be the first priority for any actions filed against such any retained amounts.

(c) If the limited public works process allowed under Section 3.85.170(b) is used, the city may waive the requirements for performance and payment bonds and/or retainage.

(d) The purchasing agent, in consultation with the project manager, city attorney's office and risk/safety analyst as needed, shall have authority to determine amounts of protective bid guarantees for all purchases in the best interests of the city.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 2nd day of August, 2017.
Signed in authentication thereof this 2nd day of August, 2017.

Amy Walen, Mayor

Attest:

Kathi Anderson, City Clerk

Publication Date: August 7, 2017

Approved as to Form:

Kevin Raymond, City Attorney
PUBLICATION SUMMARY
OF ORDINANCE O-4586

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO
PURCHASING AND BONDING POLICY.

SECTION 1. Amends the bonding policy for all public works contracts.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 2nd day of August, 2017.

I certify that the foregoing is a summary of Ordinance O-4586 approved by the Kirkland City Council for summary publication.

Kathi Anderson, City Clerk