

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 21, 2018

Final Decision Date Deadline: February 21, 2018

STATEMENT OF THE ISSUE: The Rent Board must adopt regulations governing the petition process for upward and downward rent adjustments. The Rent Program is requesting approval of a sole source contract with Kenneth Baar to prepare particularly complex rent adjustment regulations concerning the definition of a fair rate of return and rent adjustment standards to address petitions submitted on the grounds of historically low rents. In accordance with the City's procurement policies, Board approval is required of a sole source contract in an amount greater than \$9,999.

INDICATE APPROPRIATE BODY

- | | | | | |
|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

ITEM

- | | | |
|---|--|--|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) | | |
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Regulation | <input checked="" type="checkbox"/> Other: <u>CONSENT CALENDAR</u> |
| <input type="checkbox"/> Contract/Agreement | <input type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |

RECOMMENDED ACTION: APPROVE a sole source contract amendment with Kenneth Baar in the amount of \$5,001 for the preparation of rent adjustment regulations for consideration by the Rent Board, for a total contract amount not to exceed \$15,000 – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

F-3.



AGENDA REPORT

DATE: February 21, 2018

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Michael Roush, Legal Counsel

SUBJECT: PROPOSED CONTRACT AMENDMENT WITH KENNETH BAAR FOR PREPARATION OF PROPOSED RENT BOARD REGULATIONS

STATEMENT OF THE ISSUE:

The Rent Board must adopt regulations governing the petition process for upward and downward rent adjustments. The Rent Program is requesting approval of a sole source contract with Kenneth Baar to prepare particularly complex rent adjustment regulations concerning the definition of a fair rate of return and rent adjustment standards to address petitions submitted on the grounds of historically low rents. In accordance with the City's procurement policies, Board approval is required of a sole source contract in an amount greater than \$9,999.

RECOMMENDED ACTION:

APPROVE a sole source contract amendment with Kenneth Baar in the amount of \$5,001 for the preparation of rent adjustment regulations for consideration by the Rent Board, for a total contract amount not to exceed \$15,000.

FISCAL IMPACT:

Contracts with subject matter experts for the preparation of proposed rent adjustment regulations for consideration by the Rent Board are included in the amended 2017-18 Rent Program Budget and will be funded by Rental Housing Fee revenue. Since the Rent Program is still in the process of billing and collection of the Rental Housing Fee, presumably the funds needed for this contract will be borrowed from the City's General Fund and paid back in accordance with the Reimbursement Agreement between the Rent Board and City of Richmond adopted by the Rent Board on December 20, 2017.

DISCUSSION:

The Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (“Ordinance”), codified in Chapter 11.100 of the Municipal Code, establishes limits on the amount of rent that may be charged for most multifamily residential rental units in the City of Richmond. While Landlords in compliance with the Ordinance and all regulations adopted by the Rent Board are guaranteed the Annual General Adjustment rent increase each year, the Ordinance permits Landlords to petition for an individual rent adjustment in the Maximum Allowable Rent.

Landlords have a constitutional right to a fair rate of return (“Fair Return”) on rental property investments; however, the courts have not required that one particular “fair return” standard be employed by jurisdictions with rent control policies. As such, the Rent Board must adopt regulations to define the Fair Return standards used to adjudicate rent adjustment petitions.

Kenneth Baar is a national expert on Fair Return standards. He has prepared Fair Return reports for 18 California jurisdictions in fair return cases and his testimony on fair return issues has been frequently cited in published California appellate court opinions. Rent Program staff members are confident that Dr. Baar is the only individual qualified to prepare these regulations, and that contracting with another individual or attempting to draft regulations without the assistance of subject matter experts may incur unnecessary legal challenge.

In December, the Rent Program held two well-attended community workshops regarding setting standards for changes in the maximum rent. Feedback and questions gathered from participants has been transmitted to Kenneth Baar to inform the preparation of proposed Rent Board regulations. Additional information is accessible at <http://www.ci.richmond.ca.us/3521/Rent-Adjustment-Regulations>.

DOCUMENTS ATTACHED:

Attachment 1 – Contract Amendment

Attachment 2 – Original Contract

Attachment 3 – Sole Source Justification

**ITEM F-3
ATTACHMENT 1**

**CITY OF RICHMOND RENT BOARD
CONTRACT AMENDMENT**

Department: Rent Program	Project Manager: Nicolas Traylor
Project Manager E-mail: Nicolas_traylor@ci.richmond.ca.us	Project Manager Phone No: (510) 620-6576
Vendor No: 12940 PR No:	P.O./Contract No: 4003
Description of Services: Provide consultation services to Rent Program Department.	
Amendment No. 1 modifies the payment limit.	

The parties to this contract amendment do mutually agree and promise as follows:

1. Parties. The parties to this Contract are the City Of Richmond Rent Board (herein referred to as the "City") and the following named Contractor:

Company Name: Kenneth Baar

Street Address: 17 Katrine Street

City, State, Zip Code: West End, Queensland, 4101 Australia

Contact Person: Kenneth Baar

Telephone: 510-717-2025

Email: kenbaar@aol.com

Business License No: 40055945

Expiration Date: 11/14/18

A California corporation, limited liability corporation general partnership, limited partnership, individual, non-profit corporation,
 individual dba as [specify:] _____,
 other [specify:] _____

2. Purpose. This Contract Amendment is being entered into to amend the Contract between City and Contractor which was approved by the Rent Board of the City of Richmond or executed by the Executive Director on November 20, 2017, which original term commenced on November 20, 2017, and terminates June 30, 2018, with an original contract payment limit of \$9,999.00. Said contact shall hereinafter be referred to as the "Original Contact" and is incorporated herein by this reference.
3. Original Contract Provisions. The parties hereto agree to continue to abide by those terms and conditions of the Original Contract, and any amendments thereto, which are unaffected by this Contract Amendment.
4. Amendment Provisions. This Contract Amendment is subject to the Amendment Provisions attached hereto, which are incorporated by reference, and which control over any conflicting

**ITEM F-3
ATTACHMENT 1**

provisions of the Original Contract, or any amendment thereto.

5. City of Richmond Business License Active Status Maintained. Pursuant to Municipal Code Section 7.04.030, the Contractor must maintain its City of Richmond business license for this Contract Amendment to be deemed in effect.
6. Insurance Coverage Updated and Maintained. Pursuant to the Original Contract, the Contractor shall provide the City with updated insurance certificates, and the Contractor shall maintain insurance coverage, for this Contract Amendment to be deemed in effect.
7. Signatures. These signatures attest the parties' agreement hereto:

RENT BOARD:

CONTRACTOR:

By: _____

(* The Corporation Chairperson of the Board, President or Vice President should sign below)

Title: Executive Director

By: _____

I hereby certify that this Contract has been approved by the Rent Board or the Executive Director.

Title: Principal

Date Signed: _____

By: _____

Board Clerk

(* The Corporation Chief Financial Officer, Secretary or Assistant Secretary should sign below)

Approved as to form:

By: _____

By: _____

Title: _____

Board Legal Counsel

Date Signed: _____

(NOTE: Pursuant to California Corporations Code Section 313, if Contractor is a corporation or nonprofit organization, this Contract (1) must be signed by (a) the Chairperson of the Board, President or Vice-President and (b) the Secretary any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.

LIST OF ATTACHMENTS:

Amendment Provisions Exhibit A

Standard Contract/EJ/TE 9-26-07

**EXHIBIT A
AMENDMENT PROVISIONS**

ITEM F-3
ATTACHMENT 1

1. Paragraph 3 (Payment Limit) is hereby amended to increase the payment limit by \$5,001. Paragraph 3 of the Original Contract is hereby amended to read as follows:

“3. Payment Limit. City’s total payments to Contractor under this Contract shall not exceed \$15,000. City shall not pay for services that exceed the Contract Payment Limit unless a contract amendment has been approved by the City Council, Rent Board, or Executive Director.”

CITY OF RICHMOND RENT BOARD
STANDARD CONTRACT

Department: Rent Program	Project Manager: Nicolas Traylor
Project Manager E-mail: Nicolas_traylor@ci.richmond.ca.us	Project Manager Phone No: (510) 620-6576
Vendor No: 12940 PR No:	P.O./Contract No: 4003
Description of Services: Provide consultation services to Rent Program Department.	

The parties to this STANDARD CONTRACT do mutually agree and promise as follows:

1. **Parties.** The parties to this Contract are the City Of Richmond Rent Board (herein referred to as the "City") and the following named Contractor:

Company Name: Kenneth Baar

Street Address: 17 Katrine Street

City, State, Zip Code: West End, Queensland, 4101 Australia

Contact Person: Kenneth Baar

Telephone: 510-717-2025

Email: kenbaar@aol.com

Business License No: 40055945

Expiration Date: 11/14/18

A California corporation, limited liability corporation general partnership, limited partnership, individual, non-profit corporation,
 individual dba as [specify:] _____,
 other [specify:] _____

2. **Term.** The effective date of this Contract is November 20, 2017, and it terminates June 30, 2018, unless terminated as provided herein.
3. **Payment Limit.** City's total payments to Contractor under this Contract shall not exceed \$9,999. City shall not pay for services that exceed the Contract Payment Limit unless a contract amendment has been approved by the Rent Board or Executive Director.
4. **Contractor's Obligations.** Contractor shall provide those services and carry out that work described in the Service Plan (Exhibit A) which is attached hereto and is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
5. **City Obligations.** City shall make to the Contractor those payments described in the Payment Provisions (Exhibit B) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

For the Contract between the City of
Richmond Rent Board and

KENNETH BAAR

- 6. Authorized Representatives and Notices. This Contract is subject to the Authorized Representatives and Notices Provisions (Exhibit C) which are attached hereto and are incorporated herein by reference.
- 7. General Conditions. This Contract is subject to the General Conditions (Exhibit D) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
- 8. Special Conditions. This Contract is subject to the Special Conditions (Exhibit E) (if any) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
- 9. Insurance Provisions. This Contract is subject to the Insurance Provisions (Exhibit F) which are attached hereto and are incorporated herein by reference.
- 10. Signatures. These signatures attest the parties' Contract hereto:

RENT BOARD:

CONTRACTOR:

By: 

Title: Executive Director

I hereby certify that this Contract has been approved by the Rent Board or the Executive Director.

By: 
Board Clerk

Approved as to form:

By: 
Board Legal Counsel

(* The Corporation Chairperson of the Board, President or Vice President should sign below)

By: 

Title: Principal

Date Signed: Nov 30, 2017

(* The Corporation Chief Financial Officer, Secretary or Assistant Secretary should sign below)

By: _____

Title: _____

Date Signed: _____

(NOTE: Pursuant to California Corporations Code Section 313, if Contractor is a corporation or nonprofit organization, this Contract (1) must be signed by (a) the Chairperson of the Board, President or Vice-President and (b) the Secretary any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.

**ITEM F-3
ATTACHMENT 2**

For the Contract between the City of
Richmond Rent Board and

KENNETH BAAR

LIST OF ATTACHMENTS:

Service Plan	Exhibit A
Payment Provisions	Exhibit B
Authorized Representatives and Notices	Exhibit C
General Conditions	Exhibit D
Special Conditions	Exhibit E
Insurance Provisions	Exhibit F

Standard Contract/EJ/TE 9-26-07

**EXHIBIT A
SERVICE PLAN**

Contractor shall, to the satisfaction of the Rent Board or Executive Director, perform the following services and be compensated as outlined below:

SCOPE OF SERVICES

1. Prepare a memo and agenda report for consideration by the Rent Board on "fair return standards" as referenced in Richmond Municipal Code Section 11.100.070, including discussion of policy and legal issues.
2. Draft Rent Board regulations setting forth substantive standards applicable to fair return applications.
3. Attend a public hearing on fair return issues subject to the condition that the hearing is held between December 20, 2017, and January 12, 2018, either on December 20th or a date agreed upon by Contractor and the City.
4. Provide comments and analysis on other policy and legal matters as agreed to by contractor and Executive Director.

RATE

Contractor will be compensated at a rate of \$290 per hour, in an amount not to exceed \$9,999, with the approval of the Executive Director.

Contractor shall not bill for travel time.

EXHIBIT B
PAYMENT PROVISIONS

{PLEASE NOTE THAT THE RENT PROGRAM SHALL NOT PAY FOR SERVICES THAT EXCEED THE CONTRACT PAYMENT LIMIT UNLESS A CONTRACT AMENDMENT HAS BEEN APPROVED BY THE RENT BOARD OR EXECUTIVE DIRECTOR}

1. Provided Contractor is not in default under this Contract, Contractor shall be compensated as provided below.
2. Any and all payments made pursuant to this Contract shall be subject to the Contract Payment Limit. The Payment Limit includes expenses (phones, photo copying, meals and travel, etc.) Invoices, shall be adequately detailed, based on accurate records, and be in a form reasonably satisfactory to the City. Contractor may be required to provide back-up material upon request.
3. Contractor shall submit timely invoices to the following address:

Attention: City of Richmond Finance Department - Accounts Payable

Project Manager: Nicolas Traylor

P.O. Box 4046

Richmond, CA 94804

4. All invoices that are submitted by Contractor shall be subject to the approval of the City Project Manager, Nicolas Traylor before payments shall be authorized.
5. The City will pay invoice(s) within 45 days after completion of services to the City satisfaction. The City shall not pay late fees or interest.
6. A Richmond business license shall be obtained before any payment under this Contract shall be authorized and the business license must be kept current during the term of this Contract for payments to continue to be authorized.
7. All insurance coverage required by this Contract shall be provided by

the Contractor before this Contract shall be executed by the City.
The insurance coverage must be kept current during the term of this
Contract for payments to continue to be authorized.

**EXHIBIT C
AUTHORIZED REPRESENTATIVES AND NOTICES**

1. **Notices.** All notices, demands, statements, or communications provided for by this Contract shall be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to the City shall be addressed to the Department Head and (as delineated below in section 1.1) to the project manager responsible for the administration of or the supervision of the scope of work under this Contract. Notices to the Contractor shall be emailed to Kenbaar@aol.com and if Contractor does not confirm receipt within two days, shall be sent by overnight mail to 449 15th street, suite 301, Oakland, Ca. 94612, and addressed to the party designated by Contractor (as delineated below in section 1.2). Notice to City shall be deemed delivered (a) as of the fifth business day after mailing by United States certified mail, postage prepaid, addressed to the proper party; or (b) as of 12:00 p.m. on the second business day immediately after the day it is deposited with and accepted by Federal Express, or a similar overnight courier service, addressed to the proper party and marked for next business day delivery. For the purposes of this Contract, a "business day" means any day Monday through Friday that is not a holiday recognized by the federal government or the State of California.

- 1.1 City hereby designates as its Authorized Representative the Project Manager whose name and address are as follows:

Nicolas Traylor

City Of Richmond Rent Program

440 Civic Center Plaza, Suite 200

Richmond, CA 94804

- 1.2 CONTRACTOR hereby designates as its Authorized Representative the Project Manager whose name and address are as follows:

Kenneth Baar

kenbaar@aol.com

EXHIBIT D
GENERAL CONDITIONS

1. **Independent Contractor.** Contractor acknowledges, represents and warrants that Contractor is not a regular or temporary employee, joint venturer or partner of the City, but rather an independent Contractor. This Contract shall not be construed to create an agency, servant, employee, partnership, or joint venture relationship. As an independent Contractor, Contractor shall have no authority to bind City to any obligation or to act as City's agent except as expressly provided herein. Due to the independent Contractor relationship created by this Contract, City shall not withhold state or federal income taxes, the reporting of which shall be Contractor's sole responsibility.
2. **Brokers.** Contractor acknowledges, represents and warrants that Contractor has not hired, retained or agreed to pay any entity or person any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
3. **City Property.** The rights to applicable plans, drawings, reports, calculations, data, specifications, videos, graphics or other materials prepared for or obtained pursuant to this Contract, which, upon request, are to be delivered to City within a reasonable time, shall be deemed assigned to City. If applicable, Contractor shall prepare check prints upon request. Notwithstanding the foregoing, Contractor shall not be obligated to provide to City proprietary software or data which Contractor has developed or had developed for Contractor's own use; provided, however, that Contractor shall, pursuant to Section 15 below, indemnify, defend and hold harmless City from and against any discovery or Public Records Act request seeking the disclosure of such proprietary software or data.
4. **Patents, Trademarks, Copyrights and Rights in Data.** Contractor shall not publish or transfer any materials, discoveries, developments, concepts, designs, ideas, know how, improvements, inventions and/or original works of authorship resulting from activities supported by this Contract without the express prior written consent of the City Manager. If anything resulting from activities supported by this Contract is patentable, trademarkable, copyrightable or otherwise legally protectable, City reserves the exclusive right to seek such intellectual property rights. Notwithstanding the foregoing, Contractor may, after receiving City's prior written consent, seek patent, trademark, copyright or other intellectual property rights on anything resulting from activities supported by this Contract. However, City reserves, and Contractor irrevocably grants, a nonexclusive, fully paid-up, royalty-free, assumable, perpetual, worldwide license, with the right to transfer, sublicense, practice and exploit said license and the right to make, have made, copy, modify, make derivative works of, use, sell, import, and otherwise distribute under all applicable intellectual properties

without restriction of any kind said license.

Contractor further agrees to assist City, at City's expense, in every proper way to secure the City's rights in any patents, trademarks, copyrights or other intellectual property rights relating thereto, including the disclosure to City of all pertinent information and data with respect thereto. Contractor shall also assist City in the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which City shall deem necessary in order to apply for, obtain, maintain and transfer such rights, or if not transferable, to waive such rights. Contractor shall further assist City in the execution of all applications, specifications, oaths, assignments, recordations and all other instruments which City shall deem necessary in order to assign and convey to City, and any assigns and nominees the sole and exclusive right, title and interest in and to any patents, trademarks, copyrights or other intellectual property rights relating thereto. Contractor further agrees that its obligation to execute or cause to be executed, when it is in Contractor's power to do so, any such instruments or papers shall continue during and at all times after the end of Contractor's services and until the expiration of the last such intellectual property right. Contractor hereby irrevocably designates and appoints City, and its duly authorized officers, agents and servants, as its agent and attorney-in-fact, to act for and in its behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters of patents, copyright and other registrations. This power of attorney is coupled with an interest and shall not be affected by Contractor's subsequent incapacity.

5. Inspection. Contractor's performance, place of business and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the CITY, the State of California, and the United States Government.

If the project or services set forth in Exhibit A shall be performed on City or other public property, City shall have the right to inspect such work without notice. If such project or services shall not be performed on City or other public property, City shall have the right to inspect such work upon reasonable notice.

6. Services. The project or services set forth in Exhibit A shall be performed to the full satisfaction and approval of City. In the event that the project or services set forth in Exhibit A are also itemized by price, City, in its sole discretion, may, upon notice to Contractor, delete certain items or services set forth in Exhibit A, in which case there shall be a corresponding reduction in the amount of compensation paid to Contractor.

Contractor shall, at its own cost and expense, furnish all facilities and equipment necessary for Contractor to complete the project or perform the services required herein, unless otherwise provided in Exhibit A.

7. **Records.** Contractor shall keep and make available for inspection and copying by authorized representatives of the City, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the City.

Contractor shall retain all documents pertaining to this Contract for a period of five (5) years after this Contract's termination (or for any further period that is required by law) and until all Federal or State audits are complete and exceptions resolved for this contract's funding period. Upon request, CONTRACTOR shall make these records available to authorized representatives of the CITY, the State of California, and the United States Government.

Contractor shall keep full and detailed accounts, maintain records, and exercise such controls as may be necessary for proper financial management under this Contract. The Contractor's accounting and control systems shall be satisfactory to City. Contractor's accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Contract, including properly executed payrolls, time records, utility bills, invoices and vouchers. The City shall be afforded prompt access to Contractor's records, books, and Contractor shall preserve such project records for a period of at least five (5) years after the termination of this Contract, or for such longer period as may be required by law.

Contractor shall permit City and its authorized representatives and accountants to inspect, examine and copy Contractor's books, records, accounts, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the project or services set forth in Exhibit A, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this Contract and shall provide such assistance as may be reasonably required in the course of such inspection. Contractor shall also allow City access to the record keeping and accounting personnel of Contractor. City further reserves the right to examine and re-examine said books, records, accounts, and data during the five (5) year period following the termination of this Contract; and Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for five (5) years after the termination of this Contract.

Pursuant to California Government Code § 10527, the parties to this Contract shall be subject to the examination and audit of representatives of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract. The examination and audit shall be confined to those matters connected with the performance of this Contract including, but not limited to, the cost of administering this Contract.

8. **Changes and Extra Work.** All changes and/or extra work under this Contract shall be performed and paid for in accordance with the following:

Only the City Council or the City Manager may authorize extra and/or changed work. Contractor expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Contractor to secure the authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and Contractor thereafter shall be entitled to no compensation whatsoever for performance of such extra and/or changed work.

If Contractor is of the opinion that any work which Contractor has been directed to perform is beyond the scope of this Contract and constitutes extra work, Contractor shall promptly notify City of the fact. The City shall make a determination as to whether or not such work is, in fact, beyond the scope of this Contract and constitutes extra work. In the event that City determines that such work does constitute extra work, City shall provide extra compensation to Contractor on a fair and equitable basis. A change order or Contract Amendment providing for such compensation for extra work shall be negotiated between City and Contractor and executed by Contractor and the appropriate City official.

In the event City determines that such work does not constitute extra work, Contractor shall not be paid extra compensation above that provided herein and if such determination is made by City staff, said determination may be appealed to the City Council; provided, however, a written appeal must be submitted to the City Manager within five (5) days after the staff's determination is sent to Contractor. Said written appeal shall include a description of each and every ground upon which Contractor challenges the staff's determination.

9. **Additional Assistance.** If this Contract requires Contractor to prepare plans and specifications, Contractor shall provide assistance as necessary to resolve any questions regarding such plans and specifications that may arise during the period of advertising for bids, and Contractor shall issue

any necessary addenda to the plans and specifications as requested. In the event Contractor is of the opinion that City's requests for addenda and assistance is outside the scope of normal services, the parties shall proceed in accordance with the changes and extra work provisions of Section 8 of these General Conditions.

10. Professional Ability. Contractor acknowledges, represents and warrants that Contractor and its employees are skilled and able to competently provide the services hereunder, and possess all professional licenses, certifications, and approvals necessary to engage in their occupations. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Contract. Contractor shall perform in accordance with generally accepted professional practices and standards of Contractor's profession. In the event that City, in its sole discretion, desires the removal of any person employed or retained by Contractor to perform services hereunder, such person shall be removed immediately upon receiving notice from City.
11. Business License. Contractor shall obtain a Richmond Business License before performing any services required under this Contract. The failure to so obtain such license shall be a material breach of this Contract and grounds for immediate termination by City; provided, however, that City may waive the business license requirement in writing under unusual or extraordinary circumstances without necessitating any modification of this Contract to reflect such waiver.
12. Termination Without Default. Notwithstanding any provision herein to the contrary, City may, in its sole and absolute discretion and without cause, terminate this Contract at any time prior to completion by Contractor of the project or services hereunder, immediately upon written notice to Contractor. Contractor may terminate this Contract at any time in its sole and absolute discretion and without cause upon 30 days' written notice to City. In the event of termination by either party, Contractor shall be compensated for: (1) all authorized work satisfactorily performed prior to the effective date of termination; (2) necessary materials or services of others ordered by Contractor for this Contract, prior to receipt of notice of termination, irrespective of whether such materials or services of others have actually been delivered, provided that Contractor is not able to cancel such orders. Compensation for Contractor in such event shall be determined by City in accordance with the percentage of the project or services completed by Contractor; and all of Contractor's finished or unfinished work product through the time of the City's last payment shall be transferred and assigned to City. Additionally, in the event of such termination, the City may proceed with the work in any reasonable manner it chooses.

For the Contract between the City of
Richmond Rent Board and

KENNETH BAAR

13. **Termination in the Event of Default.** Should Contractor fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Contract, City may immediately terminate this Contract by giving written notice of such termination, stating the reasons for such termination. Contractor shall be compensated as provided in Section 12 of these General Conditions; provided, however, there shall be deducted from such amount the amount of damage, including attorney's fees, expert witness fees and costs, if any, sustained by City by virtue of Contractor's breach of this Contract. Additionally, in the event of such termination, the City may proceed with the work in any reasonable manner it chooses.
14. **Conflict of Interest.** Contractor acknowledges, represents and warrants that Contractor shall avoid all conflicts of interest (as defined under any federal, state or local statute, rule or regulation, or at common law) with respect to this Contract. Contractor further acknowledges, represents and warrants that no City official or employee has any economic interest, as defined in Title 2, California Code of Regulations §§ 18703.1 through 18703.5, with Contractor that would invalidate this Contract. Contractor acknowledges that in the event that Contractor shall be found by any judicial or administrative body to have any conflict of interest (as defined above) with respect to this Contract, all consideration received under this Contract shall be forfeited and returned to City forthwith. This provision shall survive the termination of this Contract for one (1) year.
15. **Indemnification.**
- (a) If this Contract is a contract for design professional services subject to California Civil Code Section 2782.8(a) and Contractor is a design professional, as defined in California Civil Code Section 2782.8(b)(2), Contractor shall hold harmless, defend and indemnify the City, its officers, agents, employees, and volunteers from and against any and all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Contractor, except where caused by the active negligence, sole negligence, or willful misconduct of the City. To the fullest extent permitted by law, Contractor shall immediately defend and indemnify the City and its officers, agents, employees, and volunteers from and against any and all liabilities, regardless of nature or type, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, any and all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Contractor's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party.
- (b) If this Contract is not a contract for design professional services subject to California Civil Code Section 2782.8(a) or Contractor is not a design professional as defined in California Civil Code Section 2782.8(b)(2), Contractor shall indemnify, defend, and hold harmless the City, its officers, agents, employees and volunteers from any and all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any

For the Contract between the City of
Richmond Rent Board and

KENNETH BAAR

person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by Contractor or any person directly or indirectly employed by, or acting as, the agent for Contractor in the performance of this Contract, including the concurrent or successive passive negligence of the City, its officers, agents, employees or volunteers.

- (c) It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its officers, agents, employees, and volunteers, immediately upon tender to Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend under this Section 15. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent counsel if Contractor asserts that liability is caused in whole, or in part, by the negligence or willful misconduct of an indemnified party.
- (d) The review, acceptance or approval of the Contractor's work or work product by any indemnified party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This Section 15 survives completion of the services or the termination of this Contract. The provisions of this Section 15 are not limited by, and do not affect, the provisions of this Contract relating to insurance.
- (e) Acceptance of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this Section 15. This Section 15 shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.
16. Safety. Contractor acknowledges that the City is committed to the highest standards of workplace safety. Contractor shall perform all work hereunder in full compliance with applicable local, state and federal safety requirements including but not limited to Occupational Safety and Health Administration requirements, and shall assume sole and complete responsibility for the safety of Contractor's employees and any subcontractor's employees. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify the City by telephone.
17. Insurance. Insurance requirements are set forth in Exhibit F to this Contract. Contractor shall abide by the insurance requirements set forth in said Exhibit F.
18. Non-Liability of Officials and Employees of the City. No official or employee of the City shall be personally liable for any default or liability under this Contract.

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KENNETH BAAR

19. Compliance with Laws. Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, with respect to this Contract, including without limitation environmental laws, employment discrimination laws and prevailing wage laws. Compliance under this provision includes compliance with all provisions of the Richmond Municipal Code ("Municipal Code"), including Chapters 2.50, 2.52, 2.56, and 2.60, if applicable.

Contractor acknowledges that under § 2.60.070 of the Municipal Code ("Living Wage Ordinance"), Contractor shall promptly provide to City documents and information verifying its compliance with the Living Wage Ordinance. Also as prescribed in § 2.60.070, Contractor shall notify each of its affected employees with regards to the wages that are required to be paid pursuant to the Living Wage Ordinance.

Contractor shall comply with § 2.28.030 of the Municipal Code, obligating every Contractor or subcontractor under a contract or subcontract with the City for public work or for goods or for services to refrain from discriminatory employment or subcontracting practices on the basis of race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee, any applicant for employment or any potential subcontractor.

Contractor acknowledges that the City's Drug Free Workplace Policy, Violence in the Workplace Policy and the Policy Against Workplace Harassment, are available on the City's website at <http://www.ci.richmond.ca.us/workplacepolicies>. Contractor agrees to abide by the terms and conditions of said policies.

20. Limitations upon Subcontracting and Assignment. This Contract binds the heirs, successors, assigns and representatives of Contractor. The Contractor shall not enter into subcontracts for any work contemplated under this Contract and shall not assign this Contract, nor any portion hereof or monies due or to become due, without the prior written consent of the City Council or its designee.

Contractor acknowledges that the services which Contractor shall provide under this Contract are unique, personal services which, except as otherwise provided herein, Contractor shall not assign or sublet to any other party without the prior written approval of City, which approval may be withheld in City's sole and absolute discretion. In the event that City, in writing, approves any assignment or subletting of this Contract or the retention of subcontractors by Contractor, Contractor shall provide to City upon request copies of each and every subcontract contract prior to the execution thereof by Contractor and subcontractor. Any assignment by Contractor of any or all of its rights under this Contract without first obtaining City's prior written consent shall be a default under this Contract.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor (if applicable), or of the interest of any general partner or joint venturer or syndicate member if Contractor is a partnership or joint-venture or syndicate, which shall result in a change of control of Contractor, shall be deemed an assignment. For this purpose, control shall mean fifty percent or more of the voting power or twenty-five percent or more of the assets of the corporation, partnership or joint-venture.

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KENNETH BAAR

21. Integration. This Contract constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any previous oral or written agreement; provided, however, that correspondence or documents exchanged between Contractor and City may be used to assist in the interpretation of the Exhibits to this Contract.
22. Modifications and Amendments. This Contract may be modified or amended only by a change order or Contract Amendment executed by both parties and approved as to form by the City Attorney.
23. Conflicting Provisions. In the event of a conflict between these General Conditions and those of any Exhibit or attachment hereto, these General Conditions shall prevail; provided, however, that any Special Conditions as set forth in Exhibit E shall prevail over these General Conditions. In the event of a conflict between the terms and conditions of any two or more Exhibits or attachments hereto, those prepared by City shall prevail over those prepared by the Contractor, and the terms and conditions preferred by the City shall prevail over those preferred by the Contractor.
24. Non-exclusivity. Notwithstanding any provision herein to the contrary, the services provided by Contractor hereunder shall be non-exclusive, and City reserves the right to employ other Contractors in connection with the project.
25. Exhibits. All Exhibits hereto are made a part hereof and incorporated herein by reference; provided, however, that any language in Exhibit A which does not pertain to the project description, proposal, scope of services, or method of compensation (as applicable), or any corresponding responsibilities of City, shall be deemed extraneous to, and not a part of, this Contract.
26. Force Majeure. Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such an obligation is prevented or delayed by reason of acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the price thereof, failure of power, restrictive governmental laws and regulations enacted after the date of this Contract, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency or other reasons of a like nature not within the reasonable control of such party.
27. Time of the Essence. Time is of the essence of this Contract. Contractor and City agree that any time period set forth in Exhibit A represents their best estimates with respect to completion dates and both Contractor and City acknowledge that departures from the schedule may occur. Therefore, both Contractor and City will use reasonable efforts to notify one another of changes to the schedule. Contractor shall not be responsible for performance delays caused by others, or delays beyond Contractor's control, and such delays shall extend the times for performance of Contractor's work.
28. Confidentiality. Contractor agrees to comply with, and to require its employees, agents and partners to comply with, all applicable State or Federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract,

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their records, or services provided them, and assures that:

All applications and records concerning any individual made or kept by Contractor or any public officer or agency in connection with the administration of or relating to services provided under this Contract will be confidential, and will not be open to examination for any purposes not directly connected with the administration of such service.

No person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service.

29. Third Parties. Nothing herein shall be interpreted as creating any rights or benefits in any third parties. For purposes hereof, transferees or assignees as permitted under this Contract shall not be considered "third parties."
30. Governing Law. This Contract shall be construed in accordance with the law of the State of California without regard to principles of conflicts of law. This Contract is made in Contra Costa County, California, and any action relating to this Contract shall be instituted and prosecuted in the courts of Contra Costa County, California.
31. Nonrenewal. Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased or renewed by the City under a new contract following expiration or termination of this Contract, and waives all rights or claims to notice or hearing respecting any failure by City to continue the purchase of all or any failure to continue purchase of all or any such services from Contractor.
32. Claims. Any claim by Contractor against City hereunder shall be subject to Government Code §§ 800 et seq. The claims presentation provisions of said Act are hereby modified such that the presentation of all claims hereunder to the City shall be waived if not made within six months after accrual of the cause of action.
33. Interpretation. This Contract shall be interpreted as if drafted by both parties.
34. Warranty. In the event that any product shall be provided to the City as part of this Contract, Contractor warrants as follows: Contractor possesses good title to the product and the right to transfer the product to City; the product shall be delivered to the City free from any security interest or other lien; the product meets any specifications contained herein; the product shall be free from material defects in materials and workmanship under normal use for a period of one (1) year from the date of delivery; and the product shall be fit for its intended purpose(s). Notwithstanding the foregoing, consumable and maintenance items (such as light bulbs and batteries) shall be warranted for a period of one hundred and eighty (180) days from the date of delivery. All repairs during the warranty period shall be promptly performed by Contractor, at Contractor's expense, including shipping.

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35. **Severability.** In the event that any of the provisions or portions or applications thereof of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, City and Contractor shall negotiate an equitable adjustment in the provisions of the Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof, shall not be affected thereby.
36. **Authority.** City warrants and represents that the signatory hereto (the Mayor of the City of Richmond or the City Manager) is duly authorized to enter into and execute this Contract on behalf of City. The party signing on behalf of Contractor warrants and represents that he or she is duly authorized to enter into and execute this Contract on behalf of Contractor, and shall be personally liable to City if he or she is not duly authorized to enter into and execute this Contract on behalf of Contractor.
37. **Waiver.** The waiver by City of any breach of any term or provision of this Contract shall not be construed as a waiver of any subsequent breach. Inspections or approvals, or statements by any officer, agent or employee of the City relating to the Contractor's performance, or payments therefore, or any combination of these acts, shall not relieve the Contractor's obligation to fulfill this Contract as prescribed; nor shall the City be thereby stopped from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.
38. **Possessory Interest.** If this Contract results in the Contractor having possession of, claim to or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue and Taxation Code 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest.
39. **Performance and Final Acceptance.**

Contractor represents that it is experienced, qualified, registered, licensed, equipped, organized and financed to perform the services under this Contract.

Contractor shall perform the services under this Contract with that degree of skill and judgment normally exercised by professional firms performing services of a similar nature in the State of California, and shall be responsible for the professional quality, technical accuracy and coordination of the services it performs under this Contract. In addition to the other rights and remedies which City may have, Contractor shall, at its own expense, correct any services which fail to meet the above standard.

City shall provide Contractor an opportunity to cure errors and omission which may be disclosed during the review of submittals, with no increase in the authorized Contract Payment Limit. Should Contractor fail to make necessary corrections in a timely manner, such corrections shall be made by the City and the cost thereof shall be charged to Contractor.

**ITEM F-3
ATTACHMENT 2**

For the Contract between the City of
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If warranted, City shall determine, and Contractor may request such determination, that Contractor has satisfactorily completed performance of this Contract. Upon such determination, City shall issue to Contractor a written Notice of Final Acceptance, after which Contractor shall not incur further costs under this Contract. Contractor shall respond to such Notice of Final Acceptance by executing and submitting to City a Release and Certificate of Final Payment.

40. Survival. The rights and obligations of the parties which by their nature survive termination or completion of the services covered by this Contract shall remain in full force and effect after termination or completion.

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EXHIBIT E
SPECIAL CONDITIONS

The General Conditions are hereby amended to include the following modifications and/or provisions (if applicable):

Insurance requirements modified per Risk Manager on 10/10/17.

City has reviewed Contractor's insurance documents and has deemed that they meet contract conditions.

For the Contract between the City of
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**EXHIBIT F
INSURANCE PROVISIONS**

During the entire term of this Contract and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the insurance requirements specified in the insurance provisions which are attached hereto and incorporated herein by this reference.

**SEE MODIFIED INSURANCE REQUIREMENTS APPROVED BY RISK MANAGER
10/10/17.**



City of Richmond
Sole Source Justification

THIS FORM MUST BE COMPLETED AND APPROVED PRIOR TO ANY PURCHASE

Contact the Purchasing Division and discuss your rationale before completing this form. If Purchasing can help you make this a competitive purchase, then this form will not be required.

Attach this completed/approved form to requisitions when competitive quotes/bids/proposals are not solicited. (Required for requisitions > \$3,000)

Requested Sole Source Supplier:

Company Name: Ken Baar Contact Name: Ken Baar

Address: 17 Katrine Street

City: West End State: Queensland Zip Code: 4101 Australia

Phone Number (510) 717-2025 E-Mail kenbaar@aol.com

Duration of Contract: August 28, 2017- June 30, 2018

Estimated Cost: \$ 15,000 Funding Source (Account String) 11850065 400201

Is the product/service IT related? Yes No If Yes, please attach the approved IT Authorization Form

For Product: Is the recommended company the manufacturer of the product? Yes No

For Product: Does the manufacturer sell the item(s) through distributors? Yes No

Description of Product or Service:

Describe the full scope of work or service contemplated including installation if required; items should include brand, model and part number if applicable; (if additional space is needed, include them in a separate page)

Prepare a proposed regulation, memorandum, and agenda report on Fair Return standards as described in the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance. Prepare a memo and agenda report on policy and legal alternatives in regard to units with historically low rents. Prepare a memo and agenda report on rent adjustment policies and legal issues in regard to capital improvements. Draft Rent Regulations related to previous mentioned items. Provide Comments on Other Policy and Legal Issues as Agreed to By Consultant and Executive Director or assigned staff.

Sole Source Rationale: PLEASE ANSWER ALL THE FOLLOWING QUESTIONS: Explain why the recommended company is the only company that can meet the requirement. Address the following: Are there any other companies who can do this job? What condition (e.g. technological superiority, or performance risks, etc.) exists so that the recommended company has a significant advantage over any other company who can do this job? It is important to sufficiently address the key reason for awarding an order/contract without soliciting competitive bids. The rationale must be clear and convincing, avoiding generalities and unsupported conclusions.

Ken Baar is the subject matter expert on Fair Return standards, not just in California, but nationally and internationally. Mr. Baar has written rent regulations for many rent control jurisdictions in California and is an expert at drafting Fair Return regulations. Ken Baar is the only contractor who will be able to prepare such regulations in a legally defensible manner. Because there is currently a backlog of over 40 landlord Fair Return petitions and there are no Fair Return regulations yet in place, those petitions cannot yet be adjudicated, placing the City at substantial legal risk. Please see attached email to Belinda Warner, Finance Director, dated September 7, 2017, for additional detail.

(if additional space is needed, include them in a separate page)

Complete the following checklist

A specific contractor is the only source of the required item because (check all that apply):

- The required items are **proprietary to the Contractor**, and contractor solely transacts (sells) direct to the customer. (There are no dealers or distributors for contractor).
- The required items are **proprietary to the Contractor**, and **contractor does not sell direct to the customer**. Contractor solely distributes the item or service through only one dealer or distributor in the United States. (There are no dealers or distributors for contractor).

Note: If item or service is available from more than one source, the item or service may be treated as proprietary, but must be competitively solicited from multiple (two or more) sources.

- A specific item is needed:
 - To be compatible or interchangeable with existing hardware
 - As spare or replacement hardware For the repair or modification of existing hardware
- Federal or state grant names vendor as condition of funding. (Attach copy of grant that names vendor)
- There is a **substantial risk** in contracting with any other contractor, (e.g., only one contractor has been successful to date in implementing a difficult manufacturing process or the **services sought**). ***In a brief explanation, provide supporting evidence of why other contractors are considered to be unable to overcome the substantial risk.***

The Richmond Rent Program must create rent regulations related to upward or downward rent adjustments in order to hear rent increase and rent decrease petitions. In particular, the Fair Return regulations must be created to allow landlords to have a process by which they can petition for a rent increase resulting from not receiving a Fair Return. Ken Baar is an internationally respected expert in rent control laws, and in particular, in Fair Return regulations and policies. Ken Baar is the only contractor with the necessary level of expertise in the subject area. If the Rent Program contracts with someone who is less knowledgeable than Ken Baar, it runs the risk of drafting inferior regulations that may cost the Program and the City unnecessary expense in the future, trying to correct the deficiencies in those regulations. See attached email to Belinda Warner, Finance Director, dated September 7, 2017, for additional detail.

- Continuation of prior Work** – Additional item, service or work required, but not known to have been needed when the original order was placed with vendor, and it is not feasible or practicable to contract separately for the additional need. ***Provide brief explanation and supporting evidence.***

(if additional space is needed, include them in a separate page)

**ITEM F-3
ATTACHMENT 3**

I acknowledge the City's requirements for soliciting competitive quotes/bids for purchases over \$3,000.00 and the criteria for justification for Sole Source purchases. I have gathered the required information, have made a concerted effort to review comparable/equal equipment/services (e.g., market research), and further affirm that there is no conflict of interest involved in the selection made.

Department: Rent Program

Requester Name and Title: Nicolas Traylor

Date: 02-05-2018

Note: Requester must be able to defend this justification.

Phone: (510) 620-6564

Department Director (Print) Nicolas Traylor (Sign) _____ Date: _____

Submit completed form to the Purchasing Division (Prior to submission to Executive Director)

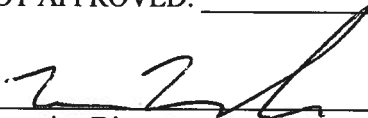
Finance Director:

APPROVED: _____

DATE: ___/___/___

NOT APPROVED: _____

COMMENTS:



Executive Director

(Under \$10,000.00)

Board Clerk Attesting to Rent Board Approval
(Over \$10,000.00) (Copy of Minutes may be substituted)

PROCEDURE

Sole Source purchase/service are exceptions to the normal bidding process and require a detailed justification. In processing Sole Source requests for supplies, services and/or equipment, the Purchasing Division adheres to and is governed by the principles set forth in City of Richmond Municipal Code Section 2.52.326 Sole Source Procurement.

If you are requesting a particular vendor, brand or product, you must make this fact clear on your Sole Source form. Your request will then be restrictive and non-competitive, and will fall into a sole source category. If the sole source justification is approved, the requisition can be expedited without the normal bidding requirements.

Such a request should not be made unless you are confident that your request is reasonable and appropriately justified to meet the City's requirements and withstand any possible audit. The City's requirements and the format for submitting such requests are contained herein. Sole Source form must be signed by authorized department representative(s). The certification will remain on file for audit purposes.

The following factors **DO NOT** apply to sole source requests and should not be included in your sole source justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for product or vendor.
2. Cost, vendor performance, and local service (these are generally considered award factors in competitive bidding).
3. Features which exceed the minimum department requirements.