ORDINANCE NO. 15693

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.88 (ARCHITECT-ENGINEER SELECTION COMMITTEE), OF THE EL PASO MUNICIPAL CODE, TO REVISE THE EXISTING PROCEDURES TO ENUMERATE A NEW SELECTION PROCEDURE.

WHEREAS, the City of El Paso, Texas, hereinafter "City" is a Home Rule Municipality duly organized in accordance with the laws of the State of Texas; and,

WHEREAS, the City has the express authority under the Professional Services Procurement Act, Chapter 2254, Texas Government Code, to make ordinances providing for the manner in which the city, as a governmental entity, shall select a provider of professional services on the basis of demonstrated competence and qualifications, including the negotiation of a fair and reasonable price; and,

WHEREAS, the City has received a number of recommendations regarding changes to its current ordinance guiding the selection procedures related to such "professionals" as defined in the Professional Services Procurement Act; and,

WHEREAS, the City desires to adopt changes to its architect-engineer selection ordinance in accordance with the modified procedure herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

I. That Title 2 (Administration and Personnel), Chapter 2.88 (Architect-Engineer Selection Committee), of the El Paso Municipal Code, shall be and is hereby deleted in its entirety and amended to read as follows:

Title 2 (Administration and Personnel), Chapter 2.88 (Selection Procedures for Architects, Engineers and Land Surveyors)

Section 2.88.010 Purpose and Authority.
The purpose of the procedures enumerated in this chapter is to provide the city with a selection procedure for employing professionals for municipal projects employed by contract that is in compliance with any and all applicable procurement requirements. This chapter shall be applicable to the city's selection of Architects, Engineers and Land Surveyors, as noted in Texas Government Code, Section 2254 *et. seq.* No such selection shall occur in any manner contrary to the Professional Services Procurement Act, Texas Government Code Section 2254. The city has the express authority to select professionals pursuant to the Professional Services Procurement Act. Specifically, the city shall select a provider of the professional services noted above solely on the basis of qualifications and demonstrated competence. A firm's qualifications shall be reviewed through the Pre-Qualification Procedure enumerated herein. A firm's demonstrated competence shall be reviewed through the Submittal and Interview Procedures enumerated below. This chapter shall not apply to the hiring of any professionals to provide services relating

to potential litigation or to provide services ancillary to compliance with local, state or federal laws. Such hiring shall be done in consultation with the City Attorney and in accordance with the applicable requirements of the Texas Government Code.

Section 2.88.020 Pre-Qualification of Firms.

The requirements for pre-qualification of any firm in each of the disciplines shall be determined by the City Engineer and shall be approved by City Council resolution, which shall be made available to the public. In order to be considered as a provider of professional services for a municipal project for the city, a firm must be pre-qualified by the closing date of such project, as noted herein. The information presented shall objectively demonstrate that the firm has the capacity to perform at or above the standards set by such profession and by the city in its contracts. A firm may update pre-qualification information at any time, but it is the sole responsibility of the firm to maintain current records with the city. Updated pre-qualification materials submitted by a firm shall replace existing materials in their entirety. Failure to update records as necessary may result in the determination of non-responsiveness of any submittal. Upon the granting of pre-qualification, annual renewal shall be required. The disciplines requiring pre-qualifications shall include the following:

A. Civil Engineering
B. Electrical Engineering
C. Environmental Engineering
D. Geotechnical/Materials Testing
E. Mechanical Engineering
F. Structural Engineering
G. Architecture
H. Landscape Architecture
I. Professional Land Surveying
J. Project Management
K. Construction Management
L. Special Projects

Section 2.88.030 Procedures.

A. Scope of Services.

Upon identification of a project requiring consultant services, the City Engineering Department, with cooperation from the city department(s) ultimately benefiting from the project (hereinafter referred to as the User Department(s)), shall prepare a detailed scope of work. Such scope of work shall, at a minimum, identify project requirements and an estimated budget for project costs. The detailed scope of work shall also consist of, at a minimum, written instructions outlined in the following format:

1. Architectural Services.

Architect basic services shall generally consist of the five (5) phases set forth herein, and shall include normal civil, structural, mechanical and electrical engineering, as well as landscaping services, as required; and such other services as may be required by the city, in the sole discretion of the City Engineer, so as to

assist in the design and construction of the project within the budget set by the city.

a. Schematic Design Phase
b. Design Development Phase
c. Construction Document Phase
d. Bidding Phase
e. Construction Phase

2. Engineering Services.
Engineer basic services shall generally consist of the five (5) phases set forth herein and shall include normal structural, mechanical and electrical engineering services, as required; and such other services as may be required by the city, in the sole discretion of the City Engineer, so as to assist in the design and construction of the project within the budget set by the city.

a. Preliminary Design Phase
b. Pre-Final Design Phase
c. Final Design Phase
d. Bidding Phase
e. Construction Phase

B. Notice to Pre-Qualified Firms.
Upon completion of the scope of services noted above where a submittal is required, the City Engineer shall send notice of such proposed project to pre-qualified firms. Such notices shall be made to each of the pre-qualified firms within each discipline required for proper completion of the project. Said notice shall include the date which shall be the deadline for the city's acceptance of any submittals from the pre-qualified candidates. This deadline shall be referred to as the "closing date" for submittals. Upon the request of a firm, a preliminary meeting may be held, and will be available to all interested firms, in order to provide the firms with the scope of the project and address any initial questions or concerns related to the project. All notices required by this chapter shall be in writing.

C. Submittals.
Where a submittal is required, firms shall provide no less than **ten (10) copies of submittals** to the city for evaluation. Submittals by firms shall be limited to **ten (10)** eight and one half (8.5) by eleven (11) inch, typed, double-spaced pages. Regardless of the materials, form or manner of such submittal, no submittal shall exceed the ten (10) page restriction. Additional pages may only be required upon the determination of the City Engineer that such additional submittal pages are necessary in order to solicit project submittals that are fully responsive to the city's proposed project request. **With the sole exception of the statement noted in Section 2.88.050(C) herein, each page of the submittal, regardless of its content, shall constitute one (1) page for purposes of determination of compliance with the page restriction.** Submittals including content on both sides of one (1) page shall be considered two (2) pages, with regard to the page

restriction. Submittals shall be provided to the City Engineer no later than the closing date, regardless of the form of delivery. Failure to comply with this section shall result in the Evaluation Committee's return of the submittal to the firm as non-responsive. Those firms engaged in the pre-qualification process may provide submittals to the City Engineer. However, any nomination by the Evaluation Committee of such a firm to the Selection Committee shall be conditioned upon the successful completion of pre-qualification prior to execution of any subsequent agreement. No agreement may be executed by the city with a firm that has not successfully completed the pre-qualification process.

D. Evaluation of Submittals.

For projects with total budgets of less than SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($750,000.00), the City Engineer, Chief Architect and Building Permits & Inspections Director shall select the highest qualified provider of professional services as enumerated herein. For projects with total budgets in excess of SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($750,000.00), the committees noted herein shall be used in order to select the provider of professional services with the submittal that will produce the highest quality project. The committees shall use the evaluation factors and criteria set forth herein to rank each submittal.

E. Negotiations.

The City Engineer shall notify the firm nominated as the highest qualified of its selection in writing, and shall request that the firm make a fee proposal to the city for the project. The City Engineer, or designee, shall negotiate a fair and reasonable fee for the project with the selected firm. If the City Engineer is unable to negotiate a fair and reasonable fee, in the City Engineer's sole discretion, the City Engineer shall notify the selected firm, by certified mail or by hand delivery, of the city's determination and that negotiations have concluded. The City Engineer shall then notify the next most highly qualified firm and begin negotiations with such firm. This process shall be repeated until a fair and reasonable fee has been reached or until the project is cancelled. Upon the attainment of a fair and reasonable fee, an agreement for professional services shall be drafted by the City Attorney's Office and presented to the mayor and city council for approval.

Section 2.88.040 Selection of Highest Qualified Firm – Projects with Total Budgets Under $750,000.00.

For projects with total budgets of less than Seven Hundred Fifty Thousand and 00/100 Dollars ($750,000.00), a committee of three (3), as noted herein, shall be required. The City Engineer, Chief Architect and Building Permits & Inspections Director shall select a firm from the list of pre-qualified firms as the highest qualified firm, based on the project's particular requirements and the firm's current workload. The City Engineer, Chief Architect and Building Permits & Inspections Director may also consider the materials contained in the firm's request for pre-qualification information. Should any firm refuse to accept such selection as the highest qualified firm, the firm shall be prohibited from making submissions for any projects governed by this chapter for one (1) year. The selected firm shall begin negotiations with the city as set forth herein. Each such agreement shall be the entire scope of a complete project, and this

procedure shall not be utilized to design and build a project in increments. This section may be used, however, in augmenting the capability of the city's in-house design staff. Pursuant to Section 2.88.100, the City Council shall hear any appeal of penalties imposed by this section. The City Council may waive such penalties upon the determination of a firm's inability to perform such requested services.

Section 2.88.050 Selection of Highest Qualified Firm – Projects with Total Budgets Over $750,000.00.

A. For projects with total budgets in excess of Seven Hundred Fifty Thousand and 00/100 Dollars ($750,000.00), project submittals shall be provided by each interested firm to the City Engineer. All submittals received by the City Engineer, prior to the closing date, shall be forwarded to the Evaluation Committee. However, if less than four (4) responsive submittals are initially provided to the City Engineer, those submittals shall be provided directly to the Selection Committee for selection of the highest qualified firm, pursuant to the evaluation factors noted herein. Prior to the evaluation of the firms, the Chair for the Evaluation Committee shall determine the number of firms to be nominated to the Selection Committee. Such nominations shall be between three (3) and five (5) firms for each project. The Evaluation Committee shall provide a ranking for each submittal pursuant to the evaluation criteria and numerical scoring system as set forth herein. Upon the Evaluation Committee's determination of the ranking of each submittal, the number of firms determined by the Evaluation Committee Chair to proceed to the Selection Committee with the highest ranking submittals shall then be nominated to proceed to the Selection Committee. The city shall notify all firms of those firms nominated to proceed to the Selection Committee.

B. The city shall provide written notice of those firms nominated to the Selection Committee to all firms that initially provided submittals. The city shall provide written notice to each nominated firm of a date and time at which the firms may present their submittal to the Selection Committee. At the date and time provided by the city, each firm shall present its submittal to the Selection Committee in a manner and form that complies with the city's requirements, as noted herein. The Selection Committee shall provide numeric scores for each firm in accordance with the Numerical Scoring System procedures set forth herein. Upon the city's determination of the rank of each firm, the city shall notify each of the firms of the final ranking. The firm determined to be the highest qualified shall then begin negotiations with the city as set forth herein. Should any firm refuse to accept such selection as the highest qualified firm, the firm shall be prohibited from making submissions for any projects governed by this chapter for one (1) year.

C. Under no circumstances shall any firm, while engaged in the selection procedures enumerated in this chapter, contact, lobby or otherwise discuss any items related to the selection in which the firm is involved with anyone on either committee after the closing date. A statement made available by the city shall be executed and provided with the firm's submittal for each project expressing the firm's recognition and acceptance of such prohibitions. Should such communication occur, said individual shall immediately notify the City Engineer of such communication. The selection procedure shall proceed,

however, the City Engineer shall not hold any final negotiations with the nominated firm until the City Engineer fully investigates the claim. Such an investigation shall be concluded within no more than seven (7) working days. Upon completion of the investigation, including review and assistance from the City Attorney's Office, the City Engineer, upon a finding of such an improper communication, shall disqualify such firm from the project selection in question. A reevaluation of the pre-qualification of said firm shall also occur, with specific notice made of the violation of this provision. The Firm shall also be disqualified from eligibility to provide submittals pursuant to the requirements herein, for a maximum of the next three (3) projects or one (1) year, whichever is greater.

Section 2.88.060 Evaluation and Selection Committees.

A. No member of the Evaluation Committee shall also be a member of the Selection Committee in any singular selection procedure. The Evaluation Committee shall determine the responsiveness of the submittals, as well as narrow the field of responsive firms to the nominated firms as noted above, based on the evaluation factors provided herein. Members of the Evaluation Committee may only substitute designees that are degreed architects or engineers, with the exception of the User Department Representative below. The licensed representatives below may not use designees. The Evaluation Committee shall consist of the following members, or their designee(s):

1. Assistant City Engineer, Chair;
2. Construction Division Manager, Engineering Department, Vice Chair;
3. Design Section Chief, Engineering Department;
4. User Department Representative;
5. Assistant Director, Building Permits and Inspections Department;
6. A licensed representative from the local architectural and engineering community;
7. Agency Representative (only applicable for projects including funding in excess of twenty percent (20%) from any agency other than the city).

B. No member of the Selection Committee shall also be a member of the Evaluation Committee in any singular selection procedure. The Selection Committee shall select the highest qualified firm from those firms nominated by the Evaluation Committee. Members of the Selection Committee may only substitute designees that are degreed architects or engineers, with the exception of the User Department below. The licensed representative below may not use designees. The Selection Committee shall consist of the following members, or their designee(s):

1. City Engineer, Chair;
2. Chief Architect, Vice Chair;
3. Director, Building Permits and Inspections Department;
4. User Department Director;
5. A licensed representative from the local architect and engineering community.

Section 2.88.065 Numerical Scoring System.

A. Evaluations of submittals as set forth in this chapter shall be made using the Numerical Scoring System prescribed by this section.

B. The Numerical Scoring System uses three (3) steps to complete the scoring process.

Step One. Assign a numerical score in accordance with the Evaluation Factors.
Step Two. Rank each firm in numerical order from highest to lowest scores.
Step Three. Compile rankings to determine the highest-ranking firm.

C. The Numerical Scoring System consists of numerical scores given within the point ranges noted within the Evaluation Factors. High numbers are favorable, low numbers are unfavorable.

D. Once each firm's overall score has been calculated each committee member shall rank the evaluated firms from first to last based on numeric score. The firm with the highest score shall be deemed the highest ranked firm.

E. The chair of the committee shall accept the rankings from each member of the committee. The chair shall add the rankings of each firm. The lowest total score is the preferred most highly qualified firm. Any tie shall be resolved by further discussion and majority voice vote of the committee.

Section 2.88.070 Evaluation Factors.

Both the Evaluation Committee and the Selection Committee shall utilize the following evaluation factors in compiling the numeric score for each firm for each project, with the exception of the selection of a Geotechnical/Materials Testing Professional.

Evaluation Factors

PROJECT PLAN – (60 Points)

1. **Responsive to Scope of Work** **(25)**
   Provide a description of the firm's understanding of the project scope and the firm's technical approach to it.
2. **Project Team** **(25)**
   Provide the name of the proposed Project Manager, including a brief description of his/her relevant experience. The firm shall also provide, by discipline, the sub-consultants to be used on the project including a brief description of the sub-consultants' relevant experience.
3. **Value Engineering Principles** **(5)**
   Provide a description of the firm's use of value engineering principles to effect economy in the construction of the project.
4. **Other Project Issues** **(5)**
   Discuss any other pertinent project issues such as zoning, environmental, land acquisition, public awareness, etc.

COST CONTROL – (20 Points)

1. **Estimating Method/Cost Control Plan** **(5)**
   Describe the firm's method for preparing cost estimates. Discuss how the firm proposes to contain scope and cost escalation during design and construction.
2. **Experience of In-House (and any Subcontracted) Estimator(s)** **(5)**
   Provide the name of the firm's estimator and a brief description of the estimator's relevant qualifications. Include comparison of cost estimate vs. actual construction cost for last five (5) projects.
3. **Quality Assurance Review** **(5)**
   Describe the firm's approach to quality assurance as it relates to cost estimating.
4. **Change Orders** **(5)**
   Provide a change order history for the firm's last five (5) projects to include delineation between scope and construction change orders. Discuss the firm's approach to negotiating with contractors.

QUALITY CONTROL - (20 Points)

1. **Quality Control Procedure** **(5)**
   Describe how the firm performs quality control in the preparation of construction plans and specifications.
2. **Peer Review Principles** **(5)**
   Describe the firm's use of peer review for quality control. Describe the firm's plan to identify and correct errors and omissions in construction plans and specifications before such materials are submitted to the City.
3. **Constructability Review** **(5)**
   Describe the firm's approach to reviewing projects for ease of construction.
4. **Governing Code Compliance Review** **(5)**
   Discuss the firm's familiarity with governing codes and their application to the project.

Section 2.88.075 Evaluation Factors for Geotechnical/Materials Testing Professionals.
Both the Evaluation Committee and the Selection Committee shall utilize the following evaluation factors in compiling the numeric score for each firm seeking selection as a Geotechnical/Materials Testing Professional.

Geotechnical/Materials Testing
Evaluation Factors

PROJECT TEAM - (60 Points)

1. **Size & Composition of Staff** **(15)**
   This will include number and minimum qualifications of technicians, engineers both licensed and degreed, and other technical and administrative positions.
2. **Staff Experience** **(15)**
   Describe your staff's experience in providing geotechnical and materials testing services. Include specific examples of projects performed in the previous three (3) years.
3. **Staff Certifications/Registrations/Licensures** **(10)**
   Provide list of profession and technical certifications, registrations, licensures held by members of your staff.

4. **Firm History** **(10)**
   Describe the firm's project experience in the providing geotechnical and materials testing services for the past three (3) years.
5. **Training** **(10)**
   Provide description of staff training program to maintain and update certifications, registrations, etc.

EQUIPMENT - (20 Points)

1. **Laboratory Equipment** **(5)**
   Provide a detailed description of the laboratory services provided directly by the firm. Also include a listing of the equipment found in the firm's laboratory.
2. **Field Testing Equipment** **(5)**
   Provide a detailed description of the field-testing equipment owned and operated by the firm.
3. **Other equipment and leases** **(5)**
   Provide a detailed description of field-testing equipment that you subcontract from others and what arrangements you have with them.
4. **Records** **(5)**
   Provide certified records of calibration of all laboratory and field equipment.

QUALITY CONTROL - (20 Points)

1. **Project Budgets** **(5)**
   Provide firm's history in meeting project budgets for the last three (3) years specifically for materials testing and geotechnical engineering assignments.
2. **Project Schedules** **(5)**
   Provide firm's history in meeting project schedules for last three (3) years specifically for materials testing and geotechnical engineering assignments.
3. **Tracking methods** **(5)**
   Provide company's approach to tracking project budgets and schedules.
4. **Compliance** **(5)**
   Provide company's approach to complying with ASTM, AASHTO, ACI, Asphalt Institute and other national testing standards.

Section 2.88.080 Evaluation of Firms.

A. Evaluation Committee Procedures – Review of Submittals.

Each of the Evaluation Committee members shall be provided with copies of each firm's submittal, a score sheet and a Code of Conduct Statement. The Evaluation Committee shall determine the responsiveness of the submittal and shall review each submittal, pursuant to the Evaluation Factors noted above. Each member shall also execute a Code of Conduct Statement for each project evaluation completed. Non-compliance with the Code of Conduct shall result in the removal of said member from the Evaluation Committee and disqualification of said member's score sheet. The Evaluation Committee shall use the Evaluation Factors and Numerical Scoring System noted herein to determine the highest qualified firms to be nominated to the Selection Committee.

B. Selection Committee Procedures – Presentations and Interviews.
At the meeting of the Selection Committee, in accordance with this chapter, each firm shall be given an equal amount of time to make its presentation and answer any questions of the committee. The City Engineer shall determine the amount of time provided each firm, not to exceed thirty (30) minutes. Each member of the committee shall evaluate each firm based on the evaluation factors specified herein, using the Numerical Scoring System specified herein. Each member shall also execute a Code of Conduct Statement for each selection procedure completed. Non-compliance with the Code of Conduct shall result in the removal of said member from the Selection Committee and disqualification of said member's score sheet. At the conclusion of the committee meeting, all documents shall be forwarded to the City Engineer who shall retain such materials in accordance with the City of El Paso's Records Retention Ordinances or policies.

Section 2.88.090 Time Restrictions.
Failure to comply with the timelines enumerated herein, as required of a firm, may result in the determination of non-responsiveness of a submittal or firm and may result in the exclusion of such firm from the evaluation and selection procedures. Timelines noted below are not to exceed periods, as duties shall be completed on an expedited schedule, unless otherwise noted. Where notice is required, such notices shall be written and timelines enumerated below shall run from the date of actual receipt.

Closing date to determination of the Evaluation Committee	7 working days
Evaluation Committee notice to the nominated firms	5 working days
From date of notice to the nominees to date of presentation	Minimum of 10 working days
Date of presentation to date of notice to the highest qualified firm	5 working days
Date of notice to selected firm to submittal of firm's fee proposal	10 working days
Period of negotiation from receipt of fee proposal	30 calendar days

Section 2.88.100 Appeal Procedures.
Any firm, which was nominated to the Selection Committee and feels that a final selection or other procedure regulated by this chapter has occurred improperly in any one selection process, may appeal directly to the City Council of the City of El Paso. Such appeal must be made within ten (10) working days from the date of final selection of the highest qualified firm. Notice of such an appeal shall be provided to all firms initially provided notice pursuant to 2.88.030(B) of this chapter. The City Council shall hear any and all appeals related to this chapter. The City Council shall be the final authority regarding any such appeals.

Section 2.88.110 Single Response to Request for Qualifications.
In the event that, in response to a notice of a proposed project for any project subject to the provisions found herein, there shall be only one (1) firm, which provides a submittal, there shall be no meeting of the Selection Committee. Rather, the submittal shall be evaluated by the Evaluation Committee to determine whether it is responsive to the notice, adequate for the city's purposes, and in the best interests of the city. If found to be responsive, adequate for the city's purposes and in the best interests of the city, the submittal shall be processed by the office of the

City Engineer as if the submittal had been selected by the process otherwise set forth in this chapter.

Section 2.88.120 Requirements Agreements.
The City shall use the procedures set forth in this chapter in order to enter into any Requirements Agreements. Requirements Agreements shall not be used to circumvent the procedures established by this chapter, but rather, in order to allow for the City to provide for the requirements of professional services in routine geotechnical and materials testing, scoping or time-sensitive situations.

II. That this ordinance shall be effective upon its final passage by the City Council. Any projects engaged in the former selection procedures at the date of passage shall continue through the procedures enumerated in the former selection procedure. The provisions enumerated herein shall apply only to those selections not in process at the time of passage of this ordinance.

III. Except as expressly herein amended, Title 2 (Administration and Personnel) of the El Paso Municipal Code, shall remain in full force and effect.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

PASSED AND APPROVED THIS 17TH DAY OF FEBRUARY 2004.

THE CITY OF EL PASO:

Joe Wardy, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO CONTENT:

Irene D. Ramirez, P.E.
Interim City Engineer

APPROVED AS TO CONTENT:

Patricia D. Adauto, Deputy CAO
Building and Planning Services

APPROVED AS TO FORM:

Raymond L. Telles
Assistant City Attorney