



City of Arts & Innovation

# Inclusiveness, Community Engagement and Governmental Processes Committee Memorandum

TO: INCLUSIVENESS, COMMUNITY ENGAGEMENT, AND GOVERNMENTAL PROCESSES COMMITTEE DATE: OCTOBER 7, 2020

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

SUBJECT: CHARTER AUTHORITY OF THE BOARD OF PUBLIC UTILITIES TO AWARD PROFESSIONAL SERVICES AGREEMENTS

**ISSUE:**

Receive a report on whether the Riverside City Charter, as amended by Measure MM, authorizes the Board of Public Utilities to award professional services agreements.

**RECOMMENDATION:**

That the Inclusiveness, Community Engagement, and Governmental Processes Committee receive a report as to the Charter authority of the Board of Public Utilities to award professional services agreements.

**DISCUSSION:**

Councilmember Conder requested that staff review whether the City Charter, as amended by Measure MM, authorizes the Board of Public Utilities("Board") to award professional services agreements. The City Charter authorizes the Board to award professional services agreements for the reasons set forth below.

Riverside City Charter section 1202 sets forth the powers and duties of the Riverside Board of Public Utilities ("Board"). Section 1202(b) provides the following (emphasis added):

(b) Authorize, and let public works contracts in compliance with Section 1109, within the limits of the budget of the Department of Public Utilities, any purchase of equipment, materials, supplies, goods or services, or any acquisition, construction, improvement, extension, enlargement, diminution, or curtailment of all or any part of any public utility system when the amount exceeds \$50,000, and authorize the City Manager, or his designee, to execute contracts or issue purchase orders for the same.

This section of the City Charter was amended by Measure MM, which was approved by City voters on November 2, 2004. Here is that amendment to the City Charter, as shown in **bold**:

(b) Authorize, **and let public works contracts in compliance with Section 1109**, within the limits of the budget of the department of public utilities, any purchase of equipment, materials, supplies, **goods or services**, or any acquisition, construction, improvement, extension, enlargement, diminution, or curtailment of all or any part of any public utility system when the amount exceeds \$50,000, **and authorize the City Manager, or his designee, to execute contracts or issue purchase orders for the same.**

The question that was placed to the voters in 2004 is as follows:

“Shall the Charter of the City of Riverside be amended to (1) allow the board of public utilities to award and execute contracts for construction, goods or services for the public utility; . . . .”

The approved Measure MM provided that the Board had the authority to authorize (approve) contracts for equipment, materials, supplies, good and services, award public works contracts (also known as construction contracts) and to authorize the City Manager to execute those contracts.

Measure MM did not distinguish between professional or non-professional services, or services only related to construction. Instead, the voters approved broad language authorizing the Board of Public Utilities to award agreements for construction, goods and services. The City Council, in approving revisions to the City Charter to conform to Measure MM or in adopting rules regarding purchasing and competitive procurement, could not have limited the authority granted by voters to the Board. Accordingly, in 2005, the City Council specifically amended its internal procedures to reflect that the Board of Public Utilities is authorized to award contracts for professional services.

The City, in its own internal procurement procedures, distinguishes between contracts for “services” and “professional services.” (See City Purchasing Resolution, Resolution No. 23256, pages 9 and 11.) However, the City can not vary or restrict the authorization granted by Measure MM to the Board without voter approval.

**FISCAL IMPACT:**

None.

Prepared by: Susan Wilson, Assistant City Attorney

Approved as to form: Gary G. Geuss, City Attorney

Attachments:

1. Measure MM (entire ballot measure)
2. History of Measure MM
3. City Council Resolution Nos. 20750 and 20751
4. December 11, 2003 Charter Review Committee Report
5. June 10, 2004 minutes, Charter Review Committee
6. City Council Resolution Nos. 20943 and 23256 (City Purchasing Resolutions)
7. Presentation