DATE: December 1, 1987

TO: Dave Wood, Deputy Director, Communications
and Electrical Division, General Services
FROM: City Attorney
SUBJECT: Use of Capital Improvement Project (CIP) Funds
for 800 MHZ Project Travel

Your memorandum of November 2, 1987 requested our advice on whether funds from CIP No. 37-321.0, "800 MHZ Police Trunked Radio System" could be used for travel expenses for a technical and operational review of the technology associated with the project. Paul Salter, your project engineer, has verbally advised that the participants in the trip are City technical and operational experts who are involved in the design of the system. The various operational characteristics and parameters of the system can only be fully understood by site visits to existing installations in other cities. The result will be to generate a scope of work for optimum design and procurement specifications. We answer your question in the affirmative based on the following analysis:

The 800 MHZ Trunked Police Radio Communications System (hereafter referred to as the "800 MHZ System") consists in part of electronic components that are to be permanently installed in the Police Administration Building and mobile receiver components that are installed in vehicles. Together, they comprise the 800 MHZ System which is a communications system for the operation and management of the Police Administration and Technical Center.

The uses of Capital Improvement Project Funds are restricted by City Charter Section 77, which provides in pertinent part as follows:

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> The moneys in the Capital Outlay Fund shall be used exclusively for the acquisition, construction and completion of permanent
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> public improvements, including public buildings and such initial furnishings, equipment, supplies, inventory and stock as will establish the public improvement as a going concern. This fund may also be used for the acquisition, construction and completion of real property, water and sewer mains and extensions, and other improvements of a

> permanent character and also the replacement or reconstruction of the same, but not the repair or maintenance thereof, and shall not be used for any other purpose or transferred from said fund, except with the consent of two-thirds of the qualified electors of said City, voting at a general or special election.
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This office has opined that certain administrative and planning needs can be assimilated into a capital improvement project fund pursuant to City Charter Section 77 when such are a necessary and integral part of establishing the permanent improvement. In Opinion 75-4, the City Attorney opined that the Capital Outlay Fund could be used for master planning expenses as a required first phase in developing the documents necessary to construct a portion of the improvements contemplated under a master plan. ╒See Op. San Diego City Atty. 15 (1975).σ

Likewise, incidental expenses in connection with the design and procedures under the Municipal Improvement Act of 1911 (Streets and Highways Code .5000 et seq.) would be an allowable cost as a necessary part of a public improvement. ╒Op. San Diego City Atty. 24, 25 (1961).σ Design costs may include travel costs of consultants who design the projects. In another opinion, this office concluded that engineering and appraisal costs are payable from a capital improvement project budget if the project is actually built, but not otherwise. ╒See Op. San Diego City Atty. 50, 51 (1961).σ Finally, this office has concluded that the cost of an appraisal is a necessary expense in a capital improvement project in connection with condemnation procedures for the acquisition of real property for the later construction of a public improvement. ╒See Op. San Diego City Atty. 79 (1956).σ

Limitations on the use of CIP funds have involved factors such as the lack of City ownership or leasehold interest in the real property underlying the project, ╒Op. San Diego City Atty. 146 (1968)σ (Fire Station at Unified Port District Lindbergh Field); ╒Op. San Diego City Atty. 252 (1982)σ (Joint financing study for Gaslamp/Seaport Village Trolley), or that the funds would not be used for construction but for maintenance. ╒See Op. San Diego City Atty. 181 (1981).σ

In perhaps one of the more illuminating opinions in this area, Robert S. Teaze, former Assistant City Attorney, allowed that the Capital Outlay Fund could be used to fund, in part, the costs of an energy conservation and management study of the City Administration Building. ╒See Op. San Diego City Atty. 266

(1977).σ In his reasoning, Mr. Teaze opined that a necessary result of the study would identify ways to cut costs of operation and maintenance without changes in the existing public improvement or works. This portion or result, he concluded, would not be a permissible expenditure of capital outlay funds. He went on to further opine, however, that to the extent the study related to the replacement or reconstruction of the public improvements, such costs are allowable notwithstanding that the improvements may also result in a lowering of the costs of operation and maintenance. He therefore suggested a 50% apportionment between the Capital Outlay Fund and other funding sources as being consistent with City Charter Section 77.

We find this reasoning persuasive in the question you pose. To the extent that the study trip will allow a clear and necessary articulation of the design parameters to be engineered into the system by means of proper selection of the mechanical and electronic components to be installed, this appears integrally related to system design. The ability for staff to exert control over the design parameters and ensure an optimum design based on a full appreciation of system flexibility and response impacts upon the installation of the system, even though it may also affect its later operation and utilization. Since, however, it is impractical and perhaps even impossible to differentiate between design and operational efficiency, the latter of which may be negligible, we opine that the expenditure from the CIP is permissible so long as the City Manager can demonstrate that the travel is necessary for the design and installation of the system.

JOHN W. WITT, City Attorney
By
Rudolf Hradecky
Deputy City Attorney

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ML-87-114