SUBJECT: DIGITAL MESSAGE BOARDS PROGRAM UPDATE

RECOMMENDATION: Receive an update on the draft terms of agreement reached with CBS Outdoor on the digital message board program, and provide direction to staff regarding the proposed program.

PRIOR ACTION: On January 8, 2013, received an update regarding the proposed message board program, and directed staff to move forward with the program, addressing specific issues (Vote: 3-2, Campbell and Rigby opposed).

On October 9, 2012, received an update regarding the City’s Economic Development efforts, recommended enhancements and provided direction to staff to move forward with the development of the new programs and return to City Council for consideration and approval (Vote: 5-0).

On March 22, 2012, confirmed priority goals and directed staff to implement strategies for achievement of goals (Vote: Consensus).

See Exhibit 1 for a complete list of prior City Council actions.

STATEMENT ON THE SUBJECT:
Background. Over the past 50 years Vista has grown into a thriving city that has over 95,000 residents. As the community has grown, so has the need and cost for services and these increased costs must be met with increased revenues. The City Council has directed staff to explore non-traditional creative options, such as digital message boards, to increase City revenues, advance community interests, and support local businesses.

Staff continues to cut costs and explore traditional sources of revenue, but the resulting financial gap cannot be filled entirely with traditional revenues. The two digital message boards have the potential to collectively generate significant revenue over the term of this agreement for the City’s General Fund.

Message Board Program. To determine if digital message boards were feasible and capable of advancing the City Council’s goals, staff first evaluated City-owned properties along State Route (SR) 78...
SUBJECT: DIGITAL MESSAGE BOARDS PROGRAM UPDATE

that could accommodate message boards while providing acceptable visibility. Staff determined that two sites met Federal, State and local criteria and submitted the sites to Caltrans for preliminary approval of the siting and safety guidelines. The City received preliminary approval from Caltrans on the sites in December 2011.

Once the sites were identified, the City issued a Request for Proposals (RFP) to determine if a digital message board program could help to advance the City Council’s goals without increasing City expenditures. Five parties responded to the RFP and two finalists were selected. Interviews with the finalists were conducted by staff and CBS Outdoor (CBS) was selected as the preferred party to negotiate with for the construction and operation of two digital message boards.

At the January 8, 2013 City Council meeting, the City Council directed staff to continue negotiations with CBS, and to include the following points in the agreement:

- Research ways to enhance the appearance/aesthetics of the message boards.
- Ensure that Vista community messaging is shown during prime time hours as well as off peak hours.
- Include discounted advertising options for all local businesses.
- If not already included in the draft agreement, insert an “audit revenues clause”.
- If not already included in the draft agreement, insert a clause to terminate the agreement if the message boards do not meet minimum thresholds.

Negotiations are continuing; however staff has made significant progress and is presenting the draft terms for the City Council’s consideration.

Draft Terms.

1. **City Revenue Generation**: Gross revenues are proposed to be split approximately 52% for the City and 48% for CBS. All operational costs will be borne by CBS out of their share, and in the first five years of the agreement the City will pay for the capital costs of the signs out of the City’s revenue share. In the first five years of the agreement, it is anticipated that net City revenues generated by the two proposed digital message boards would be between $300,000 and $400,000 per year. Beginning in year six, annual net revenues to the City would increase to between $500,000 and $600,000. Income projections were ascertained through the competitive bidding process and when making revenue assumptions staff has either given the range between the high and low projections or used the more conservative lower estimate.

2. **Term**: The term of the agreement is for ten (10) years, with one ten (10) year extension and one five (5) year extension, for a total of twenty-five (25) years.

3. **Termination clauses**: The agreement may be terminated under the following terms:

   - **Termination Option 1.** The City can terminate the agreement at the end of year ten by providing a written notice to CBS before the start of that year. Under this arrangement the City would experience no out-of-pocket costs and would retain all earnings it had accrued over the term of the agreement (estimated to be between $4.0 and $5.0 million).

   - **Termination Option 2.** The City can terminate the agreement at the end of year seven by providing a written notice to CBS by the middle of year five. Under this arrangement the City would experience no out-of-pocket expenses, and would retain all earnings it had accrued during the first four and one half years (estimated to be between $1.35 million and $1.8 million). However, no earnings would accrue to the City for operations during the second half of year five and all of years six and seven.
 SUBJECT: DIGITAL MESSAGE BOARDS PROGRAM UPDATE

4. **Sign Removal:** At the termination of the agreement, CBS will remove the Message Boards and make reasonable repairs to restore the surface of the property and surrender it to City in substantially the same condition it existed in prior to the installation of the Message Boards. At the option of CBS, it may retain the footing in place (and any portion of the column which is below grade), provided that CBS attractively caps and covers what is left in place, and provides landscaping to produce a reasonably seamless look with the surrounding area.

5. **City of Vista Civic and Cultural Messages:** Up to 15% of the digital message board content will be used for communicating City and community information, such as Moonlight Stage Productions, the Vista Christmas Parade, the Strawberry Festival, the Vista Rod Run, opportunities to participate in civic functions, and emergency alerts. The message boards would communicate to the region the varied cultural offerings available in Vista, promote civic participation, and, when needed, provide public safety information. Civic and cultural messages will be distributed equally throughout the daily 20 hour operational time of the message boards.

6. **Local Economic Development Support and Incentive Programs:** After discussing the best method to provide discounted advertising to local businesses, staff recommends creating a rebate process for local businesses wishing to receive discounted message board advertising time through the local economic development incentive program. CBS is supportive of this method, and the agreement recognizes the program and CBS’s support. Staff recommends creating a Message Board Rebate Program for local businesses whereby the City can rebate up to one-half (½) of the cost for the advertising on the message boards. This removes an operational hurdle for CBS, allows the City to continue to provide up to 10% of the digital message board time for local companies and gives the City the flexibility to change the program at any time without amending the agreement with CBS. The economic effect of this program to the City is neutral compared to having local advertisers buy the advertising from CBS directly at discounted rates and the program will provide for small and large Vista business participation. Staff will develop the details of this program and will return to the City Council for review and approval of the program details prior to implementation.

7. **Liability:** The agreement provides indemnification for the City by CBS for all claims arising out of the message boards. Further, CBS will maintain at their sole cost, $5,000,000 of liability insurance (per occurrence) for all claims arising out of the message boards.

8. **Message Board Content:** CBS will use its share of the messages for commercial advertising (non-political) and CBS reserves the right to reject advertising copy for any reason, but will reject copy for the following specific reasons:
   - The copy is factually inaccurate, misleading, fraudulent or deceptive.
   - The copy of obscene, offensive or otherwise inconsistent with local community standards. An example in this category would be a gentleman’s club.
   - The copy promotes an illegal activity. An example in this category would be marijuana.
   - The copy is for a sexually-oriented business. An example in this category would be an adult oriented clothing/paraphilia store.

   If advertising is unsold, CBS may make it available for messages which promote Vista’s community interests which are sponsored by nonprofits organized under section 501(c)(3) of the Internal Revenue Code.

   It should also be noted that the 1998 Tobacco Master Settlement Agreement between the states and the cigarette companies banned Tobacco advertising on message boards.

9. **Inspection of Records:** CBS will provide the City with quarterly and annual reports regarding the amount of message board revenues, the amount of any nonpayment’s or delinquencies, and other
SUBJECT: DIGITAL MESSAGE BOARDS PROGRAM UPDATE

related information. The City’s employees, agents or accountants will be able to examine the books and records and review systems and procedures of CBS for the purposes of verification. Examinations can be conducted within two (2) years after City’s receipt of the annual report during ordinary business hours.

Next Steps. If the City Council is supportive of the draft terms of the agreement reached with CBS to date, staff will work on completing environmental (CEQA) requirements a final agreement for City Council consideration. While considering the agreement and CEQA document, the City Council will also consider the final design for the message boards.

FISCAL IMPACT: There is no direct fiscal impact associated with the recommendation to receive an update from staff and provide further direction on the Digital Message Board proposal. It is anticipated that net City revenues generated by the two proposed digital message boards in the initial years of the agreement would be between $300,000 and $400,000 per year. Over the maximum 25-year life of this agreement Vista would receive direct payments of $13,500,000, and free advertising time valued at $4,000,000.

EXHIBITS:
1. Prior City Council Actions
Prior City Council Actions

11/09/2010 - Directed staff to research and bring back recommendations regarding electronic message boards including City owned electronic signs and message boards (Vote: 4-1, Vance opposed).

05/24/2011 Conducted a public hearing and adopted City Council Resolution No. 2011-92, approving a Negative Declaration for an ordinance adding Chapter 12.20 to the Vista Municipal Code regarding signs on City property, amending Chapter 18.04 of the Vista Development Code regarding City projects, and amending Chapter 18.52 of the Vista Development Code regarding signs on private property; and introduced and adopted City Council Ordinance No. 2011-3, adding Chapter 12.20 regarding signs on City property, amending Chapter 18.04 regarding City projects, and amending Chapter 18.52 regarding signs on private property (Vote: 5-0).

03/22/2012 - Confirmed priority goals and directed staff to implement strategies for achievement of goals (Vote: Consensus).

10/01/2012 - Received an update regarding the City’s Economic Development efforts, recommended enhancements and provided direction to staff to move forward with the development of the new programs and return to City Council for consideration and approval (Vote: 5-0).

01/08/2013 - Received an update regarding the proposed message board program. Council supported moving forward with the program (Vote: 3-2) and asked staff to address the following points in the agreement with CBS Outdoor:

- Research ways to enhance the appearance/aesthetics of the message boards.
- Ensure that Vista community messaging is shown during prime time hours as well as off peak hours.
- Include discounted advertising options for all local businesses.
- If not already included in the draft agreement, insert an “audit revenues clause”.
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