



Council Meeting: September 1, 2009

**SUBJECT: Approval of an Agreement with the Franchise Tax Board
to Exchange Data Related to Business Licensing**

BACKGROUND

Chapter 5.04 of the Sunnyvale Municipal Code is known as the Business License Tax Ordinance of the City of Sunnyvale. Section 5.04.100 states: "No person shall transact, engage in, or carry on any business within the city without first having procured a license from the city to do so and having paid the tax". The Business License application currently used by the City includes a number of exception reports to alert City staff of businesses operating in the City without a current license. The Finance Department would like to utilize data received from the Franchise Tax Board (FTB) as an additional resource to identify non-licensed businesses. In exchange, the City will be obligated to provide data to the Franchise Tax Board.

This data exchange program began as a result of the enactment of Senate Bill 1146 on September 26, 2008. This act authorizes a city to enter into a reciprocal agreement with the Franchise Tax Board to exchange tax data between the City and the FTB. The data exchange will enable both parties to identify any non-compliant businesses. The act took effect on January 1, 2009 and is being expanded to allow additional cities to join as of July 1, 2009.

This act requires a city that assesses a city business tax or requires a city business license to annually furnish specified information upon request by FTB. Information to be provided to the FTB consists of information that the city has collected in the course of administering their city business tax or license requirements. In exchange, the FTB will provide the city with information that will assist the city in identifying businesses operating without a City Business License Tax Certificate. As part of SB 1146, neither the FTB nor the City of Sunnyvale would be reimbursed for the cost of gathering and exchanging data nor would there be a charge to the agency receiving the information.

EXISTING POLICY

Fiscal Sub-Element of the General Plan, Section B.3.2: An aggressive collection system for all accounts receivable will be utilized to assure that monies due to the City are received in a timely fashion.

DISCUSSION

The City of Sunnyvale conducts regular audits of business license data to ensure all applicable taxes and fees from business operating within city limits are received. Current audits include a comparison to property tax, sales tax, and phone book information to ensure the City collects the revenue it is legally entitled to. These audits are facilitated using the business licensing software, which provides exception reports that identify where records do not match any business license information on file.

As a result of the enactment of SB 1146, the software vendor has created a new exception report for FTB data. The software has also been set up for the ability to import FTB data and export data files to send to FTB with minimal staff involvement. Once the FTB data has been imported into the system, exception reports can be run on demand to compare FTB data to our own internal business license data. It is anticipated that audits using these exception reports will enable the City to bring in additional revenue from the proper licensing of current unlicensed businesses.

Under the terms of this agreement, Sunnyvale will be required to send FTB its data annually each June (for 2009, we must deliver our data by September 30, 2009). The data required includes ownership name, address information, Employer ID number, and business start date. The FTB will send the City similar information from their database each year in December. Under the terms of the agreement, this data exchange will continue through December 2011. Should the City wish to discontinue the data exchange, the agreement may be terminated at any time with thirty days written notice to the FTB.

FISCAL IMPACT

Other than minimal staff time to implement, there is no cost associated with this program. However, the City stands to see an increase in revenue from Business License Tax, as businesses that have not registered are identified. Other Business License Tax audits conducted in the past fiscal year have resulted in over \$108,000 in additional revenue to the City.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Approve an agreement with the Franchise Tax Board to exchange data related to business licensing.
2. Do not enter into an agreement to exchange business license tax data with FTB

RECOMMENDATION

Staff recommends Alternative 1, approve an agreement with the Franchise Tax Board to exchange data related to business licensing.

Reviewed by:

Mary Bradley, Director of Finance
Prepared by: Therese Balbo, Finance Manager

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. State Of California Standard Agreement - FTB

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER C0900065
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Franchise Tax Board

CONTRACTOR'S NAME

City of Sunnyvale

2. The term of this Agreement is: **September 1, 2009 through December 31, 2011**

3. The maximum amount of this Agreement is: **\$ 0.00**
NON-FINANCIAL

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	3 pages
Exhibit C* – General Terms and Conditions	GTC307
Exhibit D - Special Terms and Conditions	3 pages
Exhibit E – City Record Format Specifications	2 pages
Exhibit F – FTB Record Layout Specifications	2 pages
Exhibit G – Confidentiality Statement	1 page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language/default.htm

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Sunnyvale

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

P.O. Box 3707, Sunnyvale, CA 94088-3707

STATE OF CALIFORNIA

AGENCY NAME

Franchise Tax Board

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Lisa Garrison, Chief Financial Officer

ADDRESS

P.O. Box 2086, Rancho Cordova, CA 95741-2086

**California Department of General
 Services Use Only**

Exempt per: **SCM 4.04.5.b.**

EXHIBIT A**SCOPE OF WORK**

This Agreement is entered into by and between the Franchise Tax Board, herein referred to as (FTB) and the City of Sunnyvale, herein after referred to as the City.

Purpose:

This Agreement allows FTB and the City to enter into a reciprocal agreement to exchange tax data specific to city business license information for tax administration purposes. By entering into a reciprocal agreement, each party agrees to bare their own costs of providing the data and the City is precluded from obtaining reimbursement.

Both parties will abide by the legal and confidential provisions of this Agreement. Exhibits A, C, D, E, F, and G attached hereto and incorporated by reference herein, sets forth additional terms to which the parties agree to be bound.

Legal Authority:

California Revenue and Taxation Code (R&TC) Section 19551.5 mandates Cities to provide city business tax data to FTB. R&TC 19551.1 authorizes a reciprocal agreement for the exchange of city business tax and income tax information between a City and FTB.

City Responsibilities:

1. The City agrees that the information provided by FTB will be used exclusively to administer the City's business tax program.
2. The City agrees that information obtained under this Agreement will not be reproduced, published, sold or released in original or in any other form for any purpose; and only accessed by City employees.
3. The City agrees to provide FTB with tax information pursuant to Exhibit E, Format Specifications, which shall include but is not limited to the following:
 - Business or owner's name.
 - Business or residence address.
 - Federal employer identification number or social security number.
 - North American Industry Classification Code or Standard Industry Classification Code.
4. The City agrees to extract and provide City data to FTB annually in June for each tax year that the Agreement is in place, June 2009, 2010, and 2011. If the Agreement is executed after June 30, 2009, the City has 30 days after execution to provide FTB with the first year's data.
5. The City agrees to submit the records to FTB using FTB's Secure Web Internet File Transfer (SWIFT).
6. The City agrees to submit the records to FTB in ASCII fixed length format, .txt, per the Format Specifications, Exhibit E.

EXHIBIT A**SCOPE OF WORK (continued)**

7. The City agrees to resubmit data in the event data is initially submitted with errors. The resubmission of data must be within 30 days of notification. If data is not submitted accurately and timely, the City forfeits its rights to FTB data for that year.
8. The City agrees that each City employee having access to FTB data shall sign a Confidentiality Statement, Exhibit G. The signed statement is to be retained by the City and produced to FTB upon request.
9. The City agrees to submit to FTB a completed safeguard questionnaire prior to receiving FTB data. The safeguard questionnaire is valid for the duration of the Agreement.
10. The City agrees to provide a copy of the resolution, order, motion, or ordinance of the local governing body, authorizing the execution of the Agreement.

FTB Responsibilities:

1. FTB agrees that information provided by the City will be used for tax administration and non-tax programs that FTB administers and may be shared with other state/federal agencies as authorized by law.
2. FTB agrees that information obtained under this Agreement will not be reproduced, published, sold or released in original or in any other form for any purpose.
3. FTB agrees to provide the City data extracted from the Taxpayer Information (TI) and Business Entity Tax System (BETS). FTB will provide the City records for taxpayers within the city's jurisdiction who indicate a business on their personal or corporation income tax return. The Record Layout, Exhibit F shall include, but is not limited to:
 - Taxpayer name.
 - Taxpayer address.
 - Taxpayer social security number or federal employer identification number.
 - Principal business activity code.
4. FTB agrees to match the data provided by the City using the social security number or federal employer identification number against FTB's data with a yes or no indicator on the Record Layout, Exhibit F. The first year's data match is at the discretion of FTB and will be based on when data is received and processed.
5. FTB agrees to provide the City an annual extraction in December 2009 for tax year 2008, December 2010 for tax year 2009, and December 2011 for tax year 2010 via SWIFT.
6. FTB agrees to register the City for a SWIFT account, allowing for the secure electronic transmission of data.
7. FTB agrees to provide the City a unique City Business Tax Number to be used for reporting purposes only.
8. FTB agrees to allow the City to resubmit data within 30 days of notification, in the event data is initially submitted with errors.

EXHIBIT A

SCOPE OF WORK (continued)

Project Coordinators:

The project coordinators during the term of this Agreement will be:

Franchise Tax Board

Erica Gonzales
Data Resources and Services Section
P.O. Box 1468, Mailstop A181
Sacramento, CA 95812-1468
Phone: (916) 845-6556
Fax: (916) 855-5695

City of Sunnyvale

Therese Balbo
Finance Manager
P.O. Box 3707
Sunnyvale, CA 94088-3707
Phone: (408) 730-7604

Return executed agreement to:

Franchise Tax Board

Procurement & Asset Management
Attention: Tracey Mollow
P.O. Box 2086, Mailstop A374
Rancho Cordova, CA 95741-2086
Phone: (916) 845-5193
Fax: (916) 845-3599

EXHIBIT D**SPECIAL TERMS AND CONDITIONS**

1. **DATA OWNERSHIP:** The classified confidential tax information being provided to the City under this Agreement remains the exclusive property of FTB. The City shall have the right to use and process the disclosed information for the purposes stated in this Agreement, which right shall be revoked and terminated immediately upon completion of this Agreement.
2. **STATEMENT OF CONFIDENTIALITY:** The Franchise Tax Board has tax return information and other data in its custody, which is confidential data. Unauthorized inspection or disclosure of state tax return information or other confidential data is a misdemeanor (Revenue and Taxation Code Section 19542 and 19542.1).
3. **USE OF INFORMATION:** The City and FTB agree that the information furnished or secured pursuant to this Agreement shall be used solely for the purposes described by this Agreement. The information obtained by FTB shall be used for tax administration and non-tax programs that FTB administers and may be shared with other state/federal agencies as authorized by law. The City and FTB further agree that information obtained under this Agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than identified in this Agreement or as authorized by law.
4. **EMPLOYEE ACCESS TO INFORMATION:** Both FTB and the City agree that the information obtained will be kept in the strictest confidence and shall make information available to its own employees only on a "need to know" basis. The "need to know" standard is met by authorized employees who need information to perform their official duties in connection with the uses of the information authorized by this Agreement. Both parties recognize their responsibilities to protect the confidentiality of this information as provided by law and ensures such information is disclosed only to those individuals and of such purpose, as authorized by the Revenue and Taxation Code.
5. **DISCLOSURE OF CONFIDENTIAL INFORMATION:** Any unwarranted disclosure or use of state tax return information or any willful unauthorized inspection of the return information is an act punishable as a misdemeanor. Inspection is defined to mean any examination of confidential information. No one other than authorized employees may have access, use, and view or manipulate the data being transmitted to the City under this Agreement. The City, in recognizing the confidentiality of state tax return information, agrees to take all appropriate precautions to protect from unauthorized disclosure of the confidential information obtained pursuant to this Agreement. The City will conduct oversight of its users with access to the confidential information provided under this Agreement, and will promptly notify FTB of any suspected violations of security or confidentiality by its users.

The City and each of the City's employees who may have access to the confidential data of FTB will be required to sign a Confidentiality Statement, Exhibit G, attesting to the fact that he/she is aware of the confidential data and the penalties for unauthorized disclosure thereof. The signed statement shall be retained by the City and furnished to FTB upon request.

EXHIBIT D**SPECIAL TERMS AND CONDITIONS (continued)**

6. **INCIDENT REPORTING:** All unauthorized or suspected unauthorized access; use and/or disclosure (incidents) of FTB data shall be reported to FTB's contact, Erica Gonzales at (916) 845-6556, immediately upon discovery of the incident. The incident report shall contain the following: date, time, employee name, description of the incident or circumstances, and means of discovery. Upon discovery of any such incident, FTB will make the appropriate notification to affected California Resident(s) pursuant to the requirements of Civil Code Section 1798.29.
7. **INFORMATION SECURITY:** Information security is defined as the preservation of the confidentiality, integrity, availability, authenticity, and utility of information. A secure environment is required to protect the confidential information obtained from FTB pursuant to this Agreement. The City will store information so that it is physically secure from unauthorized access. The records received by the City will be securely maintained and accessible only by employees of the city business license program who are committed to protect the data from unauthorized access, use, or disclosure.
8. **DESTRUCTION OF RECORDS:** All records received by the City from FTB and any database(s) created, copies made, or files attributed to the records received will be destroyed within three years of receipt. The records shall be destroyed in a manner to be deemed unusable or readable and to the extent that an individual record can no longer be reasonably ascertained. FTB will destroy City data in accordance with the Department's data retention policies.
9. **INDEMNIFICATION:** Both parties agree to indemnify, defend, and save harmless each other, its officers, agents and employees from any and all claims and losses accruing or resulting from any breach of confidentiality by either party and/or its employees.
10. **SETTLEMENT OF DISPUTES:** In the event of a dispute, the City shall file a "Notice of Dispute" with the Assistant Executive Officer of the Franchise Tax Board within ten (10) days of discovery of the problem. Within ten (10) days, the Assistant Executive Officer or his/her designee shall meet with the City and the FTB contact for purposes of resolving the dispute. The decision of the Assistant Executive Officer shall be final.
11. **SAFEGUARD QUESTIONNAIRE and REVIEW:** Prior to sending data to the City, FTB requires the City to submit a safeguard questionnaire certifying the protection and confidentiality of FTB data. The FTB retains the right to conduct an on-site safeguard review of the City. The City will be provided a minimum of seven (7) days notice prior to a safeguard review being conducted by the FTB Disclosure Office. The safeguard review will examine the adequacy of information security controls established by the City in compliance with the confidentiality requirements pursuant to this Agreement. The City will take appropriate disciplinary actions against any user determined to have violated security or confidentiality requirements.
12. **LIMITED WARRANTY:** Either party does not warrant or represent the accuracy or content of the material available through this Agreement, and expressly disclaims any express or implied warranty, including any implied warranty of fitness for a specific purpose.

EXHIBIT D**SPECIAL TERMS AND CONDITIONS (continued)**

13. **CANCELLATION**: Either party may terminate this Agreement, in writing for any reason, upon thirty days (30) prior written notice. This Agreement may be terminated by either party in the event of any breach of the terms of this Agreement. Both parties agree that in the event of a breach to the terms of this Agreement, it shall destroy all records and any databases created, copies made, or files attributed to the records received. The records shall be destructed in a manner to be deemed unusable or readable and to the extent that an individual record can no longer be reasonably ascertained, upon destruction.

14. **NO THIRD PARTY LIABILITY**: Nothing contained in this Agreement or otherwise shall create any contractual relation between either party and any other party, and no party shall relieve the City or FTB of its responsibilities and obligations hereunder. Both parties agree to be fully responsible for the acts and omissions of its third parties and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the City or FTB. Both parties shall have no obligation to pay or to see the payment of any monies to any party or persons either directly or indirectly employed by the City or FTB.

EXHIBIT E

CITY RECORD FORMAT SPECIFICATIONS

Data Element Name	Start Pos.	End Pos.	Field Size	Usage	Description
SOCIAL SECURITY NUMBER (SSN)	1	9	9	AN	Must be present unless FEIN is provided. Fill unused field with blanks.
FEDERAL EMPLOYER ID NUMBER (FEIN)	10	18	9	AN	Must be present unless SSN is provided. Fill unused field with blanks.
OWNERSHIP TYPE	19	19	1	AN	Must be present: S = Sole Proprietorship, P = Partnership, C = Corporation, T = Trust, L = LLC.
OWNERS LAST NAME	20	34	15	AN	Must be present if Ownership Type in position 19 = S.
OWNERS FIRST NAME	35	45	11	AN	Must be present if Ownership Type in position 19 = S.
OWNERS MIDDLE INITIAL	46	46	1	AN	May be blank.
BUSINESS NAME	47	86	40	AN	Enter if business is operating under a fictitious name (Doing Business As (DBA)).
BUSINESS ADDRESS NUMBER-AND-STREET	87	126	40	AN	Address of the business location or the residence of the owner if sole proprietorship.
CITY	127	166	40	A	Must be present.
STATE	167	168	2	A	Enter standard state abbreviation.
ZIP	169	177	9	AN	Enter the valid ZIP Code (nine or five-digit) assigned by the U.S. Postal Service. If only the first five-digits are know, left-justify information and fill the unused positions with blanks.
BUSINESS START DATE	178	185	8	N	Enter the eight-digit (MMDDCCYY). Zero fill if not known.
BUSINESS CEASE DATE	186	193	8	N	Enter the eight-digit date (MMDDCCYY) if out of business. Zero fill if not known or not out of business.

EXHIBIT E

CITY RECORD FORMAT SPECIFICATIONS

Data Element Name	Start Pos.	End Pos.	Field Size	Usage	Description
CITY-BUSINESS-TAX-NUMBER	194	196	3	N	Enter three-digit number assigned by FTB.
NORTH-AMERICAN-INDUSTRY-CLASSIFICATION-SYSTEM (NAICS)	197	202	6	N	Enter the six-digit NAICS code. Fill unused fields with zeros.
STANDARD-INDUSTRIAL-CLASSIFICATION (SIC)	203	206	4	N	Enter the 2-4 digit SIC code. Left justify (example 99 will be 9900). Fill unused fields with zeros.
TOTAL RECORD LENGTH		206			

EXHIBIT F

FRANCHISE TAX BOARD RECORD LAYOUT SPECIFICATIONS

Field Name	Length	Start Pos.	Description
ENTITY TYPE	1	1	"P" – personal income tax record; "B" – business tax record
SSN or FEIN	9	2	For "P" records, primary taxpayers social security number; For "B" records, federal employer identification number.
LAST NAME	40	11	For "P" records, the primary taxpayer's last name; For "B" records, business name.
FIRST NAME	11	51	For "P" records ONLY.
MIDDLE INITIAL	1	62	For "P" records ONLY.
SPOUSE SSN	9	63	For "P" records filed with a joint return.
SPOUSE LAST NAME	17	72	For "P" records filed with a joint return.
SPOUSE FIRST NAME	11	89	For "P" records filed with a joint return.
SPOUSE MIDDLE INITIAL	1	100	For "P" records filed with a joint return.
PBA CODE	6	101	For "P" records, principal business activity (PBA) code.
ADDRESS NUMBER	10	107	
PRE-DIRECTIONAL DIRECTOR	2	117	Postal Service term (i.e., N, S, E, W, NE, NW, SE, SW).
STREET NAME	28	119	
STREET SUFFIX	4	147	
POST DIRECTIONAL INDICATOR	2	151	Postal Service term (i.e., N, S, E, W, NE, NW, SE, SW).
STREET SUFFIX 2	4	153	
APARTMENT/SUITE NUMBER	10	157	
CITY	13	167	
STATE	2	180	Standard state abbreviation
ZIP CODE	5	182	The valid ZIP Code (nine or five-digit) assigned by the U.S. Postal Service.
ZIP CODE SUFFIX	4	187	Provided if known.
CBT MATCH	1	191	"N" – No match per CBT data. "Y" – Yes: CBT matched to state tax return filed.

EXHIBIT G
CONFIDENTIALITY STATEMENT

State of California

Franchise Tax Board

Confidential tax return information is protected from disclosure by law, regulation, and policy. Information security is strictly enforced. Violators may be subject to disciplinary, civil, and/or criminal action. Protecting confidential tax return information is in the public's interest, the state's interest, and the city's interest.

A city employee is required to protect the following types of information received from the Franchise Tax Board:

- Taxpayer name
- Taxpayer address
- Taxpayer social security number or taxpayer identification number
- Principal business activity code

A city employee is required to protect confidential information by:

- Accessing or modifying information only for the purpose of performing official duties.
- Never accessing or inspecting information for curiosity or personal reasons.
- Never showing or discussing confidential information to or with anyone who does not have the need to know.
- Placing confidential information only in approved locations.
- Never removing confidential information from your work site without authorization.

As a city employee, you are required to know whether information is protected. If you have any question regarding whether particular information is confidential, check with your department's project coordinator.

Unauthorized inspection, access, use, or disclosure of confidential tax return information is a crime under state laws, including but not limited to Sections 19542 and 19552 of the California Revenue and Taxation Code and Section 502 of the Penal Code. Unauthorized access, inspection, use, or disclosure may result in either or both of the following:

- State criminal action
- State and/or taxpayer civil action

You are reminded that these rules are designed to protect everyone's right to privacy, including your own.

I certify that I have read the confidentiality statement printed above. I further certify and understand that unauthorized access, inspection, use, or disclosure of confidential information may be punishable as a crime and may result in disciplinary and/or civil action being taken against me.

<i>Name</i>	
<i>Signature</i>	<i>Date</i>