



Council Meeting: March 6, 2012

**SUBJECT: Renewal of Business License Tax Data Exchange Agreement
with the California Franchise Tax Board**

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 Tax software currently used by City staff includes a number of exception reports to alert City staff of businesses operating in the City without a current tax certificate. In 2009, the Council approved an agreement with the California Franchise Tax Board (FTB) to exchange data related to Business Licensing (RTC 09-232). Staff would like to continue to utilize data received from the FTB as a resource to identify businesses that have not paid the Business License Tax.

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 FTB to exchange tax data. The data exchange will enable both parties to identify any non-compliant businesses. The act took effect on January 1, 2009. The City of Sunnyvale initially entered an agreement in September 2009, which expired on December 31, 2011. The City could not renew the agreement with the FTB prior to receiving the new agreement from the State, which occurred in February 2012. The deadline for submitting the signed agreement back to the FTB is April 23, 2012. The term of the new agreement will be from June 1, 2012 to December 31, 2014.

EXISTING POLICY

Council Policy 7.1B.3.2 states: 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 has conducted regular audits of business license data to ensure applicable taxes from business operating within city limits are received. Past audits included 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 business records that do not match business license information on file.

As a result of the enactment of SB 1146, the software vendor created an exception report for FTB data as well. The software has been set up with the ability to import FTB data and export data files to send to the 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. These exception reports have enabled the City to bring in additional revenue from businesses operating in Sunnyvale that have not paid the Business License Tax.

Under the terms of this agreement, Sunnyvale will be required to send data to the FTB annually each June. 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. The FTB will send information on taxpayers who file business related income tax returns. Under the terms of the agreement, this data exchange will continue through December 2014. Neither the FTB nor the City of Sunnyvale would be reimbursed for the cost of providing data and neither party will be charged for receiving data from the other agency. Should the City wish to discontinue participating in the data exchange program, the agreement may be terminated with thirty days written notice to the FTB.

FISCAL IMPACT

The City will receive additional Business License Tax revenue as a result of renewing this agreement. The City has received over \$215,000 in additional revenue to date from this agreement since inception.

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. Adopt a resolution to renew the agreement with the California Franchise Tax Board to exchange business information for the period of June 1, 2012 through December 31, 2014.

2. Do not adopt a resolution to renew the agreement with the California Franchise Tax Board to exchange business information for the period of June 1, 2012 through December 31, 2014.

RECOMMENDATION

Staff recommends Alternative #1. The City has seen positive financial results from the use of this data. Staff can continue to conduct audits to identify businesses operating without a business license in the City without this data. However, the City's other audit efforts are more labor intensive and therefore collections from audits would decrease.

Reviewed by:

Grace K. Leung Director, Finance
Prepared by: Therese B. Balbo Finance Manager

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Agreement between the California Franchise Tax Board and City of Sunnyvale

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

AGREEMENT NUMBER C1100211
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: **June 1, 2012 through December 31, 2014**

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

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	GTC610
Exhibit D - Special Terms and Conditions	3 pages
Exhibit E - City Record Layout Specifications	2 pages
Exhibit F - FTB Record Layout Specifications	1 page
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		<i>California Department of General Services Use Only</i>
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 650 W. Olive Avenue, Sunnyvale, CA 94086		
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		

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 and non-tax program purposes. By entering into a reciprocal agreement, each party agrees to bear its own costs of providing the data and the City is precluded from obtaining reimbursement.

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

This Agreement does not include Federal Tax Information (FTI).

Legal Authority:

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

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 to provide FTB with tax information pursuant to City Record Layout Specifications, Exhibit E.
3. 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 2012, 2013, and 2014. If the Agreement is executed after June 30, 2012, the City has 30 days after execution to provide FTB with the first year's data.
4. The City agrees to submit the records to FTB using FTB's Secure Web Internet File Transfer (SWIFT).
5. The City agrees to submit the records to FTB in ASCII fixed length format, .txt, per the City Record Layout Specifications, Exhibit E.

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

6. 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.
7. 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.
8. The City agrees to submit to FTB a completed Safeguard Review Questionnaire prior to receiving FTB data. The Safeguard Review Questionnaire is valid for the duration of the Agreement.
9. 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 to provide the City data extracted from the Taxpayer Information (TI) and Business Entities Tax System (BETS). FTB will provide the City records for taxpayers within the city's jurisdiction who indicate business income or deductions on their personal or corporation income tax return pursuant to FTB Record Layout Specifications, Exhibit F.
3. 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 FTB Record Layout Specifications, Exhibit F. The first year's data match is at the discretion of FTB and will be based on when the data is received and processed.
4. FTB agrees to provide the City an annual extract file in December 2012 for tax year 2011, December 2013 for tax year 2012, and December 2014 for tax year 2013 via SWIFT.
5. FTB agrees to register the City for a SWIFT account, allowing for the secure electronic transmission of data.
6. FTB agrees to provide the City a unique City Business Tax Number to be used for reporting purposes only.
7. 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

Cathy McCollum
Data Resources and Services Unit
Box 1468, Mailstop A181
Sacramento, CA 95812-1468
Phone: (916) 845-4431
Fax: (916) 843-5899

City of Sunnyvale

Therese Balbo
Finance Manager
650 W. Olive Avenue
Sunnyvale, CA 94086
Phone: (408) 730-7604

Return executed Agreement to:

Franchise Tax Board

Procurement & Asset Management Bureau
Attention: Ta Nita Martinez
P.O. Box 2086, Mailstop A-374
Rancho Cordova, CA 95741-2086
Phone: (916) 845-7199
Fax: (916) 845-3599

EXHIBIT D**SPECIAL TERMS AND CONDITIONS**

1. **STATEMENT OF CONFIDENTIALITY:** The Franchise Tax Board has tax return information and other confidential data in its custody. Unauthorized inspection or disclosure of state return information or other confidential data is a misdemeanor (Sections 19542 and 19542.1 Revenue and Taxation Code).

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.

2. **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 in the Scope of Work, Exhibit A. The information obtained by FTB shall be used for tax administration and nontax 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.
3. **DATA OWNERSHIP:** The confidential tax information or sensitive information being provided to the City under this Agreement remains the exclusive property of FTB. Confidential tax and sensitive data/information are not open to the public and require special precautions to protect from loss and unauthorized use, disclosure modification, or destruction. The City shall have the right to use and process the disclosed information for the purposes stated in the Scope of Work, Exhibit A, of this Agreement, which right shall be revoked and terminated immediately upon completion of this Agreement.
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 respective laws.
5. **PROTECTING CONFIDENTIAL INFORMATION:** Both FTB and the City in recognizing the confidentiality of the information being exchanged, agree to take all appropriate precautions to protect the confidential information obtained pursuant to this Agreement from unauthorized disclosure. Both FTB and the City will conduct oversight of its users with access to the confidential information provided under this Agreement.

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

6. **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, and disclosure.
7. **INCIDENT REPORTING**: All unauthorized or suspected unauthorized access; use and/or disclosure (incidents) of FTB data shall be reported to FTB's City Business Tax Program Area, (916) 845-6304 or by email: LocalGovtLiaison@ftb.ca.gov, 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.
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 unreadable 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. **SAFEGUARD REVIEW QUESTIONNAIRE AND ON-SITE SAFEGUARD REVIEW**: Prior to sending data to the City, FTB requires the City to submit a Safeguard Review 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 an on-site safeguard review being conducted by the FTB Disclosure Office. The on-site 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.
10. **DISPUTE RESOLUTION**: In the event of a dispute, the City shall file a "Notice of Dispute" with the Chief Financial Officer of the Franchise Tax Board within ten (10) days of discovery of the problem. Within ten (10) days, the Chief Financial Officer or his/her designee shall meet with the City and the FTB contact for purposes of resolving the dispute. The decision of the Chief Financial Officer shall be final.
11. **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.

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

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.
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 destroyed in a manner to be deemed unusable or unreadable 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.
15. **EARLY TERMINATION CLAUSE:** In the event that Revenue & Taxation Code 19551.1 and 19551.5 are not amended before the sunset date of December 31, 2013, this Agreement will be terminated effective that date.

EXHIBIT E**CITY RECORD LAYOUT 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 = Limited Liability Company
OWNER'S LAST NAME	20	34	15	AN	Must be present if Ownership Type in position 19 = S.
OWNER'S FIRST NAME	35	45	11	AN	Must be present if Ownership Type in position 19 = S.
OWNER'S MIDDLE INITIAL	46	46	1	AN	May be left 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 CODE	169	177	9	AN	Enter the five- or nine-digit ZIP Code assigned by the U.S. Postal Service. If only the first five-digits are known, left-justify information and fill the unused fields with blanks.
BUSINESS START DATE	178	185	8	N	Enter the eight-digit date (MMDDYYYY). Zero fill if not known.
BUSINESS CEASE DATE	186	193	8	N	Enter the eight-digit date (MMDDYYYY) if out of business. Zero fill if not known or still in business.

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 entity tax record.
SSN or FEIN	9	2	For "P" records, primary taxpayer's 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	Principal business activity 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	e.g., ST, WAY, HWY, BLVD, etc.
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	e.g., APT, UNIT, FL, etc.
CITY	13	167	
STATE	2	180	Standard state abbreviation.
ZIP CODE	5	182	The five-digit ZIP Code 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 all information received from the Franchise Tax Board.

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.

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>