ITEM NO. 10

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 27, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **FRANCHISE TAX BOARD CITY BUSINESS TAX PROGRAM**

SYNOPSIS

Staff recommends that City Council adopt a resolution authorizing the City to continue participation in the State of California Franchise Tax Board's City Business tax program at no cost; and authorize the Financial Service Director to execute the agreement.

BACKGROUND

The Franchise Tax Board (FTB) has established the City Business Tax program that benefits both the State and local cities by exchanging business tax data collected independently. The information exchange provides both agencies the ability to cross reference data to ensure compliance with State and local laws. The program calls for the city to provide information to the State annually in June and the State provides reciprocal information from its database the following December for the previous tax year.

The FTB is authorized to send information only on taxpayers reporting income from a trade or business with an address inside the jurisdictional boundaries of the city, and use of this information is limited to employees of the taxing authority of the city. The city must also submit a safeguard questionnaire prior to receiving FTB data, and each employee having access to FTB data shall sign a Confidentiality Statement (Exhibit G, City of Oceanside Agreement # C1200123).

Participation in the data exchange program is voluntary at this point; however, California Revenue and Taxation Code (R&TC) §19551.5 mandates that cities provide business tax data to the FTB when requested. The FTB may waive cost reimbursement requirements which would otherwise apply if the city enters into the proposed reciprocal data exchange agreement. There are no fees or charges to the city to participate in the program.

City of Oceanside resolution number 10-R0479-1 approved the initial agreement of participation in the City Business Tax program covering the period of August 1, 2010, through December 31, 2012. This enabled data exchange for tax years 2009, 2010,

and 2011. The new agreement continues participation in the City Business Tax program for the period of June 1, 2013, through December 31, 2015; enabling data exchange for tax years 2012, 2013, and 2014.

ANALYSIS

Due to limited data extraction and comparison capabilities with the City's prior business license software, the City saw minimal revenue improvement for the first term of the agreement. As of July 2012 the City uses LicenseTRAK as its business license software. With the added reporting capabilities in LicenseTRAK, staff expects a higher level of success in data exchange comparison to locate non-compliant entities.

The data exchange with the FTB allows the City to cross reference business information reported to the State with information reported to the City. This cross reference would help to ensure compliance with the City's zoning ordinances and business license ordinances. Staff could identify non-compliant businesses with the contact information being provided and proceed with obtaining compliance.

Another benefit for the City is that audit compliance could be done in the office thereby reducing time spent in the field associated with visual inspection for business license compliance. Businesses operating in Oceanside without a license would be contacted to become compliant.

Staff does not anticipate any costs to participate in the program.

FISCAL IMPACT

Staff expects a positive, yet unquantifiable, impact on general fund revenue (account numbers 1101.4156.0001 and 200010101.4417) due to increased compliance with City business tax laws resulting in an increase in City business license administration fees and business taxes.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS

Staff recommends that City Council adopt a resolution authorizing the City to continue participation in the State of California Franchise Tax Board's City Business tax program at no cost; and authorize the Financial Service Director to execute the agreement.

PREPARED BY:

Sheri Brown
Financial Services Division Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Teri Ferro, Financial Services Director

Attachments: Agreement
Resolution

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

AGREEMENT NUMBER
C1200123
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 Oceanside

2. The term of this Agreement is: June 1, 2013 through December 31, 2015

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

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

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS
300 North Coast Highway; Oceanside, CA 92054

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 1 - 4.04.A.2.5.

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 Oceanside, 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 bear its 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, set forth additional terms to which the parties agree to be bound. No Federal Tax Information will be exchanged.

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 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 2013, 2014, and 2015. If the Agreement is executed after June 30, 2013, the City has 30 days after execution to provide FTB with the first year's data.

5. The City agrees to submit the records electronically to FTB using FTB's Secure Web Internet File Transfer (SWIFT) system.

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 FTB 712, 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 Review Questionnaire prior to receiving FTB data. The Safeguard Review 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 Entities 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 (FTB 909A) 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 (FTB 909A). The first year's data match is at the discretion of FTB and will be based on when the data is received and processed.

5. FTB agrees to provide the City an annual extraction in December 2013 for tax year 2012, December 2014 for tax year 2013, and December 2015 for tax year 2014 via SWIFT.

6. FTB agrees to register the City for a SWIFT account, allowing for the secure electronic transmission of data.

EXHIBIT A

SCOPE OF WORK (continued)

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.

Project Coordinators:

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

Franchise Tax Board
Cathy McCollum
Data Resources and Services Unit
P.O. Box 1468, Mailstop A181
Sacramento, CA 95812-1468
Phone: (916) 845-4431
Fax: (916) 843-5899
Email: LocalGovtLiaison@ftb.ca.gov

City of Oceanside
Dana McMillen
Revenue Compliance Inspector
300 North Coast Highway
Oceanside, CA 92054
Phone: (760) 435-3841
Email: dmcmillen@ci.oceanside.ca.us

Return executed agreement to:

Franchise Tax Board
Marisa Lai
Business Acquisitions Unit
P.O. Box 2086, Mailstop A-374
Rancho Cordova, CA 95741-2086
Phone: (916) 845-4518
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 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.

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 ensure 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 access, use, 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 (FTB 712), 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. PROTECTING CONFIDENTIAL INFORMATION/ INCIDENT REPORTING: Both agencies, in recognizing the confidentiality of information exchanged, agree to take all appropriate precautions to protect the confidential information obtained pursuant to this Agreement from unauthorized disclosure. Both agencies will conduct oversight of its users with access to the confidential information provided under this Agreement, and will immediately notify the FTB's Information Security Audit Unit (SecurityAuditMail@ftb.ca.gov) of any unauthorized or suspected unauthorized accesses; uses and/or disclosures (incidents). For purposes of this section, immediately is defined within 24 hours of the discovery of the breach. The notification must describe the incident in detail and identify responsible personnel (name, title, and contact information). The agency with an incident will comply with the incident reporting requirements in accordance with Civil Code Section 1798.29 and SAM Chapter 5300 to facilitate the required reporting to the taxpayers or state oversight agencies.

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, and disclosure.

8. CLOUD COMPUTING ENVIRONMENT: A Cloud Computing Environment cannot be used to receive, transmit, store or process FTB's confidential data.

9. 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 destructed 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.

10. 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.

11. SETTLEMENT OF DISPUTES: 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.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS (continued)

12. SAFEGUARD REVIEW QUESTIONNAIRE AND REVIEW: Prior to sending data to the City, FTB requires the City to submit a Safeguard Review Questionnaire (FTB 7484) 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.

13. 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.

14. 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 unreadable and to the extent that an individual record can no longer be reasonably ascertained, upon destruction.

15. 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.

16. 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 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 = 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.

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 best interest of the city and state.

As a city employee, you are required to protect all information from the Franchise Tax Board (FTB). To protect confidential tax data, you must:

- **Access or modify tax data solely to perform official duties.**
- **Never access or inspect tax data for curiosity or personal reasons.**
- **Never show or discuss confidential tax data with anyone who does not have a need to know.**
- **Never remove confidential tax data from your worksite without authorization.**
- **Placing confidential information in approved locations only.**

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

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

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 against me.

Name	
Signature	Date

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AUTHORIZING THE CITY TO PARTICIPATE IN THE STATE OF CALIFORNIA FRANCHISE TAX BOARD CITY BUSINESS TAX PROGRAM, AND AUTHORIZING THE FINANCIAL SERVICES DIRECTOR TO EXECUTE THE AGREEMENT

WHEREAS, resolution number 10-R0479-1 authorized the initial agreement with the California Franchise Tax Board to participate in the City Business Tax program which expired on December 31, 2012.

WHEREAS, continued participation in the Franchise Tax Board City Business Tax program requires an additional agreement for a period of June 1, 2013 through December 31, 2015.

WHEREAS, the City anticipates a positive impact on the general fund revenue due to enhanced compliance with business tax laws; and

WHEREAS, participation is voluntary at this point, but California Revenue Taxation Code §19551.5 mandates that cities provide business tax data to the Franchise Tax Board when requested; and

WHEREAS, participation in the program results in a waiver by the Franchise Tax Board of cost reimbursement requirements which otherwise would apply.

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. The City is authorized to participate in the State of California Franchise Tax Board City Business Tax program and the City Financial Services Director is hereby authorized to execute the agreement.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this _____day of _____, 2013, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney