

Council/Agency Meeting Held: _____ Deferred/Continued to: _____ <input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	_____ City Clerk's Signature
Council Meeting Date:                  June 20, 2005	Department ID Number:                  CT05-09

**CITY OF HUNTINGTON BEACH  
REQUEST FOR COUNCIL ACTION**

**SUBMITTED TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS  
**SUBMITTED BY:** SHARI L. FREIDENRICH, CITY TREASURER *Shari*  
**PREPARED BY:** SHARI L. FREIDENRICH, CITY TREASURER *Shari*  
**SUBJECT:** APPROVE AGREEMENT WITH THE FRANCHISE TAX BOARD

RECEIVED  
 CITY CLERK  
 CITY OF  
 HUNTINGTON BEACH, CA  
 2005 JUN - 9 P 4: 3

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

**Statement of Issue:** The City Treasurer is requesting City Council approval for a contract to release 2004 taxpayer information from the Franchise Tax Board to the City of Huntington Beach at a cost not to exceed \$4,505.00 from January 1, 2005 to January 31, 2006.

**Funding Source:** Appropriate \$4,505.00. Cost to be offset by new revenues.

**Recommended Action:** (Motion to)

- 1) Approve and authorize the Mayor and City Clerk to execute Agreement #C0424161 between the City of Huntington Beach and the Franchise Tax Board.
- 2) Approve an appropriation and authorize an expenditure of an amount not to exceed \$4,505.00.

**Alternative Action(s):** Deny the contract and do not receive information on businesses filing with the Franchise Tax Board and doing business in the City of Huntington Beach.

**Analysis:** In 2002, Huntington Beach was one of 83 cities that contracted with the Franchise Tax Board to obtain electronic data about taxpayers who filed a Schedule C (Statement of Business Profit or Loss) with their 2001 income tax return. Based on that initial data received and doing a minimal amount of work, we received revenue that exceeded the cost of the data for that year. We participated in this program last year also. The total number of records that were received was 19,443 and the total that appeared to be potentially unlicensed businesses was 7,400.

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# REQUEST FOR COUNCIL ACTION

MEETING DATE: June 20, 2005

DEPARTMENT ID NUMBER: CT05-09

The revenue generated to date is approximately \$18,000 (first year new revenue only) versus cost of \$10,000 approximately, and so far, we have only sent letters to 5% of the potentially unlicensed businesses. We have sent out approximately 2,000 letters, and we have received 254 licenses (a "hit" rate of 13%).

We also discussed this program with the City of Newport Beach and determined that cumulative to date last year, they had a "hit" rate of approximately 19% and have received revenue of approximately \$800,000 from this program. They have sent letters to 70% of the potentially unlicensed businesses.

We expect to be able to work closely with Information Systems and City View to minimize any additional costs to process the data by taking the electronic data from the Franchise Tax Board, merge it against our current database of licensed businesses, and then send a letter using mail merge capabilities to all potentially unlicensed businesses.

As adopted by the City Council in March 1998, all requests for the mid-year appropriation of General Funds must meet one of the following criteria: 1) The request is for an unanticipated emergency, 2) The request is required to implement labor negotiations, or 3) The request will be offset by related new revenues. This request meets criterion #3, as it will be offset by new revenues.

**Environmental Status:** Not applicable

**Attachment(s):**

City Clerk's Page Number	No.	Description
3	1.	Agreement with the Franchise Tax Board January 1, 2005 to January 31, 2006
11	2.	Insurance & Indemnification Waiver Modification Request

RCA Author: slf

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**ATTACHMENT #1**

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

AGREEMENT NUMBER <b>C0424161</b>
REGISTRATION NUMBER

- 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 Huntington Beach**
- The term of this Agreement is: **May 1, 2005 through January 31, 2006**
- The maximum amount of this Agreement is: **\$ 4,505.00**  
**FOUR THOUSAND FIVE HUNDRED FIVE AND NO/100 DOLLARS**
- 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	1 page
Exhibit B – Budget Detail and Payment Provisions	1 page
Exhibit C* – General Terms and Conditions	GTC304
Exhibit D - Special Terms and Conditions	3 pages
Exhibit E – 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.dgs.ca.gov/contracts](http://www.dgs.ca.gov/contracts)

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.) <b>City of Huntington Beach</b>	
BY (Authorized Signature) 	DATE SIGNED(Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING	
ADDRESS  <b>P.O. Box 190, Huntington Beach, CA 92648</b>	
STATE OF CALIFORNIA	
AGENCY NAME <b>Franchise Tax Board</b>	
BY (Authorized Signature) 	DATE SIGNED(Do not type)
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Titus S. Toyama, Chief Financial Officer</b>	
ADDRESS  <b>P.O. Box 2086, Rancho Cordova, CA 95741-2086</b>	

<i>California Department of General Services Use Only</i>
<input checked="" type="checkbox"/> Exempt per: SCM 4.04.5.b.

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APPROVED AS TO FORM  
 JENNIFER McGRATH, City Attorney  
  
 By Leonie Mulvihill  
 Deputy City Attorney 4/6/05

**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 Huntington Beach, herein after referred to as the City.

1. Pursuant to Revenue and Taxation Code Section 19551.1, FTB will provide to the City the following records obtained from the FTB Taxpayer Information System (TI) and Business Entity Tax System (BETS) files:
  - a. Taxpayer name
  - b. Taxpayer Address
  - c. Taxpayer Social Security Number or Taxpayer Identification Number
  - d. Principal Business Activity Code
2. The records will be extracted from information in the FTB files obtained from the 2004 tax year.
3. The records will be identified by zip codes located within the jurisdictional boundaries of the City. A database of the identified records will be transmitted to the City.
4. The records will be sent to the City project coordinator on CD-Rom no later than January 31, 2006. The 2004 data will be sent on two CD's. The first will be sent in August 2005 containing the most current filings to date. A second CD will be sent in January 2006, complete with all 2004 filings.
5. The project coordinators during the term of this Agreement will be:

**Franchise Tax Board**

Robert Bisho  
Architecture and Data Management Bureau  
P.O. Box 1468, MS-B-40  
Sacramento, CA 95812-1468  
Phone: (916) 845-4762  
Fax: (916) 845-0412

**City of Huntington Beach**

Shari Freidenrich  
City Treasurer  
P.O. Box 190  
Huntington, CA 92648  
Phone: 714-536-5200

**Franchise Tax Board**

Business Acquisitions Unit  
Attention: Roshni Caswell  
P.O. Box 2086, Mailstop SA3.74  
Rancho Cordova, CA 95741-2086  
Phone: (916) 845-3700  
Fax: (916) 843-0756

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**EXHIBIT B**

**BUDGET DETAIL AND PAYMENT PROVISION**

1. **PAYMENT**: The City agrees to pay FTB \$4,505.00 for 2004 data. Upon receipt of the executed Agreement, the FTB will invoice the City for its share of the cost for 2004 data, which shall not exceed \$4,505.00.
  
2. **INVOICING**: FTB shall render an invoice in triplicate to:

City of Huntington Beach  
Shari Freidenrich  
City Treasurer  
P.O. Box 190  
Huntington Beach, CA 92648

Upon receipt of the Agreement executed by the FTB and an accompanying invoice, the City agrees to remit payment of the amount shown on the invoice, within 10 days.

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## EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. DATA OWNERSHIP: The confidential tax information being provided under this Agreement remains the exclusive property of the 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 FTB has state 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, and Government Code Section 90005).

The City and each of the City's employees who may have access to the confidential data of the FTB will be required to sign a statement, Exhibit E, attesting to the fact that he/she is aware of the confidential data and the penalties for unauthorized disclosure thereof.

3. USE OF INFORMATION: The City agrees that the information furnished or secured pursuant to this Agreement shall be used solely for the purposes described by this Agreement. The information obtained shall be used exclusively to administer the city business license program established by the City. The City further 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 other than identified in this Agreement.
4. EMPLOYEE ACCESS TO INFORMATION: The City agrees 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. Need to know are those authorized employees who need information to perform their official duties in connection with the uses of the information authorized by this Agreement. The parties recognize their mutual responsibilities to protect the confidentiality of the state tax return 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 city business license program 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 the FTB of any suspected violations of security or confidentiality by its users.

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## 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 the FTB Contact, Robert Bisho at (916) 845-4762, 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. **IRS INFORMATION:** This agreement does not allow for the release of any confidential tax return information in the FTB files that may have been obtained from sources other than the taxpayer. No confidential federal tax return information will be provided to the City. This Agreement does not provide for the exchange of confidential federal tax return information obtained from the Internal Revenue Service by the FTB.
8. **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 the 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.
9. **DESTRUCTION OF RECORDS:** All records received by the City from FTB and any database created, copies made, or files attributed to the records received will be destroyed within one year 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. Upon destruction of the records, the City will notify FTB of the completed destruction.
10. **INDEMNIFICATION:** The City agrees to indemnify, defend and save harmless the FTB, its officers, agents and employees from any and all claims and losses accruing or resulting from any breach of confidentiality by the City and/or its employees.
11. **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 FTB Contact for purposes of resolving the dispute. The decision of the Assistant Executive Officer shall be final.
12. **SAFEGUARD REVIEW:** The FTB retains the right to conduct an on-site safeguard review to 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.

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**EXHIBIT D**

**SPECIAL TERMS AND CONDITIONS (continued)**

13. **LIMITED WARRANTY:** The FTB 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:** The City may terminate this Agreement, in writing to the FTB for any reason, upon thirty days (30) prior written notice. In the event of a voluntary termination, the City agrees it will not be entitled to a refund. This Agreement may be terminated by either party in the event of any breach of the terms of this Agreement. The City agrees that in the event of its breach to the terms of this Agreement it shall destroy all records received by the City from FTB and any database created, copies made, or files attributed to the records received immediately upon written notification by FTB. 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. Upon destruction of the records, the City will notify FTB of the completed destruction.

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**EXHIBIT E**

**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>

*E-11.10*

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**ATTACHMENT #2**



# INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

1. Requested by: City Treasurer
2. Date: June 1, 2005
3. Name of contractor/permittee: Franchise Tax Board (FTB)
4. Description of work to be performed: Francise Tax Board to supply City with taxpayer information
5. Value and length of contract: Not to exceed \$4,505 through 1/31/06
6. Waiver/modification request: Reverse indem. request of breach of confidentiality by City
7. Reason for request and why it should be granted: City to indemnify FTB/State from any claims arising from City's use of taxpayer information supplied by FTB per terms of agreement.
8. Identify the risks to the City in approving this waiver/modification: City will be solely responsible for any claims arising from City's use of information provided by FTB.

*Gary Frederick*  
Department Head Signature

June 1, 2005  
Date:

### APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

**1. Risk Management**

Approved  Denied

*[Signature]*  
Signature

6/2/05  
Date

**2. City Attorney's Office**

Approved  Denied

*[Signature]*  
Signature

6/6/05  
Date

**3. City Administrator's Office**

Approved  Denied

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Administrative Services

*E - 11/12*