

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
THOMAS A. MISCHLEY, C.P.A., M.B.A.**

THIS AGREEMENT, entered into this _____ day of _____,
20_____, by and between the COUNTY OF SAN MATEO, hereinafter called
"County," and THOMAS A. MISCHLEY, C.P.A., M.B.A., hereinafter called
"Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of tax preparer services for Aging and Adult Services Public Guardian's conserved clients.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits.

The following exhibits are attached hereto and incorporated by reference herein:

Exhibit A—Services
Exhibit B—Payments and rates
Attachment I—§504 Compliance

2. Services to be performed by Contractor.

In consideration of the payments set forth herein and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit A.

3. Payments.

In consideration of the services provided by contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this contract exceed \$240,000.

4. Term and Termination.

Subject to compliance with all terms and conditions, the term of this agreement shall be from January 1, 2005 through December 31, 2007.

This Agreement may be terminated by Contractor, the Director of Health Services or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds.

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State or County funds, by providing written notice to Contractor as soon as is reasonably possible after the county learns of said unavailability of outside funding.

6. Relationship of Parties.

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers or advantages of County employees.

7. Hold Harmless.

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting.

Contractor shall not assign this Agreement or any portion thereof to a third party, or subcontract with a third party to provide services required by contractor under this agreement without the prior written consent of County. Any such assignment or subcontract without the county's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance.

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by the County Manager, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the County Manager with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County Manager of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance.** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
-
- (b) Motor Vehicle Liability Insurance \$1,000,000
-
- (c) Professional Liability \$1,000,000
-

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses.

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any federal or county financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and state, federal, county or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination.

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract (this paragraph needed only if services provided to members of the public).
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this agreement.

- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractors employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contractor between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Retention of Records.

Contractor shall maintain all required records for three years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

13. Merger Clause.

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

14. Controlling Law.

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation and performance of this Agreement shall be governed by the laws of the State of California.

15. Notices.

Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

In the case of County, to:

Jacqueline Toliver, Deputy Director
Aging and Adult Services
225 37th Avenue
San Mateo, CA 94403

In the case of Contractor, to:

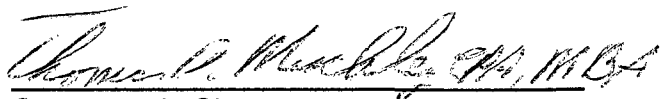
Thomas A. Mischley, C.P.A., M.B.A.
3779 Moddison Avenue
Sacramento, CA 95819-1523

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

Thomas A. Mischley, C.P.A., M.B.A.

By: _____
Mark Church, President, Board of
Supervisors



Contractor's Signature

Date: _____

Date: 4/11/04

ATTEST:

By: _____
Clerk of Said Board

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

On behalf of conserved clients under the responsibility of the San Mateo County Public Guardian, Contractor shall:

- A. Provide a competitive, clearly defined and reasonable fee schedule
- B. Provide a reduced charge for clients with minimal assets (i.e., those clients on limited benefits and/or pensions, and the cost for filing exceeds the value of the return)
- C. Provide a detailed billing of all charges with one billing per client
- D. Provide a monthly status report that identifies each client, the type and year of return(s) in process, when received by contractor, all missing information needed in order to file, and when completed and submitted by contractor
- E. Provide research services into tax circumstances of our clientele (e.g., amend a prior return)
- F. Review all available documents and provide tax-planning recommendations
- G. Provide assistance in determining values for tax basis when records are not available
- H. Understand our type of clientele and the condition of their affairs (i.e., many times the records needed for filing are simply not available, and it takes a creative letter from the preparer to the IRS explaining the situation)
- I. Have the ability to file timely extensions when the April 15 deadline is unable to be met
- J. Have the ability to e-file
- K. Provide three hours of annual tax preparation training to the Public Guardian staff on tax law changes and processes, at no additional cost
- L. Provide consultation on and review of filing requirements, including identifying missing information, at no additional cost
- M. Provide recommendations on tax consequences of investment sales in consultation with the Financial Manager, at no additional cost
- N. Provide easy access and high quality customer service

Exhibit B

In consideration of the services provided by Contractor in Exhibit A, County shall pay Contractor based upon submission of invoices per tax returns completed and approved for filing by the Public Guardian representative on the following fee schedule:

TYPES OF RETURNS	
Simple Individual Returns	\$150-295
Complex Individual Returns	\$250-525
Partnership and Corporate Returns	\$600+
Estate Tax Returns – Form 706	\$950+
Fiduciary Returns	\$250+
Correspondence/Research	\$75/hr

The fee ranges are based on these factors:

- The complexity of the return, i.e., the number of schedules required
- The number of items in the return
- The completeness of the data presented for return preparation
- Review and clerical time
- Expenses attributable directly to the return, e.g., software charges

Simple individual returns consist of the basic 1040/540 Federal/CA Individual Income Tax Return with Schedule A-Itemized Deductions; Schedule B-Interest and Dividend Income. With all data available at one time, the total estimated time to prepare, review and complete the return is 1-2 hours plus a processing, filing and computer fee of approximately \$65.00. The fee range for simple returns is based on these criteria.

Complex individual returns consist of items in the simple return plus additional forms and schedules such as D-Capital Gains and Losses; C-Profits and Loss from Business; E-Income/Loss from Rental Real Estate, etc.; Form 6251 Alternative Minimum Tax. Researching the basis of assets and transactions as well as communication with third parties may be required. The fee range for complex returns is based on total estimated time to prepare, review and complete the return of 2.1 – 3.5 hours plus a processing, filing and computer charge of approximately \$85.00.

Estimated fees for the preparation of a partnership, corporation, estate or fiduciary return are best quoted after a review of the completeness of the information and complexity of the estate or trust documents.

Reduced Fee Clients: Billings will be reduced 15% in cases where clients with limited benefits and/or pensions are filing to obtain refunds that are less than the regular cost of the return.

Attachment I

(Required only from Contractors who provide services directly to the Public on County's behalf.)

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of and for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. employs fewer than 15 persons.
- b. employs 15 or more persons and, pursuant to Section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person - Type or Print

Thomas A. Mischley

Name of Contractor(s) - Type or Print

1181 Chess Dr. Suite 200

Street Address or PO Box

Foster City

City

CA

State

94404

Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

1/22/04

Date

Thomas A. Mischley

Signature and Title of Authorized Official

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a handicapped person seeking its services, there is no method of complying with (the facility accessibility regulations)...other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Thomas A. Mischley CPA
Contact Person: Tom Mischley
Address: 1181 Chess Drive Suite 200 Foster City, CA 94404
Phone Number: 650-218-7874
Fax Number:

II Employees

Does the Contractor have any employees? [] Yes [X] No

Does the Contractor provide benefits to spouses of employees? [] Yes [X] No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- [X] Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
[] Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
[] No, the Contractor does not comply.
[] The Contractor is under a collective bargaining agreement which began on (date) and expires on (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Thomas A. Mischley
Signature

Thomas A. Mischley
Name (Please Print)

CPA/Owner
Title

11/12/04
Date