



LEGAL SERVICES AGREEMENT

This **Legal Services Agreement** (the “Agreement”) is hereby made and entered into this 9th day of July, 2018 between **Titus Pemberton**, Attorney at Law (hereinafter referred to as the “Attorney”), and **Newton County, Georgia** a political subdivision of the State of Georgia, acting by and through its governing authority, the Newton County Board of Commissioners (hereinafter referred to as the “County”), collectively referred to as the Parties.

WITNESSETH:

WHEREAS, the Newton County Juvenile Court operates a Family Treatment Court Program;

WHEREAS, the Family Treatment Court team utilizes an attorney serving also as a Guardian ad Litem to provide legal representation and services to children in the Family Treatment Court Program;

WHEREAS, the County has approved funding for the legal representation of children in the Family Treatment Court Program; and

WHEREAS, the Attorney is in the business of providing legal representation, including serving as a Guardian ad Litem, to children entitled to legal services in connection with proceedings before the Family Treatment Court, and further desires to provide said services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises herein contained, and for such other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

- (1) **Services-** Subject to the terms and conditions of this Agreement, the County hereby engages the Attorney to provide competent legal representation and services to children as assigned by the Court (hereinafter referred to as the “Work”) in connection with the Family Treatment Court Program (hereinafter referred to as the “Program”). The Attorney agrees to provide competent legal representation and services to children and parents (hereinafter referred to as the “Client”) assigned by the Court in the following types of cases:
 - a. All services as Attorney or Guardian ad Litem in Family Treatment Court cases; and
 - b. All services as a member of the Family Treatment Court Team.

The County does not guarantee any minimum amount of Work. Attorney agrees to provide all Work required by the Juvenile Court of Newton County, subject to ethical (conflicts) restrictions.

- (2) **Term-** This Agreement is effective as of July 1, 2018 and shall terminate on the 30th day of June, 2019. The term of this Agreement may be reduced in the manner hereinafter set forth under Paragraph (5) entitled "Termination." The parties agree that due to the County's ability to terminate for convenience, this Agreement is not a "multi-year" purchase agreement as defined in O.C.G.A. § 36-60-13(a).
- (3) **Compensation-** During the term of this Agreement, the County shall pay to the Attorney the sum of Six Thousand Dollars (\$6,000.00), to be paid in monthly installments of Five Hundred Dollars and 00/100 (\$500.00). In addition, Attorney shall be compensated at the rate of \$75.00 per hour for court appearances and \$60.00 per hour for case preparation for all appointments for the Family Treatment Court Program. There shall be no reimbursement for costs and/or expenses. With respect to Work reimbursed on an hourly basis, Attorney shall submit monthly invoices setting forth in detail the services performed and hours worked, along with any supporting documents reasonably requested by County to process the invoice.
- (4) **Budgetary Limitations-** Attorney agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Attorney's profession and industry. Attorney shall take no calculated risk in the performance of the Work. Specifically, Attorney agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principles of Attorney's profession and industry, Attorney will give written notice immediately to County.
- (5) **Independent Contractor Status-** Attorney hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as agent or employee either or Newton County or the Juvenile Court of Newton County. Nothing in this Agreement shall be construed to make Attorney or any of its employees, servants, or subcontractors, an employee, servant or agent of County for any purpose. Attorney controls the Work afforded under the terms of this Agreement and agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; hiring of consultants, agents or employees to complete the Work; and the payment of employees, including benefits and matters. Attorney agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. Any provisions of this Agreement that may appear to give County the right to direct Attorney as to the details of the services to be performed by Attorney or to exercise a measure of control over such services will be deemed to mean that Attorney shall follow the directions of County with regard to results of such services only. Attorney is not entitled to participate in Newton County's health insurance program, pension plan, and/or other benefits provided to full-time employees of Newton County. Attorney shall not be entitled to unemployment compensation upon termination of this Agreement or worker's compensation for any injuries sustained while performing the scope of work under this Agreement. Attorney shall provide his or her own transportation and pay all related expenses such as gasoline, maintenance, insurance, repairs, license fees, and ad valorem taxes. It is further understood

that this Agreement is not exclusive, and County may hire additional entities to perform the Work related to this Agreement.

Insamuch as the County and attorney are independent of each other, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both Parties hereto. Attorney agrees not to represent itself as County's agent for any purpose to any party or to allow any employee of Attorney to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. Attorney shall assume full liability for any contracts or agreements Attorney enters into on behalf of County without the express knowledge and prior written consent of County.

- (6) **County's Reliance on the Work-** Attorney acknowledges and agrees that County does not undertake to approve or pass upon matters of expertise of Attorney and that, therefore, County bears no responsibility for Attorney's Work performed under this Agreement. Attorney acknowledges and agrees that the acceptance of Work by County is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. County will not, and need not, inquire into adequacy, fitness, suitability, and correctness of Attorney's Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principles.
- (7) **Confidentiality-** Attorney acknowledges that it may receive confidential information of County and that will protect the confidentiality of any such confidential information and will require any of its subcontractors, Attorneys, and/or staff to likewise protect such confidential information. Attorney agrees that confidential information it learns or receives or such reports, information, opinions or conclusions that Attorney creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of County. Attorney shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

In performing the Work, Attorney may receive County records that contain personal identifying information, including addresses, social security numbers, phone numbers, birth dates, and medical information. Attorney may use such personal information only for purposes of performing the Work and shall not share this information with any third party except as necessary to perform the Work, and then only if the third party agrees to the use restrictions found in this paragraph.

Attorney acknowledges that County's disclosure of documentation is governed by Georgia's Open Records Act, and Attorney further acknowledges that if Attorney submits records containing trade secret information, and if Attorney wishes to keep such records confidential, Attorney must submit and attach to such records and affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to

Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

(8) **Termination-** This Agreement may be terminated, upon delivery of written notice, in accordance with the following:

- a. Termination for Convenience: Newton County may terminate this Agreement at any time for any reason (or no reason) upon fifteen (15) days prior written notice. As full compensation under this Agreement, Attorney shall be entitled to compensation earned prior to the date of the notice of termination plus one additional payment of Two-Hundred Fifty Dollars and 00/100 (\$250.00).

This Agreement may be terminated in the event that each of the parties mutually agree in writing. As full compensation under this Agreement, Attorney shall be entitled to compensation earned prior to the agreed upon date of termination.

- b. Termination for Cause: This Agreement may be terminated by Newton County immediately and without prior notice for breach of any material provision of this Agreement, including any of the following:

- 1) Attorney's failure to perform his or her duties in a competent manner, as determined by the Juvenile Court Judge, in her sole discretion;
- 2) Attorney's failure to perform the duties assigned, as determined by the Juvenile Court Judge, in her sole discretion;
- 3) Attorney is charged with a felony, crime of moral turpitude, act of fraud or other crime involving dishonesty, or any crime against children;
- 4) Attorney violates any applicable duties of confidentiality;
- 5) Attorney uses any illegal drug; or
- 6) Attorney commits any act or acts that could reflect discredit on or bring disrepute to the County.

As full compensation under this Agreement, Attorney shall be entitled to compensation earned prior to the date of the for-cause termination, less any damages suffered by the County.

This Agreement may be terminated by the Attorney in the event the County defaults in the performance of a material provision of this Agreement and such default continues uncured for a period of thirty (30) days after receipt by the County of a written notice from the Attorney stating the specific default. ***Under no circumstances shall the Attorney, upon his or her belief of a default, discontinue services or cause a case to be continued or the docket disrupted unless approved by the presiding judge of the case(s).***

- c. Conversion to Termination for Convenience: If County terminates this Agreement for cause and it is later determined that County did not have grounds to do so, the termination will be converted to and treated as a termination for convenience under the terms of Section 8(a) above.
- d. Requirements Upon Termination: Upon termination or expiration of this Agreement, Attorney shall continue to provide legal representation and services to all clients assigned under the Program until the conclusion of all proceedings initiated during the term of this Agreement unless the withdrawal of the Attorney is approved by the presiding judge of the case.
- e. Reservation of Rights and Remedies: The rights and remedies of County and Attorney provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

- (10) **Insurance-** The Attorney shall have and maintain in full force and effect for the duration of this Agreement, adequate insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by Attorney, its agents, representatives, employees or subcontractors. Such insurance shall include, but is not limited to, professional services insurance with coverage for Attorney's errors, omissions, or negligent acts. All policies shall be subject to approval by County as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the County Manager.
- (11) **Assignment-** Except as otherwise set forth in this Agreement, neither party shall assign, sell, or otherwise transfer this Agreement, or any interest therein, without prior written consent of the other party.
- (12) **Subcontracting and Delegation-** In order to discharge the obligations hereunder, the Attorney may engage certain attorneys as independent contractors rather than employees. If the Attorney is a law firm, the Attorney may employ associates properly admitted to the State Bar of Georgia and in good standing to handle cases assigned to the Attorney in connection with the Program. Neither contract Attorneys in solo practice nor law firms shall subcontract, associate an attorney, or delegate within the law firm an attorney, unless said attorney has practiced law for at least five (5) years *and* has at least two (2) years extensive Juvenile Court experience. Any exceptions to these requirements must receive the prior approval of the Juvenile Court Judge. The Attorney shall exercise administrative supervision over such associates or independent contractors necessary to ensure strict fulfillment of the obligations contained in this Agreement, including the responsibility to provide competent legal representation to each and every Client.
- (13) **Licensure-** The Attorney and all associates or subcontractors provided or made available by the Attorney shall be licensed to practice law in the State of Georgia and shall be in good standing with the State Bar of Georgia at all times during the term of this Agreement. The Attorney shall be licensed to practice law before the Georgia Supreme

Court and the Georgia Court of Appeals. Unless approved by the Juvenile Court Judge, the Attorney and all associates and subcontractors shall have practiced law for at least five (5) years *and* have at least two (2) years extensive Juvenile Court experience.

- (14) **Ethics Code; Conflict of Interest-** Attorney agrees that it shall not engage in any activity or conduct that would result in a violation of the Newton County Code of Ethics or any other similar law or regulation. Attorney certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performance of this Agreement. If during the Term of this Agreement a conflict should arise, Attorney shall immediately notify County. If County determines that a conflict of interest exists, County may require that Attorney take action to remedy the conflict of interest or terminate the Agreement without liability. County shall have the right to recover any fees paid for services rendered by Attorney when such services were performed while a conflict of interest existed if Attorney had knowledge of the conflict of interest and did not notify County within five (5) business days of becoming aware of the existence of the conflict of interest.
- (15) **Indemnification and Hold Harmless-** The Attorney agrees to indemnify and hold harmless the County, its divisions, departments and affiliates, officers (including elected, appointed, and Constitutional officers), directors, employees, representatives, servants, agents, officials, elected and appointed persons, insurers and attorneys, in their official and individual capacities, together with their predecessors, successors and assigns, both jointly and severally, (individually an "Indemnified Party" and collectively "Indemnified Parties") from any and all claims, actions, lawsuits, damages, judgments, costs, expenses, losses, or liabilities of any kind whatsoever arising out of the operation and maintenance of the Program in which legal services are provided by the Attorney, it being the express understanding of the parties hereto that the Attorney shall provide the actual legal services to the clients assigned under the Program and have complete responsibility for such legal services. The County shall immediately notify the Attorney of any incident, claims, or lawsuit of which the County becomes aware and shall fully cooperate in the defense of such claim, but the Attorney shall retain sole control of the defense while the action is pending (provided that the Attorney shall not settle any claim or admit any liability on behalf of any Indemnified Party without the Indemnified Party's consent).

In any and all claims against an Indemnified Party, by any employee of Attorney, its subcontractor, anyone directly or indirectly employed by Attorney or subcontractor or anyone for whose acts Attorney or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Attorney or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

(16) Employment of Unauthorized Aliens Prohibited- Pursuant to O.C.G.A. § 13-10-91, County shall not enter into a contract for the physical performance of services unless:

(1) Attorney shall provide evidence on County-provided forms, attached hereto as **Exhibits "A" and "B"** (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and Attorney's subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, **or**

(2) Attorney provides evidence that it is not required to provide an affidavit because it is an *individual* (not a company) licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

Attorney hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in **Exhibit "A"**, and submitted such affidavit to County or provided County with evidence that it is an individual not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. Further, Attorney hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event Attorney employs or contracts with any subcontractor(s) in connection with the covered contract, Attorney agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as **Exhibit "B"**, which subcontractor affidavit shall become part of the Attorney/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is an *individual* licensed and in good standing as noted in sub-subsection (2) above. If a subcontractor affidavit is obtained, Attorney agrees to provide a completed copy to County within five (5) business days of receipt from any subcontractor. Attorney and Attorney's subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract.

Attorney agrees that the employee-number category designated below is applicable to Attorney. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.] [CHECK ONE]

500 or more employees.

100 or more employees.

Fewer than 100 employees.

Attorney hereby agrees that, in the event Attorney employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, Attorney will secure from the subcontractor(s) such subcontractor(s') indication of the above employee-number category

that is applicable to the subcontractor. The above requirements shall be in addition to the requirements of state and federal law, and shall be construed to be in conformity with those laws.

- (17) **Nondiscrimination-** In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, Attorney agrees that, during performance of this Agreement, Attorney, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Attorney agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.
- (18) **Authority to Contract-** The individual executing this Agreement on behalf of Attorney covenants and declares that it has obtained all necessary approvals of Attorney's board of directors, general partners, limited partners or similar authorities to simultaneously execute and bind Attorney to the terms of this Agreement, if applicable.
- (19) **Entire Agreement-** This Agreement represents the sole and entire agreement between the Attorney and the County and all offers, negotiations or agreements between the parties are merged herein. Attorney represents that it has reviewed and become familiar with this Agreement and has notified County of any discrepancies, conflicts or errors herein.
- (20) **Modification-** No modification of the Agreement is binding unless it is in writing and signed by the parties hereto.
- (21) **Governing Law-** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.
- (22) **Waiver-** The waiver by either party of any breach by the other party of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any other breach of the same or of a different provision of this Agreement. There shall be no waiver unless in writing signed by the party against whom the waiver is sought to be enforced. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.
- (23) **Notices-** Any and all notices, requests, payments, demands, and other communications, required or permitted hereunder, shall be in writing and delivered personally, sent by overnight mail, or sent by U.S. Certified or Registered Mail, postage prepaid, return receipt requested to the address set forth below or to such other address as either party may specify by notice to the other in accordance with this paragraph. Notices shall be

deemed effective when delivered if personally delivered, or by the date indicated on the receipt if sent by overnight mail, or three (3) days after deposit in the United States mail or the date indicated on the return receipt as the delivery date, whichever is earlier, if mailed by certified or registered mail.

If to the Attorney, notices shall be sent to:

~~T.P. [unclear]~~ 1198 Clark St. S.W.
Covington, GA 30014

If to County, notices shall be sent to:

Newton County
Attn: County Manager
1113 Usher Street – Suite 203
Covington, Georgia 30014

With a copy to:

Newton County Juvenile Court
Attn: Judge Sheri Roberts
Newton County Judicial Center
1132 Usher Street, Room 119
Covington, Georgia 30014

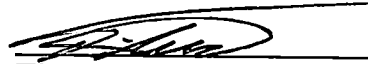
- (24) **Immunities-** Nothing contained in this Agreement shall be construed to be a waiver of County's sovereign immunity or any individual's qualified, good faith or official immunities.
- (25) **No Third Party Rights-** This agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.
- (26) **Interpretation-** No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement.
- (27) **Headings-** The headings which are used in this Agreement are for convenience only and shall not affect, in any manner, the meaning or interpretation of this Agreement.

- (28) **Duplicate Originals-** This Agreement may be executed in any number of counterpart copies, all of which constitute one and the same agreement and each of which shall constitute an original.
- (29) **Binding Effect-** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- (30) **Survival-** All obligations of the parties which have accrued as of the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.
- (31) **Material Condition-** Each term of this Agreement is material, and Attorney's breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to County at law or in equity.

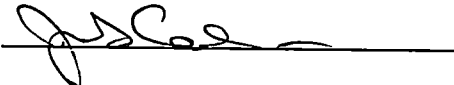
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 4th
day of July, 2018.


ATTORNEY



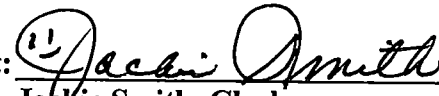
Titus Pemberton

Attest: 

NEWTON COUNTY, GEORGIA

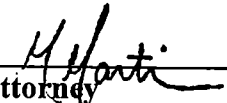
By: 

Marcello Banes, Chairman, Board
of Commissioners

Attest: 

Jackie Smith, Clerk

Approved as to Form:



County Attorney

July 10, 2018

Date



EXHIBIT "A"

STATE OF _____
COUNTY OF _____

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of Newton County, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in
_____ (city), _____ (state).

Date of Authorization

Signature of Authorized Officer or Agent

Titus Pemberton
Name of Contractor

Printed Name and Title of Authorized Officer or Agent

Family Treatment Court Legal Services
Name of Project

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20__.

Newton County, Georgia
Name of Public Employer

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "B"

STATE OF _____
COUNTY OF _____

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with Titus Pemberton on behalf of Newton County, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in
_____ (city), _____ (state).

Date of Authorization

Signature of Authorized Officer or Agent

Name of Subcontractor

Printed Name and Title of Authorized Officer or
Agent

Family Treatment Court Legal Services
Name of Project

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20__.

Newton County, Georgia
Name of Public Employer

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:
