

FORM APPROVED COUNTY COUNSEL
 BY: H. Deines 2/17/10
 MARSHAL VICTOR DATE

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

970



SUBMITTAL DATE:
 February 16, 2010

FROM: Purchasing and Fleet Services

SUBJECT: Approval of the agreement with the Criminal Defense Lawyers to provide Legal Indigent Defense Criminal Services for Riverside County

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the one year professional service agreement with Criminal Defense Lawyers for \$6,933,000 annually, which contains the options to renew the agreement for four additional one-year periods; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise the renewal option, based on the availability of fiscal year funding, and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates, and;
3. Direct the Clerk of the Board to return three original signed agreements to Purchasing and Fleet Services.

BACKGROUND: The County Executive Office is required to retain legal services for the representation of those indigent defendants in which the Riverside County Public Defender's Office (PD) declares a conflict of interest, including misdemeanors, felonies, and Welfare and Institution Code Section 600 et. seq. juvenile offenses.

(Continued on Page 2)

Robert J. HowdyShell
 Purchasing Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 6,933,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 6,933,000	Budget Adjustment:	No
	Annual Net County Cost:	\$ 6,933,000	For Fiscal Year:	FY 10/11

SOURCE OF FUNDS: Indigent Defense Budget	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY:
 Dean Deines

County Executive Office Signature

Dep't Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 3.13 Dated 7/15/08
 and 3.11 Dated 6/23/09

District:

Agenda Number:

3.57 C

BOARD OF SUPERVISORS

**FORM 11: Approval of the agreement with the Criminal Defense Lawyers to provide
Legal Indigent Defense Criminal Services for Riverside County**

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BACKGROUND CONTINUED

A Request for Proposal (RFP) was issued to solicit bids for indigent defense services for both with and without an alternate public defender's office. The PD also provided a report detailing the costs to implement and operate an alternate PD. After reviewing the responses to the RFP as well as the costs to implement an alternate PD office, the option to continue contracting for indigent defense services was the most cost effective for the County at this time.

PRICE REASONABLENESS

Purchasing released a Request for Proposal, mailing solicitations to 99 companies, posting the advertisement in a law subscription, and advertising on the County's Internet. Two responses were received for Mid and Western Riverside County, submitted by Criminal Defense Lawyers, and Blumenthal Law Offices. An evaluation team consisting of personnel from the Executive Office, Probation, and the Superior Court reviewed the proposals. The evaluation team reviewed and scored each proposal based on the bidder's overall responsiveness to the requirements of the scope of service, the ability to perform, experience and capability, references, overall cost, and oral interviews. The evaluation committee recommends that Criminal Defense Lawyer receive the award as the lowest responsive/responsible bidder for the services described above.

The Criminal Defense Lawyers submitted a proposal for all cases for the Mid and Western County at an annual fee of \$6,933,000, and the Blumenthal Law Office submitted a proposal for all cases at an annual fee of \$6,933,100.

REVIEW/APPROVAL: Purchasing and County Counsel concurs with this request.

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CRIMINAL DEFENSE AGREEMENT

for

LEGAL INDIGENT DEFENSE SERVICES

between

COUNTY OF RIVERSIDE

and

CRIMINAL DEFENSE LAWYERS (CDL)



1 **CONTRACT TO PROVIDE LEGAL SERVICES**

2 THIS CONTRACT is made this ____ day of February, 2010, between the County of Riverside
3 (hereinafter "COUNTY") and Criminal Defense Lawyers, (hereinafter "ATTORNEY"), for Indigent
4 Defense services to be provided in the Superior Court of the County of Riverside, Mid and Western
5 County Region, not including Blythe, Indio or Palm Springs, as set forth herein.

6 RECITALS

7 WHEREAS, the right of all persons against whom Criminal Court proceedings are brought to be
8 represented by Counsel is guaranteed by the Constitution of the United States and the Constitution of the
9 State of California; and

10 WHEREAS, the cost and expense of each counsel in the representation of indigent adults in the
11 specified proceedings are a proper and lawful charge upon the COUNTY; and

12 WHEREAS, it is in the public interest in circumstances where the Riverside County
13 Public Defender declares a conflict of interest, or is otherwise unavailable, that the COUNTY contract
14 with private counsel to render the usual and customary legal services required by law to be provided to
15 individuals; and

16 NOW, THEREFORE, the parties hereto agree as follows:

17 1. DESCRIPTION OF SERVICES. COUNTY contracts with ATTORNEY to
18 provide legal representation for indigent parties in the Superior Court of the County of Riverside, Mid
19 and Western Region, when appointed by the Court as required by law, after a determination that a
20 conflict of interest exists which causes the Public Defender to be unable to represent the defendant, or
21 the Public Defender is relieved by the Court for extraordinary reasons, except for those cases
22 enumerated in Section 6, and total compliance of Appendix A, herein.

23 2. TERM OF PERFORMANCE. This Contract shall take effect February 23, 2010, and continue
24 in effect to and including February 22, 2015, renewable in one-year increments by written amendment,
25 unless terminated sooner as provided herein.

26 3. SCOPE OF SERVICES. ATTORNEY shall assume full responsibility for
27 furnishing counsel necessary to provide daily representation in the various divisions and departments of
28 the Courts within the Mid and Western County Region, within the funding provisions of this Contract.

1 For the purpose of providing such professional legal services, ATTORNEY, at ATTORNEY's own
2 discretion, may perform the services, or cause them to be performed by other attorneys, who shall not be
3 parties to this Contract, but are independent contractors and not agents or employees of ATTORNEY or
4 COUNTY.

5 3.1 With respect to the total Contract price, the Parties agree that the total number of
6 cases is uncertain. As a performance range, the Parties agree that between 2160 and 3960 cases will be
7 assigned to ATTORNEY during the contract term, including:

8 a) All felony matters opened in the Superior Courts and represented through final
9 judgment including no more than three (3) special circumstance cases in which the People are seeking
10 the death penalty and where second counsel (Keenan counsel) may be assigned;

11 b) No more than eleven (11) other special circumstance cases;

12 c) Violation of Probation matters. In all violation of probation matters, the
13 ATTORNEY will not accept appointment unless the Public Defender has declared a continuing conflict
14 of interest or after the Court relieves the Public Defender for lack of preparation, incompetence,
15 unavailability or reasons not related to a declaration of conflict pursuant to Penal Code Section 987.2.

16 d) Billing for any services arising out of a violation of probation must be
17 accompanied by a copy of the court minutes showing that a public defender representative appeared on
18 the record and declared a continued state of conflict at the time of their reappointment or alternatively,
19 the billing must be accompanied by documentary affirmation of the continued conflict in the case
20 supplied by the Public Defender at the time of their reappointment.

21 e) Misdemeanor matters and other miscellaneous matters.

22 f) All cases wherein the Office of the Public Defender has declared their unavailability
23 based on "overload"

24 3.2 Special Circumstance Homicide cases are defined as all homicides in which the
25 prosecution seeks the penalty of death or life imprisonment without the possibility of parole. Because
26 ATTORNEY accepts all special circumstance cases, no Special Circumstance case in which the People
27 are seeking the death penalty will be counted until the District Attorney declares he is seeking the death
28 penalty. When conflict Special Circumstance cases are assigned under this Contract, ATTORNEY and

1 COUNTY agree that the Contract provides payment for two (2) attorneys, on each of three (3) death
2 penalty cases if the need should arise.

3 3.3 For the purpose of this contract, "overload" is defined to mean a situation wherein
4 the Office of the Public Defender declines to accept appointment by the Court due to a work overload
5 resulting from insufficient staff and/or the volume of cases assigned.

6 3.4 For the purposes of this Agreement, a "case" shall be defined as follows: The
7 representation of one person on one accusatory pleading. Multiple charges against a defendant in one
8 accusatory pleading shall not prevent designation of a matter as a single case. If a single defendant is
9 accused in more than one accusatory pleading, each separate pleading shall constitute a separate case. If
10 multiple defendants are charged in a single accusatory pleading, it shall be considered that there are as
11 many cases as there are defendants.

12 3.5 ATTORNEY agrees that representation of those charged with complex felonies
13 including Special Circumstance Homicides is generally most effective when vertical representation is
14 provided. Therefore, ATTORNEY will, pursuant to this Contract, begin representation in these cases as
15 soon as the Public Defender declares a conflict or is otherwise relieved, and defend or assign the case to
16 subcontract attorney at the earliest possible stage to insure vertical representation where appropriate.

17 3.6 ATTORNEY shall assist in the recovery of fees and funds pursuant to Penal Code
18 Sections 987.5, 987.8(b), (c) and 987.81.

19 3.7 ATTORNEY shall accept appointment when the Public Defender has declared a
20 conflict, or after the Court relieves the Public Defender for lack of preparation, incompetence,
21 unavailability or reasons not related to a declaration of conflict pursuant to Penal Code §987.2.

22 3.8 In subcontracting with other attorneys, ATTORNEY shall consider the factors
23 enumerated in Penal Code § 987 et. seq., the Rules of Professional Conduct governing lawyers in
24 Business & Professions Code § 6000 et. seq., State Bar of California Guidelines on Indigent Defense
25 Services Delivery Systems, and the State Bar Rules of California, as appropriate, including Rule 3-310.
26 ATTORNEY shall assure that all subcontractors are competent and provide constitutionally effective
27 assistance. ATTORNEY further warrants that he or she will provide attorney(s) qualified to handle
28 Death Penalty cases when required. ATTORNEY shall submit a list of all subcontracting attorneys to

1 the Executive Office at the beginning of each Fiscal Year and as necessary, when any changes in
2 subcontracting attorneys occurs. Evidence of the qualification(s) of such subcontracting attorneys shall
3 be provided with the list.

4 3.9 ATTORNEY shall perform or cause to be performed all professional legal
5 services reasonably and legally required herein from the time of appointment, to and including, a final
6 adjudication or disposition of such case. It is the intent of COUNTY that all Felony Trials are to be
7 litigated or otherwise resolved in a timely manner. In order to assure that Penal Code Section 1050
8 requests for continuances do not hinder a timely resolution of assigned cases, all contracted felony trial
9 attorneys must submit a monthly report listing all cases not resolved within four (4) months of
10 arraignment, following the filing of an Information.

11 3.10 In order to effectuate an early resolution of felony cases, the Riverside Superior
12 Court has designated Vertical Calendar Departments (VCDs) in the Mid and Western County Region.
13 These Departments have been established to reduce the backlog of criminal cases and ensure that
14 criminal cases will not be dismissed under the speedy trial requirements of Penal Code Section 1382.

15 a) ATTORNEY shall dedicate experienced criminal law attorneys to be assigned to
16 Departments designated as the Vertical Calendar Department (VCD) in the Mid and
17 Western County Region. These sub-contracting attorneys shall be available to the
18 designated Departments during normal Court business hours. ATTORNEY understands
19 that the availability of the sub-contracting attorneys to the assigned Department is of
20 paramount importance.

21 b) ATTORNEY shall assume full responsibility for assigning only sub-contracting
22 attorneys who have the necessary experience, qualifications and capabilities to handle
23 cases assigned to these specialty departments.

24 c) ATTORNEY understands that the restructuring of these specialized departments
25 is a concept being utilized by the Riverside Superior Court for case flow management,
26 and may be changed or discontinued by the Court at any time. ATTORNEY further
27 understands that the COUNTY cannot guarantee that the need for the sub-contracting
28 attorneys will continue. The COUNTY retains the right to determine that there is no

1 longer a need to provide full time attorneys to the specialized departments based on their
2 underutilization or the Court's redesignation of these departments. If for any reason, the
3 Court discontinues one or more of the Felony VCD's, ATTORNEYS and COUNTY shall
4 negotiate appropriate adjustments to the contract services and associated compensation.

5 d) ATTORNEY understands that pursuant to this contract with COUNTY, he is
6 obligated to handle all cases filed in the Riverside Superior Court Mid and Western
7 County Region upon notification of a conflict of interest by the Office of the Public
8 Defender and that the additional attorneys assigned to the specialized departments is
9 solely due to the request of the Superior Court and the Administrative Office of the
10 Courts that the specialized departments be staffed with dedicated, well qualified attorneys
11 from the District Attorney's Office, the Public Defender's Office and by Contract Panel
12 Attorneys.

13 e) ATTORNEY shall report the following information to the COUNTY as
14 requested: the cases assigned to all VCD'S, providing the department number, case
15 number, date assigned, charge, name of assigned attorney, and any other relevant
16 information.

17 4. ADMINISTRATIVE DUTIES. ATTORNEY is the Administrative Attorney
18 under this Contract. In cases involving multiple defendants, ATTORNEY shall designate counsel for
19 each defendant. In no case shall the designating ATTORNEY appoint themselves as Trial Attorney in
20 such multiple defendant cases.

21 5. PERFORMANCE MANAGEMENT. ATTORNEY shall have the responsibility
22 for significant administrative duties under this contract to avoid conflicts of interest and monitoring
23 subcontracting attorneys. The purpose of monitoring individual attorney caseloads is to ensure that all
24 clients represented under this contract receive effective assistance of counsel under the Constitutions of
25 the United States and the State of California.

26 5.1 ATTORNEY shall require each subcontracting attorney participate in Mandatory
27 Continuing Legal Education programs focusing on applicable law including but not limited to criminal
28 law and procedure, and trial advocacy law. ATTORNEY shall encourage subcontracting attorneys to

1 participate in shared training with the Public Defender to the extent possible. ATTORNEYS shall
2 review on a yearly basis the performance of each subcontracting attorney. This review shall include
3 inquiry and/or observation by ATTORNEY of the performance of the independent subcontractor in a
4 trial or other relevant courtroom setting. ATTORNEY will require the subcontracting attorney to
5 provide proof of attendance at MCLE programs and to report participation in educational programs or
6 other informal training. ATTORNEY will do his or her best to assure that only attorneys with the
7 requisite skill and experience handle particular category of cases and are assigned to such cases.
8 ATTORNEY shall periodically monitor and evaluate the work of investigators and the performance of
9 experts and other providers of ancillary services.

10 5.2 ATTORNEY shall telephone the County representative(s) at least monthly, and
11 meet at least semi-annually to discuss caseloads, MCLE programs, and certify that ATTORNEY has
12 reviewed the performance of each independent subcontractor as described above. In addition to any
13 oral report, ATTORNEY shall submit written reports (October 30 and April 30) including a summary of
14 subcontract attorney evaluations and observations, average number of MCLE approved training hours,
15 and report participation in other educational programs related to the practice of criminal law. The written
16 reports should also contain any information that may be indicative of the quality of representation
17 provided by ATTORNEY.

18 6. EXCLUSIONS. ATTORNEY shall not be obligated under this Contract to
19 provide defense in the following cases:

- 20 (a) Stand-by or Co-Counsel when a defendant has waived counsel or
21 represents himself in propria persona;
- 22 (b) All post-trial appellate proceedings including appeals to the Appellate
23 Department of Superior Court or higher Appellate Courts;
- 24 (c) All federal proceedings;
- 25 (d) All parole violation hearings;
- 26 (e) All civil forfeiture proceedings;

1 (f) Any case in which the Court either removes or refuses to appoint the
2 Public Defender on other than conflict grounds or fails to make an actual
3 finding of incompetence under "Marsden".

4 7. COMPENSATION. The contract cost for February 23, 2010 through February
5 22, 2011 shall be a maximum of \$6,933,000.00 plus expenses as set forth in Section 8 herein.
6 COUNTY shall pay ATTORNEY up to the sum of \$577,750.00 per month paid in arrears. It remains
7 the responsibility of the ATTORNEY to oversee the budgeted funds to ensure they are properly
8 disbursed to provide the legal services required under this Contract.

9 7.1 COUNTY shall pay ATTORNEY on a per case basis at the rate set out in the
10 contract (\$1,870.00) on all felony cases wherein the Office of the Public Defender has declared an
11 overload, payment to be made monthly upon submission of an invoice by ATTORNEY. Said payments
12 are not included in the total contract amount set out in Section 7 above.

13 7.2 ATTORNEY may request a meeting with the COUNTY at any time to discuss the
14 Public Defender's declaration of a policy of "unavailability" or "overload"; however, ATTORNEY
15 agrees to accept into their caseload those cases the Public Defender declines to accept so the Court is not
16 disrupted.

17 7.3 It is understood that, to the extent, ATTORNEY'S constitutional and necessary
18 level of legal representation under the Contract may tend to justify additional payment, such necessary
19 services in all but the most extreme circumstances, will all be considered by the ATTORNEY to be their
20 pro bono publico contribution to the administration of justice.

21 7.4 If, in addition, in ATTORNEY'S estimation an extreme circumstance arises,
22 ATTORNEY may make a timely request for additional compensation from the County Executive
23 Office. Extreme circumstances shall generally be limited to extremely protracted felony cases; cases
24 involving trial for more than three defendants assigned to the Contract, extraordinary change of venue
25 cases involving extreme expense, and such similar circumstances as may arise. ATTORNEY'S request
26 must be in writing and include a complete justification of action or anticipated extra expenses and
27 complete itemization of requested extraordinary payment.

28 7.5 Extreme circumstances also includes felony matters in which The People are

1 seeking the death penalty, and where second counsel may be assigned, beyond the three (3) cases
2 outlined in Section 3.1, above or beyond the eleven (11) Special Circumstance cases outlined in Section
3 3.1 b) above. In order to assist the COUNTY and the Court, ATTORNEY shall make their best effort
4 to provide representation for Defendants in all additional capital and special circumstance cases. If
5 ATTORNEY is able to provide representation in such cases not included in the contract, ATTORNEY
6 shall send a letter to the County Executive Office providing a brief description of the qualification of
7 counsel or remit CR-191 *Declaration of Counsel For Appointment In Capital Case*, and enumerate the
8 circumstances indicative of the suggested Category as set out and approved by the Riverside County
9 Board of Supervisors and adopted by the Riverside Superior Court as Court Policy Memorandum
10 (Administrative) #C10.4 adopted 11/21/07. If ATTORNEY is unable to provide counsel, or if
11 circumstances arise where it is necessary for the COUNTY to find representation for Defendant(s),
12 ATTORNEY shall immediately notify COUNTY and the County Executive Office will assist in finding
13 counsel with the help of County Counsel.

14 7.6 Compensation of counsel will be paid by the County Executive Office upon
15 review and approval of a written invoice. Compensation will be based on the percentages set out in the
16 Board and/or Court Policy Memorandum or upon approval of the County Executive Officer or his/her
17 designee. ATTORNEY shall review billings, if requested by the County Executive Office.

18 8. EXPENSES. ATTORNEY shall pay all costs of specialized and professional
19 services reasonably necessary to assist the defense in the preparation and presentation of his/her case,
20 including for those cases designated "overload", including medical and psychiatric examination,
21 investigative services, expert testimony, forensic services, language interpretation, discovery costs,
22 reporter's transcripts, and fees for experts appointed pursuant to statute, from a trust account they hold
23 for the County of Riverside, except those services reimbursed pursuant to Penal Code § 987.9.
24 ATTORNEY shall, within 90 days after the start date of this Contract, provide the County Executive
25 Office with a written policy, acceptable to the County Executive Office, governing the use and
26 accounting of the trust account(s) established pursuant Section 8 (Expenses). Contractor shall
27 disseminate these policies and procedures to all attorneys that they engage to provide services under this
28 contract. Contractor shall require their attorneys to provide all their investigators and other specialized

1 and professional service vendors with the Contractor's written policies and procedures pertaining to
2 approval, invoicing and payment. The written policy shall address the issues described in Attachment A.
3 For these services during the contract term, the additional sum of \$40,000, per month, for Western
4 County cases, and \$35,000 per month for Mid County cases, shall be paid to ATTORNEY monthly, in
5 arrears, and set aside monthly and maintained in a separate interest bearing trust accounts for this
6 purpose, EXCEPT that payments shall be suspended when the balance in ATTORNEY'S trust account
7 for all criminal Penal Code 987.2 cases exceeds \$45,000 for each region. Additionally, upon written
8 agreement of ATTORNEY and the County Executive Officer, or designee, the monthly expense
9 payments may be modified in amount or timing but in no event shall exceed the maximum amount per
10 month as set forth in this Paragraph 8. ATTORNEY will maintain a trust account for all criminal Penal
11 Code 987.2 cases into which all of the monthly expense amount will be deposited. Any interest accrued
12 from these funds will be redeposited into the respective trust account and used by the ATTORNEY to
13 pay the costs incurred herein (Business & Professions Code §6211(b)). These funds remain the property
14 of the County of Riverside and at the end of the contract, or upon request of COUNTY, all or a portion
15 of the unexpended funds shall be returned to COUNTY, and an accounting provided to the County
16 Executive Office within 30 days of termination, for all sums expended, including accrued interest.
17 ATTORNEY may not expend from the Criminal trust account more than \$5,000 per death penalty case
18 for law clerk or paralegal services without approval from the County Executive Officer.

19 9. TERMINATION. Either Party may cancel this Contract, in whole or in part, on
20 ninety-(90) day's written notice to the other party. In the event this Contract is canceled, ATTORNEY
21 shall be responsible for the matters currently assigned to ATTORNEY.

22 10. INDEPENDENT COUNSEL. ATTORNEY is, and shall at all times be deemed
23 independent and shall be wholly responsible for the manner in which he performs the services required
24 by this Contract. ATTORNEY exclusively assumes responsibility for the acts of his or her employees
25 as they relate to the services to be provided during the course and scope of their employment.
26 ATTORNEY, his or her agents, employees and independent contractors and their agents and employees
27 shall not be considered in any manner to be employees of the County of Riverside.

1 11. RECORDS. ATTORNEY shall keep sufficient records to enable COUNTY to
2 establish the cost of representing each individual in Court proceedings and allow County of Riverside to
3 attempt to recover such costs from whoever may be obligated to reimburse the COUNTY.

4 11.1 ATTORNEY shall furnish monthly reports, within ten (10) days of the end of
5 each month, on opened and concluded cases to the County Executive Office. Such reports shall be in a
6 format as specified by the County Executive Office, and include name of defendant; type of case; case
7 number; charge; disposition; number of cases opened, closed and reopened, transferred, or where a
8 substitution for previously appointed counsel has occurred; and a notation of which cases ATTORNEY
9 was appointed on under Section 3.1a), b), and c) herein. ATTORNEY understands that COUNTY relies
10 on the monthly reports to determine the cost of services and that any correction or adjustment to the
11 report must be done in a timely manner not to exceed sixty (60) days from the required submission date
12 of the monthly report by ATTORNEY, and that ATTORNEY will not be compensated for cases
13 reported beyond the sixty (60) days. ATTORNEY shall also furnish a monthly report of expenditures
14 for the criminal trust account funds, that includes the vendor, type of expense (e.g., investigation, expert,
15 etc.), client/case identifier (not name and/or case number of defendant), and amount of expense. The
16 report shall additionally include the current balance of the account. ATTORNEY shall utilize a standard
17 electronic accounting system to input and maintain data and compile records. Should ATTORNEY feel
18 an indigent defendant referred does not qualify for services, ATTORNEY shall immediately so advise
19 defendant and the Court and request determination by the Court. In no event shall ATTORNEY accept
20 anything of value as consideration for services rendered to any indigent defendant the ATTORNEY has
21 been appointed to represent by the Courts, except as provided in this Contract. ATTORNEY shall not
22 charge any defendant for services rendered pursuant to this Contract. ATTORNEY shall adhere to the
23 guidelines in Attachment A of this Contract.

24 11.2 For all cases where ATTORNEY is providing legal counsel to any state inmate
25 charged with an offense during the time sentenced to a state correctional facility, ATTORNEY (or the
26 subcontracting attorney) shall track the hours related to handling that specific case. ATTORNEY hours
27 are specific requirements of the State of California in order to reimburse counties for indigent defense
28 services provided on behalf of state indigent inmates' charges with a crime while in custody. The report

1 on these hours shall be submitted with the monthly statistics.

2 11.3 COUNTY may, at its discretion, audit or inspect ATTORNEY'S files, books
3 and/or financial records relating to the Contract, at any reasonable times. ATTORNEY shall be audited
4 by an outside auditor a minimum of once every twelve months, at the end of the contract period.
5 ATTORNEY shall be responsible for one-half of the cost of the audit. ATTORNEY agrees to make
6 available for inspections, without restrictions, all books, statements, ledgers and other financial records
7 for a period of five (5) years from the termination of this Contract. All financial records shall be kept, or
8 made available to County of Riverside, at ATTORNEY'S principal place of business at 3685 Main
9 Street, Suite 250, Riverside, California.

10 12. HOLD HARMLESS. ATTORNEY shall indemnify and hold the COUNTY,
11 Special Districts, their respective directors, officers, Board of Supervisors, agents, elected officials and
12 employees free and harmless from any liability, whatsoever, based or asserted upon any act(s) or
13 omissions(s) of ATTORNEY for property damage, bodily injury, or death or any other element of
14 damage of any kind or nature, relating to or in anyway connected with or arising from the
15 accomplishment of the services to be performed by ATTORNEY hereunder; and ATTORNEY shall
16 defend, at its sole expense, including ATTORNEY fees, COUNTY, Special Districts, their respective
17 directors, officers, Board of Supervisors, agents, elected officials and employees in any legal action (s)
18 or claims(s) based upon such alleged act(s) or omission(s) whether the subject action(s) or claim(s) are
19 well-founded, properly filed or pleaded, or not commenced in a court of competent jurisdiction.

20 13. INSURANCE: Without limiting or diminishing the ATTORNEY'S obligation to
21 indemnify or hold the COUNTY harmless, ATTORNEY shall procure and maintain or cause to be
22 maintained, the following insurance coverages during the term of this Agreement.

23 13.1 Workers' Compensation: If ATTORNEY has employees as defined by the State
24 of California, ATTORNEY shall maintain Workers' Compensation Insurance (Coverage A) as
25 prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B)
26 including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy
27 shall be endorsed to waive subrogation in favor of the County of Riverside; and, if applicable, to provide
28 a Borrowed Servant/Alternate Employer Endorsement.

1 13.2 Commercial General Liability: ATTORNEY shall maintain Commercial General
2 Liability insurance coverage, including but not limited to, premises liability, contractual liability,
3 completed operations, personal and advertising injury covering claims, which may arise from or out of
4 ATTORNEY'S performance of its obligations hereunder. Policy shall name the County of Riverside,
5 special districts, their respective directors, officers, Board of Supervisors, elected officials, employees,
6 agents or representatives as an Additional Insured. Policy's limit of liability shall not be less than
7 \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit,
8 it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

9 13.3 Vehicle Liability: If ATTORNEY'S vehicles or mobile equipment is used in the
10 performance of the obligations under this Agreement, ATTORNEY shall maintain liability insurance for
11 all owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined
12 single limit. If such insurance contains a general aggregate limit, it shall apply separately to this
13 agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of
14 Riverside, special districts, their respective directors, officers, Board of Supervisors, elected officials,
15 employees, agents, or representatives as an Additional Insured.

16 13.4 Professional Liability: ATTORNEY shall maintain Professional Liability
17 Insurance providing coverage for performance of work included within this Agreement, with a limit of
18 liability of not less than \$250,000 per occurrence and \$500,000 annual aggregate. If ATTORNEY'S
19 Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such
20 insurance shall continue through the term of this Agreement. Upon termination of this Agreement or the
21 expiration or cancellation of the claims made insurance policy ATTORNEY shall purchase either 1) an
22 Extended Reporting Endorsement (also known as Tail Coverage); or, 2) Prior Dates Coverage from a
23 new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or, 3)
24 demonstrate through Certificates of Insurance that Consultant has maintained continuous coverage with
25 the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of
26 five (5) years beyond the termination of this Agreement. The ATTORNEY shall provide proof of
27 coverage to COUNTY within 30 days of execution of the Contract.

1 13.5 Blanket Commercial Crime Policy: ATTORNEY shall maintain a Blanket
2 Commercial Crime Policy including, but not limited to, coverage provided under Forms 'A', 'B' and 'F'
3 for all Directors, Officers, employees, agents and representatives who may be involved in any way with
4 the direction, handling, depositing, payment or other function that involves COUNTY funds associated
5 with the performance of this Contract with a limit of liability of not less than an amount per loss equal
6 to, or greater than, the maximum amount of COUNTY money that may be in trust with the ATTORNEY
7 at any one time. The coverage will remain in force for at least three (3) years subsequent to the
8 termination of this Agreement or until that time when all moneys have been reconciled and the
9 COUNTY has agreed in writing that all financial issues have been completed and the ATTORNEY no
10 longer has any COUNTY assets held in the Trust as defined herein. If this coverage is written on a
11 Claims-Made basis, the ATTORNEY will provide either 1) an Extended Reporting Endorsement (also
12 known as Tail Coverage); or, 2) Prior Dates Coverage from a new insurer with a retroactive date back to
13 the date of, or prior to, the inception of this Contract; or, 3) demonstrate through Certificates of
14 Insurance that ATTORNEY has maintained continuous coverage with the same or original insurer.
15 Such extended claims made coverage shall be maintained for a period of three years or until that time
16 when all moneys have been reconciled and the COUNTY has agreed in writing that all financial issues
17 have been completed and the ATTORNEY no longer has any COUNTY assets held in the Trust as
18 defined herein. In the alternative, ATTORNEY may obtain a Fidelity Bond acceptable to COUNTY.

19 13.6 General Insurance Provisions - All lines:

20 a. Any insurance carrier providing insurance coverage hereunder shall be admitted
21 to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such
22 requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager
23 waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only
24 for one policy term.

25 b. The ATTORNEY'S insurance carrier(s) must declare its insurance deductibles or
26 self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence,
27 such deductibles and/or retentions shall have the prior written consent of the County Risk Manager
28 before the commencement of operations under this Agreement. Upon notification of deductibles or self

1 insured retentions which are deemed unacceptable to the COUNTY, at the election of the County's Risk
2 Manager, ATTORNEY'S carriers shall either; 1) reduce or eliminate such deductibles or self-insured
3 retentions as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees
4 payment of losses and related investigations, claims administration, defense costs and expenses.

5 c. The ATTORNEY shall cause their insurance carrier(s) to furnish the County of
6 Riverside with 1) a properly executed original Certificate(s) of Insurance and certified original copies of
7 Endorsements effecting coverage as required herein; or, 2) if requested to do so orally or in writing by
8 the County Risk Manager, provide original Certified copies of policies including all Endorsements and
9 all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and
10 policies of insurance shall contain the covenant of the insurance carrier(s) shall provide no less than
11 thirty (30) days written notice be given to the County of Riverside prior to any material modification or
12 cancellation of such insurance. In the event of a material modification or cancellation of coverage, this
13 Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective
14 date, another properly executed original Certificate of Insurance and original copies of endorsements or
15 certified original policies, including all endorsements and attachments thereto evidencing coverages and
16 the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier
17 to do so on its behalf shall sign the original endorsements for each policy and the Certificate of
18 Insurance. ATTORNEY shall furnish COUNTY with original Certificate(s) of Insurance and certified
19 original copies of endorsements or policies of insurance including all endorsements and any and all
20 other attachments as required in this. The ATTORNEY shall provide proof of coverage to COUNTY
21 within 7 days of execution of the Contract.

22 d. It is understood and agreed by the parties hereto and the ATTORNEY'S insurance
23 company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as
24 primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retentions or
25 self-insured programs shall not be construed as contributory.

26 e. If, during the term of this Agreement or any extension thereof, there is a material
27 change in the scope of services or performance of work the Risk Manager of the County of Riverside
28 reserves the right to adjust the types of insurance required under this Agreement and the monetary limits

1 of liability for the insurance coverages required herein, if; in the County Risk Manager's reasonable
2 judgment, the amount or type of insurance carried by the ATTORNEY has become inadequate.

3 14. MATERIAL BREACH. Notwithstanding the provisions of Section 2., the failure
4 of ATTORNEY or his or her agents or employees to comply with the terms of this Contract and any
5 reasonable directions, by or on behalf of the COUNTY, issued pursuant thereto shall constitute a
6 material breach of Contract by ATTORNEY, and, in addition to any other remedy authorized by law,
7 COUNTY shall have the right to terminate said Contract immediately. Failure to exercise this right of
8 termination shall not constitute a waiver of such right, which may be exercised at any subsequent time.
9 At the option of COUNTY, this Contract may be terminated upon the happening of any of the following:

- 10 (a) Violation of any material provision of this Contract;
- 11 (b) Institution of proceedings by, or against, any ATTORNEY under the
12 bankruptcy laws of the United States;
- 13 (c) Discovery that this Contract was obtained through fraud by commission or
14 omission;
- 15 (d) Suspension of business operation, or receivership, of ATTORNEY;
- 16 (e) Any assignment of this Contract without prior COUNTY approval;
- 17 (f) The institution of disciplinary proceedings against any ATTORNEY by
18 the California State Bar; or
- 19 (g) The commencement of criminal prosecution of any ATTORNEY in any
20 Court anywhere.
- 21 (h) Failure to observe the Rules of Professional Conduct, including Rule 3-
22 310.

23 It is understood that the above-noted items are not exclusive of any other causes for
24 termination, and failure of COUNTY to exercise its rights to terminate shall not constitute waiver of
25 such right, which may be exercised at any subsequent time.

26 15. CONFLICT OF INTEREST. ATTORNEY shall exercise reasonable care and
27 diligence to prevent any actions or conditions that could result in a conflict of interest. This obligation
28

1 applies to ATTORNEY, ATTORNEY'S employees, agents, relative sub-tier contractors, and third
2 parties associated with or accomplishing work for ATTORNEY under this contract.

3 a. ATTORNEY will establish measures to prevent employees or agents from
4 making, receiving, providing, or offering gifts, entertainment, payment, loans, or other considerations,
5 which could be deemed to appear to influence individuals to act contrary to the best interest of the
6 COUNTY.

7 b. ATTORNEY shall not sit as Judge Pro Tem in any of the Courts that
8 ATTORNEY provides representation for indigent services under this contract.

9 c. ATTORNEY shall provide conflict free representation. ATTORNEY is aware of
10 *Christian v. Jackson* (1996) 41 C.A.4th 986, and *Castro v. Los Angeles Board of Supervisors* (1991) 232
11 C.A.3d 1432, and the guidelines expressed therein.

12 16. PRIVATE PRACTICE. ATTORNEY shall not be prohibited from engaging in
13 the private practice of law, including the defense of those charged with crimes or any and all
14 proceedings in the Courts of the County of Riverside. ATTORNEY shall not accept in his or her private
15 practice any case, which may cause a conflict of interest, which would preclude ATTORNEY from
16 providing representation to indigents pursuant to this Contract.

17 17. WAIVER. No waiver by any party of any existing default by any other party
18 shall be deemed to waive any subsequent default by such party.

19 18. ASSIGNMENT: This Agreement shall not be assigned by ATTORNEY, either in
20 whole or in part, without prior written consent of COUNTY. Any assignment or purported assignment
21 of this Agreement by Consultant without the prior written consent of COUNTY will be deemed void and
22 of no force or effect.

23 19. CUMULATIVE RIGHTS. All rights hereunder are cumulative, not alternative,
24 and are in addition to any other rights given by law.

25 20. ENTIRE AGREEMENT. This Contract supersedes any prior agreements
26 between the Parties and is the sole basis for Contract between the Parties. This Contract expresses the
27 understandings of the Parties concerning all matters covered.

1 21. ALTERATION. No addition to, or alteration of, the terms of this Contract,
2 whether by written or oral understanding of the Parties, their officers, agents or employees, shall be
3 valid unless made in the form of written amendment to this Contract and formally approved by the
4 Parties.

5 22. SUBCONTRACTS. The Parties agree that ATTORNEY shall not sign contracts
6 with subcontractors wherein there is a clause in said contracts prohibiting subcontractors from
7 submitting proposals when COUNTY solicits proposals for Indigent Defense Services.

8 23. PERIODIC REVIEW. ATTORNEY and COUNTY agree that there exists some
9 uncertainty as to the number of cases and extent of the work to be performed hereunder, and that the
10 amount could be greater or lesser than stated in Section 3.1 herein. Consequently, the Parties agree to a
11 mandatory meeting prior to March 31, 2010, to evaluate the case filings and any other matters affecting
12 this Contract. It is expected that if the caseload has not met the benchmark figure set in the Contract,
13 ATTORNEY and COUNTY shall make adjustments to the Contract as necessary to 1) determine
14 payback by the ATTORNEY to COUNTY for falling below the agreed case range and 2) reduction in
15 the future caseload benchmark and associated compensation. If the caseload as set in this Contract is
16 exceeded, ATTORNEY and COUNTY shall make adjustments to the existing Contract as necessary to
17 1) determine additional compensation due ATTORNEY at the contract rate for the additional caseload,
18 and 2) adjustment in the future caseload benchmark and associated compensation. [Example: Monthly
19 payment of \$ 181,500 divided by average cases per month equals \$726.00 per case to be used for
20 adjustments.] ATTORNEY, however, may request a meeting at any other time during the Contract
21 period to discuss any matters related to this Contract.

22 24. CONTINUITY OF REPRESENTATION. The Parties agree that at the
23 conclusion of this Contract term, or earlier if the Contract is canceled by either Party, that there will be a
24 need to provide for the existing caseload through its completion. Continuity of counsel is desired where
25 there is an established attorney-client relationship. Each case will be reviewed independently. To that
26 end, COUNTY agrees that every effort will be made, for the sake of the clients, to have any successor
27 attorney absorb matters not yet set for trial.

28 24.1 As to those cases already set for trial, the Parties agree upon the following:

1 a. Any case, except Special Circumstance Homicides, that is originally set for trial
2 with a trial date more than 90 days after the expiration of this Contract, or any case including Special
3 Circumstance Homicides or vertical prosecution cases in which arraignment is pending in the Superior
4 Court will be transferred to the new attorney if there is one, if no conflict of interest exists.

5 b. Special Circumstance Homicides that have been assigned to ATTORNEY for less
6 than 180 days shall be transferred to successor attorney. ATTORNEY will assist new counsel in
7 preparation as requested by that counsel.

8 c. It is anticipated that ATTORNEY or subcontract attorney will remain as counsel
9 on all other Special Circumstance cases set for trial, all vertical prosecution cases set for trial, and all
10 other felonies in which a trial date is, or has previously been, set by that ATTORNEY.

11 24.2 The first two provisions above provide for transfer of cases to successor attorney
12 and responsibility for providing adequate legal counsel, but the Parties agree that the Court can hear any
13 motion brought by any counsel on behalf of any client affected by this process and that decision may be
14 contrary to this process.

15 24.3 For those cases that cannot be transferred to successor attorney, the Parties agree
16 that the COUNTY's liability for costs shall be limited to the following:

17 a. COUNTY shall pay ATTORNEY up to one additional month at current
18 negotiated rates, which will compensate for trial preparation and trial except as set forth below. For
19 those cases originally scheduled for trial during the Contract term or within 60 days of the termination of
20 the Contract, no additional payment is provided beyond the per case cost as reflected in Section 23, not
21 to exceed one months compensation

22 b. For those cases originally set for trial more than 60 days after termination of the
23 Contract, the following payment schedule will apply:

24 Special Circumstance Homicides	\$500/day or \$250/half day per Attorney
25	Trial or motion (excluding 1050 motions)
26 Vertical Prosecution and Non-	\$400/day or \$200/half day
27 Special Circumstance Homicides	Trial or motion (excluding 1050 motions)
28 Other	\$350/day or \$175/half day

Trial or motion (excluding 1050 motions)

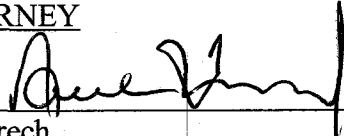
1
2 c. It is agreed that if a case has been assigned to ATTORNEY during the term of this
3 Contract, costs of ATTORNEY preparation have already been paid, and only motion and trial costs will
4 be paid in addition as set forth above. Special Circumstance Homicides are the exception, and each case
5 that has been assigned to the ATTORNEY for less than 180 days but cannot be transferred to successor
6 counsel due to a conflict, will be negotiated separately with a representative from the County Executive
7 Office and the ATTORNEY to cover the cost of ATTORNEY preparation. Any exceptional cases may
8 be negotiated separately as well.
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25. NOTICES. All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one (1) day after their deposit in the United States Mail, postage prepaid:

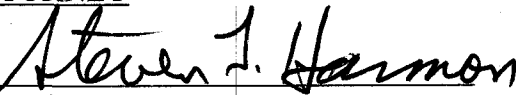
County of Riverside
County Executive Office
4080 Lemon St. 4th Floor
Riverside, CA 92501
Attn: County Executive Officer

ATTORNEY
Criminal Defense Lawyers
3685 Main Street, Suite 250
Riverside, CA 92501
Attn: Paul Grech or Steve Harmon

DATED: 2/17/2010

ATTORNEY
By 
Paul Grech

DATED: Feb 17, 2010

ATTORNEY
By 
Steve Harmon

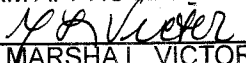
DATED: _____

County of Riverside

ATTEST:
Kecia Harper-Ihem, Clerk

By _____
Chairman, Board of Supervisors

By _____
Deputy

FORM APPROVED COUNTY COUNSEL
BY:  2/17/10
MARSHA L. VICTOR DATE

1 **ATTACHMENT A**

2 **Definitions**

3 Wherever these words occur in this Attachment, shall have the following meaning:

- 4 a) "ATTORNEY" shall mean any employee, agent or representative of the contract company used
5 in conjunction with the performance of this contract.
- 6 b) "Vendor" shall mean an individual, firm, partnership or corporation that performs services for
7 the ATTORNEY or his or her subcontract attorney, either directly or through a duly authorized
8 representative.
- 9 c) "County" shall mean the County of Riverside and its Executive Office (EO). For purposes of this
10 amendment, E.O. and County are used interchangeably.

11 **Specialized and Professional Services Trust Account Policy**

12 (1) ATTORNEY shall retain on file written documentation from each engaged subcontract attorney
13 and professional vendor; a signed acknowledgment of the following: (a) has read and understands the
14 written policies and procedures pertaining to Requests for Approval, reporting and invoicing; (b)
15 understands that subcontract attorney and vendor must respond to all inquiries by the ATTORNEY,
16 and the County regarding billings and payments protocols unless such request infringes upon attorney
17 client privileges, and (c) understands that subcontract attorney and any additional vendor may not get
18 paid the full amount included in the invoice and/or may be required to reimburse the County for
19 inappropriate or unauthorized expenditures.

20 (2) ATTORNEY shall implement the following internal controls:

- 21 (a) Reasons for approving fewer or more hours than requested will be documented;
- 22 (b) Dates initial and any supplemental requests were approved will be recorded on the request forms
23 and in ATTORNEY's electronic case tracking systems; and,
- 24 (c) The number of requests made, total number of hours approved, hours used, and hours remaining
25 will be tracked and recorded for each case.
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27
28

1 (3) ATTORNEY shall include the following policies and procedures regarding invoices for
2 specialized and professional services, and insure their subcontract attorneys and any subsequent vendors
3 adhere to these policies and procedures:

4 (a) Invoices will include all case identifiers described above; travel time, start and end locations
5 when requesting reimbursement for miles; accurate total miles, total hours, and total dollar
6 amounts; billing by the tenths or quarter of an hour, whichever is less; and total hours authorized,
7 used and remaining on the case.

8 (b) ATTORNEY shall ensure by their signature on the invoice that the work performed was
9 consistent with what was described and authorized in the corresponding "Request for Approval",
10 and those the dates for which hours are billed were after the date of approval for investigative
11 work and before the case was close.

12 (c) ATTORNEY shall review all invoices to ensure that the work performed is consistent with what
13 was described in the Request for Approval and the number of hours approved and was conducted
14 after the date of approval and before the case was closed;

15 (d) Verify that all calculations on the invoices are correct, including use of the correct mileage and
16 hourly rates for investigations;

17 (e) Verify that the dates of each activity are within the billing period for the invoice;

18 (f) Bill in increments of tenth or quarter hours, whichever is lower.

19 (g) Examples of investigative activities that would not be subject to payment by the ATTORNEY
20 include: (i) work performed over the number of hours approved; (ii) worked performed after the
21 date a case was closed; and, (iii) administrative activities that are not considered investigative,
22 such as setting up files, filling out required paperwork for the ATTORNEY, indexing, or placing
23 discovery into binders.

24 (4) The ATTORNEY shall :

25 (a) Assign, record, and track internal file numbers for each case with specialized and professional
26 expenditures by defendant and case.

- 1 (b) Include the internal file numbers as a case identifier in the monthly reports of expenditures of
2 Trust Account Funds, in addition to the vendor, type of service, amount of expense, and current
3 balance of the account.
- 4 (c) Include in the paper documents associated with each payment from Trust Account Funds: (i)
5 individual invoices for each case paid by the check; (ii) a coversheet that includes the cases,
6 amount for each case, and total amount paid or to be paid to the vendor by the subcontract
7 attorney; and (iii) the check number for the final payment to the subcontract attorney or vendor.
- 8 (d) Input into an internal electronic system for each case with specialized and professional
9 expenditures, at a minimum: (i) case identifiers such as the defendant's first and last name, case
10 number, internal file number, ATTORNEY or subcontract attorney, and type of case (e.g.
11 felony, misdemeanor, special circumstance); (ii) information on requests for specialized and
12 professional services such as the dates of the request and approval, type of service (e.g.
13 investigator, expert, etc.), vendor name, number of requests, number of hours or dollar amount
14 approved; and (iii) separate entries on expenditures made on the case that include the date of the
15 invoice, type of service, vendor, hours used, amount of other expenses, total amount billed on the
16 invoice, and the check number for payment.
- 17 (e) Utilize a readily available, inexpensive electronic software that is able to run reports using the
18 above information and provide: (i) the total expenditures, number of requests, hours approved,
19 used, and remaining on a particular case; (ii) average cost per case and/or by case type (e.g.
20 felony, misdemeanor, special circumstances); (iii) total and average cost per service charge type
21 (e.g. investigator, expert, etc.); (iv) total and average expenditure per vendor; and (v) average
22 number of hours requested, approved and used per case type.

23 **"Request For Approval" Procedures**

24 (5) The following information shall be required for all initial and any supplemental subcontract
25 attorney "Requests for Approval" for specialized and professional services and shall be maintained in
26 the file unless such request infringes upon attorney client privileges:

- 27 (a) Itemized planned activities (e.g. review discovery, crime scene investigation, review police
28 reports, etc.);

- 1 (b) Whether or not a written report is required;
- 2 (c) Names or initials of witnesses to be contacted and interviewed, if available;
- 3 (d) Anticipated location of planned interviews;
- 4 (e) Consistent case identifiers on all pages, including: defendant first and last name, case number,
- 5 internal file number, and ATTORNEY;
- 6 (f) The number of the request;
- 7 (g) ATTORNEY hours approved and worked to date on the case (for supplemental requests); and,
- 8 (h) Other pertinent information

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