

**INTERLOCAL AGREEMENT BETWEEN THE
BRUSHY CREEK REGIONAL UTILITY AUTHORITY
AND THE VILLAGE OF VOLENTE**

This Interlocal Agreement (“ILA”) is made by and between the Brushy Creek Regional Utility Authority, Inc. (“BCRUA”), a non-profit corporation of the State of Texas, created and existing under the laws of the State, including Subchapter D of Chapter 431 as amended, Texas Transportation Code, and the City of Cedar Park, Texas, the City of Leander, Texas, the City of Round Rock, Texas all home-rule municipalities and political subdivisions of the State, (individually the “City”; collectively the “Cities”) and the Village of Volente, Texas (“Volente” or “Village”), a Texas Type-B, general-law municipality. The BCRUA, including the Cities and Volente are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, the Cities have an obligation to preserve and protect the public health, safety, and welfare of their more than 500,000 citizens by providing a dependable and adequate source of safe drinking water; and

WHEREAS, the BCRUA was created by the Cities to design, construct and operate a regional water transmission and treatment system to provide the Cities with drinking water; and

WHEREAS, each of the Cities has contracted with the Lower Colorado River Authority for water stored in Lake Travis (*See Exhibits A, B and C attached to this ILA*); and

WHEREAS, the BCRUA has completed construction of a 17 MGD water treatment plant (the “Treatment Plant”) located in the City of Cedar Park; and

WHEREAS, in order for the Cities to have a dependable method of accessing their contracted water in times of severe drought, it is necessary for the BCRUA to design, construct, and operate a deep-water intake facility and maintenance building (the “Intake Facility”), a raw water transmission line, and a pumping facility (the “Pumping Facility”), (collectively referred to as the “System”) to transmit the water from Lake Travis to the Treatment Plant; and

WHEREAS, after receiving the results of an engineering study attached to this ILA as Exhibit D, the BCRUA determined that certain property within the corporate limits of Volente (“Site 4”) (*see Exhibit E attached to this ILA*), was the preferred site for the Intake Facility and the Pumping Facility; and

WHEREAS, Site 4 is located entirely within the corporate limits of the Volente and is zoned for residential use; and

WHEREAS, Volente preferred that the Intake Facility and the Pumping Facility be located on certain property previously owned by LCRA (“Site 8”) (*see* Exhibit E attached to this ILA); and

WHEREAS, following significant negotiation, BCRUA and Volente entered into a Memorandum of Understanding (“MOU”) (See Exhibit F attached to this ILA) which provided that Volente would support Site 4 as the location of the Intake Facility, if BCRUA would locate the Pumping Facility on Site 8, and construct an underground tunnel (“Tunnel”) instead of an open-cut trench to house the raw water transmission line; and

WHEREAS, with Volente’s support, BCRUA’s request to move the Pumping Facility to Site 8 was approved; and

WHEREAS, changing the location of the Pumping Station from Site 4 to Site 8 and constructing the Tunnel instead of an open-cut trench will significantly increase the cost to the BCRUA by approximately \$6,000,000; and

WHEREAS, Volente understands and agrees that the Intake Facility will now be located on Site 4, and the Tunnel will be constructed in part within the corporate limits of Volente; and

WHEREAS, the Volente Village limits are composed of a total area of two square miles (*see* Map of Village attached to this ILA as Exhibit G); and

WHEREAS, the Volente Village is a primarily rural, residential community with a limited number of lots available for commercial and retail use; and

WHEREAS, the Village of Volente is not included in BCRUA’s plan to provide a dependable and adequate source of water to the Cities; and

WHEREAS, residents of the Village of Volente rely primarily on private wells, private water filtration systems, and septic systems that could be impacted by activities related to the construction and operation of the deep-water intake facility, the maintenance building, the raw water transmission line, and the pumping facility; and

WHEREAS, the Village has two major thoroughfares that provide nearly all of the access to and through the Village of Volente, FM 2769 and Lime Creek Road; and

WHEREAS, FM 2769 serves as the major regional travel corridor through the area in an east-west direction, and Lime Creek Road provides access in a north-eastern direction; and

WHEREAS, due to the narrow curving nature of both thoroughfares there is limited heavy or commercial traffic; and

WHEREAS, the BCRUA proposes to utilize Lime Creek Road for construction traffic in and out of the Village; and

WHEREAS, Lime Creek Road and FM 2769 contain steep slopes and critical sharp curves, which will constrain the size of construction vehicles which can safely transverse their length and which will need to be negotiated in order the protect the safety and welfare of motorists; and

WHEREAS, the construction and long-term operation of the intake facility and Tunnel will significantly increase heavy traffic within the Village; and

WHEREAS, the construction of the intake facility and Tunnel will take multiple years to complete; and

WHEREAS, the construction of the intake facility and Tunnel will require numerous large construction vehicles to use Village roads causing significant wear and tear and damage to such roads; and

WHEREAS, the construction and increased traffic on Village roads will inconvenience Village residents and pose traffic safety risks to Villagers and guests; and

WHEREAS, Volente has an obligation to preserve and protect the public health, safety, and welfare of its residents by reasonably regulating development within its corporate limits; and

WHEREAS, in furtherance of said obligation, Volente has adopted the Ordinances regulating development within its corporate limits; and

WHEREAS, BCRUA agrees that it intends to comply with Volente’s Ordinances regulating development within the corporate limits of Volente; and

NOW THEREFORE, the BCRUA and Volente now wish to set forth their agreement regarding the design, construction, and operation of the Intake Facility in Volente, as set forth below:

ARTICLE I DEFINITIONS

“BCRUA” means the Brushy Creek Regional Utility Authority, a local government corporation created by the home rule cities of Cedar Park, Leander, and Round Rock to provide a dependable and adequate supply of treated water to their citizens.

“BCRUA Project” means the regional water transmission and treatment system construction project including the construction of the Intake Facility and Tunnel to be constructed within the Village of Volente.

“**Intake Facility**” means the deep-water intake facility, maintenance building, and accessory facilities to be constructed and operated on Site 4, for the purpose of accessing raw water from Lake Travis.

“**Ordinances**” means the validly adopted ordinances of the Village of Volente regulating development and construction in the Village.

“**Pumping Facility**” means the pumps, buildings, and related facilities to be constructed and operated on Site 8 for the purpose of pumping raw water to the Treatment Plant.

“**Site 4**” means the tract of land described in Exhibit E owned by the BCRUA in Volente on which the Intake Facility will be constructed.

“**Site 8**” means the tract of land described in Exhibit E owned by the BCRUA on which the Pumping Facility will be constructed.

“**System**” means the Intake Facility, the Tunnel, and the Pumping Facility.

“**Tunnel**” means the underground tunnel for the raw water transmission line between the Intake Facility and the Pumping Facility.

“**Volente**” means the Village of Volente, a Texas Type-B, general law city.

ARTICLE II BCRUA’S ACKNOWLEDGMENTS AND REPRESENTATIONS

BCRUA and the Cities acknowledge and agree that Volente has a legitimate governmental interest in protecting the public health, safety, and welfare of its citizens by regulating development in the corporate limits of Volente. In furtherance of the aforesaid interest, Volente has adopted the Ordinances to regulate development within the corporate limits of Volente. With respect to the design, construction, and operation of the Intake Facility and Tunnel, BCRUA agrees to deal with Volente in good faith with respect to complying with the applicable development regulations of Volente as set forth in the Ordinances and the MOU. BCRUA agrees not to seek enforcement of the 1000-foot restricted zone pursuant to 30 Tex. Admin. Code § 290.41(e)(2)(B).

ARTICLE III VOLENTE’S ACKNOWLEDGMENTS AND REPRESENTATIONS

BCRUA has determined that the Intake Facility and Tunnel are critical components of the System to access raw water in Lake Travis in order to provide drinking water to the Cities. Volente acknowledges that the Intake Facility and Tunnel are critical components and that Site 4 is BCRUA’s preferred location for the Intake Facility and that the Tunnel must be constructed in part within Volente’s corporate limits. With respect to the design, construction and operation of the Intake Facility on Site 4, and the Tunnel, Volente agrees to deal with the BCRUA in a reasonable fashion and in good faith with respect to imposing and enforcing the Ordinances.

**ARTICLE IV
COVENANT OF GOOD FAITH AND FAIR DEALING**

BCRUA and Volente each agree and covenant to deal with each other honestly, fairly, in good faith, and in accordance with the MOU so that they can discharge their respective duties to protect the public health, safety, and welfare of their respective citizens.

**ARTICLE V
USE, MAINTENANCE AND REPAIR OF ROADWAYS**

- 5.01.** BCRUA agrees to maintain all roadways utilized within the Village during the construction phase in a condition equal to or better than the condition of such roads prior to the project, including pavement striping/markings using non-water-based paint, all pavement base and surface repair reconstruction and resurfacing, drainage, mowing, litter and debris control. BCRUA agrees to conduct monthly inspection of road conditions to determine any necessary repairs.
- 5.02.** BCRUA agrees to repair any damage caused by vehicles or construction equipment utilized for the BCRUA Project within thirty (30) calendar days of inspection by BCRUA or notification of damage by Volente.
- 5.03.** Within sixty (60) calendar days of completion of the project, BCRUA agrees to resurface and restore all roads utilized within the Village as part of the BCRUA Project to preconstruction conditions or better.
- 5.04.** Upon failure of BCRUA to perform any such repair or replacement work as provided in this Article, and five (5) calendar days after written notice has been given by the Village to BCRUA, the Village may repair such portion of the public right-of-way as may have been disturbed by BCRUA, its contractors, or agents. Upon receipt of an invoice from the Village, BCRUA will reimburse the Village for the costs so incurred within thirty (30) calendar days from the date of the Village invoice.
- 5.05.** Should the Village reasonably determine, within two (2) years from the date of the completion of the repair work, that the surface, base, irrigation system or landscape treatment requires additional restoration work to meet existing standards of the Village, BCRUA shall perform such additional restoration work to the satisfaction of the Village.
- 5.06.** Notwithstanding the foregoing, if the Village determines that the failure of BCRUA to properly repair or restore the public right-of-way constitutes a safety hazard to the public, the Village may undertake emergency repairs and restoration efforts. BCRUA shall promptly reimburse the Village for all costs incurred by the Village within thirty (30) calendar days from the date of the Village invoice.

ARTICLE VI

TRAFFIC AND CONSTRUCTION

- 6.01.** BCRUA shall provide the Village a Traffic Management Plan (“TMP”) which shall be developed to help with the mobility, safety, and construction productivity needs while minimizing impact on the quality of life for the residents of the Village. The TMP shall be approved by BCRUA and the Village Council.
- 6.02.** At a minimum the TMP shall identify the vehicle and truck haul routes during construction and for the operation of the facilities. The identification of the haul routes shall include an estimate of the volume, size, and frequency of vehicles and trucks during each phase of construction. The construction operating hours for each phase and the hours of operation of the facility shall be identified and factored into the TMP. The TMP shall also include a traffic impact analysis at the entrances to and key intersections of the Village; potential line of sight issues and related turning radii recommended improvements; access management of neighborhoods, schools, and businesses; and recommended placement of uniformed flagger or officers and hours/conditions they are to be present. In addition, a traffic control plan shall be provided by BCRUA that meets the minimum Texas Manual on Uniform Traffic Control Devices (TMUTCD) requirements. For potential impact of future operation and maintenance of the impacted roadways, TMP shall also include pre- and post-construction roadway condition assessment or monitoring. No total road closures shall be permitted unless otherwise approved by the Village Council. An approved TMP shall be included with BCRUA’s site plan application. Site plan applications which do not include an approved TMP will be considered incomplete, and will not be accepted for official submission by the Village. The process and procedures for approval of the TMP by the Village shall be in accordance with Section 9.05.064 of the Village Code of Ordinances, including review and recommendation by the Planning and Zoning Commission before consideration by the Village Council.
- 6.03.** BCRUA agrees to comply with the terms and conditions of the TMP throughout the duration of the Project. Any amendments to the TMP must be in writing and shall be effective if signed by the authorized representatives of the Parties.
- 6.04.** BCRUA agrees that all large equipment and sections of the intake system shall be assembled at a location outside of the Village and brought to the Site 4 via barge.
- 6.05.** All spoils shall be removed from the Village via Lime Creek Road (north) or via barge via Site 4.

ARTICLE VII SAFETY AND REPORTING

- 7.01.** BCRUA agrees to provide to the Village 24-hour emergency contacts for the maintenance and storage building.

- 7.02. BCRUA shall establish and maintain a complaint triage process with a single point of contact and response for any concerns regarding the construction and continued operation of the BCRUA Project.
- 7.03. BCRUA agrees to provide notice of completion of phases of construction.
- 7.04. BCRUA agrees to provide notice of commencement of each construction phase prior to commencement of such phase.
- 7.05. BCRUA agrees to provide Volente notice of any material construction changes for the BCRUA Project within the Village of Volente, including changes to the contractors or subcontractors within 2 business days.
- 7.06. To the extent permitted by law, BCRUA shall provide the Village, upon request, a list of all chemicals released into Lake Travis via the BCRUA deep water intake, to include the amounts used, date of release, method of release, and purpose of the release.
- 7.07. BCRUA agrees to immediately notify the Village of any accidents, workers compensation injuries or deaths as a direct result of the BCRUA Project.
- 7.08. BCRUA agrees to install an outer perimeter fence constructed taller than the inner perimeter razor-wired fencing to obscure the view of the razor wired-fence. The outer perimeter fence shall be constructed of materials that are in keeping with the natural beauty and look consistent with the Village of Volente vision statement.

**ARTICLE VIII
MONITORING WELLS AND PROTECTION OF PRIVATE WELLS**

BCRUA agrees that it will use its best efforts to establish a water well monitoring program (See Exhibit H attached to this ILA) that will include any private domestic wells that are located within four hundred (400) feet on either side of the Tunnel. (See Exhibit I attached to this ILA for the list of wells within 400 feet of the tunnel.) After the effective date of this ILA, BCRUA shall notify owners of property with private domestic wells within four hundred feet on either side of the tunnel of the proposed well monitoring program. Volente understands that the success of the program depends on the voluntary cooperation of the affected landowners and Volente is not responsible for residents providing BCRUA access to wells on private property.

**ARTICLE IX
VOLENTE'S ACCESS TO WATER**

After the BCRUA System is constructed Volente would like to have access to the System to supply water to its citizens. The BCRUA agrees to consider any such request in good faith.

**ARTICLE X
REIMBURSEMENT FOR PROFESSIONAL SERVICES; MEETINGS**

- 10.01.** BCRUA agrees to reimburse Volente for all past, present and future engineering and attorney's fees accrued for: the negotiation and preparation of this Agreement; the review of design documents and the applications for permits; and the inspections and approvals for the construction of the Intake Facility and Tunnel.
- 10.02.** BCRUA agrees that Volente's engineering representative will be permitted to attend and observe design and construction meetings that involve the Intake Facility and Tunnel. BCRUA shall notify the Village of such meetings not later than seven (7) calendar days before the date of the meeting.

ARTICLE XI DISPUTE RESOLUTION

- 11.01.** The parties desire to resolve disputes arising under this Agreement without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between themselves.
- 11.02.** At the written request of either party, each party shall promptly appoint one non-lawyer representative to negotiate informally and in good faith to resolve any dispute arising under this Agreement. The representatives appointed shall promptly determine the location, format, and duration of the negotiations.
- 11.03.** If the representatives cannot resolve the dispute within thirty (30) calendar days after the first negotiation meeting, the parties agree to refer the dispute to the Dispute Resolution Center of Austin for mediation in accordance with the Center's mediation procedures by a single mediator assigned by the Center. Each party shall pay half the cost of the Center's mediation services.
- 11.04.** The parties agree to continue performing their duties under this Agreement, which are unaffected by the dispute, during the negotiation and mediation process.
- 11.05.** If mediation does not resolve the parties' dispute, the parties may pursue their legal and equitable remedies.
- 11.06.** A party's participation in or the results of any mediation or other non-binding dispute resolution process under this section or provisions of this section shall not be construed as a waiver by a party of: (1) any rights, privileges, defenses, remedies or immunities available to a party; (2) a party's termination rights; or (3) other termination provisions or expiration dates of this interlocal agreement.
- 11.07.** Nothing shall prevent either party from resorting to judicial proceedings if (a) good faith efforts to resolve a dispute under these procedures have been unsuccessful, or (b) interim resort to a court is necessary to prevent serious and irreparable injury to a party or to others.

**ARTICLE XII
INSURANCE AND LIABILITY**

- 12.01.** BCRUA, including the individual Cities and all of BCRUA's or a Cities' Contractors and Subcontractors performing work within the Village shall provide the following insurance policies throughout the term of the Agreement, and shall provide to BCRUA and to the Village on request a copy of the insurance policy or relevant excerpts thereof demonstrating compliance with this provision:
- a. The Village of Volente shall be added as an additional named insured on all policies issued for work to be conducted within the Village.
 - b. Worker's Compensation providing statutory coverage and Employer's Liability Insurance providing limits of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease-each employee, and One Million Dollars (\$1,000,000) disease-policy limit.
 - c. Business Automobile Insurance providing One Million Dollars (\$1,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of Contractor owned or leased motor vehicles, including onsite and offsite operations. Limits may be satisfied using primary and excess/umbrella policies.
 - d. Commercial General Liability Insurance providing limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of Contractor or any of its employees or subcontractors for whom Contractor is legally liable. Limits may be satisfied through the use of primary and excess/umbrella policies
 - e. Contractor's Pollution Liability (CPL) Insurance providing limits of Two Million Dollars (\$2,000,000) per claim and aggregate. CPL coverage will provide for liability due to pollution conditions caused by or exacerbated by Contractor and will include coverage related to the remediation of pollutants and for third-party claims alleging bodily injury and/or damage to third-party property due to pollutants. Claims made coverage will include a retroactive date that predates all Work executed per this Agreement.
 - f. Professional Liability insurance covering errors and omissions in the professional services performed on behalf of the Village, with limits of One Million Dollars \$1,000,000.
 - g. Commercial Crime insurance with limits of \$1,000,000.
 - h. Umbrella Excess Liability insurance that following the form of the underlying primary liability insurance required by this Agreement, with limits of Six Million Dollars \$6,000,000 each occurrence combined single limit.

- 12.02.** BCRUA shall require all Contractors, including the Cities, Walker Partners and Subcontractors to add the Village and Village’s directors, officers, employees, and representatives as additional named insured in Contractor’s commercial general liability, automobile liability, excess/umbrella, and Contractor’s pollution liability policies for any work conducted within the Village.
- 12.03.** Certificates of Insurance (“COI”).
- a. The Parties shall provide a COI evidencing the required insurance policies, limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 12.01 and its subsections. Certificates of insurance will reference the project name as identified on the first page of this Agreement.
 - b. In the event the COI provided indicates that any required insurance will expire during the period of this Agreement, the party shall furnish, on or before the expiration date, a renewed COI as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereafter has been procured and in effect.
 - c. In the event a COI evidencing the renewed coverage is not available prior to the policy renewal date, that party shall provide to the other party, within fifteen (15) days of the policy’s(ies’) renewal date(s). The party shall furnish the insurance certificates to the other party immediately upon the first party’s receipt.
 - d. The Village shall be notified immediately if any COI that has expired, lapses or been cancelled.
- 12.04.** BCRUA is responsible for all verified damage to residential properties, including trees, shrubs, driveways, portable buildings, garages, wells and septic systems incurred as a result of the BCRUA Project. All claims will be evaluated by an independent third-party expert the cost of which will be paid for by the BCRUA.

**ARTICLE XIII
GENERAL PROVISIONS**

- 13.01.** **Authority.** This ILA is made in part under the authority conferred in Chapter 791, *Texas Government Code* and Section 552.001, *Texas Local Government Code*.
- 13.02.** **Severability.** The provisions of this ILA are severable and, if any provision of this ILA is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this ILA shall not be affected, and this ILA shall be construed as if the invalid portion had never been contained herein.
- 13.03.** **Payments from Current Revenues.** Any payments required to be made by a Party under this ILA shall be paid from current revenues or other funds lawfully available to the Party for such purpose.

- 13.04. Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this ILA.
- 13.05. Entire Agreement.** Except as otherwise expressly provided herein, this ILA contains the entire agreement of the Parties regarding the use of construction cost savings from Phase 1A of the BCRUA regional treatment and distribution project and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter. The Parties confirm that further agreements regarding the Regional Project are contemplated and shall not be affected or limited by this ILA.
- 13.06. Amendments.** Any amendment of this ILA must be in writing and shall be effective if signed by the authorized representatives of the Parties.
- 13.07. Applicable Law; Venue.** This ILA shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Travis County, Texas.
- 13.08. Notices.** Any notices given under this ILA shall be effective if (i) forwarded to a Party by hand-delivery; (ii) sent by any electronic means of sending messages, including facsimile transmission and electronic mail (“Electronic Transmission”); or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

BCRUA: Karen Bondy, General Manager
Brushy Creek Regional Utility Authority
221 E. Main St.
Round Rock, Texas 78664

With copy to: Stephan L. Sheets
Sheets & Crossfield, P.C.
309 E. Main St.
Round Rock, Texas 78664

VILLAGE OF VOLENTE: Jana Nace, Mayor
Village of Volente
16100 Wharf Cove
Volente, Texas 78641

With copy to: Alan Bojorquez
Bojorquez Law Firm, P.C.
11675 Jollyville Rd. Ste 300
Austin, Texas 78759

Each notice sent in accordance with this section shall be deemed to have been received at the time on the day it was delivered at such address, at the beginning of business on the third (3rd) Business Day after it was mailed, or one (1) hour after they were sent on the same day it was sent by Electronic Transmission, or at the start of business on the

first (1st) Business Day thereafter if the day on which it was sent by Electronic Transmission was not a Business Day. Either party may change its address for notice by giving notice to the other party as provided in this section.

- 13.09. Force Majeure.** Parties shall not be deemed in violation of this ILA if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.
- 13.10. Counterparts.** This ILA may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.
- 13.11. Authority.** Each party represents and warrants that it has the full right, power and authority to execute this ILA.
- 13.12. Effective Date.** This ILA is effective on the date last executed below:

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(Signatures on following pages)

**BRUSHY CREEK REGIONAL UTILITY
AUTHORITY**

By: _____
Anne Duffy, President

Date: _____

DRAFT

VILLAGE OF VOLENTE

By: _____
Jana Nace, Mayor

Date: _____

DRAFT

EXHIBIT "A"

**Contract between the City of Cedar Park and the Lower Colorado River Authority for
water stored in Lake Travis**

DRAFT

EXHIBIT "B"

Contract between the City of Leander and the Lower Colorado River Authority for water stored in Lake Travis

DRAFT

EXHIBIT "C"

**Contract between the City of Round Rock and the Lower Colorado River Authority for
water stored in Lake Travis**

DRAFT

EXHIBIT 'D'

Engineering Study Conducted by BCRUA

DRAFT

EXHIBIT 'E'

Map of Intake and Pumping Facility Sites and Tunnel

DRAFT

EXHIBIT "F"

**Memorandum of Understanding between the Village of Volente and the Brushy Creek
Regional Utility Authority**

DRAFT

EXHIBIT "G"

Map of the Village of Volente

DRAFT

EXHIBIT “H”

BCRUA Private Well Monitoring Program

DRAFT

EXHIBIT "I"

List of Private Wells within 400 feet of the BCRUA Tunnel

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