

Attachment - B

CONTRACT NO. 19,950-1

(Amendment to Contract No, 19,950, as amended)

THIS AMENDMENT is entered into between the CITY OF PASADENA, a municipal corporation ("the City") and INTER CON SECURITY SYSTEMS, INC., A California Corporation herein referred to as ("Contractor"), pursuant to the following facts:

R E C I T A L S

A. Contractor and City entered into Contract No. 19,950 ("the Contract") on August 1, 2009.

B. The parties desire to amend the Contract to increase the total not-to-exceed amount of said Contract.

NOW, THEREFORE, City and Contractor agree as follows:

1. The Contract is amended by modifying Section 5 to read:

5.1. For satisfactory and timely performance of the services, the City will pay Contractor an amount not to exceed Six Hundred Twenty Thousand One Hundred Dollars (\$620,100.00), in year one, Six Hundred Thirty three Thousand Six Hundred Dollars (\$633,600.00), in year two, and Six Hundred Forty Seven Thousand Four Hundred Dollars (\$647,400.00), in year three, and Six Hundred Sixty Thousand and Three Hundred Dollars (\$660,300.00), for one additional term, in accordance with the payment schedule presented in the Proposal, incorporated herein by reference.

5.2 Contractor's grand total compensation under this Contract, including change orders, shall not exceed \$2,561,400 without the prior authorization of the City Council and written amendment of this Contract.

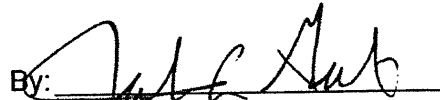
2. Except as modified above, all terms and conditions of Contract No. 19,950, as amended, are unchanged and remain in effect.

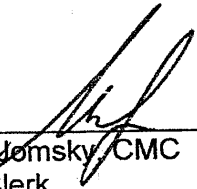
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives as of the date set forth below.

DATED: 10/25/12

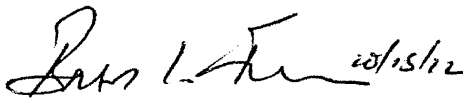
CITY OF PASADENA

ATTEST:

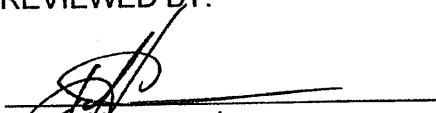
By: 
Michael Beck
City Manager


Mark Jomsky, CMC
City Clerk

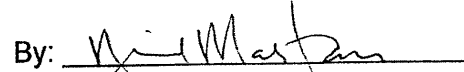
APPROVED AS TO FORM:


Brad L. Fuller
Assistant City Attorney

REVIEWED BY:


Larry Hammond
Budget Administrator

INTER CON SECURITY SYSTEMS,
INC.
A California Corporation

By: 
Neil Martau
Chief Financial Officer

LARRY HAMMOND
PURCHASING ADMINISTRATOR
0000102260031
CITY OF PASADENA

September 27, 2012

SERVICES CONTRACT NO. 19,950

THIS Contract is made between the CITY OF PASADENA ("City"), a municipal corporation, and INTER-CON SECURITY SYSTEMS, INC., a California corporation with headquarters at 210 South De Lacey Avenue, Pasadena, California 91105.

("Contractor").

The City and Contractor agree as follows:

1.0 EMPLOYMENT OF CONTRACTOR. City agrees to engage Contractor to perform the services as hereinafter set forth as authorized by the City Council on June 22, 2009.

2.0 SCOPE OF SERVICES.

2.1 Contractor shall perform all work necessary to complete the services set forth in the Request for Proposals dated February 11, 2009, Exhibit "A", Contractor's proposal to the City ("Proposal") dated March 13, 2009, Exhibit "B", the City's revised Request for Proposals dated June 1, 2009, Exhibit "C", the Contractor's revised proposal to the City dated June 8, 2009, Exhibit "D", and the Parking Enforcement Guidelines, Exhibit "E", all of which are attached to and incorporated into this Contract by reference.

2.2 All services shall be performed to the satisfaction of City.

2.3 All services shall be performed according to the standards then prevailing in the Parking Enforcement Services profession.

3.0 PERSONNEL.

3.1 Contractor represents that it employs, or will employ, at its own expense, all personnel required to perform the services under this Contract.

3.2 Contractor shall not subcontract any services to be performed by it under this Contract without prior written approval of City.

3.3 All of the services required hereunder will be performed by Contractor or by City-approved subcontractors. Contractor, and all personnel engaged in the work, shall be fully qualified and authorized or permitted under State and local law to perform such services and shall be subject to approval by the City.

4.0 TERM; TIME OF PERFORMANCE.

4.1 Contractor shall commence its services immediately upon the execution of this Contract, and shall complete the services on July 31, 2012.

4.2 The Contract may, if mutually agreeable to the City Manager and the Contractor, be extended for two additional one year terms with the compensation rates to be adjusted by amounts equal to the increase or decrease in the Consumer Price Index. The change in the index used to compute the new compensation rates for the two-time annual Contract extensions, if any, shall be adjusted by change, if any, in the urban consumers index (1967 = 100) for the Los Angeles-Anaheim-Riverside area or any successor index. The change in the index for the first ten (10) months of the preceding contract year will be used to compute the new compensation rate. Such extensions may be granted by the City Manager without returning to the City Council for additional approval.

5.0 COMPENSATION AND FEES.

5.1 For satisfactory and timely performance of the services, the City will pay Contractor an amount not to exceed Six Hundred Twenty Thousand One Hundred Dollars (\$620,100.00), in year one, Six Hundred Thirty three Thousand Six Hundred Dollars (\$633,600.00) in year two, and Six Hundred Forty Seven Thousand Four Hundred Dollars (\$647,400.00) in year three, in accordance with the payment schedule presented in the Proposal, incorporated herein by reference.

5.2 Contractor's total compensation under this Contract, including change orders, shall not exceed \$1,901,100.00 without the prior authorization of the City Council and written amendment of this Contract.

5.3 Contractor shall, at its sole cost and expense, furnish all necessary and incidental labor, material, supplies, facilities, equipment and transportation as required under Exhibits A, B, C and D of this Contract. Materials shall be of the quality provided for under Exhibits A, B, C and D to this Contract. The above Contract fee shall include all professional time and all clerical, administrative, overhead, insurance, reproduction, telephone, air travel, auto rental, subsistence, and all related expenses as required under Exhibits A, B, C and D.

6.0 PAYMENT.

6.1 On the 15th day of each calendar month during the Contract term, Contractor shall submit to the City an invoice for the services completed, authorized

expenses, and authorized extra work actually performed or incurred during the immediately preceding calendar month.

6.2 Each such invoice shall state the basis for the amount invoiced, including the services completed, the number of hours spent, reimbursable expenses incurred and any extra work performed.

6.3 Contractor shall also submit a progress report with each invoice that describes in reasonable detail the services and the extra work, if any, performed in the immediately preceding calendar month.

6.4 City will pay Contractor the amount invoiced within thirty (30) days after the City approves the invoice.

6.5 Payment of such invoices shall be payment in full for all services, authorized costs and authorized extra work covered by that invoice.

7.0 CHANGE ORDERS.

There is no change order authority provided in this Contract.

8.0 CITY'S RESPONSIBILITY.

City shall cooperate with Contractor as may be reasonably necessary for Contractor to perform its services; and will give any required decisions as promptly as practicable so as to avoid unreasonable delay in the progress of Contractor's services.

9.0 GENERAL TERMS AND CONDITIONS.

9.1 INDEPENDENT CONTRACTOR.

9.1.1 It is understood that in the performance of the services herein provided for, Contractor shall be, and is, an independent contractor, and is not an agent or employee of City and shall furnish such services in its own manner and method except as required by this Contract. Further, Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Contractor in the performance of the services hereunder. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

9.1.2 Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of the City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

9.2 CONTRACTOR NOT AGENT. Except as the City may authorize in writing, Contractor and its subcontractors shall have no authority, express or implied, to act on behalf of or bind the City in any capacity whatsoever as agents or otherwise.

9.3 OWNERSHIP OF WORK. All reports, drawings, plans, specifications, computer tapes, floppy disks and printouts, studies, memoranda, computation sheets and other documents prepared by Contractor in furtherance of the work shall be the sole property of City and shall be delivered to City whenever requested. Contractor shall keep such documents and materials on file and available for audit by the City for at least three (3) years after completion or earlier termination of this Contract. Contractor may make duplicate copies of such materials and documents for its own files or for such other purposes as may be authorized in writing by the City.

9.4 CORRECTION OF WORK. Contractor shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, goods, services and other work, without additional cost to the City. The performance or acceptance of services furnished by Contractor shall not relieve the Contractor from the obligation to correct subsequently discovered defects, inaccuracy or incompleteness.

9.5 WAIVER. The City's waiver of any term, condition, breach or default of this Contract shall not be considered to be a waiver of any other term, condition, default or breach, nor of a subsequent breach of the one waived.

9.6 SUCCESSORS. This Contract shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, successors and/or assigns.

9.7 NO ASSIGNMENT. Contractor shall not assign or transfer this Contract or any rights hereunder without the prior written consent of the City and approval by the City Attorney, which may be withheld in the City's sole discretion. Any

unauthorized assignment or transfer shall be null and void and shall constitute a material breach by the Contractor of its obligations under this Contract. No assignment shall release the original parties or otherwise constitute a novation.

9.8 COMPLIANCE WITH LAWS. Contractor shall comply with all Federal, State, County and City laws, ordinances, rules and regulations, which are, as amended from time to time, incorporated herein and applicable to the performance hereof, including but without limitation the Pasadena Living Wage Ordinance.

9.9 ATTORNEY'S FEES. If any action at law or in equity is brought to enforce or interpret the terms of this Contract, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

9.10 INTERPRETATION.

9.10.1 Applicable Law. This Contract, and the rights and duties of the parties hereunder (both procedural and substantive), shall be governed by and construed according to the laws of the State of California.

9.10.2 Entire Agreement. This Contract, including any Exhibits attached hereto, constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).

9.10.3 Written Amendment. This Contract may only be changed by written amendment signed by Contractor and the City Manager or other

authorized representative of the City, subject to any requisite authorization by the City Council. Any oral representations or modifications concerning this Contract shall be of no force or effect.

9.10.4 Severability. If any provision in this Contract is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Contract, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Contract.

9.10.5 Order of Precedence. In case of conflict between the terms of this Contract and the terms contained in any document attached as an Exhibit or otherwise incorporated by reference, the terms of this Contract shall strictly prevail. The terms of the City's Request for Proposals shall control over the Contractor's proposal. The order of precedence of the documents is as follows: Contract, Exhibit "E", Exhibit "C", Exhibit "D", Exhibit "A", and Exhibit "B".

9.10.6 Choice of Forum. The parties hereby agree that this Contract is to be enforced in accordance with the laws of the State of California, is entered into and/or is to be performed in the City of Pasadena and that all claims or controversies arising out of or related to performance under this Contract shall be submitted to and resolved in a forum within the County of Los Angeles at a place to be determined by the rules of the forum.

9.10.7 Duplicate Originals. There shall be two (2) fully signed copies of this Contract, each of which shall be deemed an original.

9.11 TIME OF ESSENCE. Time is strictly of the essence of this Contract and each and every covenant, term and provision hereof.

9.12 AUTHORITY OF CONTRACTOR. The Contractor hereby represents and warrants to the City that the Contractor has the right, power, legal capacity and authority to enter into and perform its obligations under this Contract, and its execution of this Contract has been duly authorized.

9.13 ARBITRATION OF DISPUTES. Any dispute for under \$25,000 arising out of or relating to the negotiation, construction, performance, non-performance, breach or any other aspect of this Contract, shall be settled by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association at Los Angeles, California and judgment upon the award rendered by the Arbitrators may be entered in any court having jurisdiction thereof. The City does not waive its right to object to the timeliness or sufficiency of any claim filed or required to be filed against the City and reserves the right to conduct full discovery.

9.14 INDEMNITY.

9.14.1 Contractor agrees to indemnify, hold harmless and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, the City, its City Council and each member thereof, and its officers, employees, commission members and representatives, from any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part result from, or arise out of, or are claimed to result from or to arise out of:

A. any activity on or use of City's premises or facilities or any performance under this Contract; or
any acts, errors or omissions (including, without limitation, professional negligence) of Contractor, its employees, representatives, subcontractors, or agents in connection with the performance of this Contract.

9.14.2 This agreement to indemnify includes, but is not limited to, personal injury (including death at any time) and property or other damage (including, but without limitation, contract or tort or patent, copyright, trade secret or trademark infringement) sustained by any person or persons (including, but not limited to, companies, or corporations, Contractor and its employees or agents, and members of the general public). The sole negligence or willful misconduct of City, its employees or agents other than Contractor or Contractor's subcontractors are excluded from this indemnity agreement.

9.15 RELEASE. Contractor agrees to release and covenants not to sue the City, its City Council and each member thereof, and its officers, employees, commission members and representatives for any damage or injury (including death) to itself, its officers, employees, agents and independent contractors damaged or claiming to be damaged from any performance under this Contract.

9.16 INSURANCE. Contractor shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of the Contract, including any extensions thereto. The policies shall state that they afford primary coverage.

9.16.1 Automobile Liability with minimum limits of at least \$100,000/300,000/50,000 if written on a personal automobile liability form, for using a personal vehicle; or an amount of \$500,000 including owned, hired, and non-owned liability coverage if written on a Commercial automobile liability form.

9.16.2 General Liability with minimum limits of at least \$1,000,000 combined single limits written on an Insurance Services Office (ISO) Comprehensive General Liability "occurrence" form or its equivalent for coverage on an occurrence basis. Premises/Operations and Personal Injury coverage is required. The City of Pasadena, its directors, commissioners, officers, employees, agents and volunteers must be endorsed on the policy as additional insureds as respects liability arising out of the Contractor's performance of this Contract.

A. If Contractor employs other contractors as part of the services rendered, Contractor's Protective Coverage is required. Contractor may include all subcontractors as insureds under its own policy or shall furnish separate insurance for each subcontractor, meeting the requirements set forth herein.

B. Blanket Contractual Coverage is required.

C. Products/Completed Operations coverage where such risk is applicable.

D. Explosion, Collapse and/or Underground (X, C, and/or U) coverage where such risk is applicable.

9.16.3 Professional Errors and Omissions coverage in a sum of at least \$1,000,000. Applicable aggregates must be identified and claims history provided to determine amounts remaining under the aggregate.

9.16.4 Contractor shall comply with the applicable sections of the California Labor Code concerning workers' compensation for injuries on the job. Compliance is accomplished in one of the following manners:

- A. Provide copy of permissive self-insurance certificate approved by the State of California; or
- B. Secure and maintain in force a policy of workers' compensation insurance with statutory limits and Employer's Liability Insurance with a minimal limit of \$1,000,000 per accident. The policy shall be endorsed to waive all rights of subrogation against City, its directors, commissioners, officers, employees, and volunteers for losses arising from performance of this Contract; or
- C. Provide a "waiver" form certifying that no employees subject to the Labor Code's Workers' Compensation provision will be used in performance of this Contract.

9.16.5 Each insurance policy included in this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice to City.

9.16.6 Insurance shall be placed with insurers with a Best's rating of no less than B:VIII.

9.16.7 Prior to commencement of performance, Contractor shall furnish City with a certificate of insurance for each policy. Each certificate is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) must be in a form approved by City. City may require complete, certified copies of any or all policies at any time.

9.16.8 Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Contractor shall immediately notify City and cease all performance under this Contract until further directed by the City. In the absence of satisfactory insurance coverage, City may, at its option: (a) procure insurance with collection rights for premiums, attorney's fees and costs against Contractor by way of set-off or recoupment from sums due Contractor, at City's option; (b) immediately terminate this Contract; or (c) self insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorney's fees and costs, being collectible from Contractor, by way of set-off or recoupment from any sums due Contractor.

9.17 NOTICES.

Any notice or demand to be given by one party to the other shall be given in writing and by personal delivery or prepaid first-class, registered or certified mail, addressed as follows. Notice simply to the City of Pasadena or any other City department is not adequate notice.

If to the City: Frederick C. Dock
Director of Transportation
Department of Transportation
City of Pasadena
221 East Walnut Street, Suite 199
Pasadena, California 91101

With a Copy to: Parking Manager
Department of Transportation
City of Pasadena
221 East Walnut Street, Suite 199
Pasadena, California 91101

If to the Contractor: Enrique Hernandez, Jr., President
Inter-Con Security Systems, Inc.
210 South De Lacey Avenue
Pasadena, California 91105

Any such notice shall be deemed to have been given upon delivery, if personally delivered, or, if mailed, upon receipt or upon expiration of three (3) business days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party.

9.18 TERMINATION FOR CONVENIENCE (Without Cause). City may terminate this Contract in whole or in part at any time, for any cause or without cause, upon fifteen (15) calendar days' written notice to Contractor. If the Contract is thus terminated by City for reasons other than Contractor's failure to perform its obligations, City shall pay Contractor a prorated amount based on the services satisfactorily completed and accepted prior to the effective date of termination. Such payment shall be Contractor's exclusive remedy for termination without cause.

9.19 DEFAULT. In the event either party materially defaults in its obligations hereunder, the other party may declare a default and terminate this Contract by written notice to the defaulting party. The notice shall specify the basis for the default. The Contract shall terminate unless such default is cured before the effective date of termination stated in such notice, which date shall be no sooner than ten (10) days after the date of the notice.

Termination for cause shall relieve the terminating party of further liability or responsibility under this Contract, including the payment of money, except for payment for services satisfactorily and timely performed prior to the service of the notice of termination, and except for reimbursement of (1) any payments made by the City for service not subsequently performed in a timely and satisfactory manner, and (2) costs incurred by the City in obtaining substitute performance.

9.20 ASSIGNMENT OF ANTITRUST CAUSES OF ACTION.

Contractor hereby agrees to assign to the City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec 15) or under the Cartwright Act Chapter 2 (Commencing with Section 16700) or part 2 of Division 7 of the Business and Professions Code, or any similar or successor provisions of Federal or State law, arising from purchases of goods, services or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties.

10.0 ADDITIONAL ASSURANCES.

10.1 EQUAL EMPLOYMENT OPPORTUNITY PRACTICES. Contractor agrees to comply with the City's Competitive Bidding and Purchasing Ordinance, Chapter 4.08 of the Pasadena Municipal Code, the rules and regulations promulgated thereunder, the California Fair Employment and Housing Act (Government Code Section 12900 et seq.) and to this end:

10.1.1 Contractor certifies and represents that, during the performance of this Contract, the Contractor and any other parties with whom it may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, medical condition, marital status. Contractor further certifies that it will not maintain any segregated facilities.

10.1.2 Contractor shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of this Contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition or marital status.

10.1.3 Contractor shall, if requested to so do by the City, certify that it has not, in the performance of this Contract, discriminated against applicants or employees because of their race, religious creed, color, national origin, ancestry, disability, sex, age, medical condition or marital status.

10.1.4 If requested to do so by the City, Contractor shall provide the City with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

10.1.5 Contractor agrees to recruit Pasadena residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this Contract and which are performed within the City.

10.1.6 Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

10.1.7 The Contractor shall include the provisions set forth in paragraphs numbered 10.1.1 through 10.1.6 of subsection 10.1 of this Contract, inclusive, in each of its subcontracts.

10.2 PASADENA BUSINESS LICENSE. Contractor shall obtain, and pay any and all costs associated therewith, any Pasadena Business License which may be required by the Pasadena Municipal Code.

10.3 MAINTENANCE AND INSPECTION OF RECORDS.

The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Contractor's records to the extent the City deems necessary to insure it is receiving all money to which it is entitled under the Contract and/or is paying only the amounts to which Contractor is properly entitled under the Contract or for other purposes relating to the Contract.

The Contractor shall maintain and preserve all such records for a period of at least 3 years after termination of the Contract.

The Contractor shall maintain all such records in the City of Pasadena. If not, the Contractor shall, upon request, promptly deliver the records to the City of Pasadena or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Pasadena, including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

10.4 CONFLICT. Contractor hereby represents, warrants and certifies that no member, officer or employee of the Contractor is a director, officer or employee of the City of Pasadena, or a member of any of its boards, commissions or committees, except to the extent permitted by law.

11.0 TAXPAYER PROTECTION AMENDMENT. Under the provisions of the City of Pasadena Taxpayer Protection Amendment of 2000 ("Taxpayer Protection Act"), the Contractor/Organization will be considered a "recipient of a public benefit." The full provisions of the Taxpayer Protection Act are set forth in Pasadena City Charter, Article XVII. Under the Taxpayer Protection Act, City public officials who approve this Contract/transaction are prohibited from receiving specified gifts, campaign contributions or employment from Contractor/Organization for a specified time. As well, if this Contract is to be approved by the City Council, Councilmembers or candidates for Council are prohibited from receiving campaign contributions during the time this Contract is being negotiated. This prohibition extends to individuals and entities that are

specified and identified in the Taxpayer Protection Act and includes Contractor/Organization and its trustees, directors, partners, corporate officers and those with more than a 10% equity, participation, or revenue interest in Contractor/Organization. Contractor/Organization understands and agrees that: (A) Contractor/Organization is aware of the Taxpayer Protection Act; (B) Contractor/Organization will complete and return the forms provided by the City in order to identify all of the recipients of a public benefit specified in the Taxpayer Protection Act; and (C) Contractor/Organization will not make any prohibited gift, campaign contribution or offer of employment to any public official who negotiated and/or approved this Contract/transaction.

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