

AGREEMENT FOR SUPPLIES AND SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Univar Solutions USA, Inc., a Washington Corporation, whose address of record is 8201 S. 212th Street, Kent, Washington 98032, (hereinafter referred to as "Vendor").

WHEREAS, City requires the supply and delivery of sodium fluoride; and,

WHEREAS, Vendor represents that it possesses the skills and ability to safely provide the supply and delivery of sodium fluoride at the request of the City.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Vendor shall furnish the following supplies and services: Vendor shall supply and deliver the products and materials described in Exhibit "A" attached hereto.

No additional services shall be performed by Vendor unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Public Works or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Vendor.

2. **TIME OF PERFORMANCE, DELIVERY SCHEDULE.** Vendor shall complete all deliveries within seven (7) calendar days after receipt of an order from City.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on June 30, 2022. Prior to the expiration of this Agreement, City shall have the option to renew this Agreement for two (2) additional one (1) year terms for the additional maximum period of two (2) years ending as of June 30, 2024.

4. **COMPENSATION.** Payment by the City to the Vendor for actual services and supplies delivered to City pursuant to this Agreement shall be made

upon presentation of an invoice detailing the supplies and services delivered under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Vendor agrees to provide all supplies and services required under the Scope of Services in Exhibit "A" for an amount not to exceed Seventy-Six Thousand Eight Hundred Dollars (\$76,800.00).

If the option to renew is exercised, the compensation shall be as follows:

Option to Renew – Year 2 (July 1, 2022 – June 30, 2023)	\$86,400.00
Option to Renew – Year 3 (July 1, 2023 – June 30, 2024)	\$95,360.00

5. METHOD OF PAYMENT. Compensation to Vendor shall be paid by the City after submission by Vendor of an invoice delineating the services performed and quantities of all products, materials and supplies delivered.

6. TRAINING AND SAFETY REQUIREMENTS. Vendor shall properly and legally maintain all vehicles and equipment used in connection with the performance of this Agreement. Vendor shall train all delivery drivers and personnel to safely handle and deliver all materials, products and supplies being provided to City under this Agreement. Vendor agrees to take all reasonable precautions necessary to minimize the potential for spillage during the delivery of all materials, products and supplies, including spillage that may occur during the connection or disconnection of any pipes, hoses, lines or other conduits or containers. Vendor shall maintain records or training of Vendor's drivers and other personnel, which shall be made available to City as set forth in Section 7 of this Agreement.

7. VENDOR'S BOOKS AND RECORDS. Vendor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Vendor to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Vendor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Vendor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Vendor desire any insurance protection, the Vendor is to acquire same at its expense.

In the event Vendor or any employee, agent, or subcontractor of Vendor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Vendor shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Vendor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. **INDEMNITY.** Vendor shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Vendor or Vendor's officers, employees, volunteers, and agents during performance of this Agreement; Vendor shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and all claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Vendor or its employees, subcontractors, or agents, or by the quality or character of Vendor's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Vendor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Vendor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Vendor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Vendor shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Vendor shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Vendor shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Vendor.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Vendor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Vendor shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Vendor shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Vendor.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Vendor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

e. Certificate of Insurance. Vendor shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

f. Notwithstanding any language in this Agreement to the contrary, Vendor shall be entitled to be paid pursuant to the terms of this Agreement until Vendor has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City

may have, City reserves the right to withhold payment if Vendor's insurance policies are not current.

11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public works" the Vendor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Vendor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Vendor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Vendor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Vendor agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Vendor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Vendor under this Agreement will be permitted only with the express written consent of the City.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Vendor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Vendor. If the Agreement is so

terminated, the Vendor shall be paid for those supplies and services previously delivered to the City at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Vendor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Vendor in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

15. Vendor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Vendor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Vendor hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

16. WAIVER. In the event that either City or Vendor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

17. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

18. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any

rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

19. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

20. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

21. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

22. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

23. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Frederic A. Winkler 4/13/21
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

VENDOR
UNIVAR SOLUTIONS USA, INC.,
A Washington Corporation

BY: Shawna McCarthy
(Signature)

Shawna McCarthy
(Typed Name)

Its: Municipal Commercial Manager
(Title)

BY: Jennifer M Perras
(Signature)

Jennifer M Perras
(Typed Name)

Its: Municipal Specialist
(Title)

Taxpayer I.D. No. 91-1347935

ADDRESS: 8201 S. 212th Street
Kent, WA 98032

TELEPHONE: (253) 872-5040

FAX: (853) 872-5041

E-MAIL:

Jennifer.perras@univarsolutions.com

Sodium Fluoride Supply

Exhibit A: Specifications

I. General Specifications

- A. All items must meet or better all applicable Federal, State, and local requirements and all applicable requirements.
- B. If the manufacturer or bidder has any exceptions (variations, deviations, deletions, additions, and the like) from these Specifications, they must state exactly what those exceptions are and any impact on form, fit, or function in its bid. City reserves the exclusive right to either accept or reject those exceptions and City's decision is final. Bidder, in submitting its bid, understands and acknowledges these requirements and conditions.
- C. Awarded contractor or vendor shall possess City of Merced Business License as part of the execution of the awarded contract.

II. Detailed Specifications

- A. Quote hereon your lowest prices for SODIUM FLUORIDE.
- B. Granular state.
- C. 98% minimum purity.
- D. To be used in 4% solution.
- E. Product shall conform in all respects to the following standards:
 - AWWA Standard for Sodium Fluoride (AWWA-B701-11 or current revision) and comply with the latest U.S. code standards, except as modified or supplemented herein.
 - NSF/ANSI/CAN 60: Water Treatment Chemicals.
 - Meet or exceed UL specification UN 1690,6.1,PG III
- F. Bidders must submit with their bid contract documents the following:
 - In accordance with Section 64590, Title 22 of the California Code of Regulations (CCR), no chemical or product shall be added to drinking water by a water supplier unless the chemical or product is certified as meeting the specifications of NSF International/American National Standard Institute {NSF/ANSI} 60-2005 (Drinking Water Treatment Chemicals-Health Effects). Certification shall be from an ANSI accredited product certification organization whose certification system includes the criteria for ensuring the chemical or product meets NSF/ANSI Standard 60 per Section 64590 of the CCR. Bidders must submit an affidavit of compliance from the ANSI accredited product certification organization. Bidders must include a statement by the chemical manufacturer include, signed by an authorized representative on letterhead stationery, attesting to the affidavit's validity. In lieu of submitting an affidavit of compliance and a letter attesting to the affidavit's validity, a current printout from the ANSI accredited product certification organization is acceptable.

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- A representative analysis of the chemical to be supplied, as prepared by a reputable outside laboratory or bidder's in-house laboratory if ISO certified.
 - Name and address of the chemical manufacturer.
 - Product Bulletin and Typical Properties.
 - Safety Data Sheet (SDS).
- G. Preferably, deliver product in 50 lbs bags or smaller (but not smaller than 20 lbs).
- H. Approximate consumption per month is 5,300 lbs per month or 64,000 lbs per year. Indicated quantities are estimates of anticipated usage for a 12-month period and are given for informational purposes only. Nothing in these estimated annual quantities must be construed as obligating the City to purchase specific quantities, as these quantities may vary depending on actual operating conditions and demands during the contract term. The City reserves the right to purchase any volume of the chemical listed, at the contract price, regardless of stated estimates of quantities. No price adjustments will be allowed as a result of an increase or a decrease in the quantity purchased.
- I. All bids submitted must include a base unit price, FOB destination, Merced at the specified delivery location in Section III, C below. Bidders shall provide bid prices on the Bid Form including all costs associated with providing and delivering the chemical to the agency's facility, including materials, labor, equipment, transportation, insurance, overhead, profit, and all applicable taxes except sales tax in effect at the time of delivery. Bids qualified by additional or conditional charges such as CPI, escalators, fuel surcharges, or transportation charges between the supplier and the final delivery points will not be allowed.
- J. Bid Form will be incorporated as part of any resulting purchase order or contract as pricing reference.
- K. All Bids must be signed.

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Sodium Fluoride Supply

MAIL SEALED BIDS TO:
678 W 18th St Merced CA
95340

CITY OF MERCED
PURCHASING
DEPARTMENT
BID FORM
(209) 385-6833
purchasing@cityofmerced.org

PARCEL & HAND
DELIVERED BIDS GO TO:
2525 "O" ST MERCED CA
95340

QUOTE HEREON YOUR LOWEST PRICES F.O.B. MERCED FOR THE FOLLOWING EQUIPMENT, MATERIALS, SUPPLIES OR SERVICES. NO ALLOWANCE FOR FREIGHT, CARTAGE, PACKING, OR POSTAGE UNLESS SPECIFIED ON THIS BID. WHERE BRAND OR MAKE IS SPECIFIED, SIMILAR OR EQUAL WILL BE CONSIDERED.

SEALED BIDS MUST BE IN THIS OFFICE BY: **DEPARTMENT:** Water
Thursday, March 25, 2021 2:00 P.M. **REQUISITION:** 03252021, Sodium Fluoride Supply

Quantity	UOM	Description	Grade	CAS#	Unit Price/Year 1	Extended Price
64,000	lbs	Sodium Fluoride	Granular	7681-49-4	\$ 1.20	\$ 76,800. ^w
					Unit Price/Year 2	Extended Price
					\$ 1.35	\$ 86,400. ^w
					Unit Price/Year 3	Extended Price
					\$1.49	\$95,360 ^w

We have stated hereon the prices at which we will furnish and deliver the equipment, materials, supplies or services as specified above.


Delivery will be made in 3-5 days after receipt of order (A.R.O.), except as otherwise indicated.

Note: The City reserves the right to reject any and or all bids, split the bid award, or to accept the bid that best serves the public purpose, even though it may not be the lowest.

COMPANY: Univar Solutions USA Inc.

BY: Jennifer M. Perras

TITLE: Municipal Specialist

SIGNATURE: 

DATE: 3/22/2021

PHONE: 253-872-5040

EMAIL: jennifer.perras@univarsolutions.com

PAYMENT TERMS: (Net 10, 30, 45) NET 30

CITY OFFICERS AND EMPLOYEES INELIGIBLE TO BID

Bidders are advised that under Government Code Section 1126 officers and employees of the City of Merced are not eligible to bid on City contracts (to provide equipment, materials, supplies or services to the City) or to enter into a lease or other agreements with the City. Any bid submitted by a City officer or employee, either individually or through a partnership, corporation, or other form of business entity or association, will be rejected and may subject the employee to discipline under the City's Personnel Rules, Article XIX Section 19.02.

NOTICE
ALL BIDS MUST BE SIGNED

Sodium Fluoride Supply

III. Special Instructions for Deliveries

A. Packaging

1. Pack all items to ensure that each item can be handled and transported safely from the shipping point, during transit, arrival at the destination point, offloading, and storage. Packing materials and packaging must be appropriate to the items.

B. Delivery Schedule

1. Make deliveries seven calendar days after receipt of order (A.R.O.).
2. Deliveries will be spaced out approximately every two months because of weather temperature and lack of storage capacity considerations. First delivery will occur within a week of contract execution which can potentially happen in mid-late April.

C. Delivery Location

1. Well Site 1 Warehouse: 477 St Lawrence Dr, Merced CA 95340
2. Notification: Call 209 564 2546 at least 24 hours prior to deliveries.
3. Delivery hours: Mon–Fri; 7:30am to 2:30pm, closed 11:30am to 12:30pm.
4. Include FOB Merced, CA delivery costs in the unit prices; no exceptions.

D. Rejections and Pickups

1. Note that City reserves the right to reject items that fail to comply with Specifications, are damaged, or are in excess of ordered quantities.
2. Pick up items to be returned to vendor within five business days of notification and process credit for returned items within ten business days of receipt.

E. Material Handling

1. **SAFETY REQUIREMENTS:** The bidder, their employees, subcontractors, and/or agents must conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety, and they must adhere to all State, Federal and Occupational Safety and Health Act (OSHA) safety standards while they are on the premises of City. Furnished equipment, materials, and/or services must comply with all OSHA standards and regulations, and all applicable governmental laws and orders. City reserves the right to individually refuse any shipment, at its sole discretion, which cannot be unloaded using safe and proper techniques. Any such refusal must result in the return of the chemical at the successful bidder's sole expense. If requested by City, the successful bidder and/or the firm providing transportation of the chemical shall submit to a safety briefing at the City's site before commencing deliveries. The successful bidder and/or the firm providing transportation of the chemical are required to comply with the site-specific safety requirements. In addition, if requested by City, the successful bidder and/or the firm providing transportation of the chemical may be asked to review site safety materials and provide a signed acknowledgement of their receipt of the site safety materials.

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2. **SPILLAGE:** The successful bidder must be prepared to provide safety training on the safe handling and use of the chemical and emergency procedures in the event of a leak or spill. Should a chemical spill or leak result due to negligence, faulty equipment, or inferior packaging on the part of the bidder or their agents, the bidder and their agents must be responsible for cleaning the spill or leakage and for bearing any cost incurred due to spill or leakage clean-up. It must be the successful bidder's responsibility to effect immediate containment, clean-up, disposal, and restoration activities in accordance with the individual facility's requirements and any and all applicable laws and regulations. All material associated with such clean-up operations must be hauled away and lawfully disposed of at no charge to City. The property of City where the delivery is being made must not be used for such disposal. If the spill is NOT cleaned up, City will hire a certified hazardous material handling company to clean up the spill, and the costs incurred, including any fines or penalties which may be imposed by regulating authorities, will be charged to the bidder or deducted from amounts owed. Chemicals must stay in the possession of the bidder and must not be unloaded until accepted by City. All chemicals must be delivered in accordance with Department of Transportation regulations.

F. Chemical Orders

1. A purchase order as part of the resulting agreement will be issued to the successful bidder by City.
2. All chemical sales must be invoiced to City.
3. The contracted unit cost of the chemical is the awarded bid price.
4. Successful bidder may seek a price increase for any nontrivial change requested by City in the terms and conditions of purchase order and/or purchase agreement.
5. Successful bidder may not change the price throughout the term of the contract unless by mutual written agreement between City and successful bidder per Section Modification of Contract.

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