RESOLUTION - ACTION REQUESTED 2016-609

MEETING: November 22, 2016

TO: The Board of Supervisors

FROM: Tony Stobbe, Public Works Director

RE: Roadside Weed Spraying

RECOMMENDATION AND JUSTIFICATION:
Approve a Professional Services Agreement with California Reforestation for Roadside Herbicide and Pre-Emergent Spraying with a not-to-exceed amount of $75,000; and Authorize the Board of Supervisors Chair to Sign the Agreement. This agreement will allow for herbicide and pre-emergent application of approximately 600 lane miles along County maintained Road Right-of-Way. The vendor, California Reforestation, is familiar with the County Road System as they have successfully provided these services in the past and are a known provider in good standing of these services with the Mariposa County Agriculture Department.

New for this year, the Department is starting an Opt-Out Program whereby residents with property adjacent to County Right-of-Way will have an ability to opt-out of the chemical application program in exchange for the property owner assuming weed control responsibility. Those residents seeking more information on the Opt-Out Program are encouraged to visit the Public Works Department in person at 4639 Ben Hur Road for additional information and to fill out the application agreement required to participate in this program. A copy of the application is included with this item. Enrollment in the Opt-Out Program will last for a period of two years unless otherwise revoked by the resident or by the Department due to breach of the terms of the program.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On January 5, 2016, Resolution 2016-17 the Board of Supervisors approved a Contract for Services to this vendor for similar roadside weed spraying services. Weed spraying was also a priority during the Fiscal Year 2016-17 Final Budget Hearings.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
The Board could chose to not approve the agreement and provide alternative direction to the Director of Public Works.

FINANCIAL IMPACT:
Funding for this item is included in the approved Road budget.

ATTACHMENTS:
CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson, CAO
11/16/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier
CONTRACT FOR SERVICES

This Contract made this 23rd day of November, 2016 between:

COUNTY: Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

and

CONTRACTOR: California Reforestation
22230-A South Colorado River Drive
Sonora, CA. 95370

ARTICLE 1. TERM OF CONTRACT

1.01 Contract Term: This Contract shall become effective on October 27, 2016, and shall terminate August 31, 2017, unless terminated in accordance with the provisions of Article 7 of this Contract.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

2.01 Independent Contractor: It is the expressed intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Contract.

2.02 Contractor Qualifications: Contractor warrants that Contractor has the necessary experience and technical skills to provide services under this Contract.

2.03 Contract Management: Contractor shall report to the Public Works Director who will review the activities and performance of the Contractor and administer this Contract.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

3.01 Scope of Services: Contractor agrees to furnish the following services:
Contractor shall provide the services described in Exhibit “A” attached hereto.
No additional services shall be performed by Contractor unless approved in advance in writing by the County 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 County and the results of the work shall be monitored by the Public Works Director or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

3.02 **Method of Performing Services:** Contractor will determine the method, details, and means of performing the above-described services including measures to protect the safety of the traveling public and Contractor’s employees. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor’s services.

3.03 **Employment of Assistants:** Contractor may, at the Contractor’s own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Contract. County may not control, direct, or supervise Contractor’s assistants or employees in the performance of those services.

Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

**ARTICLE 4. COMPENSATION**

4.01 **Compensation:** In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to the services satisfactorily performed in the not to exceed amount of $75,000. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:

- [ ] Total sum to be paid upon completion of services.
- [X] Incremental payments based on the following schedule:
  Submittal of monthly invoices

**Funding Source: 300-0301-581-0418**

4.02 **Invoices:** Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County. All invoices shall reference contract number.
4.03 Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.

4.04 Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of materials, equipment, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor’s costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

5.01 Tools and Instrumentalities: Contractor will supply all tools and instrumentalities required to perform the services under this Contract. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

5.02 Indemnification: Contractor shall indemnify and hold County harmless against any and all liability imposed or claimed, including attorney’s fees and other legal expenses, arising directly or indirectly from any act or failure of Contractor or Contractor’s assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars ($1,000,000) to cover such claims or in an amount determined appropriate by the County Risk Manager. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause 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 Contract, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

5.03 General Liability and Automobile Insurance: During the term of this Contract Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least $1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named
as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.

5.04 Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Contract, certificates of insurance evidencing coverage as set forth in paragraphs 5.03 and 5.05 which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Contract, without thirty (30) days written notice to County prior to the effective date of such cancellation.

5.05 Workers’ Compensation: During the term of this Contract Contractor agrees to provide workers’ compensation insurance for Contractor’s employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor’s employees or agents.

5.06 Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Contract is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor 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 County.

5.07 State and Federal Taxes: As Contractor is not County’s employee; Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor’s payments;

b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;

c. County will not withhold state or federal income tax from payment to Contractor;

d. County will not make disability insurance contributions on behalf of Contractor;

e. County will not obtain workers’ compensation insurance on behalf of Contractor.

5.08 Records: It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Contract shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinafore, prepared pursuant to this Contract are prepared specifically for the County and are not necessarily suitable for any future or other use.
5.09 **Contractor’s Books and Records:** Contractor 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 County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. 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 County.

5.10 **Assignability of Contract:** It is understood and agreed that this Contract contemplates personal performance by the Contractor 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 Contractor under this Contract will be permitted only with the express written consent of the County.

**ARTICLE 6. OBLIGATIONS OF COUNTY**

6.01 **Cooperation of County:** County agrees to comply with all reasonable requests of Contractor and to provide access to all documents as permitted by law necessary to the performance of Contractor’s duties under this Contract.

6.02 **Assignment:** Neither this Contract nor any duties or obligations under this Contract may be assigned by County without the prior written consent of Contractor.

**ARTICLE 7. TERMINATION OF CONTRACT**

7.01 **Termination on Occurrence of Stated Events:** This Contract shall terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.

7.02 **Termination by County for Default of Contractor:** Should Contractor default in the performance of this Contract or materially breach any of its provisions, County, at County’s option, may terminate this Contract by giving written notification to Contractor.

7.03 **Termination for Convenience of County:** County may terminate this Contract at any time by providing a notice in writing to Contractor that the Contract is terminated. Said Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

7.04 **Termination of Funding:** The parties acknowledge that the nature of government finance is unpredictable and that the rights and obligations set forth in this Contract are necessarily
contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Contract and all obligations of County arising from this Contract shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Contract, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

8.02 Entire Agreement of the Parties: This Contract supersedes any and all contracts, either oral or written, between the Parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and contracts between the Parties with respect to the rendering of such services in any manner whatsoever. Each Party to this Contract acknowledges that no representatives, inducements, promises, or contracts, orally or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein, and that no other contract, statement, or promise not contained in this Contract shall be valid or binding. Any modification of this Contract will be effective only if it is in writing signed by the Party to be charged and approved by the County as provided herein or as otherwise required by law.

8.03 Partial Invalidity: If any provision in this Contract is held by a court or competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

8.04 Attorney’s Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Contract, the prevailing Party will be entitled to reasonable attorney’s fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that Party may be entitled.

8.05 Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.
8.06 **Waiver:** In the event that either County or Contractor shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition or obligation.

8.07 **Governing Law:** This Contract and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Contract shall be held exclusively in a state court in the County of Mariposa.

Executed in Mariposa, California, on the date and year first above written.

**COUNTY:**

By: [Signature] [Date]

John Carrier, Chair

**CONTRACTOR:**

California Reforestation

By: [Signature] [Date]

Will Donald

**ATTEST:**

By: [Signature] [Date]

Rene LaRoche

**APPROVED AS TO FORM:**

By: [Signature] [Date]

Steven W. Dahlem

County Counsel
BID SPECIFICATIONS

ROADSIDE CHEMICAL WEED PROGRAM

The County of Mariposa is seeking bids for a Contract for Services agreement to apply pre-emergent and herbicides for chemical weed control to approximately 300 miles (600 lane miles) of roadside along paved County-maintained roads as well as 12.5 miles (25 lane miles) of Zone of Benefit roads.

**Overall Roadside Chemical Weed Control Program Goal:**
The goal of the Roadside Chemical Weed Control Program is to provide chemical weed control using herbicides on four-foot wide shoulders on up to 300 centerline miles (600 shoulder miles) of County maintained roads and 12.5 centerline miles (25 shoulder miles) of Zone of Benefit roads for a minimum period of three (3) months. The miles of County maintained roads and Zone of Benefit roads are located throughout the County.

**Bidder Qualifications:**
Eligible Bidders shall be licensed as an Agricultural Pest Control Advisor and an Agricultural Pest Control Operator(s) in good standing with the State of California. All applicators applying chemicals on County roads shall be required to possess a valid Qualified Applicator License or Qualified Applicator Certificate.

**Miscellaneous Requirements:**
The area to be sprayed will consist of a 4-foot wide strip along the edge of designated County roads and Zone of Benefit roads. Contractor will be required to have an inspection by the County Agricultural Commissioner prior to application. Contractor shall have had no unresolved violations against their company within the past two years with either the County Agricultural Commissioner or the State of California.

The bid shall be submitted by qualified, experienced, and licensed contractors and be based on a per-lane mile rate and must include the following:

1. All labor required for a complete application; including flagging or a pilot car for safe operation.
2. Miscellaneous labor costs; i.e., sick or vacation time, etc.
3. All equipment and related costs.
4. All insurance costs.
5. Receiving, handling, and storage of herbicides.
6. Disposal of used herbicide containers.
7. Any miscellaneous expenses.
# ROAD SIDE CHEMICAL WEED PROGRAM

**November 2016**

**Bid Schedule**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>ITEM DESCRIPTION</th>
<th>UNIT</th>
<th>QUANTITY</th>
<th>UNIT PRICE ($)</th>
<th>EXTENSION ($)</th>
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<tr>
<td>1</td>
<td>COMBINATION OF PRE-EMERGENT AND HERBICIDE</td>
<td>LANE MILE</td>
<td>400</td>
<td>125.00</td>
<td>50,000.00</td>
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<tr>
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<td>HERBICIDE ONLY</td>
<td>LANE MILE</td>
<td>100</td>
<td>110.00</td>
<td>11,000.00</td>
</tr>
<tr>
<td>3</td>
<td>PRE-EMERGENT ONLY</td>
<td>LANE MILE</td>
<td>100</td>
<td>120.00</td>
<td>12,000.00</td>
</tr>
</tbody>
</table>

ROAD SIDE CHEMICAL WEED PROGRAM TOTAL IN FIGURES: $73,000.00

AMOUNT OF BID, WRITTEN OUT: Seventy-three Thousand 00/100

SIGNATURE OF BIDDER: [Signature]

NOTE: UNITS ARE FOR BID PURPOSES ONLY. THE COUNTY RESERVES THE RIGHT TO REVISE THE QUANTITIES WITHOUT ADJUSTMENT IN THE UNIT PRICE.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFLICTS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Cutler Segerstrom Insurance Agency
CDI# 0302939
1030 Greenley Road
Sonora, CA 95370

INSURED
California Reforestation Inc.
22230-A S. Colorado River Dr.
Sonora, CA 95370

CONTACT NAME: Heather Karney
PHONE: (209) 532-6951
FAX: (209) 532-1997
E-MAIL: heather.karney@leavitt.com

ININSURER(S) AFFORRDERING COVERAGE NAIC #
A: Philadelphia insurance Co. 18058
B: Mercury Casualty Company 11908
C: Midwest Employers Casualty Company 23612
D: ACE/Westchester Insurance Company 10030
E: AGCS Marine Insurance Company 22837

CERTIFICATE NUMBER: 2016-2017 Master
REVISION NUMBER:

BIBL
LTR
TYPE OF INSURANCE
CLAIMS-MADE OCCUR
Foresters Errors & Commissions
GENL AGGREGATE LIMIT APPLIES PER PERIOD
POLICY INCEPT LOC
OTHER

RIB
LTR
TYPE OF INSURANCE
CLAIMS-MADE OCCUR
Umbrella Liab EXCESS Liab
Umbrella Liab EXCESS Liab

RIB
LTR
TYPE OF INSURANCE
CLAIMS-MADE OCCUR

WORKERS COMPENSATION AND EMPLOYER'S LIABILITY
ANY PROPRIETOR PARTNER EXECUTIVE OFFICER MEMBER EXCLUDED
(Mandatory in NH)
If yes describe under DESCRIPTION OF OPERATIONS below

Y/N
Y/N
A/B

POLICY NUMBER
PPX1462371
CCAO020579
PUB532389
BNW00034591
G0750243A003
SML93033043

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER
Mariposa County Public Works
4639 Ben Hur Rd.
Mariposa, CA 95338

cjay@mariposacounty.org

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
H Karney-Exec/HEKARN

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# Certificate of Liability Insurance

**Date:** 10/26/2016

**Certificate Holder:**

- **Name:** Heather Karney
- **Phone:** (209) 532-6951
- **FAX:** (209) 532-1997
- **Email:** heather.karney@leavitt.com

**Producer:**
- Cutler Segerstrom Insurance Agency
- CDI# 0J20939
- 1030 Greenly Road
- Sonora, CA 95370

**Insured:**
- California Reforestation Inc.
- 22230-A S. Colorado River Dr.
- Sonora, CA 95370

**Insurers Affording Coverage:**
- Topa Insurance Company
  - NAIC # 18031

**Coverages and Certificates Number:** 2016-2017

**Revision Number:**

**Risks, Limits, Type of Insurance, Additional Coverage, Special Wording, Policy Number, Policy Effective (MM/DD/YYYY), Policy Expired (MM/DD/YYYY), Limits:**

**Commercial General Liability:***
- **Type of Insurance:**
  - Claims-Made
  - Occur

**General Aggregate Limit Applies Per:**
- Policy
- Sector
- LOC
- Other

**Automobile Liability:***
- **Any Auto:**
- **All Owned Autos:**
- **Scheduled Autos:**
- **Non-Owned Autos:**
- **Hired Autos:**
- **Combined Single Limit (per occurrence):**
- **Bodily Injury (per person):**
- **Bodily Injury (per accident):**
- **Property Damage (per accident):**

**Umbrella Liability:**
- **Excess Liability:**
  - **Occur:**
  - **Claims-Made:**

**Premium Retentions:**
- **Per Statute:**
- **Other:**
  - E.L. Each Accident
  - E.L. Disease - E.A. Employee
  - E.L. Disease - Policy Limit

**Workers' Compensation and Employers' Liability:**
- **Any Proprietor/Partner/Executive Officer/Member Excluded:**
- **Mandatory in NH:**
- Description of Operations below

**A Excess Automobile:**
- **Policy Number:** XL6601760-06
- **Policy Effective:** 9/12/2016
- **Policy Expired:** 9/12/2017
- **Limits:**
  - Each Occurrence
  - Aggregate
  - $2,000,000

**Description of Operations, Locations, Vehicles (ACORD 101, Additional Remarks Schedule, may be attached if more space is required):**

**Certificate Holder:**
- **Email:** cjay@mariposa county.org
- **Address:**
  - Mariposa County Public Works
  - 4639 Ben Hur Rd.
  - Mariposa, CA 95338

**Cancellation:**
- **Should Any of the Above Described Policies Be Cancelled Before the Expiration Date Thereof, Notice Will Be Delivered in Accordance With the Policy Provisions:**

**Authorized Representative:**
- H. Karney - Exec/HEKARN

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ACORD 26 (2014/01)

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