**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (“***Memorandum***”) is effective as of July 1, 2017, or as may be specifically set forth in Exhibits A-D, by and between the Superior Court of California, County of Siskiyou (“***Court***”) and the County of Siskiyou (“***County***”) (each a “***Party***” and collectively the “***Parties***”).

**RECITALS**

**WHEREAS**, effective as of January 1, 1998, the Lockyer-Isenberg Trial Court Funding Act of 1997, commonly referred to as AB233, relieved counties from their previous responsibility to fund trial court operations, as defined in Government Code Section 77003 and California Rule of Court 10.810 (“***Trial Court Operations”***);

**WHEREAS**, thereafter the State of California (“***State***”) assumed responsibility for funding of Trial Court Operations;

**WHEREAS**, pursuant to Government Code Section 77212(a), during the 1997-1998 Fiscal Year, County was required to continue to provide and Court was required to continue to use, County services provided to Court, including, but not limited to, auditor/controller services and coordination of telephone services, Treasurer’s services, .

**WHEREAS**, Government Code Sections 77212(b) and (c) give Court and County, starting on July 1, 1998, the option to terminate the above-mentioned services, except those that are vital to Court, with at least ninety (90) days notice ;

**WHEREAS**, Court requests County, through certain County departments, to provide to Court certain services described in this Memorandum;

**WHEREAS**, the services which County provides to Court shall be charged as specified herein and shall otherwise comply with California Rule of Court 10.810; and

**WHEREAS**, County is willing and able to provide said services to Court, and Court agrees to pay for said services.

**NOW, THEREFORE**, the Parties agree as follows:

**AGREEMENT**

1. Services
	1. **Scope of Services.** County and Court shall provide such services as set forth in Exhibits A-D, attached hereto and incorporated herein by reference, as related to the support of Trial Court Operations (“***Services***”).
	2. **Compensation for Services.** In consideration for the Services provided to Court by County, and subject to California Rule of Court 10.810, Court agrees to compensate County as set forth in Exhibits A-C. County agrees to compensate Court for services set forth in Exhibit D. In the event that Court or County determines that a funding limitation requires a reduction or elimination of Service or level of Service, the Parties agree that the particular Service and/or level of Service to be reduced shall be discussed before any Service reduction is made. County and Court retain the right to terminate such services, if in its sole discretion it determines payment is insufficient, unduly delayed, or the continued provision of such services is not in the best interest of the County.
	3. **Indirect and Overhead Costs.** Court and County shall allocate any indirect and overhead costs in accordance with the State approved Cost Allocation Rate. However, Court and County labor shall be charged directly based on time records.
	4. **Manner of Payment.**
		1. Court and County shall bill for services on a annual basis by means of a written invoice with supporting documentation ( “***Invoice***”) by July 20th of every year. Such payments shall be due within thirty (30) days of the billing, except for AR billing which shall remain on a monthly basis.
		2. With regard to additional Services that may be requested by Court or County beyond those Services listed in Exhibits A-D, the Party providing the additional Services shall submit an Invoice identifying any other additional Service(s) rendered. All charges for additional Services rendered shall be made in accordance with Government Code Section 77003, California Rule of Court 10.810 and as may be otherwise be provided by law. The County and Courts ICRP rate is agreed to be in accordance with these requirements.
	5. **Dual Service Provider.** When a County employee provides the same or similar Services to both Court and County and such Services to Court are billed to Court on an hourly basis pursuant to this Memorandum, such employee shall record the amount of time he or she spent on Trial Court Operations. County shall only bill Court for the employee’s actual time spent on Trial Court Operations. Costs charged to Court may not exceed the costs of providing similar services to County departments.
	6. **Verification.** Either Party may request additional back-up information regarding any Service being billed or the amount charged. Best efforts shall be made to provide information within fifteen (15) days of such request. It is understood that for fiscal year end billing the fifteen (15) day response time is critical to the Court and County. Either Party shall also have the right to review or audit the information supporting the invoice of the other Party, in order to assure compliance with the terms of the Memorandum. This review right is limited by any laws protecting employee privacy. This Memorandum is subject to examinations and audit by the State Auditor for a period of three years after final payment.

**1.7 Cooperation.** Either Party may identify to the other Party outside vendors or subcontractors of goods or services used by a Party. Each Party shall at all times endeavor to cooperate with such outside vendors or subcontractors so identified and shall advise the other Party of any cooperation or coordination problems that may arise.

* 1. **State Budget.** Neither Party shall be in breach of this Memorandum for failure to pay Invoices on time if such failure results from the Legislature’s or County’s failure to approve and adopt a budget in a timely manner, except that the County retains the right to discontinue such services on appropriate notice.
1. term/termination
	1. **Term.** This Memorandum shall be effective as of July 1, 2017, or as may be specifically set forth in Exhibits A-D, and shall remain in effect until June 30, 2023, (a) unless otherwise terminated as provided in a specific exhibit as to Services which are being continued (or may be continued) for a limited term, or (b) until terminated by either Party in accordance with Section 2.2 of this Memorandum as to all other Services. The maximum contract amount shall not exceed $1 million through June 30, 2023. This Memorandum shall continue on a year-to-year basis after June 30, 2023 by one party providing notice to continue in writing unless a change in services is requested by either party.
	2. **Termination.** Except as provided in Section 2.3 below, either Party may terminate all or any of the Services under this Memorandum, by giving notice to the other Party in the manner specified in Section 5.6 below. Pursuant to California Government Code Section 77212(b), such notice under this Section 2.2 shall be given at least ninety (90) days prior to the end of Court’s fiscal year, and shall become effective only upon the first day of the succeeding fiscal year, except that in circumstances where payment to the County is delayed over 90 days for any reason, the County may terminate such services. The fiscal year begins on July 1 and ends on June 30, with the initial year of this agreement July 1, 2017 through June 30, 2018.
	3. **Vital Services**. If either Party elects to terminate a Service, it shall provide reasonable assistance to ensure that, if said Service is a vital service, it can be available from other entities that provide such Services.
	4. **Collection Services.** Exhibit D will remain in full force and effect after the termination of this Memorandum, unless and until the Parties execute a new memorandum of understanding or other document setting forth their agreement on the operation of a subsequent collection program as required by Penal Code section 1463.010.
2. Dispute REsolution
	1. **Continuation of Services.** Whenever County and Court disagree as to any matter governed by this Memorandum, the dispute resolution process discussed in this Section 3 shall govern. Until the dispute is resolved, County and Court shall continue to provide the Services and shall continue to make payments therefore as set forth herein.
	2. **Request for Meeting.** If after ten (10) working days, Court and County cannot resolve any dispute; either Party may give the other Party a written request for a meeting between the Court Executive Officer and the County Administrative Officer for the purpose of resolving a disagreement between the Parties. If such meeting is requested, the meeting shall be held within ten (10) days of the receipt of such request.
	3. **Resolution of Disputes.** If the meeting in Section 3.2 does not resolve the issue, the Presiding Judge and Chairman of the Board of Supervisors shall meet with staff and the County Administrative Officer and the Court Executive Officer to resolve the matter. Any disputes between the Parties regarding the interpretation or performance of this Memorandum that are not resolved under Section 3.2 above or the Presiding Judge and Chairman of the Board of Supervisors meeting, may be resolved if both parties agree by submission of the dispute to non-binding mediation. If the meeting fails to occur or fails to resolve the disagreement, nothing in this Memorandum shall preclude the Parties from exercising their legal remedies.
	4. **Jurisdiction and Venue.** If a dispute between the Parties regarding the interpretation or performance of this Memorandum is not resolved under Section 3.3 above, either Party may bring legal action to interpret or enforce this Memorandum in the Superior Court of California, County of Siskiyou. In the event that such legal action is taken by either Party, the judges for the Superior Court of California, County of Siskiyou will adhere to state law requiring judges to recuse themselves from hearing a case if the judges have an interest in the outcome or when a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Upon recusal by the Siskiyou Judges, the Chief Justice would assign a judge to hear the case through the Assigned Judges Program.
3. COURT FACILITIES
	1. **Maintenance**
		1. In December, 2008, Siskiyou County transferred responsibility for the Court’s space in the Siskiyou County Courthouse located in Yreka to the State of California. At the same time, the County transferred ownership of the Dorris Courthouse to the State of California.
		2. For the Courthouse in Yreka, by terms of the transfer agreement the County performs maintenance services to the Court on an hourly rate basis from requests the Court submits on Computer Aided Facility Management (CAFM) forms for services.
		3. As a result, the County may no longer charge the Court for any costs on its Cost Allocation Plan for maintenance performed at the Courthouse in Yreka or the Dorris Courthouse.
	2. **Furniture, Furnishings and Equipment.**
		1. Pursuant to Government Code Section 68073.1, all furniture, furnishings, and equipment used solely by Court on June 30, 1997, are the sole property of Court unless County was prohibited from transferring title by a contract, agreement, covenant, or other provisions in the law. This Section shall be interpreted consistently with the Agreement for the transfer of responsibility for the Courts space in the Siskiyou County Courthouse executed in December 2008 and shall not be interpreted as conveying a right to the Court to any additional furniture, furnishings, or equipment.
		2. Any other furniture, furnishings, or equipment made available for use by Court on June 30, 1997, shall continue to be made available to Court, unless otherwise agreed in writing by Court and County.
		3. Court shall assume all responsibility for any furniture, furnishing, and equipment for which title is transferred to Court or that continues to be made available for use by Court pursuant to this section, including the fiscal responsibility for any rental or lease obligation, the repair, maintenance, and replacement of such furniture, furnishing, and equipment.
4. standard causes
	1. **Amendment.** No addition to or alteration of the terms of this Memorandum shall be valid unless made in the form of a written amendment to this Memorandum, which is formally approved and executed by the governing bodies of each of the Parties of this Memorandum, or their respective authorized designees.
	2. **Further Assurances.** Each Party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this Memorandum. The Parties agree to consult with each other with regard to future collection enhancement programs.
	3. **Time.** Time is of the essence of each and all of the provisions of this Memorandum.
	4. **Assignment.** A significant consideration for this Memorandum is the familiarity of County with Court operations and facilities that will allow County to efficiently provide the Services utilizing trained County staff. County and Court agree that County will advise Court of any subcontracted Service and, that County shall ensure that performance of work or Services by County vendors or subcontractors shall be in conformance with the terms and conditions specified within this Memorandum and supplemental agreements for specified work or Services. County shall be responsible for ensuring satisfactory performance by County vendors or subcontractors.
	5. **Time of Performance.** Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to those business days when both Court and County are conducting business. If the final date for payment of any amount or performance of any act falls on a Saturday, Sunday or holiday, such payment shall be made or act performed on the next succeeding Court business day.
	6. **Notices.** Any notices required or permitted hereunder shall be in writing and may (a) be personally delivered; (b) be mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) be sent by reputable overnight delivery service; addressed as follows or to such other place as each Party may designate by subsequent written notice to the other Party:

If to Court: Superior Court Executive Officer

 311 Fourth St, Room 206

 Yreka, CA 96097

 Attn: Court Executive Officer

 If to County: Siskiyou County Administrative Office

 1312 Fairlane Rd.

 Yreka, CA 96097

 Attn: County Administrative Officer

* 1. **Waiver.** Any waiver by either Party of a breach of any of the terms of this Memorandum shall not be construed as a waiver of any succeeding breach of the same or other term of this Memorandum.
	2. **Binding.** This Memorandum shall be binding upon the successors of Court and County.
	3. **Counsel and Drafting.** Each Party, by its due execution of this Memorandum, represents to the other Party that it has reviewed each term of this Memorandum with their counsel, or has had the opportunity for such review with their counsel. No Party shall deny the validity of this Memorandum on the ground that such Party did not have the advice of counsel. Each Party has had the opportunity to participate in drafting and preparation of this Memorandum. The provisions and terms of this Memorandum shall be interpreted in accordance with the plain meaning thereof, and shall not be construed in favor or against either Party.
	4. **Counterparts.** This Memorandum may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.
	5. **Severability.** In the event any provision of this Memorandum is held by a court of competent jurisdiction or arbitration to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.
	6. **Governing Law.** This Memorandum shall be construed under the laws of the State of California, without regard to its conflict of law provisions.
	7. **Certification of Authority to Execute this Memorandum.** The individual(s) signing below represent they have full authority to (a) execute this Memorandum on behalf of the Parties, and (b) legally bind the Parties to the terms and conditions of this Memorandum.
	8. **Independent Contractor.** Each Party, with its departments as its agents, shall perform this Memorandum as an independent contractor, exercising due care and providing the Services with such skill that is customary for providers of such Services. The officers, agents and employees of either Party are not, and shall not be deemed, employees of the other Party for any purpose, including workers’ compensation and shall not be entitled to any of the benefits. Each Party shall determine, at its own risk and expense, the method and manner by which the duties imposed in general by this Memorandum shall be performed; provided, however, that each Party may monitor the work performed. Neither Party shall deduct or withhold any amounts whatsoever from the reimbursement paid to the other Party, including, but not limited to, amounts required to be withheld for state and federal taxes or employee benefits. Each Party alone shall be responsible for all such payments for its employees who perform services pursuant to this Memorandum.
	9. **Civil Assessments for Criminal Cases after July 1, 2004.** The Parties understand and agree that the Court shall recover all costs associated with the Comprehensive Court Collection Program ***(“Program”)*** as provided by law.
	10. **Legislative Changes**. This Memorandum is subject to any future legislation that may alter or amend any provision contained herein.
	11. **Compliance with Laws.** Each party is, and will remain, in compliance in all material respects with all laws, rules, and regulations applicable to the Services it provides to the other Party.
	12. **Small Claims Advisory Services**.
		1. Court shall oversee, manage, and subcontract Small Claims Advisory Services on behalf of County and shall ensure compliance with the requirements found in California Code of Civil Procedure Sections 116.260, 116.940 and California Rules of Court, Rule 3.2120 applicable to the Regional Services.
		2. The Parties further agree and understand that County shall not provide any financial support from the County General Funds for the Small Claims Advisory Services.
1. MUTUAL indemnification
	1. **Indemnification by Court.** Court shall indemnify and hold harmless and defend County, its officers, agents and employees, from any and all liability, demands, damages, penalties, fines, interests, costs or expenses (including reasonable attorneys’ fees) that arise out of, or are alleged to arise out of or are in any way connected with or incident to the duties or obligations of Court pursuant to this Memorandum, including any error or omission of Court in performing such duties and obligations, except to the extent that such claims arise out of the negligence or willful misconduct of County, its officers, agents or employees.
	2. **Indemnification by County.** County shall indemnify and hold harmless and defend Court, its judges, subordinate judicial officers, officers, agents and employees, from any and all liability, demands, damages, penalties, fines, interest, costs or expenses (including reasonable attorneys’ fees) that arise out of, or are alleged to arise out of or are in any way connected with or incident to the duties or obligations of County pursuant to this Memorandum, including any error or omission of County in performing such duties and obligations, except to the extent that such claims arise out of the negligence or willful misconduct of Court, its judges, subordinate judicial officers, officers, agents or employees.
	3. **Third Party Claims.** If any third party shall notify a Party with respect to any matter (a "***Third Party Claim***") which may give rise to a claim for indemnification against the other Party under this Section 6, then the Party seeking indemnification shall promptly and timely notify the indemnifying Party in writing of the Third Party Claim. The indemnifying Party shall be relieved of any obligation or liability under this Section 6, to the extent a delay by the Party seeking indemnification in giving notice of the receipt of the Third Party Claim results in any damage or prejudice to the indemnified Party. If the indemnifying Party is conducting the defense of the Third Party Claim in accordance with this Section 6.3, the indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim that legally binds the indemnified Party, without the prior written consent of the indemnified Party (which consent shall not be withheld unreasonably). For purposes of this Section 6.3, notice shall be deemed served (a) to County, if notice is delivered to the Clerk of the County Board of Supervisors, and (b) to Court, if notice is delivered to the Court Executive Officer.

**IN WITNESS WHEREOF**, the Parties have executed this Memorandum as of the day and year first above written.

**SUPERIOR COURT OF CALIFORNIA,**

**COUNTY OF SISKIYOU:**

By: APPROVED AS TO LEGAL FORM

 Presiding Judge \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 CEO Siskiyou County Superior Court

**COUNTY OF SISKIYOU:**

By:

 Michael N. Kobseff, Chair, Board of Supervisors

ATTEST:

COLLEEN SETZER

Clerk, Board of Supervisors

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Deputy

**EXHIBIT A**

**EMPLOYEE BENEFIT SERVICES**

1. **EMPLOYEE BENEFIT SERVICES**

The County shall provide to the Court certain employee benefit services. These services shall include administration of County employee benefit programs as provided to Court. Court shall provide notice of its intention to leave any County employee benefit program as directed by statute.

1. **PAYMENT TERMS**

Subject to Section 1.2 of the Memorandum, Court agrees to reimburse County for the services in administering its benefits plans based on direct charges of county staff reported on time sheets.

1. **SERVICES**

Benefits administered by the County include: a) 457 Plans, b) Vision Plan, c) CALPERS (Including providing a copy of the annual actuarial projection.)

County agrees to exercise best efforts to notify Court of any benefit plan or rate changes within a week of notification to the County.

County agrees to exercise best efforts to notify Court of any change to the Pension Obligation Bond (POB) rate by the May 1st prior to the fiscal year end June 30th.

Court agrees to provide all services to administer these benefits, with the exception of the ACH payment that County shall make.

The estimated County service time per month is six and a half hours.

**EXHIBIT B**

**TREASURER SERVICES**

1. **TREASURER SERVICES**

County shall provide to Court certain treasurer services. These services shall include: a) deposit of fees and fines, b) processing of credit carddeposits, c) necessary wire transfers, d) investment of fees and fines revenues deposited with Treasurer, and Administration of the 457 Plan.

PAYMENT TERMS

* 1. Court agrees to reimburse County for the treasurer services outlined in this Exhibit B in accordance with direct billing by the Treasurer’s Office from its staff time sheets.
	2. Treasurer shall bill for services annually and Court shall reimburse Treasurer annually after receiving the billing.
	3. Estimated monthly charges which include direct and indirect charges by the Treasurer to the Court are:

Daily Deposit Services – 24 Hours per month

NSF Services – 1 Hour per month

Credit Cards – 67 Hours per year

Deferred Comp Plan – 15 hours per year

**EXHIBIT C**

**CUSTODIAL SERVICES**

County agrees to provide custodial services at the Yreka Courthouse located at 311 Fourth Street, Yreka, California.

1. County shall bill Court for custodial services using a methodology which allocates costs based on a pro rata basis of net space utilized by the Court, as provided in the Courthouse Transfer Agreement of December, 2008.
2. County and Court agree that Court has 33.63% of net space of the Yreka Courthouse’s total net square feet of 28,101 square feet.

**EXHIBIT D**

**CRIMINAL CASE REPORTING AND COLLECTIONS SERVICES**

1. **PURPOSE**
	1. The purpose of this Exhibit D is to outline the collection services performed for the County by the established procedure to assist County’s Auditor-Controller with criminal case collections through the Superior Courts Collections Unit Comprehensive Collections Program, as defined below, pursuant to California Penal code Section 1463.007.
2. **DEFINITIONS**
	1. **Adjustment** – Any change in a debtor’s original fine, fee, forfeiture or assessment.
	2. **Assessment** – A charge established by Court that is not a fine, fee, or forfeiture.
	3. **Collections** – The process used by the Revenue Division to facilitate County debt repayment. Superior Court Collection Unit.
	4. **Comprehensive Court Collection Program (“CCCP”)** – A broad program pursuant to Government Code Section 1463.007 that allows allowable costs of collections to be reimbursed to the collecting agency.
	5. **Defendant** – The accused person or party in a civil or criminal action.
	6. **Distribution** – The act or process of dividing collected dollars and apportioning them to agencies as appropriate.
	7. **Fee** – a fixed charge established by Court, County or State.
	8. **Fine** – a punitive sum determined by the State or Court.
	9. **Forfeiture** – a sum imposed by the State or Court due to a breach of legal obligation
	10. **Information Technology Department** – A Siskiyou County Department responsible for information network design and maintenance.
	11. **Operating System** – An information system used by either the State or County to carry out the data management functions required for the Comprehensive Collection Program.
	12. **State** – The State of California.
	13. **Trust Account** – An account set up to hold collection proceeds for future distribution.
3. **RESPONSIBILITIES**
	1. **COURT RESPONSIBILITIES**

Court shall:

1. Collect criminal Fines, Fees, Forfeitures, and Assessments that shall be deposited daily with the Treasurer. Collections made by Court to be held in trust for criminal cases shall be forwarded within one (1) day to the Treasurer with a cash receipt from the Auditor-Controller. The cash receipt, at a minimum, shall include the defendant’s name, case number, amount collected and date collected.
2. Provide County with a monthly report indicating the amount of criminal Fines, Forfeitures, Fees, Assessments and restitution collected, in a format mutually agreed upon, by no later than fifteen (15) days after the end of each month. However, the dissolutions and marriages report shall be submitted to the County no later than the 8th of any month.
3. Court shall prepare the TC 145 Report, and distribute all Civil Fees as specified in GC 68085(c)(2). If an error is made on a monthly submission, Court will provide supporting documentation, including what the error was. If the error involves cost splits, the documentation will be provided no later than the 15th of the end of the month.
4. Maintain and preserve all records related to this Exhibit D for the minimum period required by law according to California Government Code Section 26202.
5. Maintain any and all records necessary to comply with State audit requirements for all distributions.
	1. **COUNTY RESPONSIBILITIES**

County shall:

1. Assume responsibility for investing all criminal Fines, Fees, Forfeitures, and Assessments transferred to County from Court according to State Law, Administrative Office of the Courts, and State Controller Office regulations and guidelines.
2. Distribute criminal Fines, Fees, Forfeitures, and Assessments per code, and submit TC 31 Report to the State Controller’s Office as required by GC 68085.5(a) and 68101.
3. Estimated monthly charges by the Auditor to the Court are:

Daily Cash Receipts – 5 hours

Transfer from Trust to Court Restitution –5 Hours

TC 145 Processing – 1 hour per month

CLER for Fees/Fines – 1 hour

* 1. **JOINT RESPONSIBILITIES**

Court and County agree to:

1. Designate an employee to act as the contact person for each Party to facilitate the exchange of information and resolve any day-to-day issues for this section.
2. Meet together monthly or as otherwise agreed to discuss issues of mutual interest and concern that may arise in connection with the purpose of this Exhibit D.
3. Accept responsibility for receiving, replying to and/or complying with any audit of an appropriate State audit agency that directly relates to the services to be performed under this Exhibit D or to funds to be handled or disbursed hereunder.
4. Maintain all records and documentation in accordance with State law governing criminal case collections.
5. Distribute restitution payments to victims pursuant to information provided to the County by the Superior Court Collections Unit.
6. Auditor-Controller verifies availability of funds, prepares clearing journal, and pass off to Treasurer to forward TC 145 collections via ACH to the Judicial Council.
7. Safeguard all confidential information shared between Court and County to carry out the purpose of this Exhibit D according to State and Federal law.
8. Monitor, notify and implement any changes or modifications to State laws and/or regulations affecting Collection and/or payment distribution activities.
9. Provide Court access to Banner at the courthouse for running of reports for criminal Fines, Fees, Forfeitures, Assessments, Trusts, and Victim Restitution for monthly balancing.

1. **FINANCIAL PROVISIONS**
	1. County shall reimburse Court for Collections costs incurred for criminal cases. Court will submit monthly invoices based on timesheets for actual salary and benefit costs, and supplies incurred by Court as documented on time records. Court will provide County with an acceptable methodology in calculating overhead to be mutually agreed upon.
	2. Court and County shall maintain an accounting system and supporting fiscal records to comply with State audit requirements related to the services to be performed under this Exhibit D for the Comprehensive Collections Program.

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