

The Board of Mayor and Aldermen of the City of Waveland, Mississippi, met in regular session at the Waveland City Hall Board Room, 301 Coleman Avenue, Waveland, MS. on December 1, 2015 at 6:30 p.m. to take action on the following matters of City business.

**ROLL CALL:**

Mayor Smith noted for the record the presence of Aldermen Burke, Richardson and Lafontaine, along with Deputy City Clerk Tammy Fayard and City Attorney Rachel P. Yarborough.

Absent from the meeting was Alderman Charles Piazza and City Clerk Lisa Planchard.

\*EXHIBIT 'A' is noted at the end of minutes by recommendation of City Attorney; this re: Hensley R. Lee Contracting, Inc. Invoice No. 20.

**PUBLIC COMMENTS:**

- Jerry West
- Oscar Crespo
- Bryan Therolf
- Jay Kelley

**MAYOR'S REPORT**

**Re:** Invited everyone to the Festival of Lights Friday evening at 5:30 pm, Santa Claus and Elsa from Disney's 'Frozen' © will be at City Hall to greet the children.

**ATTORNEY'S COMMENTS**

**Re:** Requested removal of Item No. 20, such change order item requested by Police Department is premature and still with FEMA and MEMA review.

**ALDERMEN'S COMMENTS**

**Re: Alderman Burke –**

- Requested moving Agenda Item No. 26 forward in the agenda, as Mrs. (Allison) Anderson has a previous engagement.
- Discussed wall construction in the Business Center (Incubator). Noted quote said, 'fire caulking as needed'. Ms. Cullen said she recalls that there was a specific reason the contractor left it just below the ceiling, but could not recall what that was.

**Re: Alderman Richardson**

- Inquired about use of portable radar to use with speeding issues on Herlihy Street. Chief Allen said the portable radar detectors are about \$4,000 each.

**Re: Alderman Lafontaine**

- Requested the STOP sign at Herlihy and Waveland Avenue be straightened, apparently a car hit it.
- Requested a street repair by the Dura-Patcher near the ballfield on Waveland Avenue approaching the stop sign.
- Update on Manholes and the risers; will speak with Brent Anderson about this.
- Discussed the Water Ordinance committee meeting (does not involve a quorum of the Board) date and time set for December 7<sup>th</sup>.

**RSVP**

**Re: Claims**

Alderman Burke moved, seconded by Alderman Lafontaine to approve the RSVP Claims as submitted.  
**(EXHIBIT B)**

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**DOCKET OF CLAIMS**

**Re: Claims**

Alderman Lafontaine moved, seconded by Alderman Richardson to approve the Docket of Claims, including the Streets Payroll portion, in the amount of \$715,203.04 dated December 1, 2015 as submitted, which balance excludes Transaction No. 160494, in the amount of \$2,000 payable to the Hancock County Animal Shelter; this has been denied until the Board can work out a more equitable payment schedule between the entities contributing to Shelter support. **(EXHIBIT C)**

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**PLANNING AND ZONING (EXHIBIT D)**

**Re: Joseph Jeffrey Gex, 409 Jeff Davis**

**Joseph Jeffery Gex appeared before the commission** with a request for a conditional use in order to construct a 20' x 40' pole barn on his property. He is also requesting a variance of 10' from the required rear yard setback in order to be 5' from the property line. This property is located at 409 Jeff Davis Avenue. Legal description: Part of lot 14 & 16, 4<sup>th</sup> Ward, City of Waveland, Hancock County, Mississippi. **(EXHIBIT D)**

Commissioner Charlotte Watson moved, seconded by Clarence Harris to recommend that the Board of Mayor and Alderman approve the applicant's request for a conditional use in order to construct a 20' x 40' pole barn on his property and a variance of 10' from the required rear yard setback in order to be 5' from the property line. The overhang for the structure must be within the 5' setback, no plumbing and electrical for lighting only.

Alderman Burke moved, seconded by Alderman Lafontaine to follow the recommendation of the Planning and Zoning Board and approve the request as submitted.

A vote was called for with the following results

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**CHANGE ORDERS/CIVIC CENTER/OLD WAVELAND SCHOOL/GROUND ZERO  
MUSEUM**

**Re: Change Order No. 1 from DCD Construction for changes related to the Ground Zero  
Museum Upgrades Project**

Alderman Burke moved, seconded by Alderman Richardson to approve Change Order No. 1 from DCD Construction, Inc., submitted by Architect Allison Anderson, including required signatures, requesting the following changes for an increase in the contract of \$17,988.00 for the Ground Zero Museum/Waveland Civic Center: **(EXHIBIT E)**

a) Additional Audio Visual Equip/Surge protection	\$ 641.00
b) Repair additional window sill and water damage SE Corner of Kitchen	\$ 1,141.00
c) Remove Stage light for Stage Curtain Track	\$ 1226.00
d) Mechanical repairs above \$8,500.00 allowance	\$ 831.00
e) Deduct Room Darkening shades at Auditorium Door	\$ -267.00
f) Add Exhibit lighting at Corridors	\$14,416.00

Mrs. Yarborough said for the record, the City received three signed copies of the executed Change Order signed by Mrs. Anderson and a DCD Construction representative. Mrs. Yarborough asked who her contact was at the City regarding these additional items. Mrs. Anderson said she spoke with the Mayor about the design options last week. Mrs. Yarborough also asked for confirmation from Mrs. Anderson that the Funding Agency would pay for this request. Mrs. Anderson said, "Yes, that is my understanding." Mrs. Yarborough said, "For the record, this also has to fall under the requirements of Section 31-7-13, Subsection G, which requires that in the event a determination is made by an Agency or Governing Authority after construction contract is let, that changes or modifications to the original contract are 1-necessary or 2- would better serve the purpose of the Agency. In short, if the Board approves this Change Order, it is necessarily making the finding that these changes are necessary and incidental to the original scope of the contract and that the increased amount is commercially reasonable for the changes." Mrs. Anderson explained that they tried to identify items that would fit within the grant requirements; they have to be 'fixed', they can't be moveable things. We had some requests for some wireless mics and things like that; they don't fall within the CDBG funding guidelines so we couldn't really recommend those." Mrs. Yarborough asked if the Change Order anticipates an increase in contract time. Mrs. Anderson said, "No it does not."

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

#### **PROCLAMATION**

##### **Re: Proclaim December as *Shop Local Month***

Alderman Burke moved, seconded by Alderman Lafontaine to approve a Proclamation recognizing December 1-31, 2015 as 'Shop Local Month' in the City of Waveland. **(EXHIBIT F)**

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

#### **INTERLOCAL AGREEMENT/AGREEMENTS/FIBEROPTIC INTERNET**

##### **Re: Motion to approve Interlocal Governmental Cooperation Agreement regarding Fiber Optic/High Speed Internet**

Motion to approve an Interlocal Governmental Cooperation Agreement between certain Mississippi Coast Municipalities and Counties (Bay St. Louis, Biloxi, Diamondhead, D'Iberville, Gautier, Gulfport, Long Beach, Moss Point, Ocean Springs, Pascagoula, Pass Christian, and Waveland, Boards of Supervisors for Hancock, Harrison and Jackson Counties) for development of a fiber optic ring for ultra-high-speed broadband, digital data infrastructure for internet service and for related purposes, all to be known as the "Silicon Coast Public Internet". *Cliff Kirkland provided an updated Interlocal Agreement to move forward.*

##### **Motion Dies for lack of first or second**

#### **AGREEMENT/HANCOCK COUNTY UTILITY AUTHORITY-HCUA/SERVICE AGREEMENT/CONTRACT**

##### **Re: Service Agreement to accept HCUA Water into Municipal Water System**

Alderman Richardson moved, seconded by Alderman Burke to **TABLE** the Service Agreement with the City of Waveland and the Hancock County Utility Authority. Approval pending issue with accepting non-fluoridated water into City water system. (Tabled from previous meetings).

Alderman Lafontaine said, "Now it appears there is an issue with the Health Department as to the fluoride. Just to let everybody know that it's on hold until we get the Health Department to decide one way or the other can we accept water that does not have fluoride in it vs. our water that we put the fluoride in." The Mayor does have a meeting set up with them to try to get something set one way or the other so the City can report back to the Utility Authority.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**AGREEMENTS/LETTER OF UNDERSTANDING/MEA DRUG TESTING CONSORTIUM/CONTRACTS**

**Re: Contract with MEA Drug Testing Consortium**

Alderman Burke moved, seconded by Alderman Richardson to **TABLE** approval, with required signatures, the Agreement/Letter of Understanding with MEA Drug Testing Consortium.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**STREETS DEPARTMENT/POLICE DEPARTMENT**

**Re: Replace Street Sign on McLaurin Street and Nicholson Avenue at Gex Street**

Alderman Burke moved, seconded by Alderman Richardson to approve placement of street signs located on McLaurin St. and Nicholson Avenue at Gex Street designating 'No Parking here to Corner'. Persons are parking on Gex and blocking the view to turn onto either McLaurin or Nicholson, causing a school bus to change its route.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**FORFEITED TAX LAND PATENT/TRANSFER OF LAND**

**Re: Approve Forfeited Tax Land Patent No. 80268- Vacant Lot at corner of Nicholson Avenue and Central Avenue.**

Alderman Lafontaine moved, seconded by Alderman Richardson to approve Forfeited Tax Land Patent No. 80268 under Mississippi Code Annotated §29-1-1 as amended, providing intergovernmental transfer of Forfeited Tax Lands from the State of MS. to the City of Waveland for a fee of \$12.00 payable to Hancock County Chancery Clerk for the following parcel: BLK 6, Lot 25, E W Ullman 8.89' 24 B, Section 2, Township 9, Range 14 West, Parcel/PPIN: 161C-0-02-175.000, Hancock County, Mississippi. *City Attorney to research before Board approves.* (Tabled from previous meetings).

Mrs. Yarborough said that apparently none of the prior minutes have a motion, it was just discussion where it was a proposal that they (prior Board) use this lot as a playground of some sort. She said that neither the City Clerk, nor the Deputy City Clerk could find any formal motion in the minutes where the deed was accepted or requested that the State take action.

A vote was called for with the following results:

Voting Yea: None

Voting Nay: Burke, Richardson, and Lafontaine

Absent: Piazza

### **FEDERAL FUNDING/SECTION 3/CORRECTIVE ACTION PLAN**

#### **Re: Section 3 Corrective Action Plan**

Alderman Burke moved, seconded by Alderman Richardson to **TABLE** approval of Section 3 Corrective Action Plan, with required signatures, as City Policy noting the City of Waveland will do all it can to abide by Section 3 should it apply for and receive Federal Funding. *City Attorney requested language in plan be revised, awaiting revised plan.* (Tabled from previous meetings).

Mrs. Yarborough said she spoke with Ms. Lyn Powers of the Horne Group who told Mrs. Yarborough that this was nothing more than a formality. Mrs. Yarborough said she planned to contact MDA for clarification of this request to require the City to accept this Section 3 Corrective Action Plan.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

### **INVOICES/CITYWIDE DRAINAGE IMPROVEMENTS PROJECT/LIGHTHOUSE/ OUTDOOR RECREATION PLAN/FACILITIES PLAN AND RELATED SERVICES- SEWER/SEWER, CAMERA & CLEAN LINES**

#### **Re: Invoices as Submitted by Various Contractors**

Alderman Burke moved, seconded by Alderman Richardson to approve the following invoices submitted by various contractors and recommended to be placed in line for payment consideration contingent upon receiving funding from grant sources, if required, as listed (Items b-f): **(EXHIBIT G)**

- a) ~~Payment Request No. 20 (FINAL) from Hensley R. Lee Contracting, Inc. in the amount of \$25,890.00—Jeff Davis & Gulfside Street Sewer Improvements Project. Still awaiting submission of additional documents contractually required with the final invoice requested of Digital Engineering by City Attorney. (Tabled from previous meeting)~~  
**REMOVED**
- b) Payment Application No. 12 from Kappa Development in the amount of \$249,604.32 – Citywide Drainage Improvements Project.
- c) Invoice No. 0077838 from Pickering Firm, Inc. in the amount of 12,068.70 – Citywide Drainage Improvements Project.
- d) Invoice No. 215-068-1 from Compton Engineering in the amount of \$4,700.00 – Design of Lighthouse, Outdoor Recreation Project
- e) Invoice No. 215-065-3 from Compton Engineering in the amount of \$24,902.50 – Waveland Facilities Plan and Related Services Project (Sewer TV, Cleaning & Improvements)
- f) Invoice No. 215-065-4 from Compton Engineering in the amount of \$9,075.00 – Waveland Facilities Plan and Related Services Project. (Sewer SSES/Flow monitoring)

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**EXECUTIVE SESSION/PAYMENT REQUEST/JEFF DAVIS –GULFSIDE SEWER IMPROVEMENTS PROJECT/INVOICES**

**Re: Payment Request No. 20 (Final) from HRL, moved to Executive Session**

Alderman Lafontaine moved, seconded by Alderman Richardson to **TABLE** and include in Executive Session Payment Request No. 20 (FINAL) from Hensley R. Lee Contracting, Inc. in the amount of \$25,890.00 – Jeff Davis & Gulfside Street Sewer Improvements Project. Still awaiting submission of additional documents contractually required with the final invoice.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**POLICE DEPARTMENT/TRAVEL**

**Re: Officer Thomas Antoine to attend Refresher Police Academy**

Alderman Burke moved, seconded by Alderman Lafontaine approve part time officer Thomas Antoine to attend the refresher Police Academy as required by the State Standards and Training office. Class will being 1/4/2016 and last 11 weeks at the Harrison County Academy. Cost to the City will be \$900 registration and use of a City patrol vehicle. Registration is reimbursed by the State upon completion. Lodging and per diem not needed as Officer Antoine will be driving back after classes.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**POLICE STATION-BUILDING/GENERATORS**

**Re: Inspection from TAW Power Systems to Inspect Existing Generator at Police Building Site**

Alderman Burke moved, seconded by Alderman Richardson to approve inspection proposal from TAW Power Systems in the amount of \$1,000.00 to inspect the existing generator at the new Police Building to determine if it is usable. (For Police Building project and is not covered by J.O. Collins Contract or covered by FEMA funds.) **(EXHIBIT H)**

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**POLICE DEPARTMENT/GENERATORS**

**Re: Jason Ward of Ward & Associates, PA. to Inspect and Survey Automatic Transfer Switch**

Alderman Burke moved, seconded by Alderman Richardson to approve Power Systems, Inc., as recommended by Nofie Alfonso (via Jason Ward of Ward & Associates, PA.), to inspect and survey the automatic transfer switch (the controller for the generator), in amount of \$750.00. Jason Ward of Jason

Ward and Associates is an affiliate of Nofie Alfonso, Architect and the recommendation is coming from Nofie Alfonso. The City's contract is with Nofie Alfonso, not Jason Ward & Associates, PA. (For Police Building project and is not covered by J.O. Collins Contract or covered by FEMA funds.)  
**(EXHIBIT I)**

Mrs. Yarborough asked for clarifications in the body of the motion that Jason Ward of Jason Ward and Associates is an affiliate of Nofie Alfonso and this recommendation would be coming from Nofie.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

### **SANDY RECOVERY IMPROVEMENT ACT/REQUEST FOR PROPOSALS**

#### **Re: Crowder Gulf Pre-Qualified as Debris & Wreckage Contractor under Sandy Recovery Act**

Alderman Burke moved, seconded by Alderman Richardson to prequalify Crowder Gulf as a debris and wreckage removal contractor until December 1, 2016 under the Sandy Recovery Improvement Act of 2013 regarding Public Assistance Alternative Procedures for debris removal. The determination of a pre-qualified contractor does not constitute a "stand by" contract or bind the City to any future contract conditioned on a qualifying event. **(EXHIBIT J)**

Mrs. Yarborough said that the evaluation is not necessarily awarding a contract; the evaluation is pre-qualifying debris removal contractors in case of a qualifying event, which then they would go through the competitive bid process. She said this basically this just pre-qualifying them (Crowder Gulf) as a reputable contractor and capable of providing those services, so you could actually choose more than one, or just one.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

### **MISSISSIPPI RURAL WATER ASSOCIATION/RURAL WATER ASSOCIATION/ ALDERMEN/TRAINING/CONTINUING EDUCATION**

#### **Re: Alderman Jeremy Burke's attendance at the Mississippi Rural Water Training Session**

Spread on the minutes Alderman Jeremy Burke's attendance at the Mississippi Rural Water Association Training Session held September 17, 2015. **(EXHIBIT K)**

### **PROPOSALS/RESCIND MOTIONS/STORMWATER/ CONTRACTS/AGREEMENTS/ PHASE II STORM WATER**

#### **Re: Rescind Motions from November 18, 2015- Storm Water Program Services**

Alderman Lafontaine moved, seconded by Alderman Richardson to rescind the motions from the meeting of November 18, 2015 related to action taken for the following, being listed items (a&b):

- a) Motion to accept the proposal from Compton Engineering to perform Phase II Storm Water Program Services to the City of Waveland in the amount of \$34,000 to include Tasks 1 through 3 of the proposal. Acceptance of the proposal Tasks 1 thru 3 is conditioned upon the execution of a contract between the parties.
- b) Motion to accept the proposal from Compton Engineering regarding Implementation Services as described in Task 4 to perform Phase II Storm Water Program Services to the City of Waveland for the years 2016-2020 in the amount of \$24,000 per year. Acceptance of the proposal Task 4 is conditioned upon the execution of a contract between the parties.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**REQUEST FOR PROPOSALS/STORMWATER PHASE II/ADVERTISEMENTS**

**Re: Advertise for Requests for Proposals for Various Components of the Phase II Storm Water Program**

Alderman Burke moved, seconded by Alderman Richardson to approve advertising for Requests for Proposals for the following as listed (Item a&b):

- a) Services to design and implement the Phase II Storm water Program for the time period through the end of 2015.
- b) Continue implementation of Phase II Storm water Program services for the time period of 2016-2020.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**EXECUTIVE SESSION**

**Re: Potential Litigation**

Alderman Burke moved, seconded by Alderman Lafontaine to consider Executive Session to prompt a closed discussion regarding pending litigation regarding Gohres Realty v. City of Waveland and potential litigation regarding Jeff Davis/Gulfside Sewer Improvements Project.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

Alderman Burke moved, seconded by Alderman Richardson to enter Executive Session to discuss pending litigation regarding Gohres Realty v. City of Waveland and potential litigation regarding Jeff Davis/Gulfside Sewer Improvements Project.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

Alderman Richardson moved, seconded by Alderman Burke to exit Executive Session with no action taken.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine



Voting Nay: None

Absent: Piazza

**JEFF DAVIS-GULFSIDE SEWER IMPROVEMENTS PROJECT/INVOICES/LEGAL DEPARTMENT**

**Re: Payment Request No. 20 (Final) as submitted by HRL**

Alderman Lafontaine moved, seconded by Alderman Burke to **DENY** payment Request No. 20 (Final) from Hensley R. Lee Contracting, Inc. (HRL) due to failure to complete the contract and failure to submit contractual documentation with final payment; this motion also includes assessment of \$52,500.00 in liquidated damages against HRL.

Mrs. Yarborough said this was tabled from the last meeting and at the last meeting she had requested from Digital Engineering, who was the engineer on the project, to request from HRL contractually required documentation that must be submitted with a Final Payment Application. She said on November 29<sup>th</sup>, 2015 she sent an email to Digital Engineering following up requesting specifically, at a minimum, evidence of insurance as required by Paragraph 5.04.B.7, Consent of Surety to Final Payment, as a new claim had been made since July, a list of all claims against the Owner the Contractor believes is unsettled, a complete and legally effective release or waivers of all lien rights arising out of or liens filed in connection with the work, a Contractor executed final receipt under 8.4 of Section 500, an updated punch list and a liquidated damages calculation. Mrs. Yarborough said she also expressed concern that the Board believed that the work had not been completed and the striping had not been placed on the same streets as the striping had been before and that it was also incomplete. Mrs. Yarborough said she had received an email response today from Dr. Bob Thorn, on behalf of HRL Contracting, in response to her November 29<sup>th</sup>, 2015 email which stated 1) that they submitted their Pay Application No. 20 and that remains unpaid, and their Subcontractor continues to ask for payment. Mrs. Yarborough said she took as an admission that they had not paid all of their subcontractors as required under the contract. 2) She said that they also stated that a new bond claim had been made on the project by GCU and that the matter would not be complete until the Courts decided the matter and she took that as a admission that the surety was not going to release the City for final payment as required by the contract and required by law, and 3) They also stated that they were waiting the City's decision on submittals for manhole substitutions, as GCU refuses to return to the project. Mrs. Yarborough said she took that as an admission, again, that there was incomplete work under the contract; there was again, no other submission of the requested documents, no updated punch list, no position as to whether the striping had been completed or done to specs. There was also no Release of Surety submitted, no updated insurance, no updated affidavits, just the letter dated November 30, 2015 which she would submit as **EXHIBIT A** to be attached to the minutes, signed H.R. Lee, President of HRL Contracting, Inc. Mrs. Yarborough said, "I would also recommend to the Board that, based on the calculations from, I believe it is Change Order No. 6, the date of Substantial Completion contractually was to be April 1, 2015. Substantial completion was not completed until July 15, 2015, which was 105 days. At this time, I would recommend that the City find \$52,500 in liquidated damages against HRL. There's also been 125 days between the last submission of payment, which would be Pay App No. 19 and this Final Payment Request No. 20. So at this time it appears that any further documentation will not be forthcoming from HRL; that the Contract remains incomplete, and that there remains \$52,500 in liquidated damages." Mrs. Yarborough

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**ADJOURN**

**Re: Adjourn Meeting at 8:35 p.m.**

Alderman Burke moved, seconded by Alderman Richardson to adjourn the meeting at 8:35 p.m.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

The foregoing minutes were presented to Mayor Smith on January 8, 2016.

\_\_\_\_\_  
Lisa Planchard  
City Clerk

The Minutes of December 1, 2015 have been read and approved by me on this day the 8<sup>th</sup> of January, 2016.

\_\_\_\_\_  
Mike Smith  
Mayor

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