

ORDINANCE NO. 24-736

**ORDINANCE TO DECLARE PROPERTY AS SURPLUS
AND AUTHORIZING AND DIRECTING ITS SALE**

WHEREAS, the City of Huntsville, an Alabama municipal corporation ("City"), is the owner of certain real property situated in Limestone County, Alabama, containing approximately 23.94 acres, more or less, as more particularly described as follows in Exhibit "A" attached hereto (the "Subject Property"); and

WHEREAS, Fennel Noble Family Limited Partnership, an Alabama limited partnership, has requested that the City declare the Subject Property as surplus and offer the same for sale; and

WHEREAS, it is the judgment and opinion of the Mayor and the City Council of the City of Huntsville that, pursuant to §11-47-20 of the *Code of Alabama* (1975), that the Subject Property is no longer used or needed for a public purpose; and

WHEREAS, in the judgment and opinion of the Mayor and the City Council of Huntsville, Alabama, that the Subject Property has appraised for \$718,000.00, and said amount is fair and reasonable compensation for the Subject Property; and

WHEREAS, it is necessary for the Mayor of the City of Huntsville to enter into that certain Purchase and Sale Agreement between the City of Huntsville and Fennel Noble Family Limited Partnership attached hereto as Exhibit "B" (the "Agreement"), and pursuant to the terms and conditions therein, the Subject Property will be sold to Fennel Noble Family Limited Partnership in exchange for Seven Hundred Eighteen Thousand and No/100 Dollars (\$718,000.00); and

WHEREAS, the Mayor of the City of Huntsville is authorized to execute the Agreement, a statutory warranty deed, and all other documents necessary to transfer and convey any interest the City may have in the Subject Property to Fennel Noble Family Limited Partnership; and

WHEREAS, a general and permanent ordinance is necessary to effect declaration of the Subject Property as surplus property, for the transfer or sale of said surplus property, and to authorize the Mayor to execute a deed to the purchaser for the surplus property.

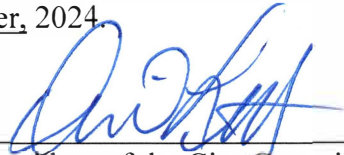
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, ALABAMA, AS FOLLOWS:

1. The Subject Property is found and determined not to be needed for public or municipal purposes by the City of Huntsville and is hereby declared as surplus property in accordance with the requirements of §11-47-20 of the *Code of Alabama* (1975); and
2. The Mayor of the City of Huntsville is hereby authorized and directed to execute the Agreement, to convey the Subject Property to Fennel Noble Family Limited Partnership in accordance with the terms of said Agreement, to execute and deliver a statutory warranty deed, and all documents required to close said sale for and on behalf of the City, along with

all other instruments, agreements, or other documents as shall be necessary or desirable in connection with the transaction contemplated thereby or in furtherance of the Agreement; and

3. The City Clerk for the City of Huntsville is hereby instructed to publish notice of this Ordinance in accordance with §11-45-8 of the *Code of Alabama* (1975); and
4. A copy of said ordinance, Agreement, and other real estate closing documents, as legally required, will be kept on file in the office of the City Clerk of the City of Huntsville, Alabama; and
5. This ordinance shall become effective upon its approval, adoption, enactment, and publication by posting as set forth in §11-45-8(b) of the *Code of Alabama* (1975).

ADOPTED this the 10th day of October, 2024.



President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 10th day of October, 2024.



Mayor of the City of Huntsville,
Alabama

EXHIBIT "A"
(Legal Description of Subject Property)

That certain tract of land lying and being in Section 36, township 4 South, Range 4 West of the Huntsville Meridian. Said tract being the property conveyed to the City of Huntsville, in RLPY 2017, Page 67360, as recorded in the Office of the Probate Judge for Limestone County, Alabama and being more particularly described as follows

Commencing at a railroad spike found at the southwest corner of Section 36, Township 4 South, Range 4 West of the Huntsville Meridian; thence along the south boundary of said Section 36 South 88 Degrees 09 Minutes 04 Seconds East a distance of 5343.62 feet to a #5 rebar with a cap stamped "Garver LLC CA 445" (typical) set at the southeast corner of said Section 36; thence along the east boundary of said Section 36 North 1 Degree 53 Minutes 21 Seconds East a distance of 50.17 feet to a #5 rebar set on the north right-of-way of Bibb Garrett Road, said point being the Point of Beginning of the herein described tract, having established grid coordinates of (N) 1508845.12, (E) 336055.68 Zone East of the Alabama State Plane Coordinate System;

Thence along said right-of-way North 88 Degrees 21 Minutes 38 Seconds West a distance of 162.83 feet to a #5 rebar with an illegible cap found; thence North 88 Degrees 21 Minutes 38 Seconds West a distance of 41.15 feet to a #5 rebar set; thence North 88 Degrees 05 Minutes 00 Seconds West a distance of 222.70 feet to a #5 rebar set; thence leaving said north right-of-way North 0 Degrees 00 Minutes 00 Seconds West a distance of 826.37 feet to a #5 rebar set; thence North 4 Degrees 58 Minutes 33 Seconds West a distance of 1172.70 feet to a #5 rebar set on the south right-of-way of the Southern Railway; thence along said south right-of-way North 70 Degrees 31 Minutes 47 Seconds East a distance of 637.90 feet to a #5 rebar set on the east boundary of said Section 36; thence leaving said south right-of-way along said east boundary South 1 Degree 53 Minutes 21 Seconds West a distance of 2221.77 feet to the POINT OF BEGINNING.

The above-described tract contains 23.94 acres, more or less.

EXHIBIT "B"
(Purchase and Sale Agreement)

*[Attach copy of Purchase and Sale Agreement between the City of Huntsville and Fennel Noble
Family Limited Partnership.]*

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into by, between and among the **City of Huntsville**, an Alabama municipal corporation ("City" or "Seller"), and **Fennel Noble Family Limited Partnership**, an Alabama limited partnership, or its permitted assigns ("Purchaser") effective as of this 10th day of October, 2024 (the "Effective Date").

RECITALS:

WHEREAS, Seller is the owner of certain real property lying in Limestone County, Alabama, located on the south side of Bibb Garrett Road, consisting of approximately 23.94 acres, more or less, identified by Limestone County Revenue Commissioner Records as Parcel Number 16-07-36-0-000-003.002, and being more particularly described in Exhibit "A" attached hereto and incorporate herein (the "Property").

WHEREAS, Purchaser is the owner of certain real property lying in Limestone County, Alabama, located adjacent to the Property as identified on Exhibit "B" attached hereto and incorporated herein (the "Purchaser Land").

WHEREAS, Purchaser desires to purchase the Property from Seller and Seller desires to sell the Property to Purchaser upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of Ten Dollars and No/100 (\$10.00), the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

1. Sale and Purchase. The parties incorporate by reference the Recital clauses set forth above as if fully set forth herein. Subject to and in accordance with the terms of this Agreement, Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the Property from Seller, together with the improvements thereon, if any, and all rights, easements, interests, privileges, tenements, and hereditaments appurtenant thereto.

2. Purchase Price. The purchase price for the Property shall be SEVEN HUNDRED EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$718,000.00) (the "Purchase Price"). The Purchase Price shall be paid to Seller in cash or immediately available funds, upon delivery of the deed to Purchaser, and upon satisfaction of all Closing Conditions set forth in Section 7 below (the "Closing").

3. Title Commitment; Survey. The City shall provide a title commitment from Lanier Ford Shaver & Payne, PC ("Closing Agent") to issue an owner's policy of title insurance to be issued in accordance with commercially reasonable standards and insuring Purchaser with good and marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances, tenancies, covenants, conditions, restrictions, easements and other matters of record affecting title except for the Permitted Exceptions ("Title Commitment"). "Permitted Exceptions" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) easements for the installation or maintenance of public utilities servicing the Property; (iii) easements, restrictions, and setback lines of record; (iv) rights of way for public roads; (v)

subdivision regulations and zoning ordinances of applicable governmental entities; and (vi) such other matters, if any, as may be acceptable to Purchaser. The City shall remove all monetary liens, if any, prior to Closing. Purchaser, at its option and expense, may obtain a boundary survey of the Property to be prepared by a public land surveyor licensed by the state of Alabama setting forth a metes and bounds legal description of the Property (the "Survey"). Seller will provide Purchaser with copies of any recent survey of the Property currently within its possession.

4. Title Insurance. The Closing Agent shall issue an ALTA Owner's policy of title insurance in favor of Purchaser in form and substance acceptable to Purchaser ("Title Policy"). The Title Policy premium shall be paid by Purchaser at Closing. Not less than three business days before Closing, Purchaser shall advise Closing Agent of any requested endorsements and the valuation for pending improvements Purchaser desires to simultaneously insure.

5. Inspection Period. Commencing on the Effective Date and ending one hundred eighty (180) days later (the "Inspection Period"), Purchaser, its agents, designees, and contractors shall have the right to enter the Property for the sole purpose of conducting Purchaser's due diligence investigations of the Property, including without limitation, review of title, surveys, geological studies, sole borings, environmental assessments, and such other investigations, studies or tests as Purchaser may deem necessary or desirable in order to determine whether or not the Property is suitable for its intended use. Seller is currently in the process of performing a flood study on the Property, and once completed, shall provide Purchaser with a copy. Prior to the expiration of the Inspection Period, Purchaser shall provide Seller with written notice, to be given in accordance with Section 15 below, of its desire to proceed to Closing. In the event such written notice is not provided prior to the end of the Inspection Period, then this Agreement shall automatically terminate and shall be null and void. Purchaser at its option may waive or proceed to Closing prior to the expiration of the Inspection Period by providing written notice to Seller and Closing Agent in accordance with Section 15 herein.

6. Closing. Closing shall occur on or within sixty (60) days following the satisfaction of the Closing Conditions (set forth in Section 7 below), or at such other date and time as is mutually agreed upon by the parties (the "Closing Date"). Closing shall occur at the offices of Closing Agent. The parties may deliver any documents or closing funds as required herein on or before the Closing Date, such that neither party will be required to be physically present at Closing. Possession of the Property shall be provided to Purchaser at Closing.

(a) On or before Closing, Seller shall deliver the following items to Closing Agent, properly executed and notarized and in form and substance acceptable to Purchaser:

(i) A statutory warranty deed conveying good and marketable fee simple title to the Property to Purchaser subject only to the Permitted Exceptions (the "Deed").

(ii) Recorded or recordable releases terminating and releasing all monetary liens, if any.

(iii) A seller's/owner's title affidavit and any other documents, certificates and agreements that the Closing Agent and/or title company may reasonably require to issue an updated title commitment or owner's title policy.

(iv) A closing statement mutually agreed to by the parties, validly executed and delivered by Seller.

(v) All other documents reasonably requested by the Title Company to carry out the transaction contemplated by this Agreement, including, but not limited to, (A) an affidavit of Non-Foreign Status of Seller, (B) formation documents, certifications, resolutions, brokers affidavits and other reasonable and customary documents establishing that Seller is duly authorized and empowered to enter into this Agreement and perform its obligations hereunder, and (C) such additional assignments, instruments and documents executed and delivered by Seller as may be reasonably necessary to complete the transfer of the Property, to clear title, and/or to otherwise carry out the intent and purposes of this Agreement.

(b) On or before Closing, Purchaser shall deliver to Closing Agent the following:

(i) The Purchase Price and any additional amounts required to cover any Closing Costs.

(ii) A closing statement mutually agreed to by the parties, validly executed and delivered by Purchaser.

(iii) Such other documents, such as customary affidavits or company agreements and/or written consents, as may be reasonably requested by Closing Agent or its Title Company to close on the Property and/or in accordance with the terms of this Agreement.

7. Closing Conditions. Closing shall be contingent upon the following conditions being satisfied on or before the Closing Date ("Closing Conditions"):

(a) Declaration of Surplus; Approval by City Council. Declaration of the Property as "surplus" pursuant to an official ordinance and approval of this Agreement by the City Council of the City of Huntsville.

(b) Annexation. The City shall have the Property and the Purchaser Land annexed into the City limits of the City of Huntsville, Alabama and shall have the property zoned in accordance with the City's zoning regulations as CIP Zoning for both the Property and the Purchaser Land. For purposes of such annexation and zoning change, until such time as the Property and Purchaser Land has a change in use, it shall be assessed as agricultural land.

(c) Water and Sewer. The City and Purchaser have entered into an agreement confirming that the City will provide water and sanitary sewer to the Property and the Purchaser Land.

In the event all of the Closing Conditions set forth above have not occurred on or before the Closing Date, then this Agreement shall automatically terminate and be of no further force and effect without any liability of any party hereto to the other except with respect to any obligations that expressly survive termination of this Agreement. Seller shall proceed after the Effective Date hereof, to commence the actions necessary to accomplish the Closing Conditions as promptly as possible and shall use good faith efforts to accomplish them prior to the expiration of the Inspection Period.

8. Property Taxes. All ad valorem or property taxes on the Property shall be prorated as of the Closing Date, such that Seller shall be responsible for any ad valorem taxes due up to and through the Closing Date, and Purchaser shall be responsible for all ad valorem taxes due after the Closing Date. At this time, the Property is currently assessed as exempt.

9. Closing Costs. All closing costs, including any title insurance premium, all deed, transfer, and mortgage taxes, and any and all recording costs and closing fees shall be paid by Purchaser. Provided, however, Seller shall pay for any title commitment fee and the cost to prepare the Deed. Each party shall pay for its own attorney's fees incurred in connection with the transaction contemplated by this Agreement.

10. Permitting and Approvals. Purchaser, its agents, employees and contractors, may, at its election, seek from the City all necessary licenses, permits, and certificates that are required to construct, own, operate, and maintain the Property. Accordingly, Seller shall work in good faith to assist Purchaser in Purchaser's application for and obtaining of all applicable permits, licenses, certificates, or approvals required in connection with Purchaser's intended use of the Property, if so desired by Purchaser. However, Purchaser acknowledges and agrees that Seller is in no way waiving or disclaiming, nor should this provision be construed as a waiver of, any applicable City licensing, permitting, zoning, design guidelines, or building code requirements. This Section shall survive Closing.

11. Final Subdivision Plat. The parties shall work in good faith with one another during the Inspection Period to have the Property and the Purchaser Land subdivided and platted in accordance with the City's subdivision regulations (the "Plat"). The Plat shall be recorded by Purchaser, at Purchaser's expense, in the Office of the Judge of Probate of Limestone County, Alabama contemporaneously with the Closing.

12. Governing Law. The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama without regard to its conflict of law provisions.

13. Entire Agreement. This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been or is being relied upon by either party. Each party has relied upon its own examination of this Agreement and the provisions, warranties, representations and covenants expressly contained herein.

14. Successors and Assigns. All rights and obligations of the parties under this Agreement shall inure the benefit of and be binding upon all successors and assigns of each party.

15. Notice. All notices shall be in writing and may be delivered by any of the following methods: (i) hand delivery, (ii) certified United States Mail or nationally-recognized overnight delivery service (such as, FedEx or UPS), or (ii) email transmission. Notices shall be deemed received, (i) if delivered by hand, on the date of delivery, (ii) if delivered by U.S. Mail or overnight delivery service, on the date the same is deposited with the applicable carrier, or (iii) if delivered by email on the date the transmission is sent. Notices shall be addressed as follows:

If to Seller: City of Huntsville

Attn: Shane Davis & Jim McGuffey
305 Fountain Circle, 4th Floor
Huntsville, AL 35801
Ph: 256-427-5300
Email: shane.davis@huntsvilleal.gov
jim.mcguddy@huntsvilleal.gov

With a copy to: Katie Beasley
Lanier Ford Shaver & Payne, PC
2101 W. Clinton Ave. Ste. 102
Huntsville, Alabama 35805
Ph: 256-535-1100
Email: kab@lanierford.com

If to Purchaser: Fennel Noble Family Limited Partnership
Attn: Ms. Susan Clark
1730 Radcliffe Road
Montgomery, Alabama 36106
Ph: 334-546-6616
Email: susan.clark@fnpartnerships.com

With a copy to: Moore Company Realty
Attn: Mr. Eric Higgins
4 Office Park Circle, Ste. 217
Birmingham, Alabama 35233
Ph: 205-641-9421
Email: ehiggins@mcrmpm.com

16. Seller's Representations and Warranties. Seller makes the following representations and warranties:

(a) The City has full right and authority to enter this Agreement and to perform all obligations of Seller, and the City, by action of its governing body, has duly authorized the execution, delivery, and performance of this Agreement.

(b) The execution, delivery, and performance of this Agreement by Seller does not and will not result in any violation of, conflict with, or constitute a default under, any agreement, mortgage, ordinance, resolution, indenture, or other instrument to which the City or the Property are subject.

(c) There is not now pending nor, to the actual knowledge of the City, threatened, any litigation, proceeding, or investigation affecting the City which questions (i) the validity or organization of the City, (ii) the members, title or positions of the members of the City Council of the City of Huntsville or the manner in which the City's offers are selected, or (iii) the subject matter of this Agreement.

17. Purchaser's Representations and Warranties. Purchaser hereby makes the following representations and warranties:

(a) Purchaser is a duly organized and validly existing limited partnership under the laws of the State of Alabama, duly authorized to conduct business in the State of Alabama, and Purchaser has duly authorized the execution, delivery, and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by Purchaser requires and consent of, filing with or approval of, or notice to, or hearing with any person, company, or entity (including, but not limited to, any governmental or quasi-governmental entity), except for such consents, filings, notices and hearings described herein, or already held or maintained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by Purchaser, violates, constitutes default, or a breach of (i) Purchaser's partnership agreement or other organization documents of Purchaser, (ii) any agreement, instrument, contract, mortgage, or indenture to which Purchaser is a party, or to which Purchaser or its assets are subject, or (iii) any judgment, decree, order, ordinance, regulation, consent or resolution applicable to Purchaser or any of its properties or assets.

(d) There is not now pending nor to the knowledge of Purchaser, threatened, any litigation, proceeding, claim, or investigation affecting Purchaser which questions the validity or organization of Purchaser, or any of the representations and warranties of Purchaser contained herein.

18. Condition of Property. Purchaser understands, acknowledges and agrees that the City is acquiring the Property as a conduit and without ownership of the same for any material amount of time prior to conveyance to Purchaser, and that Purchaser is conducting its own due diligence and other inquiries and inspections respecting the nature, condition and suitability of the Property. Furthermore, the City makes no representations or warranties, and shall have no liability to Purchaser or any of its Affiliate Entity or assigns whatsoever, regarding the Property, including but not limited to, (i) the Property's nature or condition, (ii) the existence and/or absence of any substances or other deleterious elements or conditions on the Property, (iii) the suitability of the Property or (iv) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property. Purchaser further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS IS" condition.

19. Survival. Any terms and covenants contained in this Agreement which require the performance of any party after the Closing shall survive the Closing and delivery of the Deed.

20. Amendment. This Agreement may only be amended by a written instrument executed by both parties.

21. Assignment. Purchaser may assign its rights and obligations under this Agreement to any related entity or company controlled by or sharing common control or ownership with Purchaser (an "Affiliate Entity") or otherwise made as a result of any restructure, consolidation, merger, or reorganization of Purchaser in which Purchaser or the Affiliate Entity is the surviving

entity without the consent of Seller. In the event of an Assignment, Purchaser shall provide the Closing Agent with notice of the Assignment, including the name, form of entity, address, and current contact information of the Affiliate Entity, along with any related entity or company documents of said Affiliate Entity as may be requested by the Closing Agent. Prior to Closing, the City and/or Closing Agent may require Purchaser and Affiliate Entity to execute and acknowledge a formal assignment document in a form reasonably acceptable to Closing Agent.

22. Effective Date. The Effective Date shall mean the date this Agreement has been executed by the City.

23. Party Cooperation. The parties agree to cooperate with one another and will work in good faith and will use their commercially reasonable best efforts in order to complete each of their respective obligations as set forth herein.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute one agreement between the parties. Documents executed, scanned and transmitted electronically, and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures. Notwithstanding the preceding sentence, the parties agree that they will transmit their original signature pages to the Closing Agent promptly after execution.

25. Real Estate Commissions. Seller and Purchaser each represent and warrant to one another that they, respectively, have not consulted with any broker or finder in connection herewith and no broker, finder or other agent is entitled to any fee or commission with respect to or by reason of this transaction. Seller and Purchaser each agree to indemnify and hold the other harmless from and against any and all loss, cost, damage, claim, expense (including attorneys' fees) incurred by or assessed against the other as a result of a breach of the respective foregoing covenants and representations made by each of them.

26. Attorneys' Fees. If any legal proceeding is commenced related to this Agreement, the prevailing party in such legal proceeding shall be entitled to recover its reasonable attorneys' fees, court costs, and litigation expenses from the non-prevailing party therein.

27. Further Assurances. At Closing Agent's request, the parties shall execute and deliver any additional documents reasonably required to carry out the transaction contemplated herein or to correct any scrivener's error or omissions contained in this Agreement or any document executed pursuant hereto or in connection with the transaction contemplated herein.

28. Counsel Acknowledgment. The parties acknowledge that Seller's counsel, Samuel H. Givhan and Katherine Amos Beasley, of the law firm of Lanier, Ford, Shaver & Payne, PC (collectively, "Counsel") prepared this Agreement on behalf of and in the course of their representation of Seller and, for purposes of this transaction, Counsel represents Seller's interest and no other. All conflicts of interest in connection with Counsel's representation of Seller, if any, are hereby waived.

29. No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among or between Seller and Purchaser, and/or their respective successors and assigns.

30. No Third-Party Beneficiaries. This Agreement is intended only for the benefit of the parties hereto, and neither this Agreement, nor any of the rights, interests, obligations, or commitments hereunder, is intended for the benefit of any other person, entity, or third party.

31. Arm's Length Transaction. Seller and Purchaser acknowledge and agree that this Agreement shall be interpreted as an agreement between two parties of equal bargaining strength, it being the intention of the parties that this Agreement reflect the conditions and terms which would be obtained by and between comparable, independent persons or parties in substantially similar transactions (taking into account the relative responsibilities and risks between the parties) and comparable market and economic conditions and circumstances.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below.

[Signatures appearing on the following pages.]

[Seller's Signature Page to Purchase and Sale Agreement.]

SELLER:

City of Huntsville, an Alabama municipal
corporation

By: Tommy Battle
Tommy Battle, Mayor

ATTESTED TO:

By: S. Edwards
Shaundrika Edwards, City Clerk

Date: October 10, 2024

[Purchaser's Signature Page to Purchase and Sale Agreement.]

PURCHASER:

**Fennel Noble Family Limited Partnership, an
Alabama limited partnership**

By: 
Susan N. Clark, Managing Partner

WITNESSED:

By: 
Name: J. ALLEN CLARK, III

Date: 9/5/2024

Exhibit "A"
(Legal Description of the Property)

That certain tract of land lying and being in Section 36, township 4 South, Range 4 West of the Huntsville Meridian. Said tract being the property conveyed to the City of Huntsville, in RLPY 2017, Page 67360, as recorded in the Office of the Probate Judge for Limestone County, Alabama and being more particularly described as follows:

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