

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF FORT LAUDERDALE
FOR A JOINT STUDY FOR RAIL INFRASTRUCTURE ALTERNATIVES**

This Agreement (“Agreement”) is entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and the City of Fort Lauderdale, a Florida municipal corporation (“City”) (each individually referred to as a “Party” and collectively referred to as the “Parties”).

RECITALS

A. County and City wish to conduct a joint study to examine alternative approaches for rail infrastructure to cross the New River in Fort Lauderdale (the “Project”).

B. On September 8, 2022 the Broward County Board of Commissioners passed Resolution 2022-443, directing the County Administrator to work with the City of Fort Lauderdale to jointly plan, fund, and carry out an updated assessment for the purpose of building consensus on a cost-effective alternative for rail service to cross the New River.

C. City has entered into an Interlocal Agreement (“ILA”) with the Broward Metropolitan Planning Organization (“MPO”), under which the MPO has agreed to qualify and retain consultants to provide general planning services for City.

D. MPO will, upon approval by MPO’s Board, enter into a contract with a consultant(s) qualified by MPO (“Consultant”) to provide services for the Project, as such services are specified by City and County in Work Order Proposals issued by the MPO to Consultant.

E. County and City have prepared a Scope of Work for the Project for Consultant to provide in accordance with its contract with the MPO.

F. County and City wish to enter into this Agreement to provide for the administration and funding of the Project Services.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **City Project Representative** means the individual chosen by the City Manager to serve as the City’s representative to work jointly with the County Project Representative to direct and monitor Consultant’s performance of the Project Services.

1.2 **County Project Representative** means the individual chosen by the County Administrator to work jointly with the City Project Representative to direct and monitor the Consultant's performance of the Project Services.

1.3 **Project Services** means all work the Consultant is required to perform in connection with the Project, as more particularly identified in the Scope of Work contained in MPO's Work Order Proposal Number 7, which attached as Exhibit A and made a part hereof, and as may be identified in subsequently agreed Scope(s) of Work related to the Project.

ARTICLE 2 **OBLIGATIONS OF PARTIES**

2.1 County and City shall each be responsible for paying 50% of Consultant's compensation as provided in this article.

2.2 County and City agree that Consultant's compensation for the Project Services shall not exceed \$500,000, and City's and County's contribution to such compensation shall not exceed \$250,000 each, unless otherwise agreed upon in an amendment to this Agreement.

2.3 County and City also agree that they may ask Consultant, through a written and approved proposal, to perform additional work after completion of the Project Services. Consultant's compensation for such additional work shall not exceed \$100,000, and City's and County's contribution to such compensation shall not exceed \$50,000 each, unless otherwise agreed upon in an amendment to this Agreement.

2.4 City shall provide \$500,000 to the MPO as an advance payment before commencement of the Project Services.

2.5 Consultant shall submit invoices to the MPO, which shall present such invoices to the City Project Representative for approval. Upon approval, the invoices shall be paid to Consultant by the MPO from the advance payment provided by City.

2.6 After receipt of an invoice by the City Project Representative, the City Project Representative shall submit the invoice to the County Project Representative. Within fifteen (15) days of receipt, the County Project Representative shall either (i) approve and initiate a payment for 50% of the invoice or (ii) notify the City Project Representative of any amount(s) of the invoice the County will not pay, along with the County's reason for not approving the invoice. However, in no case shall the County be obligated to pay more than 50% of any invoice.

2.7 The County Project Representative and City Project Representative shall jointly approve work authorizations and authorized change orders for the Project Services. Neither Party may approve work authorizations, change orders, or invoices without the written consent of the other Party.

ARTICLE 3
TERM AND TIME OF PERFORMANCE

3.1 The term of this Agreement shall commence upon the date this Agreement is executed by the last of the Parties to execute (the "Effective Date") and shall terminate upon completion of the Project, unless sooner terminated. Any financial obligations of any Party regarding the Project that accrued prior to the date of termination of this Agreement shall survive the termination of this Agreement.

3.2 Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 4
LIABILITY

4.1 County and City are public entities subject to Section 768.28, Florida Statutes. Each party shall be individually and separately liable and responsible for the actions of its officers, agents, and employees in the performance of their respective obligations under this Agreement, to the extent required by applicable law.

4.2 County and City shall each individually defend any action or proceeding brought against their respective agency pursuant to this Agreement, and shall be individually responsible for all of their respective costs, attorneys' fees, expenses, and liabilities incurred as a result of any such claims, demands, suits, actions, damages, and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments, or decrees that may be entered as a result thereof, including appellate proceedings.

4.3 County and City agree that this Agreement in no way obligates either Party to indemnify or hold harmless the other Party concerning any claims, demands, damages, or causes of action that may be brought relating to this Agreement.

4.4 Upon request, each Party shall furnish the other Party with written verification of liability protection in accordance with Florida law, which may include self-insurance.

4.5 Notwithstanding the provisions contained herein, neither Party waives its sovereign immunity or any aspect thereof, nor any other rights and privileges as provided in Section 768.28, Florida Statutes. Except as otherwise expressly set forth in this Agreement, each Party's liability to the other Party shall be limited to direct damages and shall exclude liability for special, indirect, punitive, or consequential damages.

ARTICLE 5
TERMINATION

5.1 If either Party defaults on any of the terms, obligations, restrictions, or conditions in this Agreement, the aggrieved Party shall give the defaulting Party written notice of the default and opportunity to cure; the cure period for a monetary default shall be within ten (10) business days after the written notice of default, and the cure period for a nonmonetary default shall be within thirty (30) business days after the written notice of default (or, if the nonmonetary default is not reasonably capable of cure within thirty (30) business days, then actions taken to correct such default shall be commenced within thirty (30) business days after written notice of default, and the defaulting Party must diligently and promptly prosecute such corrective measures to completion). If the default is not cured within the applicable cure period, the Party having given notice of default shall have all legal remedies available to it, including, but not limited to, termination of the Agreement upon thirty (30) days' written notice of termination to the other Party, in which case the defaulting Party shall be liable for any and all damages permitted by law arising from the default and breach of the Agreement. The Parties agree that if this Agreement is erroneously, improperly, or unjustifiably terminated for cause, such termination shall be deemed a termination for convenience pursuant to Section 5.2, which shall be effective sixty (60) days after such notice of termination for cause is provided.

5.2 Either Party may terminate this Agreement for convenience by providing written notice to the other Party pursuant to the provisions of this section. Notice of termination for convenience must state that the Agreement is being terminated for the convenience of the terminating Party and the effective date of termination, which shall not be less than sixty (60) days after the date of notice of termination. Each Party acknowledges and agrees that it has received good, valuable, and sufficient consideration from the other, the receipt and adequacy of which are hereby acknowledged, for the right to terminate this Agreement for convenience.

5.3 This Agreement may be terminated at any time by mutual written agreement of the Parties.

5.4 If this Agreement is terminated for any reason or for convenience, each Party shall pay its share (i.e., 50%, consistent with Article, Sections 2.2. and 2.3) of invoice(s) submitted by Consultant for Project Services performed by Consultant through the effective date of termination, but if the termination results from an uncured breach, damages shall, to the extent permitted by this Agreement, be recoverable by the Party not in breach.

ARTICLE 6
EEO COMPLIANCE

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the compliant Party deems appropriate.

ARTICLE 7
MISCELLANEOUS

7.1 Public Records. The Parties are public agencies subject to Chapter 119, Florida Statutes, and, to the extent applicable, the provisions of Section 119.0701, Florida Statutes, are deemed incorporated as if fully set forth herein.

7.2. Independent Contractor. Nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. Neither County nor City, nor the agents of either, shall act as officers, servants, employees, or agents of the other Party relating to the Project, the Consultant, or this Agreement, unless expressly authorized herein. Neither of the Parties shall have the right to bind the other Party to any obligation not expressly authorized by or undertaken under this Agreement.

7.3 Third-Party Beneficiaries. Neither County nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement. Nothing in this Agreement, express or implied, is intended to (i) confer upon any entity or person other than the Parties and their successors or assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise, except as specifically provided in this Agreement; or (ii) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

7.4 Notices. Whenever either party desires to give notice to the other, such notice must be in writing, sent by United States Mail, postage prepaid, commercial express carrier, or by hand delivery, with a simultaneous copy sent via electronic mail, and addressed to the party for whom it is intended at the place last specified. Notice shall be effective when sent or hand delivered, provided that a simultaneous electronic mail copy is also sent. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For County: Broward County Administrator
115 South Andrews Avenue, Suite 409
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7000
Email: mcepero@broward.org

With copy to: Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Email: ameyers@broward.org

For City: City of Fort Lauderdale
Attention: City Manager
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Email: gchavarria@fortlauderdale.gov

With copy to: City of Fort Lauderdale
Attention: City Attorney's Office
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Email: dspence@fortlauderdale.gov

7.5 Assignment and Performance. Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the prior written consent of the other Party. Any purported assignment, transfer, subcontract, or encumbrance in violation of this section will be void. If a Party violates this provision, the other Party shall have the right to immediately terminate this Agreement.

7.6 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. A Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. Any waiver must be in writing signed by an authorized signatory of the waiving Party.

7.7 Compliance with Laws. Each Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

7.8 Severance. In the event any part of this Agreement is found to be invalid or unenforceable by any court of competent jurisdiction, through any filed appeal, that part shall be deemed severed from this Agreement, and the remaining provisions shall continue to be in full force and effect.

7.9 Joint Preparation. Each Party and its counsel have participated in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

7.10 Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either Party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY EACH HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

7.11 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by authorized representatives of County and City.

7.12 Prior Agreements. This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the Project. The Parties agree that there is no commitment, agreement, or understanding concerning the Project that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

7.13 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

7.14 Representation of Authority. County and City each represent and warrant to the other Party that this Agreement constitutes a legal, valid, binding, and enforceable agreement, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that the Party has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to the party. County and City each further represent and warrant that execution of this Agreement is within their legal powers, and each individual executing this

Agreement on behalf of the Party is duly authorized by all necessary and appropriate action to do so and does so with full legal authority.

7.15 Multiple Originals and Counterparts. This Agreement may be executed in multiple originals, whether executed physically or electronically, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

7.16 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. All references to “days” shall constitute calendar days, unless otherwise expressly stated. Any approvals required under this Agreement must be in writing signed by an authorized signatory of the Party giving the approval.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Interlocal Agreement: BROWARD COUNTY, through its Board of County Commissioners, signing by and through its County Administrator, authorized to execute same by Board action on the ____ day of _____, 2023, and the CITY OF FORT LAUDERDALE, signing by and through its Mayor and City Manager, duly authorized to execute same.

BROWARD COUNTY

By: _____
Monica Cepero
County Administrator

____ day of _____, 2023

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By: _____
Ben Salzillo (Date)
Senior Assistant County Attorney

CITY OF FORT LAUDERDALE

CITY OF FORT LAUDERDALE

WITNESS:

Dean J. Trantalis, Mayor

____ day of _____, 2023

Print or type name

WITNESS:

Greg Chavarria
City Manager

Print or type name

____ day of _____, 2023

ATTEST:

APPROVED AS TO FORM:
D'Wayne M. Spence, Interim City Attorney

David R. Soloman, City Clerk

By _____
Kimberly Cunningham Mosley, Assistant City
Attorney

EXHIBIT A

SCOPE OF WORK

Assessment of Alternatives for Enabling Commuter Rail to Cross the New River on the FEC Corridor

Overview/Background:

The City of Fort Lauderdale (City) and Broward County (County) wish to partner for the purpose of further review of alternatives for a new passenger rail crossing of the New River within the Florida East Coast Railway (FEC) corridor. Utilizing the City's Interlocal Agreement for Planning services with the Broward Metropolitan Planning Organization (MPO), the City seeks cost-effective proposals from the MPO's General Planning Consultants (GPC) to provide professional planning services to undertake an assessment of river crossing alternatives focused on the intersection of the FEC) corridor with the New River in the City's downtown.

This request has been issued for the purpose of selecting a professional planning consultant to perform the type and scope of work listed below as requested by the City through the MPO, based on the needs expressed by both the City and County.

The assessment will take advantage of previous studies that have been done on four alternatives for Broward Commuter Rail (BCR) service to cross the New River including: a 21' Bascule Bridge; a 56' Bascule Bridge; an 80' Fixed Bridge; and a subsurface tunnel. The most recent work in this regard includes the following:

1. Initial Draft Opinion of Probable Construction Cost Estimate v1.0, New River Crossing Tunnel Alternative (report dated December 3, 2021, prepared by HDR)
2. Broward Commuter Rail (BCR) PD&E Study, Summary of Initial Draft Capital Cost and Operations & Maintenance Costs (Memorandum dated Nov. 9, 2021)

Work Product:

The selected consulting firm will be tasked with conducting a peer review of the above-referenced documents and providing additional information, as determined by their findings, of alternative methodologies and financial scenarios of the four crossing alternatives. The selected firm will prepare an executive summary and formal report. The work product does not need to focus on building consensus; instead, the focus is to provide an objective peer review so that the parties better understand the financial impacts, funding options, and methodologies of the four crossing alternatives.

Deliverables shall include a refined work plan, schedule, draft, and final detailed reports summarizing the results of the below tasks, including all files in their native format. The final deliverables shall be provided with seven (7) printed copies and two (2) flash drives

containing PDF versions of the final reports. Data, sources of reference, or background information are to be included as appendices in final report document.

The selected firm should anticipate providing up to three formal presentations and supporting materials of their findings: 1) to the project team/key stakeholders, 2) to the City Commission, and 3) to the County Commission.

Timeline and Budget:

As a priority project, the time for completion of this Scope of Work shall not exceed six (6) months from the Notice to Proceed (NTP). A proposed schedule for each milestone task (1- 7) must be included in all proposals. A refined/updated schedule and project work plan must be included as an initial deliverable within two weeks of NTP. The project does not have an established budget, but given the condensed timeline and peer review requirements, there is a general expectation that the cost will not exceed \$500,000.00.

Scope of Work:

It is important to note that the assessment associated with this solicitation is meant to be independent of previous studies and reviews while utilizing the information and data provided in those previous studies to ensure unbiased analysis and recommendations. For this reason, candidate consulting firms and individuals proposed for this work should not include those firms or individuals involved in the prior river crossing alternatives work contracted by the Florida Department of Transportation.

The successful Consultant will be required to provide a variety of professional planning work: Project Overview, Rail Operator Engagement, Capital Costs, Operating and Maintenance, Grant Opportunities, Comparative Cost Studies, and Assessment of Environmental Permitting Constraints.

BMPO and City Responsibilities:

Consistent with the City and BMPO Interlocal Agreement, the BMPO will provide general administrative oversight of the work order, limited to include processing of invoices, acceptance of payments from the City, procurement processes, and associated. The City will supply a single point of contact to act on behalf of the City and County as Task Project Manager and are responsible for all associated project management responsibilities such as ensuring adequate scope, schedule, deliverables reviews, etc.

Task 1 - PROJECT OVERVIEW. Undertake a comprehensive review of available information on the New River crossing for the BCR. This task includes a thorough review of the documents referenced above, along with any other studies or analyses on alternatives relevant to New River commuter rail crossings. This task includes the

identification of any potential cost-saving opportunities that may or may not have been included in the past studies, along with identifying cost increases that may be necessary to add due to changes in the market for materials, design considerations, and services that may have occurred after the completion of the past studies.

Deliverable: Technical Memorandum

Task 2 - RAIL OPERATOR ENGAGEMENT. Outreach to Local Rail Operators (Florida East Coast Railway and Brightline). The Consultant will engage with local rail operators to identify and understand potential implementation challenges of the four New River Crossing alternatives. The Consultant will focus on impacts to the operator, their operation, and the potential remedies, timelines, and associated cost(s) of such impacts. Engagement efforts will include collecting input on preferred option(s) from rail operators. If a specific operator does not support any of the four (4) proposed options being studied, detailed information on why they do not endorse any option, along with their suggested alternative solution, will be provided for City, County, and consideration.

Deliverable: Technical Memorandum

Task 3 - CAPITAL COSTS. Define an updated range of capital costs for all New River Crossing alternatives (Tunnel and Bridges) per the preliminary conceptual designs prepared for each of the four alternatives in previous studies. Cost estimates will be developed to a Class 4 (minimum) level of accuracy, per the AACE International Cost Estimate Classification System (1% to 15% Level of Project Definition, expected accuracy range of L: -15% to -30%, H: +20% to +50%) and will include projections of potential cost increases/inflation based on the anticipated, potential year of construction. Cost estimates will be comprehensive and include all phases of planning, NEPA, designing, permitting, constructing, etc., each design useable for project planning and grant application purposes, and include all costs necessary to implement the project, including various tunneling methodologies and their associated costs, signaling and train control systems, safety systems, foundation work, any required reconfiguration of tracks, stations, right of way acquisition, design work, project management, permitting, and contingencies per Federal Transit Administration requirements. Costs will be compared to a similar structure utilized for a freight and/or passenger rail project. The costs will be broken down by the standard cost categories (SCC's) used by FTA for Capital Investment Grants. If an alternative is anticipated to cause any temporary or longer-term interruption of present freight and/or passenger services on the current FEC corridor, the Consultant will provide an estimate of the duration of this interruption and provide suggestions for arrangements that may be made to minimize the duration and negative impacts.

Deliverable: Technical Memorandum

Task 4 - OPERATING AND MAINTENANCE. Define a range of Operating and Maintenance (O&M) costs for the New River crossing alternatives. The Consultant will identify necessary labor, materials, utilities, and other costs associated with Operating and Maintenance (O&M) for each alternative and provide a range of annual costs for a fifty-year period. Level of certainty should be similar to the capital costs defined in Task 2 (L: -15% to -30%, H: +20% to +50%). Reference to O&M costs for similar transit tunnels/bridges in other parts of the country will be included to the maximum extent possible. The Consultant will create a cost estimate table that identifies and compares the estimated O&M costs for all crossing alternatives. O&M costs will be compared to a similar structure utilized for a freight and/or passenger rail project.

Deliverable: Technical Memorandum

Task 5 - GRANT OPPORTUNITIES. Identify funding sources, including state and federal grants. Consultant shall identify sources of grant funding that would have a reasonable probability of making awards to proposals submitted for each alternative (tunnel, low, medium, and high bridge). The criteria used by each source must be explained and, to the extent that cost-effectiveness, cost/benefit ratios, or other criteria are used, the corresponding figures or scores for each alternative should be assessed to determine the likelihood of the project receiving a competitive score and/or grant approval. Consultant to identify the grant funding cycles, key time frames, and recommendations for internal progress and review, minimum grant application requirements, and other pertinent information to ensure timely application(s) submissions.

Deliverable: Technical Memorandum

Task 6 – NEPA SCHEDULE IMPACTS. Given the expectation that federal funds will be used to fund the BCR project and that National Environmental Protection Act (NEPA) requirements will apply, the Consultant should assess the likely environmental classification category that the federal lead agency (e.g., [FTA, joint lead FTA/FRA](#)) would apply to the crossing alternative, and provide a range of estimates describing how long it could take to complete the required environmental documentation process.

Deliverable: Technical Memorandum

Task 7 – FINAL REPORT, EXECUTIVE SUMMARY, AND PRESENTATIONS. The Consultant will make three presentations: 1) to the project team/key stakeholders, 2) to the City Commission, and 3) to the County Commission. The Consultant will prepare a draft final report, final report, executive summary, PowerPoint presentation, refined work plan, and an updated project schedule. Data, sources of reference, or background

information are to be included as appendices to the final report.

Deliverables: Seven (7) printed copies of the final report and two (2) flash drives containing PDF versions of the final report and PowerPoint presentation.

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