

INTERLOCAL COOPERATION AGREEMENT

BETWEEN

CITY OF LINCOLN, NEBRASKA

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

AND

NEBRASKA EMERGENCY MANAGEMENT AGENCY

Effective date _____, 2008

THIS INTERLOCAL COOPERATION AGREEMENT (this "Agreement") is entered into effective _____, 2008 by and between the CITY OF LINCOLN, NEBRASKA a municipal corporation and political subdivision of the State of Nebraska, (hereinafter referred to as the "City"); LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska (hereinafter referred to as the "NRD"), NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, an agency of the State of Nebraska (hereinafter referred to as the "DCS"), and NEBRASKA EMERGENCY MANAGEMENT AGENCY, an agency of the State of Nebraska (hereinafter referred to as "NEMA"); all parties executing this Agreement are public agencies within the meaning of *Neb. Rev. Stat.* § 13-803 . The parties are sometimes collectively referred to as the "Parties" and individually as "Each Party".

WITNESSETH:

RECITALS

A. Art. XV, § 18 of the Constitution of the State of Nebraska and *Neb. Rev. Stat.* § 13-801 through 13-827 (1997) authorize two (2) or more public agencies to enter into agreements with one another for joint or cooperative action in regard to the exercise or enjoyment jointly of any power or powers, privileges, or authority exercised or capable of exercise by such public.

B. The Parties wish to work together to undertake a public flood protection project (the "Project"), making the most efficient and effective use of their respective authorities and duties, by cooperating on the basis of mutual advantage and to enter into this Agreement with one another for joint and cooperative action for any duties, obligations, or responsibilities exercised or capable of being exercised individually by Each Party.

C. This Agreement is prepared and entered into in conformance with the direction established by the Nebraska Legislature in LB 320 (2007) which, among other things, provides for funding and authority to implement the Project .

D. City, NRD, and DCS have previously participated in a study for the reduction of flood threat from Beal Slough to public and private properties east and west of South 14th Street, including facilities owned and managed by the DCS. This study is the basis for the Project which is the subject of this Agreement.

E. NRD has received a Federal Emergency Management Agency (FEMA) grant and is in the process of developing an all-hazards, multi-jurisdictional mitigation plan that will include the City. The Plan must be approved by FEMA and adopted by the City to be eligible for Hazard Mitigation Grant Program funding. No work may start on the eligible Project components prior to award of a Mitigation Grant Program grant.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, IT IS AGREED BY AND BETWEEN THE PARTIES HERETO, as follows:

SECTION 1 PARTIES AND DEFINITIONS

1.01 **Parties.** The Parties to this Agreement are public agencies within the meaning of *Neb. Rev. Stat.* § 13-803.

1.01.1 Each Party understands and agrees that it is a public agency within the meaning of *Neb. Rev. Stat.* § 13-803. Each Party consents to the participation in this Agreement by the other Parties. Each Party agrees and acknowledges that this Agreement shall become binding upon each Party upon execution of this Agreement by all Parties.

1.01.2 It is understood and agreed that each Party may execute this Agreement in counterparts and that each Party will be bound upon execution thereof to the same extent as if all Parties had joined in the execution of this Agreement on a single signature page.

1.02 **Definitions:** The following definitions shall have the prescribed meaning for the purpose of this Agreement:

102.1 **"The Project"** means a public project for purposes of reducing the flood threat from Beal Slough upstream and downstream of South 14th Street in the City of Lincoln. The major components of the Project include modifications to the channel of Beal Slough, removal of a railroad bridge over the channel, the possible replacement of the South 14th Street bridge, construction of stream bed stability structures and a low water vehicular crossing of the channel, and flood protection for the DCS central utility plant.

SECTION 2 AUTHORITY

2.01 Each Party has executed this Agreement pursuant to the authority under the Interlocal Cooperation Act as provided in *Neb. Rev. Stat.* § 13-801 through 13-827.

2.02 The City has the power and authority pursuant to *Neb. Rev. Stat.* §15-224 to establish, alter and change the channel of watercourses.

2.03 The NRD has the power and authority to develop and execute plans, facilities, works and programs relating to, among others, erosion prevention and control, prevention of damages from flood water and sediment, and drainage improvement and channel rectification, pursuant to *Neb. Rev. Stat.* § 2-2329 (1), (2), and (9).

2.04 The DCS has the power and authority to maintain and administer facilities required for the custody, control, correctional treatment, and rehabilitation of persons committed to the department,, pursuant to *Neb. Rev. Stat. § 83-171 (1)*.

2.05 NEMA has the power and authority to reduce the vulnerabilities of citizens and communities from damage, injury, and loss of life and property resulting from natural, technical, or man-made disasters and emergencies; authorize and provide for cooperation and coordination of activities related to mitigation of, prevention of, preparedness for, response to, and recovery from disaster; and to provide for the funding of activities incidental to carrying out the purposes of the Project, pursuant to *Neb. Rev. Stat. § 81-829.37*.

SECTION 3 DURATION

3.01 Subject to partial or complete termination of this Agreement as hereinafter provided in Section 5.03, the duration of this Agreement within the meaning of *Neb. Rev. Stat. § 13-804(3)(a) (1997)* shall be for 10 years, unless mutually extended by written agreement of all Parties.

3.02 The FEMA Hazard Mitigation Grant Program funds award is valid for a three-year period from the date of approval of the Project. If the Project cannot be completed within the three-year period, a time extension may be requested of the FEMA Regional Director.

3.03 For Part 2 the design is intended to be completed in 2009 with the construction in 2010 to facilitate City and State expenditure timelines.

SECTION 4 PROJECT

4.01.1 The Project includes two Parts, with Part 1 identified as flood protection for the DCS Central Utility Plant and Part 2 identified as improvements to the Beal Slough channel, bridge removals and reconstructions, low water crossings, and channel stability measures.

4.01.2 The scope of this Agreement shall include, but not be limited to: the final design, plans and specifications for Parts 1 and 2; construction of Parts 1 and 2; preparation of a Conditional Letter of Map Revision (CLOMR); submittal to FEMA; and preparation and filing of Letter of Map Revision (LOMR) upon Project completion. The costs for preparation and filing of the CLOMR and LOMR will be in addition to the Project costs, will be paid by the City and/or NRD, and will not be eligible for matching FEMA funds.

4.01.3 The estimated costs and funding arrangements for the Project are as follows:

4.01.3.1 The estimated total cost for Part 1 is \$900,000, with funding from the State of \$225,000 (25%) and Federal funding of \$675,000 (75%), available in FY 2007-2008;

4.01.3.2 The estimated total cost for Part 2 is \$7,322,930, with funding from the State of \$610,000 (8.3%), Federal funding of \$5,490,000 (75%), City funding of \$611,465 (8.35%), and NRD funding of \$611,465 (8.35%), available in FY 2008-2009 (percentages are approximate);

4.01.3.3 Any cost savings in the total cost of Part 1 of the Project will be shared proportionately by the State and Federal Parties. Any cost overruns on either Part 1 or 2 of the Project will be subject to approval and negotiation by all Parties in advance of the spending, subject to approval by FEMA. Any cost savings in the total cost of Part 2 of the project will be shared proportionately by the local, State and Federal Parties;

4.01.3.4 Each Party understands and acknowledges that other Parties may have certain limitations on budgeting, appropriation, and spending of funds and Each Party agrees to use its best efforts to contribute its fair share of the funds, assets and administrative services as in carrying out the Agreement; and

4.01.3.5 For Part 2, City funding totaling \$1,220,000 is currently available with the approved 2007 stormwater bond for the City and NRD shares, pursuant to 4.01.7. The NRD intends to fund the NRD share of \$611,456 out of their FY 2008-09 and FY2009-10 budgets. For Parts 1 and 2, State funding is available in FY 2008 and 2009 as provided in LB 320; for Parts 1 and 2, Federal funding is designated by the Legislature in FY 2008 and 2009 if FEMA deems the Project as eligible and approves funding under the Hazard Mitigation Grants Program applied for by the Parties as a Mitigation Grant(s).

4.01.4 NRD, in cooperation with other Parties, will develop an all-hazards, multi-jurisdictional Hazard Mitigation Plan and City shall be expected to adopt the Plan by Resolution. DCS shall prepare and submit applications for FEMA Hazard Grants for Part 1, and City shall prepare and submit applications for FEMA Hazard Grants for Part 2, with review and comment on all applications by all Parties. The Federal funds for both Part 1 and 2 shall be FEMA Hazard Mitigation Grant Program funds. Eligible work on said Project may not be started prior to Grant Program funds award by FEMA.

4.01.5 NEMA, will administer the State and Federal funds for the Part 1 Project and DCS will be the lead project manager for design, plans and specifications,

and construction. The related project costs shall be \$225,000 (25%) State and \$675,000 (75%) Federal. NRD and City will assist in design review and permitting.

4.01.6 NRD, in consultation with City, NEMA, and DCS, will administer the NRD, City, State and Federal funds for the Part 2 Project and will be the lead project manager for design, plans and specifications, and construction. The related project costs shall be \$5,490,000 (75%) Federal, \$610,000 (8.3%) State, \$611,465 (8.35%) City, and \$611,465 (8.35%) NRD (percentages are approximate).

4.01.7 NEMA shall reimburse NRD on a quarterly basis in a proportion of 75% Federal and 25% State, upon certification of costs incurred by the NRD, beginning as soon as administratively possible on or after October 1, 2008, provided however, that no State or Federal funds for Part 2 shall be expended or reimbursed until this Interlocal Agreement is effective and ~~until~~ the NRD and City have available funding totaling \$1,220,000.00. City shall reimburse NRD on a quarterly basis according to its proportionate share, upon certification of costs by NRD.

4.01.8 DCS shall provide the NRD a perpetual easement over the area needed for the construction and operation and maintenance of Part 2 on State property and temporary construction and access for the project.

4.01.9 DCS shall be responsible for operation, maintenance, inspection, and replacement if necessary, of Part 1; NRD shall be responsible for operation, maintenance, inspection and replacement if necessary of Part 2.

4.01.10 Each Party shall designate a person to serve as its representative for coordinating the Project. All Parties shall have joint approval of the design and plans for the Project.

4.01.11 DCS may install landscaping in addition to any landscaping included in the Project at DCS sole cost and expense, provided that DCS must first obtain approval of NRD, which will not be unreasonable withheld.

SECTION 5 MISCELLANEOUS PROVISIONS

5.01 Each Party shall comply with the terms and conditions of this Agreement in good faith, and the other Parties may rely upon such good faith compliance.

5.02 No Party may assign its contractual rights under this Agreement, except to a successor public agency.

5.03 This Agreement may be terminated by any of the Parties in whole or in part upon appropriate action by ordinance, resolution or otherwise pursuant to the law of the governing body of Each Party. Upon partial termination, appropriate financial adjustments shall be made by amendment to this Agreement. Upon complete termination, a financial accounting shall be made along with a proportionate reconciliation of all outstanding costs and reimbursements.

5.04 This Agreement may be amended at any time in writing duly signed by Each Party upon appropriate action by ordinance, resolution or otherwise pursuant to the law of the governing body of Each Party so that any such amendment to this Agreement may become enforceable consistent with the provisions of *Neb. Rev. Stat. § 13-804(2)*.

5.05 This Agreement contains the entire agreement of the Parties. All prior and contemporaneous negotiations, discussions, and other writings are merged and incorporated herein, it being the intention of the Parties that this Agreement is a final and full expression of their agreement. No representations were made or relied upon by any Party other than those expressly set forth herein.

5.06 This Agreement shall be governed by the laws of the State of Nebraska.

5.07 If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be invalid, unenforceable, or otherwise inoperative, the remaining sections shall continue in full force and effect as if agreed to without the inoperative provisions.

5.08 In carrying out the terms and conditions of this Agreement the Parties shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or martial status pursuant to the requirements of applicable law. The Parties shall maintain Fair Labor Standards in the performance of this Agreement as required by applicable law.

IN WITNESS WHEREOF, the Parties have signed and executed this Agreement effective on the date agreed to above.

THE CITY OF LINCOLN, NEBRASKA

By: _____

Title: _____

Signed: _____, 2008

NEBRASKA DEPARTMENT OF
CORRECTIONAL SERVICES

By:  _____

Title: Robert P. Houston, Director

Signed: March 28, 2008

DCS Contract #0801B

NEBRASKA EMERGENCY MANAGEMENT
AGENCY

By: 

Title: Assistant Director
for BG Timothy Kadavy, The Adjutant General

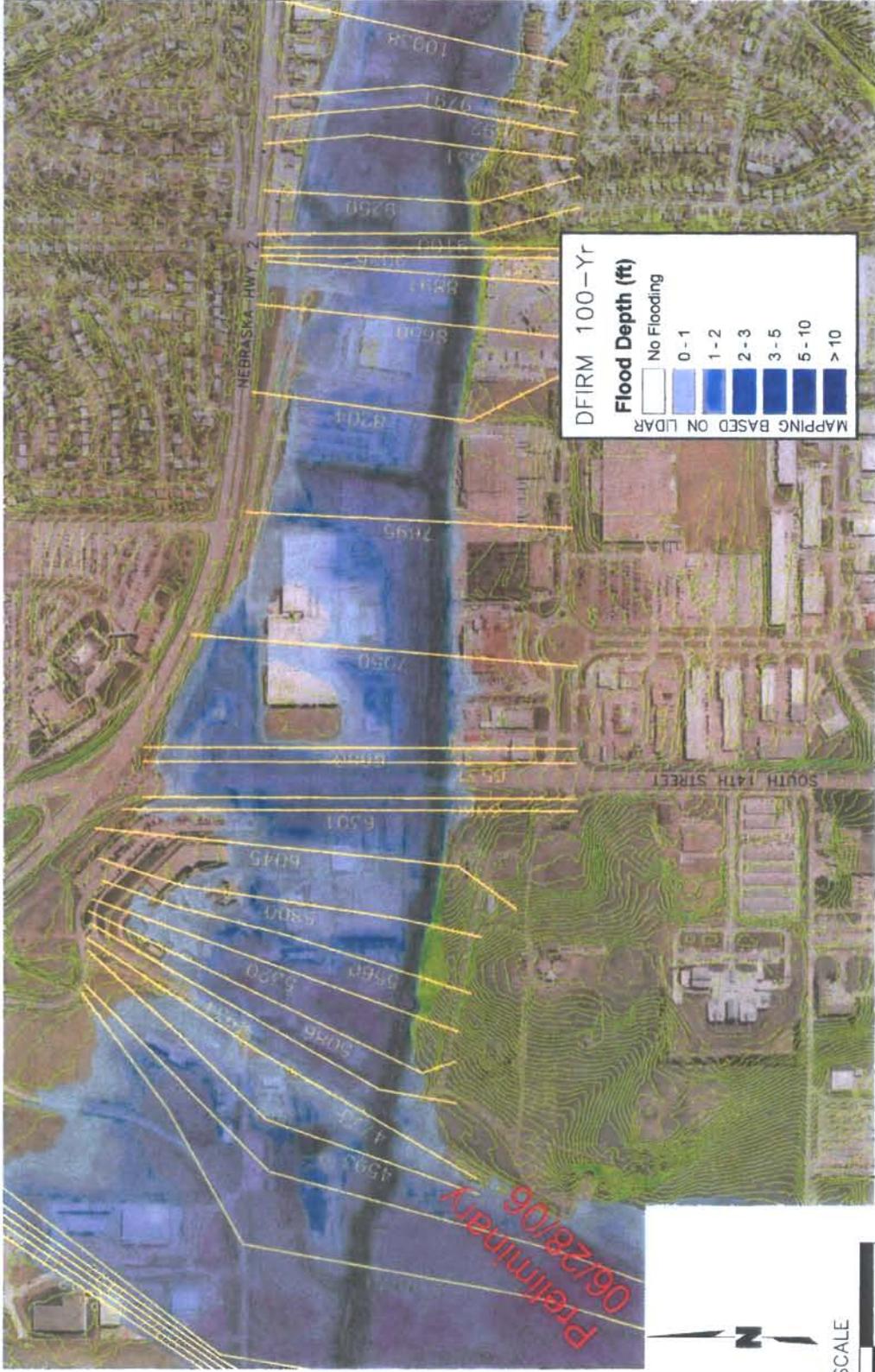
Signed: , 2008

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT

By: 

Title: General Manager

Signed: March 24, 2008



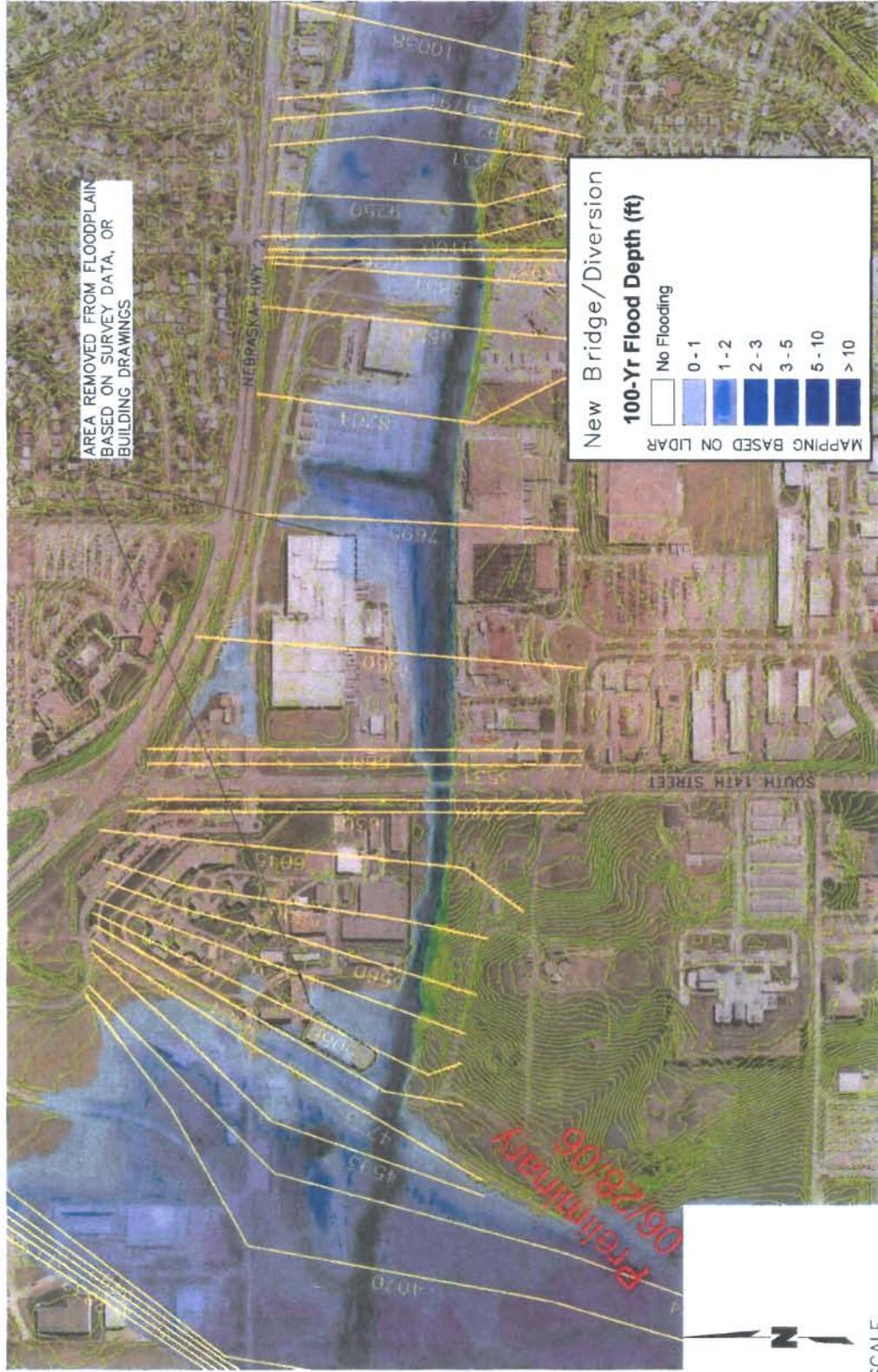
PROJECT: 2-2006-0048
 DRAWN BY: SJP
 DATE: 7/26/06

EXISTING FLOODPLAIN BASED ON DFIRM HEC-RAS MODEL
 PRELIMINARY FLOOD REDUCTION STUDY BEAL SLOUGH - PIONEERS BOULEVARD TO SOUTHWOOD DRIVE

MOLLSSON
 ASSOCIATES

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 TEL: 402.474.8311
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FIGURE 4



AREA REMOVED FROM FLOODPLAIN
BASED ON SURVEY DATA, OR
BUILDING DRAWINGS

New Bridge/Diversion

100-Yr Flood Depth (ft)

No Flooding
0 - 1
1 - 2
2 - 3
3 - 5
5 - 10
> 10

MAPPING BASED ON LIDAR



PROJECT: 2-2006-0048
DRAWN BY: SJP
DATE: 7/26/06

**ALTERNATIVES 1&2 – PROPOSED FLOODPLAIN FOR BRIDGE
REPLACEMENT/DIVERSION CHANNEL**
PRELIMINARY FLOOD REDUCTION STUDY BEAL SLOUGH – PIONEERS BOULEVARD TO SOUTHWOOD DRIVE



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