#### **RESOLUTION NO. 2006 - 093**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, APPROVING A SOLE SOURCE PROVIDER AGREEMENT WITH ARCHAEOLOGICAL AND HISTORICAL CONVERVANCY, INC. TO PROVIDE ARCHAEOLOGICAL AND HISTORICAL CONSULTING SERVICES TO THE TOWN IN AN AMOUNT NOT TO EXCEED \$13,000 PER YEAR; AUTHORIZING THE MAYOR, THE TOWN ADMINISTRATOR, AND THE TOWN ATTORNEY TO EXECUTE AN AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS,** on May 24, 2006, Archaeological and Historical Conservancy, Inc. (Bob Carr) submitted a proposal to provide Archaeological and Historical Consulting Services to the Town; and

**WHEREAS,** since Bob Carr's services have previously been utilized by the Town and in order to maintain historical consultant continuity, a sole source procurement is necessary to provide archaeological and historical consulting services; and

**WHEREAS,** the Town is desirous of entering into this sole source provider agreement with Archaeological and Historical Conservancy, Inc.; and

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida as follows:

**Section 1.** The above referenced recitals are true and correct and are incorporated herein by reference.

**Section 2.** The Town Council, hereby agrees to enter into a sole source agreement with Archaeological and Historical Conservancy, Inc., for Archaeological and Historical Consulting Services for an amount not to exceed ten thousand dollars (\$10,000) for consultant services and an amount not to exceed three thousand dollars (\$3,000) for reimbursable expenses.

**Section 3.** The Town Council authorizes the Mayor, the Town Administrator, and the Town Attorney to enter into an agreement in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions, or deletions which they deem necessary and proper to effectuate the intent of this Resolution.

Section 4. This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 7<sup>th</sup> day of September 2006, on a motion by Council member Aster Knight and seconded by Council member Jeff Nelson.

Fink	Y
Maines	Y
Blanton	Y
Knight	Y
Nelson	Y

Ayes	5
Nays	0
Absent	0
Abstaining	0

int

Mecca Fink, Mayor

ATTEST:

. Susan (1. Susan A. Owens, Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D., Town Attorney FTL\_DB: 1004197\_1



# AGREEMENT BETWEEN THE

# TOWN OF SOUTHWEST RANCHES

# AND

# ARCHAEOLOGICAL AND HISTORICAL CONSERVANCY, INC.

# FOR

ARCHAEOLOGICAL AND HISTORICAL CONSULTING SERVICES

# ARCHAEOLOGICAL AND HISTORICAL CONSULTING SERVICES

**THIS IS AN AGREEMENT** made and entered into by and between the Town of Southwest Ranches, a municipal corporation of the State of Florida, hereinafter referred to as "Town" and Archaeological and Historical Conservancy, Inc., hereinafter referred to as "Consultant."

**WHEREAS,** on May 24, 2006, Consultant submitted a proposal to provide Archaeological and Historical Consulting Services to the Town; and

**WHEREAS,** since Consultant's services have previously been utilized by the Town, in order to maintain continuity, the Town Council has determined that it is in the best interest of the Town to sole source Consultant's services; and

**WHEREAS,** on September 7, 2006, the Town Council adopted Resolution No. 2006-093 authorizing the Mayor, Town Administrator, and Town Attorney to enter into this Agreement;

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual terms and conditions herein, the Town and Consultant hereby agree as follows:

#### Section 1: Scope of Services

Consultant agrees to provide archaeological and historical consulting services to the Town as specifically delineated in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as "Scope of Services", "Services" or "Work").

## Section 2: <u>Compensation</u>

- 2.1 Compensation is to be based upon an hourly rate as specified in Exhibit "B" up to a maximum amount of ten thousand dollars (\$10,000) per year. Any work performed in excess of the ten thousand dollar per year limitation shall be performed at the sole cost and expense of Consultant.
- 2.2 Reimbursable Expenses: The Town agrees that the cost of miscellaneous supplies associated with this Agreement, may be reimbursable up to a maximum amount of three thousand dollars (\$3,000) per year. All reimbursable expenses must be approved in

writing by the Town Administrator before said reimbursable expense has been incurred. Phones, postage, and photocopies shall be deemed a reimbursable expense. If available, Consultant may utilize the Town's computer and office equipment.

2.3 Consultant shall attend all Council Meetings, Board Meetings, Committee Meetings, when requested, and shall make itself available to work with the Town of Southwest Ranches Historical Society, at no additional compensation.

#### Section 3: <u>Term</u>

Town and Consultant agree that the Term of this Agreement shall commence upon the execution of this Agreement by both parties and shall continue for a period of one year, unless terminated earlier pursuant to Section 5 hereof. Based upon the mutual agreement of both parties, the Term of this Agreement may be extended or renewed, under the same terms and conditions contained herein. Any renewal by the Town must be approved by the Town Council.

## Section 4: Park Museum/Research Facility

- 4.1 Consultant agrees to work with the Town to obtain grant funding to develop a park museum/research facility, at no additional cost to the Town.
- 4.2 In the event grant funds become available, the Town shall consider entering into a lease with Consultant to utilize this facility as an office, research area, and historical artifact collection area, under the general terms and conditions specified in Exhibit "C".
- 4.3 Consultant agrees that in the event the Town elects to enter into a lease with Consultant, that the lease terms shall also provide Consultant's services as delineated in Exhibit "C".

#### Section 5: <u>Termination</u>

Either party may terminate this Agreement with or without cause by written notice, sent by U.S. Certified Mail, Return Receipt Requested, to the other party at the address set forth in Section 7 hereof, effective fifteen (15) days after the delivery of said notice. In the event of termination, Consultant shall solely be paid for any work performed up to the date of termination and Consultant shall not be entitled to any additional compensation, of any kind or in any amount, from Town as a result of being terminated. Consultant specifically waives any and all rights to seek any additional sums or damages from Town due to being

terminated other than Consultant's sole right to be paid for any work performed up to the date this Agreement is terminated. Upon termination, Consultant shall immediately refrain from performing further Work for the Town or incurring additional expenses.

## Section 6: Indemnification, Liability & Insurance

- To the fullest extent permitted by law Consultant shall indemnify, 6.1 and hold harmless the Town, the Town's officers, agents, and employees from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees and costs at all tribunal levels, including but not limited to, the trial level and all appeals, to the extent caused by the malfeasance, negligence, recklessness, or wrongful misconduct of Consultant and persons employed or utilized by Consultant in the performance of the Work pursuant to this agreement. Town and Consultant agree that 1% of the compensation due to Consultant from Town pursuant to this Agreement is offered and accepted as sufficient separate consideration for Consultant's agreement to indemnify Town and Town's officers and employees as provided for in this paragraph. This specific consideration for Consultant's agreement to indemnify is already incorporated in the rate agreed to between Town and Consultant. Consultant agrees to be fully responsible for acts and omissions of their respective agents or employees. Nothing herein is intended to serve as a waiver of sovereign immunity by the Town to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter, whether arising out of this Agreement or any other contract.
- 6.2 Comprehensive General Liability Insurance: Consultant to provide comprehensive general liability insurance with minimum limit of coverage of One Million (\$1,000,000) Dollars per occurrence. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include coverage for:
  - (a) Premises and/or Operations;
  - (b) Independent Contractors;
  - (c) Broad Form Property;

- (d) Contractual;
- (e) Personal injury; and
- (f) Products/Completed.
- 6.3 Automobile Liability Insurance, Consultant to provide automobile liability insurance to cover any auto with a limit of coverage of at least three hundred thousand (\$300,000) dollars per occurrence.
- 6.4 Consultant shall provide to Town a certificate of Insurance and a copy of required insurance policies as required by this Section.

### Section 7: Notices

All written correspondences shall be addressed as follows, unless a party otherwise gives notice to the other party of such other address:

If to Town:

John Canada, Town Administrator 6589 S. W. 160 Avenue Southwest Ranches, Fl. 33331

With a copy to:

Keith Poliakoff, Esq. 3111 Stirling Road Fort Lauderdale, FL 33312

If to Consultant:

Robert S. Carr, President 4800 S. W. 64 Avenue, Suite 107 Davie, FL. 33314

#### Section 8: <u>Relationship</u>

8.1 The consultant shall perform all of the services enumerated in this Agreement solely as an independent contractor, and not as an employee of the Town. The Consultant, as directed by the Town Administrator, shall be responsible for directing its efforts as to the manner and means of accomplishing the work to be performed hereunder by Consultant, pursuant to good and workmanlike practices. The priority, order, performance of services or safety practices shall not affect Consultant's status as an independent

contractor and shall not relieve Consultant of the obligations assumed under this Agreement.

8.2 Neither Consultant nor Town 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 claim against either of them based upon this Agreement.

#### Section 9: <u>Subcontracting</u>

All substantive work to be performed pursuant to the terms of this Agreement shall be performed by Consultant. No work shall be subcontracted to other parties or firms by Consultant without the prior written consent of the Town Council.

#### Section 10: <u>Ownership Rights</u>

All work performed and materials created under this Agreement shall be considered work product and shall be the exclusive intellectual property of the Town.

#### Section 11: Audit Right & Retention of Records

Town shall have the right to audit the books, records, computer records, electronic stored data, and accounts of Consultant that are related to this Agreement. Consultant shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. Consultant shall preserve and make available, at reasonable times for examination and audit by Town, all financial records, supporting documents, statistical records and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes) if applicable, or, if the Florida Public Records Act is not applicable, of a minimum period of five (5) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period of five (5) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by Town to be applicable to Consultant's records, Consultant shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirements of either federal or state law shall be violated by Consultant. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for Town's disallowance and recovery of any payment upon such entry.



#### Section 12: Nondiscrimination

- 12.1 Consultant shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Consultant shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Consultant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.
- 12.2 Consultant's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin.
- 12.3 Public Entity Crime Act. Consultant represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Town, may not submit a bid on a contract with Town for the construction or repair of a public building or public work, may not submit bids on leases of real property to Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Town, and may not transact any business with Town in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from Town's competitive procurement activities. In addition to the foregoing, Consultant further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity" crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Consultant has been placed on the convicted vendor list.

#### Section 13: Entire Agreement

This Agreement incorporates and includes all prior negotiations and understandings applicable to the matters contained herein. The parties agree that this Agreement constitutes the entire understanding and Agreement between the parties and supersedes previous agreements and representations whether written or oral.

#### Section 14: Construction

This Agreement has been a joint effort of the parties, and the resulting documents, solely as a matter of judicial construction, shall not be construed more severely against one of the parties than the other.

#### Section 15: Further Assurances

Town and Consultant agree to execute, acknowledge, and deliver, and cause to be done, executed, acknowledged, and delivered, all such further documents and perform such acts as shall be requested of it to carry out this Agreement and give effect hereto solely consistent with applicable Federal, State and local laws, rules or regulations. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

#### Section 16: Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute the same Agreement.

#### Section 17: No Amendment or Waiver

This Agreement may not be changed, altered or modified except by an instrument in writing signed by all parties hereto, with the same formality and of equal dignity as the execution of this Agreement, prior to the initiation of any Work reflecting such change.

#### Section 18: Severability

In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed to be in full force and effect. In case any one or more of the provisions of this Agreement shall be determined by appropriate judicial authority to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions of this Agreement shall be in no way affected, prejudiced, or disturbed thereby.

### Section 19: Professional Assurances

Consultant shall perform all services under this Agreement in accordance with the highest standard of care used by similar professional code enforcement officers in Broward County, Florida, under similar circumstances and shall exercise a reasonable degree of skill and care, as determined by the degree of skill and care ordinarily employed by others of the same profession.

### Section 20: <u>Resolution of Disputes</u>

- 20.1 To prevent litigation, it is agreed by the parties hereto that the Town Administrator shall decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Agreement and fulfillment of this Agreement as to the character, quality, amount and value of any work done and materials furnished, or proposed, to be done or furnished under or, by reason of, the Agreement. The Town Administrator's decision shall be reduced to writing and a copy furnished to Consultant within a reasonable time following submission to the Town of the question, claim, difficulty or dispute as referenced above. The Town Administrator's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.
- To further prevent litigation, the parties shall endeavor to resolve any and 20.2 all claims arising from this Contract by mediation. A request for mediation shall be filed, in writing, with the other party to the Contract. To the extent litigation is permitted under this Contract, the request shall be made prior to the filing of a legal or equitable proceeding, which shall not be filed prior to the outcome of mediation which will be completed within sixty (60) consecutive calendar days from the date a request for mediation is submitted to the other party unless the parties agree to an extension. The statute of limitations of any claim shall be tolled from the date mediation is requested until completed. To the extent the parties cannot mutually select a mediator, within fifteen (15) consecutive calendar days, from the date a request for mediation has been submitted, either party can request the American Arbitration Association to appoint a mediator with experience to serve as mediator. The mediator selected to serve shall be certified by the Florida Supreme Court. The mediation shall be conducted in Broward County, Florida.

# Section 21: Applicable Law & 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. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the exclusive jurisdiction and venue of an appropriate Court of competent jurisdiction in the Seventeenth Judicial Circuit of Broward County, Florida.

# BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND TOWN HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

# Section 22: Enforcement; Attorney's Fees

The Town and Consultant are the beneficiaries of this Agreement and as such, may enforce this Agreement by action at law or in equity. In the event of any litigation between the Town and Consultant resulting from and/or arising out of this Agreement, it is hereby acknowledged and agreed that the prevailing party shall be entitled to recover any and all reasonable attorney's fees and costs from the non-prevailing party in any such litigation, including attorneys fees and costs incurred at the trial level and on appeal.

# Section 23: <u>Representation of Authority</u>

The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

#### Section 24: Survivability

Section 6 of this Agreement entitled "Indemnification, Liability and Insurance"; Section 10 of this Agreement entitled "Ownership Rights"; Section 11 of this Agreement entitled "Audit Right & Retention of Records"; Section 15 of this Agreement entitled "Further Assurances"; Section 20 of this Agreement entitled "Resolution of Disputes"; Section 21 of this Agreement entitled "Applicable Law & Venue; Waiver of Jury Trial"; and Section 22 of this Agreement entitled "Enforcement; Attorney's Fees", shall survive the termination, cancellation, or expiration of this Agreement for any reason whatsoever.

### Section 25: <u>Compliance With laws</u>

Consultant shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### Section 26: Miscellaneous

- 26.1 Performance: Consultant represents that all persons performing the services required under this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth herein in a skillful and respectable manner.
- 26.2 Materiality and Waiver of Breach: Consultant and Town agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

Either 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.

26.3 Conflicts: Neither party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with that party's loyal and conscientious exercise of judgment related to its performance under this Agreement.

The parties agree that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against the other in any legal or administrative proceeding related to performance under this Agreement in which he or she is not a party, unless compelled by court process. Further, the parties agree that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of the other party or in connection with any such pending or threatened legal or administrative proceeding related to the performance under this Agreement. The limitations of this section shall not preclude either party or any other persons from representing themselves in any action or in any

administrative or legal proceeding related to the performance under this Agreement.

In the event Consultant is permitted to utilize subcontractors to perform any services required by this Agreement, Consultant agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

- 26.4 Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Town shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- 26.5 Severance. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Town or Consultant elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- 26.6 Drug-Free Workplace. Consultant shall maintain a drug-free workplace.
- 26.7 Multiple Originals. This Agreement may be fully executed in three (3) copies by all parties each of which, bearing original signatures, shall have the force and effect of an original document.
- 26.8 Headings. Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.
- 26.9 Truth-in-Negotiation Certificate. Signature of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting.

**IN WITNESS WHEREOF,** the parties have made and executed this Agreement on the respective dates under each signature: CONSULTANT, signing thru its President, Bob Carr, and Town, signing by and through its Mayor, duly authorized to execute same by Council action on the 7<sup>th</sup> day of September, 2006.

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## ARCHAEOLOGICAL AND HISTORICAL CONSERVANCY, INC.

By: \_\_\_

Robert S. Carr, President

\_\_\_\_\_ day of October, 2006

WITNESSES:

# **TOWN OF SOUTHWEST RANCHES**

By: \_\_

Mecca Fink, Mayor

\_\_\_\_ day of October, 2006

Ву: \_\_

John Canada, Town Administrator

ATTEST:

Susan A. Owens, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Gary A. Poliakoff, J.D, Town Attorney FTL\_DB: 1007416\_1

# Exhibit "A" Scope of Services

The Scope of Services includes but is not limited to the following specific activities:

## **Historic Preservation**

Consultation for historic management plans Consultation for Town grant applications Consultation for Town grant planning

### **Archaeological Testing**

Necessary testing on Town directed sites

# **Archaeological Monitoring**

Monitoring as necessary for site clearing Monitoring as necessary for exotic plant removal at designated sites Monitoring as necessary for historical artifacts

# Historic Architectural Assessment

Assessment of site forms Assessment and review of historic structural plans Assessment and review of site photo documentation

### Other Archaeological and Historical Services

Provide necessary services deemed to be in the best interest of the of the Town archaeological and historical efforts



# Exhibit "B" Hourly Rates

Principal, Robert Carr	\$100 per hour
Archaeological Technician for Testing	\$40 per hour
Archaeological Technician for Monitoring	\$35 per hour
Architectural Historian (Tim Harrington)	\$80 per hour

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# Exhibit "C" Park Museum/Research Facility

Both parties shall endeavor to obtain grant funding to establish a 1,600 square feet structure that will provide for an office, research area and historical artifact collection area.

Town shall consider:

- 1) Ten (10) year lease
- 2) Electricity to be paid by Town
- 3) Building maintenance and repairs paid by Town

Consultant shall consider: (at no cost)

- 1) Provide public access to all aspects of the facility
- 2) Provide historical and archaeological tours of parks
- 3) Provide opportunities to dig on the constructed Indian mounds throughout the year under the guidance of professional archaeologists
- 4) Encourage volunteer and student participation at Town parks
- 5) Provide yearly reports on the status of the Town's historic and archaeological resources
- 6) Provide management plans and guidelines for the proposed interpretive park and "Space Needs Study" area for the facility

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