

AGREEMENT FOR PETROLEUM AND GEOTHERMAL PROPERTY SALES STUDY

THIS Agreement is made effective November 1, 2012, by, between and among the CALIFORNIA ASSESSORS' ASSOCIATION, a non-profit corporation ("Assessors' Association), HAROLD W. BERTHOLF, INC., a California professional corporation ("Contractor"), and the Assessors of the Counties of Contra Costa, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Los Angeles, Madera, Mono, Monterey, Orange, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Ventura and Yolo, all elected officers of political subdivisions of the State of California (the "Assessors" or "Participating Assessors").

WHEREAS:

- (a) Under the provisions of Revenue and Taxation Code Sections 441-454 and 480-484, a County Assessor has authority to gather confidential information from property owners necessary and relevant to the determination of the fair market value of property for purposes of property taxation within that Assessor's County; and
- (b) Under the provisions of Revenue and Taxation Code Section 408(b), upon request, a County Assessor may disclose confidential appraisal data received from taxpayers to other Assessors if they deem such information relevant and necessary for the accurate appraisal of property; and
- (c) The participating Assessors in Counties containing oil, gas and geothermal energy-producing properties regularly exchange relevant valuation information on an individual basis and are in need of a means to gather, coordinate and analyze sales and property information data from oil, gas and geothermal energy-producing property sales throughout California. This is necessary to provide individual Assessors an appropriate data base of sales and an analysis of the income projections, cost projections, capital improvement projections and discount rates used in such

sales to assist in the determination of the fair market value of such properties in their respective Counties while maintaining the confidentiality of taxpayer property and business information as required by Revenue and Taxation Code Sections 408, 451 and 481; and

- (d) The Assessors' Association is composed of all California County Assessors and is willing to serve as the coordinator of the collective efforts of the Participating Assessors to gather and analyze relevant property valuation information and to coordinate the exchange of the gathered analyzed information among the Participating Assessors while maintaining the confidentiality required by Revenue and Taxation Code Sections 408, 451, 480 and 674; and
- (e) Contractor is willing to use its ability and expertise to help the Participating Assessors gather relevant sales information concerning oil, gas and geothermal energy-producing properties and to provide analysis of such transactions. This information is useful to the Assessors in performing fair market value appraisals of oil, gas and geothermal energy-producing properties within their respective Counties. Contractor has outlined a plan of action to gather and analyze relevant sales for the Assessors, under the coordinating auspices of the Assessors' Association, and to deliver the results of the sales analysis to the individual Participating Assessors, while maintaining full confidentiality of the taxpayers' information as required by law; and
- (f) The Assessors of Contra Costa, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Los Angeles, Madera, Mono, Monterey, Orange, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Ventura, and Yolo Counties are members of the Assessors' Association and have agreed to enter into this Agreement with the Assessors' Association and Contractor. They have done so to gather and analyze relevant oil, gas and geothermal energy-producing property sales within each of their respective

Counties, to share the information and analysis among themselves for purposes of property tax appraisals, to maintain necessary taxpayer confidentiality as required by Revenue and Taxation Code Sections 408, 451 and 481, and to share, on a proportionate basis as set forth herein below, the costs of the individual Assessors and Contractor gathering this information from each participating County and the analysis of this information by Contractor.

NOW THEREFORE, in consideration of the mutual promises of performance set forth, the parties agree as follows:

1. TERM: The term of this Agreement is from November 1, 2012, through and including October 31, 2014.

2. CONTRACTOR'S SERVICES: As more fully set forth below, Contractor's services shall include, but are not limited to, the following: (a) Contractor shall assist the Participating Assessors in gathering and compiling information concerning the fair market value of oil, gas and geothermal energy-producing properties as evidenced by the purchases and sales of such properties; (b) Contractor shall coordinate and perform an analysis of the sales information compiled; (c) Contractor shall prepare a report detailing the results of the sales study survey (the "Sales Survey Report"); and (d) Contractor shall distribute and explain the Sales Survey Report to Participating Assessors.

Contractor shall perform these duties as a consultant to each of the respective Participating Assessors and shall always maintain and preserve the confidentiality of the taxpayers' information reviewed for the Assessors as required by law and this Agreement. Contractor shall perform the specific duties set forth herein below and shall perform them in the following five (5) phases:

A. Phase I: Collection of Relevant Sales Data

Contractor shall review oil, gas and geothermal energy-producing property sales data and information presently in the possession of the Participating Assessors and assist those Assessors in gathering complete, accurate and timely operating and economic data, including sales price (or cash equivalency for stock exchanges, mergers or sales on other than cash terms), reserves information, product price projections, expense projections, inflation factors, capital development plans, enhanced recovery plans and discount rates used by the buyer and seller in determining the agreed upon sales price ("Economic Data"). Contractor will gather this information through the individual Assessors under the individual Assessor's statutory investigative and information production demand powers. Contractor is hereby authorized to request additional information and records from the taxpayer.

B. Phase II: Analysis and Calculation Based on Collected Sales Data

Contractor shall analyze and calculate the comparability of the sales information and Economic Data. The purpose of this analysis will be to accurately determine the relevant economic information from such sales and to find reliable factors of comparability that the Assessors may use in performing appraisals.

C. Phase III: Preparation of Written Sales Survey Report by Contractor

Contractor shall prepare for the Assessors a Sales Survey Report which shall be a detailed written and illustrated report of the sales survey findings.

D. Phase IV: Presentation of Sales Survey Report to Assessors

Contractor shall present the Sales Survey Report to the Assessors for review, comment and clarification.

E. Phase V: Meetings Between Contractor and Assessor's Staff

Contractor shall meet with Assessors' staff to help them utilize the Sales Survey Report findings in the appraisal of oil, gas and geothermal energy-producing property.

3. ACCEPTANCE OF EMPLOYMENT:

Contractor accepts this Agreement for special services and promises to render the services required herein to the best of its ability.

4. COMPENSATION OF CONTRACTOR:

In consideration for the services to be provided pursuant to this Agreement, the Assessors' Association will pay Contractor (on behalf of the Participating Assessors) a total contract compensation amount, including reimbursable costs, not to exceed NINETY-SEVEN THOUSAND TWENTY DOLLARS (\$97,020) per year.

The Assessors' Association will reimburse Contractor for the reasonable, actual costs incurred or advanced by Contractor in providing the services herein described, which include expenses for travel (including meals and lodging), printing, photocopies, long distance telephone calls and such other costs as are reasonably necessary for Contractor's duties and obligations hereunder. Reimbursable costs for meals, automobile travel and accommodations shall not exceed the rates established by Kern County.

The maximum amount payable is calculated to include two (2) trips by Contractor's staff as part of its obligation to explain the sales study and provide assistance. Any additional trips made by Contractor's staff at the request of the Assessors' Association will be considered an additional cost and will be billed separately and allocated to the various Counties in the same ratio used herein to allocate the total contract compensation amount. Reimbursement for travel expenses for travel undertaken at the request of individual Counties is the responsibility of the requesting County.

Contractor shall bill his services under this Agreement to the Assessors' Association, and, in turn, the Assessors' Association will provide copies of such billings to the Assessors. Billings shall be on an hourly basis according to the following rates:

<u>JOB TITLE</u>	<u>RATE</u>
Engineer	\$175.00 per hour
Clerical Assistant	\$66.00 per hour

5. PARTICIPATING ASSESSORS' SHARE OF COSTS:

Assessors' Association shall allocate the respective share of the annual costs of this Agreement to be paid among the participating Assessors' Counties as follows:

COUNTIES ANNUAL SHARE OF COST					
Contra Costa	\$990	Fresno	\$2,090	Glenn	\$990
Humboldt	\$990	Inyo	\$2,310	Kern	\$62,920
Kings	\$990	Los Angeles	\$7,810	Madera	\$1,210
Mono	\$990	Monterey	\$990	Orange	\$1,870
Sacramento	\$990	San Joaquin	\$990	San Luis Obispo	\$990
Santa Barbara	\$5,720	Ventura	\$3,190	Yolo	\$990
TOTAL					\$97,020

Each Assessor shall deposit his or her County's annual share of the total cost of this Agreement in a funding account to be established in the name of the Assessors' Association by November 30th of each year. Disbursements from this account shall be made only with the approval of James Fitch, Chairman of the Petroleum Standards Advisory Committee of the Assessors' Association or Vice-Chairman, Daniel Goodwin, in his absence. The Assessors' Association shall return any remaining principal and any accrued interest in the account upon completion of the services to be rendered under this Agreement, in excess of account fees, to the participating Counties in proportion to the amount each contributed. Any *de minimis* refund of net interest may be waived by an individual County in favor of the Assessors' Association.

6. STATEMENT OF SERVICES RENDERED:

Contractor shall provide monthly statements to Assessors' Association for services rendered during the term of this Agreement. Such statements shall set forth the time spent by Contractor, with a general statement of the work performed. Contractor shall submit statements for payment to the Assessors' Association, through Kern County Assessor, James Fitch. Assessor Fitch shall be responsible for administering this Agreement for the Assessors' Association and the Participating Assessors. Assessor Fitch will also be responsible for processing all payments due for services rendered. Assessor Fitch shall provide copies of all billings submitted by and all payments made to Contractor to the Participating Assessors. Payment of any unquestioned bill or item from a bill shall be made within thirty (30) days of receipt by Assessors' Association.

7. RECORDS:

Contractor shall keep accurate records of all time expended and expenses incurred in the performance of this Agreement for a period of four years from the date the record is created, and such records shall be subject to inspection and audit by Assessors' Association during reasonable business hours.

8. CONFIDENTIALITY:

Contractor shall maintain the confidentiality of all records, information and data of any form or description related to any assessee that is obtained in performance of this contract, in accordance with the provisions of Sections 408, 451 and 481 of the Revenue and Taxation Code ("Confidential Information"). Such Confidential Information includes, but is not limited to, change of ownership statements, property tax returns, income tax returns, annual business property statements, all information obtained by an Assessor pursuant to Revenue and Taxation Code Sections 441(d) through 470, purchase/sale agreements, purchase/sale cash flow statements and any other confidential property owner information obtained by Contractor. Contractor shall provide all services, advice and representation rendered under this Agreement exclusively to the Assessors' Association and to the individual Participating

Assessors. All records, data and Confidential Information coming into Contractor's possession and all knowledge gained from Assessors' Association or from any of the Participating Assessors during the course of Contractor's performance of services hereunder shall be and remain the property of the assessing County and shall be maintained by Contractor in strictest confidence while in Contractor's possession. Contractor shall never show, discuss or provide Confidential Information, taxpayer information or records in Contractor's possession to anyone other than a Participating Assessor. Contractor shall take all necessary steps to protect Confidential Information.

If Contractor's Sale Survey Report, work papers, source data or any Confidential Information in the possession of Contractor, are subject to a request for discovery during any assessment appeal or other administrative or judicial proceeding, Contractor shall assert the individual Assessor's privilege against disclosure of this information and notify the Assessors' Association of the discovery request. Contractor and the Assessors shall also assert the confidentiality privilege against disclosure and the confidentiality requirements of Revenue and Taxation Code Sections 408(e), 451, 480 and 674.

The individual Assessors and Contractor shall not disclose any Confidential Information, including materials prepared by and in the possession of Contractor or the Assessors until the party seeking the Confidential Information: (1) seeks a judicial order for disclosure by application to a court of competent jurisdiction; (2) provides and serves written notice of this application to the individual Assessor and all taxpayers to whom the requested information pertains; (3) submits, as part of the application for a judicial order for disclosure of such records, a proposed order for limited disclosure and a protective order; and (4) obtains and serves Contractor and Assessors with an order for disclosure of the information and a protective order issued by a court of competent jurisdiction to prevent further distribution of the information ordered produced.

The Contractor and Assessors shall seek to obtain a protective order meeting the terms of this Agreement which: (a) strictly limits the use of any such information so disclosed by the requesting party or any agents, attorneys or consultants to the particular assessment appeal or court case for which the information is sought; (b) prohibits any person to whom the information is disclosed from making any use of the disclosed information other than for the particular case for which the information is sought; (c) prohibits any such person from making any subsequent disclosure of this information to any third party or other purpose; and (d) requires the return or certified destruction of all copies of such information at the conclusion of the particular assessment appeal or litigation for which the information is sought.

An acceptable protective order must also require the signed agreement by the party receiving such information under the order of disclosure in which all recipients of such confidential information; (a) agree to maintain the confidentiality of all Confidential Information according to the terms of the protective order; (b) acknowledge that the violation of the order of disclosure and/or protective order subjects them to a citation for penal contempt under the provisions of Code of Civil Procedure Section 128; and (c) acknowledge that any breach of the protective order and their agreement to abide by such protective order subjects them to injunctive relief and civil liability for any damages, expenses, fees or costs caused by unauthorized disclosure of the Assessors' Confidential Information.

9. TERMINATION:

- (A) Notwithstanding the Agreement term stated in Paragraph 1 hereof, either the Contractor or the Assessors' Association may terminate this Agreement by the giving of thirty (30) days' prior written notice of termination to the other party.
- (B) Upon such notice, Contractor shall suspend services and promptly provide Assessors' Association and Assessors with a written accounting statement of services performed and hours expended since the last monthly billing. Upon presentation of Contractor's

statement of services rendered, delivery of work product performed to date and the return of any Assessors' documents or taxpayer information, including all Confidential Information, in Contractor's possession, Assessors' Association will compensate Contractor for any unpaid hours devoted to the satisfactory performance of services before the date of notice of termination.

- (C) Within ninety (90) days after the effective date of termination of this Agreement, Contractor shall: (1) purge and return all information contained in, or derived from, the property owner's Confidential Information and records (whether electronically stored, provided by the Assessors or obtained from the taxpayer) to the Chairman of the Petroleum Standards Advisory Committee of the Assessors' Association or, in the event the Chairman is unable to receive said information, the Vice-Chairman of said committee, and; (2) provide a written declaration, under the penalty of perjury, to the Assessors' Association that upon the conclusion, termination, or non-renewal of this Agreement, Contractor has complied with the confidentiality provision of this Agreement, including Paragraph 9(C)(1), herein.
- (D) Any remaining funds deposited by the participating Assessors shall, after payment of all accrued administrative expenses and sums property due Contractor, be refunded to each of the Assessors' counties in proportion to each Assessor's County's paid share of the total contract consideration. The parties intend that each and every provision of Sections 7, 8 and 13 herein shall survive the termination of this Agreement.

10. NOTICES:

All notices given under this Agreement shall be deemed given when made in writing and deposited in the United States Postal Service, registered or certified, postage prepaid, addressed as follows:

TO CONTRACTOR: Russell B. Bertholf, President
Harold W. Bertholf, Inc.
1601 Executive Court, Ste. 1
Sacramento, CA 95864-2607

TO ASSESSORS: James W. Fitch, Kern Co. Assessor-Recorder
Chair, P.S.A.C.
1115 Truxtun Avenue, 3rd Floor
Bakersfield, CA 93301

11. CONFLICT OF INTEREST:

During the term of this Agreement, Contractor agrees not to undertake additional representation for other clients that could place Contractor in a position adverse to the Assessors' Association or the Participating Assessors. Contractor shall comply with the requirements of Government Code Section 87100, et seq., during the term of this Agreement.

12. INDEPENDENT CONTRACTOR STATUS:

It is understood and agreed that the Assessors' Association and the Assessors retain Contractor in his capacity of an independent contractor practicing his profession and not as an officer or employee of the Assessors' Association or of the Counties of the Participating Assessors. Contractor's Federal Tax Identification Number is: 94-2710327.

13. INDEMNIFICATION:

Contractor shall indemnify, defend (upon request by Assessors' Association and Assessors' Counties), hold and save Assessors' Association, the individual Participating Assessors and the Participating Assessors' Counties, officers, employees and agents harmless from any and all claims for damage or other liability to any third person arising out of this Agreement, except for actions arising out of their own negligence or misconduct, including reasonable attorney's fees and costs. It is the intent of the parties that Contractor will defend and indemnify Assessors' Association and Assessors' Counties for any and all occurrences, losses, claims of loss, whether due to the active negligence, passive negligence, willful or intentional misconduct, violations of law or other acts or omissions of Contractor which arise

during the course of the work performed under this Agreement. It is further understood and agreed the obligation of Contractor to defend and indemnify extends to and includes liability of Assessors' Association and Assessors' Counties for private attorney general fee awards and liability which arise by operation of law as the result of any act, omission or occurrence related to this Agreement, or which arise from the work performed under this Agreement.

It is further expressly understood and agreed that the duty to indemnify shall include, but not be limited to, any internal costs for staff time, investigation and fees of the County Counsel of Assessors' Counties necessarily incurred as a result of claims based on any act or omission by Contractor or its agents under this Agreement or the work performed under this Agreement on those claims where Contractor or its agents are at fault.

Should the legality of this Agreement be challenged in any way by any third party, the Participating Assessors shall share the costs of defense, litigation and any damages award in the same proportion as the Participating Assessors share costs as set forth in Section 5.

14. INSURANCE:

The Contractor shall not commence work under this Contract until he has obtained all insurance required under this section and the required Certificates of Insurance have been filed with and approved by the Assessors' Association. Contractor shall be responsible for any deductibles under all required insurance policies.

- (1) Workers' Compensation Insurance Requirements - The Contractor shall submit written proof that the Contractor and any subcontractors are insured against liability for workers' compensation in accordance with the provisions of Section 3700 of the Labor Code. By signing this Agreement, the Contractor makes the following certification, required by Labor Code § 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

- (2) Liability Insurance Requirements - The Contractor shall maintain in full force and effect, at all times during the term of the Contract, the following insurance:
- (a) Commercial General Liability Insurance coverage including, but not limited to, Premise-Operations, Contractual Liability Insurance (specifically concerning the indemnity provision of this Contract), Broad Form Property Damage, and Personal Injury for liability arising out of the work performed under this Agreement with the Assessors' Association and Assessors' Counties.
 - (b) Automobile Liability Insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, non-owned and hired vehicles used in the performance of the work mentioned in this Agreement.

The general insurance policies shall have minimum limits for Bodily Injury Liability and Property Damage Liability of One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence. The automobile insurance policy shall have limits of at least One-Hundred-Thousand Dollars (\$100,000/\$300,000) per claim/occurrence. An endorsement to the Commercial General Liability Insurance policy above shall name the Assessors' Association and Assessors' Counties, officers, agents and employees as additional insured.

- (c) Prior to commencement of any work, evidence of insurance in compliance with the requirements above and identifying the work to be performed under this Contract shall be furnished to Assessors' Association and Assessors' Counties.
- (3) Cancellation of Insurance - The insurance coverage shall contain provisions that the insurance may not be canceled or reduced during the term of the contract (or any extensions thereof) unless the Assessors' Association received thirty (30) days prior written notice of such cancellation or reduction. Also, phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of the Certificate of Insurance. All insurance shall be issued by a company or companies listed in the current "Best's Key Rating Guide" publication with a minimum of a "B + V" rating, or in special circumstances, be pre-approved by Assessors' Association.
- (4) Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the Assessors' Association from taking such other actions as is available to it under any other provision of this Agreement or otherwise in law. Failure to maintain all such insurance in effect at all times during the term of this Agreement shall be a material breach of the Agreement by the Contractor.

15. COMPLIANCE WITH APPLICABLE LAWS:

In the performance of services under this Agreement, Contractor shall comply with all applicable federal, state, county and municipal laws, regulations, rules and ordinances, and shall comply with the requirements of the Workers' Compensation laws of the State of California.

16. COOPERATION OF PARTIES:

Contractor, the Assessors' Association and Participating Assessors recognize that it is essential to cooperate fully concerning the preparation of the analysis contemplated by this Agreement. In connection with this Agreement, the parties agree to provide any data, information, and documentation reasonably requested by any other party to this Agreement. In the event that Contractor and Assessors are refused access to pertinent sales data by a property owner and legal actions under Revenue and Taxation Code Sections 441, 442, 454, or 468 are necessary to obtain the requested data, each Assessor shall undertake necessary enforcement action to obtain information concerning sales occurring in his or her County. The Assessors who are parties to this Agreement shall individually provide Contractor, (through the respective Assessors' legal counsel), with assistance in resolving questions of law, preparation of necessary pleadings on behalf of the participating Assessor and the representation of individual Assessors in any court appearances necessary to enforce production under the individual Assessors' sales information requests. The parties agree the enforcement of County Assessor information investigation rights is necessary and essential for the performance of Contractor's services under this Agreement. Contractor shall not be held liable for any failure to complete the contemplated sales survey arising from the failure of Assessors to enforce the production of relevant sales information from property owners. Contractor further acknowledges and agrees that, without prior authorization of Assessors' Association and the Participating Assessors, Contractor shall not disclose information concerning his work or make representations concerning any Participant's position in this matter except with the prior written consent of the Assessors' Association and the Participating Assessors. The parties intend that this procedure will be in the best interests of the parties in avoiding unnecessary misunderstandings and disputes.

17. REVIEW FOR LEGAL ADEQUACY:

Each party to this Agreement acknowledges and agrees that this Agreement has been reviewed by each party's respective legal counsel for legal adequacy.

18. WAIVER:

No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this Agreement by either party shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Agreement. No delay or omission of either party in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, or be construed as a waiver of a variation of any of the terms of this Agreement.

19. HUMBOLDT ANTI-NUCLEAR WEAPONS PROVISION:

Contractor certifies by its signature below that Contractor is not a Nuclear Weapons Contractor, in that Contractor is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. Contractor agrees to notify the Assessors' Association and the Assessor of Humboldt County immediately if it becomes a nuclear weapons contractor, as defined above. Assessors' Association and the Assessor of Humboldt County may immediately terminate this Agreement if it determines that the foregoing certification is false or if Contractor becomes a nuclear weapons contractor.

20. SEVERABILITY PROVISION:

If any term or portion of this Agreement is held to be invalid, illegal, void or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect. If this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or otherwise unenforceable between Contractor and any or all of the Participating Assessors, it shall nonetheless remain in full force and effect between the Participating Assessors.

21. SIGNATURE IN COUNTERPARTS:

This Agreement may be executed in counterparts by all parties. The Agreement is effective as to any signatory party on execution and, for purposes of enforcement, true copies of signatures shall be deemed to be original signatures.

IN WITNESS WHEREOF, the parties execute this Agreement as of the date first written above.

HAROLD W. BERTHOLF, INC.
A California Professional Corporation

CALIFORNIA ASSESSOR'S ASSOCIATION
A California Non-Profit Corporation

By _____
Russell B. Bertholf, President
"Contractor"

By _____
Tom Bordonaro
California Assessor's Association

(Participating Assessors' Signature Page Following)

Approved As To Form And Content

Jerri Bradley, Kern County Counsel

Date _____

2012-2014 Agreement For Petroleum & Geothermal Property Sales

Study Participating Counties

County of Contra Costa

By _____

County of Glenn

By _____

County of Inyo

By _____

County of Kings

By _____

County of Madera

By _____

County of Monterey

By _____

County of Sacramento

By _____

County of San Luis Obispo

By _____

County of Ventura

By _____

County of Fresno

By _____

County of Humboldt

By _____

County of Kern

By _____

County of Los Angeles

By _____

County of Mono

By _____

County of Orange

By _____

County of San Joaquin

By _____

County of Santa Barbara

By _____

County of Yolo

By _____

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