

1 [Municipal Transportation Agency Leverage Lease Financing.]

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3 **Resolution authorizing one or more lease-to-service contract transactions with respect**
4 **to up to 21 Breda light rail cars; approving the form of and authorizing the execution**
5 **and delivery of a Participation Agreement setting forth the terms and conditions of the**
6 **lease-to-service contract transaction relating to the rail cars; approving the form of and**
7 **authorizing the execution and delivery of a Head Lease Agreement providing the terms**
8 **and conditions pursuant to which the rail cars will be leased to a trust; approving the**
9 **form of and authorizing the execution and delivery of a Head Lease Supplement**
10 **supplementing the terms and conditions pursuant to which specific rail cars will be**
11 **leased to the trust; approving the form of and authorizing the execution and delivery of**
12 **a Sublease Agreement providing the terms and conditions pursuant to which the trust**
13 **will lease the rail cars back to the City to be operated and maintained by the City;**
14 **approving the form of and authorizing the execution and delivery of a Sublease**
15 **Supplement supplementing the terms and conditions pursuant to which the City will**
16 **lease back the rail cars from the trust; approving the form of and authorizing the**
17 **execution and delivery of a Payment Agreement providing the terms and conditions**
18 **pursuant to which the City will provide for the payment of a portion of the sublease**
19 **rent; approving the form of and authorizing the execution and delivery of an Equity**
20 **Collateral Security Agreement and a Custody Agreement providing the terms and**
21 **conditions pursuant to which the City will provide for a custody account to hold, and a**
22 **security interest in, certain securities for the payment of a portion of the sublease rent**
23 **and the purchase option purchase price if the purchase option is or is deemed**
24 **exercised; approving the form of and authorizing the execution and delivery of a**
25 **Support and Access Agreement providing the terms and conditions pursuant to which**

1 the City will provide the trust support and access to certain property if the City
2 chooses not to exercise the purchase option; approving the form of and authorizing
3 the execution and delivery of an Agreement for Assignment on Default which will
4 provide the lender to the trust with an option to purchase, and take an assignment of
5 the equity investor's beneficial interest in the trust estate upon the occurrence of
6 certain events ; approving the form of and authorizing the execution and delivery of a
7 Tax Indemnification Agreement providing the terms and conditions under which the
8 City will indemnify under certain circumstances the equity investor for income
9 inclusions or losses of tax benefits; approving the form of and authorizing the
10 execution and delivery of an Insurance and Indemnity Agreement providing the terms
11 and conditions under which the City will indemnify the strip surety provider; approving
12 indemnification of various parties; acknowledging the waiver of the City's right to jury
13 trial under certain circumstances; acknowledging proposed waiver requests pursuant
14 to Sections 12B.5-1(d) and 12C.5-1(d) of the San Francisco Administrative Code;
15 finding that the lease-to-service contract transaction is designed to reduce the amount
16 or duration of payment or similar risk to the City or enhance the relationship between
17 risk and return with respect to investments made pursuant to or in connection with
18 such transaction; approving and authorizing the execution and delivery of any
19 document necessary to implement this Resolution; authorizing the execution and
20 delivery of documents in conforming sets for the equity investor; ratifying and
21 approving any action heretofore taken in connection with the transaction contemplated
22 by this Resolution; and related matters.

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1 WHEREAS, The City and County of San Francisco, a charter city and county (the
2 “City”), acting through its Municipal Transportation Agency (the “MTA”), currently owns and
3 operates approximately 149 Breda rail cars entirely within the jurisdiction of the City; and,

4 WHEREAS, The Board of Directors of the MTA (the “MTA Board”) authorized and
5 directed staff to explore a potential lease-sublease transaction with respect to the Breda rail
6 cars to generate funds for the MTA; and,

7 WHEREAS, A plan of financing the lease-sublease transaction, as described in a staff
8 report to the MTA Board (referred to herein as, the “Transaction Summary”), was presented
9 by staff to the MTA Board, a copy of which is on file with the Clerk of this Board of Supervisors
10 (the "Board"), and describes a substantial present value benefit to the City from the
11 transaction which would be available for use by the MTA for the benefit of the public; and,

12 WHEREAS, Based on said Transaction Summary, the City has determined that it is
13 appropriate and desirable to enter into a transaction (the “Transaction”) for the lease of up to
14 21 of the Breda rail cars (the “Rail Cars”) to one or more entities and to sublease such Rail
15 Cars back from said entities in order to generate an immediate cash payment to the City; and,

16 WHEREAS, The Transaction Summary describes various financing and other
17 documents relating to the Transaction, including the following: a Head Lease (between the
18 City, as lessor, and a trust, the beneficiary of which is an Equity Investor, as lessee), a
19 Sublease (between a trust, as sublessor, and the City, as sublessee), a Participation
20 Agreement (among the City, an Equity Investor, a trustee, a lender to the trust and a payment
21 undertaker), a Tax Indemnity Agreement (between the City, as indemnitee, and the Equity
22 Investor) and other documents described herein and/or authorized hereby (collectively
23 referred to herein as the “Operative Documents”); and,

24 WHEREAS, In approving the Payment Agreement, the City has given due
25 consideration to the credit worthiness of Financial Security Assurance Inc., as Guarantor, and

1 has noted the current ratings of the Guarantor are the highest ratings categories given by
2 three nationally recognized rating agencies; and,

3 WHEREAS, In compliance with Government Code Section 5922, the Board of
4 Supervisors hereby determines that the purpose of the Transaction (including amounts
5 required to be deposited and invested under the Operational Documents) is intended to
6 reduce the amount or duration of payment, rate or currency, or similar risk connected to the
7 lease agreements, or enhance the relationship between risk and return with respect to
8 investments made pursuant to or in connection with, the Transaction; and,

9 WHEREAS, It is deemed to be in the best financial interest for the City to enter into the
10 Operative Documents, as authorized herein, and,

11 WHEREAS, All acts, conditions and things required by law to exist, to have happened
12 and to have been performed precedent to and in connection with the consummation of the
13 Transaction hereby do exist, have happened and have been performed in regular and due
14 time, form and manner as required by law;

15 NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the City and
16 County of San Francisco as follows:

17 Section 1. Approval of Recitals. The Board hereby finds and declares that the above
18 recitals are true and correct.

19 Section 2. Approval of the Transaction. In accordance with the applicable law and the
20 Charter of the City, the Board hereby approves the Transaction as described in the
21 Transaction Summary. The Transaction shall proceed in substantially the form described in
22 the Transaction Summary, provided that (i) the Sublease shall have a term of no more than
23 thirty (30) years [and (ii) shall generate a net present value benefit to the City of at least 6% of
24 the appraised value of the Rail Cars, currently estimated to be \$72,555,000].

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1 Section 3. Participation Agreement. The form of Participation Agreement, dated as of
2 September __, 2003 or such other date selected by the Mayor or his designee (the
3 “Participation Agreement”), among the City, as head lessor and sublessee; the MUNI Rail
4 Statutory Trust 2003 (the “Trust”), as head lessee and sublessor; Wells Fargo Bank, N.A.
5 equity investor (the “Equity Investor”); FSA Global Funding Limited as lender (the “Lender”);
6 Premier International Funding Co., as payment undertaker (the “Payment Undertaker”), and
7 U.S Bank National Association, as trustee (the “Trustee”), and in its individual capacity (the
8 “Trust Company”); in substantially the form of the Participation Agreement presented to the
9 Board (including the various exhibits and addenda attached thereto), a copy of which is on file
10 with the Clerk of the Board, is hereby approved. The Mayor or his designee is hereby
11 authorized to execute, and the Clerk of the Board or her designee is hereby authorized to
12 attest to, the Participation Agreement, with such changes, additions and modifications
13 (including any schedules, to be attached thereto, which will be prepared on or around the
14 closing date of the Transaction) as the City Attorney may approve as to form; such approval
15 as to form to be conclusively evidenced by the execution and delivery of the Participation
16 Agreement.

17 Section 4. Head Lease Agreement. The form of Head Lease Agreement, dated as of
18 September __, 2003 or such other date selected by the Mayor or his designee (the “Head
19 Lease”), between the City, as head lessor, and the Trust, as head lessee, in substantially the
20 form of the Head Lease presented to the Board (including the various exhibits and addenda
21 attached thereto), a copy of which is on file with the Clerk of the Board, is hereby approved.
22 The Mayor or his designee is hereby authorized to execute, and the Clerk of the Board or her
23 designee is hereby authorized to attest to, the Head Lease, with such changes, additions and
24 modifications (including any schedules, to be attached thereto, which will be prepared on or
25 around the closing date of the Transaction) as the City Attorney may approve as to form; such

1 approval as to form to be conclusively evidenced by the execution and delivery of the Head
2 Lease.

3 Section 5. Head Lease Supplement No. 1. The form of Head Lease Supplement
4 No. 1, dated as of September __, 2003 or such other date selected by the Mayor or his
5 designee (the “Head Lease Supplement”), between the Trust, as head lessee, and the City,
6 as head lessor, in substantially the form of the Head Lease Supplement presented to the
7 Board (including the various exhibits and addenda attached thereto), a copy of which is on file
8 with the Clerk of the Board, is hereby approved. The Mayor or his designee is hereby
9 authorized to execute, and the Clerk of the Board or her designee is hereby authorized to
10 attest to, the Head Lease Supplement, with such changes, additions and modifications
11 (including any schedules, to be attached thereto, which will be prepared on or around the
12 closing date of the Transaction) as the City Attorney may approve as to form; such approval
13 as to form to be conclusively evidenced by the execution and delivery of the Head Lease
14 Supplement.

15 Section 6. Sublease Agreement. The form of Sublease Agreement, dated as of
16 September __, 2003 or such other date selected by the Mayor or his designee (the “Sublease
17 Agreement”), between the Trust, as sublessor, and the City, as sublessee, in substantially the
18 form of the Sublease Agreement presented to the Board (including the various exhibits and
19 addenda attached thereto), a copy of which is on file with the Clerk of the Board, is hereby
20 approved. The Mayor or his designee is hereby authorized to execute, and the Clerk of the
21 Board or her designee is hereby authorized to attest to, the Sublease Agreement, with such
22 changes, additions and modifications (including any schedules, to be attached thereto, which
23 will be prepared on or around the closing date of the Transaction) as the City Attorney may
24 approve as to form; such approval as to form to be conclusively evidenced by the execution
25 and delivery of the Sublease Agreement.

1 Section 7. Sublease Supplement No. 1. The form of Sublease Supplement No. 1,
2 dated as of September __, 2003 or such other date selected by the Mayor or his designee
3 (the “Sublease Supplement”), between the Trust, as sublessor, and the City, as sublessee, in
4 substantially the form of the Sublease Supplement presented to the Board (including the
5 various exhibits and addenda attached thereto), a copy of which is on file with the Clerk of the
6 Board, is hereby approved. The Mayor or his designee is hereby authorized to execute, and
7 the Clerk of the Board or her designee is hereby authorized to attest to, the Sublease
8 Supplement, with such changes, additions and modifications (including any schedules, to be
9 attached thereto, which will be prepared on or around the closing date of the Transaction) as
10 the City Attorney may approve as to form; such approval as to form to be conclusively
11 evidenced by the execution and delivery of the Sublease Supplement.

12 Section 8. Payment Agreement. The form of Payment Agreement, dated as of
13 September __, 2003 or such other date selected by the Mayor or his designee (the “Payment
14 Agreement”), among the Payment Undertaker, the City and the Trust, in substantially the form
15 of the Payment Agreement presented to the Board (including the various exhibits and
16 addenda attached thereto), a copy of which is on file with the Clerk of the Board, is hereby
17 approved. The Mayor or his designee is hereby authorized to execute, and the Clerk of the
18 Board or her designee is hereby authorized to attest to, the Payment Agreement, with such
19 changes, additions and modifications (including any schedules, to be attached thereto, which
20 will be prepared on or around the closing date of the Transaction) as the City Attorney may
21 approve as to form; such approval as to form to be conclusively evidenced by the execution
22 and delivery of the Payment Agreement.

23 Section 9. Support and Access Agreement. The form of Support and Access
24 Agreement, dated as of September __, 2003 or such other date selected by the Mayor or his
25 designee (the “Support and Access Agreement”), between the City and the Trust, in

1 substantially the form of Support and Access Agreement presented to the Board (including the
2 various exhibits and addenda attached thereto), a copy of which is on file with the Clerk of the
3 Board, is hereby approved. The Mayor or his designee is hereby authorized to execute, and
4 the Clerk of the Board or her designee is hereby authorized to attest to, the Support and
5 Access Agreement, with such changes, additions and modifications (including any schedules,
6 to be attached thereto, which will be prepared on or around the closing date of the
7 Transaction) as the City Attorney may approve as to form; such approval as to form to be
8 conclusively evidenced by the execution and delivery of the Support and Access Agreement.

9 Section 10. Tax Indemnification Agreement. The form of Tax Indemnification
10 Agreement, dated as of September __, 2003 or such other date selected by the Mayor or his
11 designee (the “Tax Indemnification Agreement”), between the City, as indemnitor, and the
12 Equity Investor, in substantially the form of the Tax Indemnification Agreement presented to
13 the Board (including the various exhibits and addenda attached thereto), a copy of which is on
14 file with the Clerk of the Board, is hereby approved. The Mayor or his designee is hereby
15 authorized to execute, and the Clerk of the Board or her designee is hereby authorized to
16 attest to, the Tax Indemnification Agreement, with such changes, additions and modifications
17 (including any schedules, to be attached thereto, which will be prepared on or around the
18 closing date of the Transaction) as the City Attorney may approve as to form; such approval
19 as to form to be conclusively evidenced by the execution and delivery of the Tax
20 Indemnification Agreement.

21 Section 11. Agreement for Assignment on Default. The form of Agreement for
22 Assignment on Default, dated as of September __, 2003 or such other date selected by the
23 Mayor or his designee (the “Agreement for Assignment on Default”), among the City, the
24 Trust, the Trust Company and the Strip Surety Provider in substantially the form of the
25 Agreement for Assignment on Default presented to the Board (including the various exhibits

1 and addenda attached thereto), a copy of which is on file with the Clerk of the Board, is
2 hereby approved. The Mayor or his designee is hereby authorized to execute, and the Clerk
3 of the Board or her designee is hereby authorized to attest to, the Agreement for Assignment
4 on Default, with such changes, additions and modifications (including any schedules, to be
5 attached thereto, which will be prepared on or around the closing date of the Transaction) as
6 the City Attorney may approve as to form; such approval as to form to be conclusively
7 evidenced by the execution and delivery of the Agreement for Assignment on Default.

8 Section 12. Insurance and Indemnity Agreement. The form of Insurance and
9 Indemnity Agreement), dated as of September __, 2003 or such other date selected by the
10 Mayor or his designee (the “Insurance and Indemnity Agreement”), between Financial
11 Security Assurance Inc. (the “Strip Surety Provider”) and the City, in substantially the form of
12 the Insurance and Indemnity Agreement presented to the Board (including the schedules,
13 exhibits and addenda attached thereto), a copy of which is on file with the Clerk of the Board,
14 is hereby approved. The Mayor or his designee is hereby authorized to execute, and the
15 Clerk of the Board or her designee is hereby authorized to attest to, the Insurance and
16 Indemnity Agreement, with such changes, additions and modifications (including any
17 schedules, to be attached thereto, which will be prepared on or around the closing date of the
18 Transaction) as the City Attorney may approve as to form; such approval as to form to be
19 conclusively evidenced by the execution and delivery of the Insurance and Indemnity
20 Agreement.

21 Section 13. Equity Collateral Security Agreement. The form of Equity Collateral
22 Security Agreement, dated as of September __, 2003 or such other date selected by the
23 Mayor or his designee (the “Equity Collateral Security Agreement”), among the City, as
24 pledgor, the Trust Company, as pledgee and collateral agent, and the Trust, in substantially
25 the form of the Equity Collateral Security Agreement presented to the Board (including the

1 schedules, exhibits and addenda attached thereto), a copy of which is on file with the Clerk of
2 the Board, is hereby approved. The Mayor or his designee is hereby authorized to execute,
3 and the Clerk of the Board or her designee is hereby authorized to attest to, the Equity
4 Collateral Security Agreement, with such changes, additions and modifications (including any
5 schedules, to be attached thereto, which will be prepared on or around the closing date of the
6 Transaction) as the City Attorney may approve as to form; such approval as to form to be
7 conclusively evidenced by the execution and delivery of the Equity Collateral Security
8 Agreement.

9 Section 14. Custody Agreement. The form of Custody Agreement, dated as of
10 September __, 2003 or such other date selected by the Mayor or his designee (the “Custody
11 Agreement”), among the City, as pledgor, the Trust Company, as custodian, and the Trust
12 Company as pledgee and Collateral Agent, in substantially the form of the Custody
13 Agreement presented to the Board (including the schedules, exhibits and addenda attached
14 thereto), a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor
15 or his designee is hereby authorized to execute, and the Clerk of the Board or her designee is
16 hereby authorized to attest to, the Custody Agreement, with such changes, additions and
17 modifications (including any schedules, to be attached thereto, which will be prepared on or
18 around the closing date of the Transaction) as the City Attorney may approve as to form; such
19 approval as to form to be conclusively evidenced by the execution and delivery of the Custody
20 Agreement.

21 Section 15. Approval of Indemnification of Various Parties. The Board hereby
22 expressly approves the indemnification by the City of the party or parties for the liabilities
23 described below, subject in all respects to the particular conditions set forth in the respective
24 agreements (capitalized terms used in the descriptions below and not otherwise defined, shall
25 have the meanings given to such terms as set forth in the respective agreement):

1	<u>Agreement</u>	<u>Indemnified Party</u>	<u>Liability</u>
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Participation Agreement (Section 15)	Trust, the Trustee, the Trust Company, Trust Estate, Equity Investor, the Agent, the Initial Lender, any Holder, the Payment Undertaker, the Payment Undertaker Guarantor, the Strip Surety Provider, any New Strip Surety Provider, any Equity Investor Guarantor and, in each case, their respective affiliates, agents, directors, officers and employees.	General Indemnity and General Tax Indemnity on an after-tax basis, with respect to the transactions and matters contemplated by any of the Participation Agreement, each Loan Certificate, Loan Agreement, the Head Lease, any Head Lease Supplement, the Sublease, any Sublease Supplement, the Trust Agreement, any Transferee Guaranty, the Payment Agreement, the Payment Undertaker Guaranty, the Tax Indemnification Agreement, the Strip Surety Policy, the Insurance and Indemnity Agreement, the Agreement for Assignment on Default, the Support and Access Agreement, the Account Pledge and Security Agreement, and the Custody Agreement.
17 18 19	Payment Agreement	Payment Undertaker	Any deduction or withholding taxes required to be made or withheld from any payment by the Payment Undertaker on an after tax basis
20 21	Tax Indemnification Agreement (Section 5)	Equity Investor	Loss of Tax benefits
22 23 24	Insurance and Indemnity Agreement	Strip Surety Provider	All payments made by the Strip Surety Provider pursuant to the Policy, or otherwise
25	Custody Agreement	U.S. Bank National Association, as	General indemnification with respect to matters related to

	Custodian	or arising from the Equity Collateral Security Agreement, the Custody Agreement or the Securities Account.
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In addition:

- (1) In the event of any early termination, the City bears the risk of payment in the event that market conditions result in the equity defeasance not completely satisfying the payment owed on such early termination date; and
- (2) In no event shall an Indemnified Party under the Participation Agreement or Tax Indemnification Agreement (“Indemnitees”) be required, or the City permitted, to appeal an adverse judicial determination to the United States Supreme Court unless prior to the Indemnitee taking any such action (a) the City shall have acknowledged in writing its obligation to indemnify the Indemnitee in respect of such contested Tax in the event such contest is unsuccessful; (b) if the City has not previously done so, the City shall advance the amount thereof plus interest, penalties and additions to Tax with respect thereto to such Indemnitee on an interest-free basis with no additional net after-tax_cost to such Indemnitee to make such payment and shall indemnify such Indemnitee against any adverse tax consequences arising from such advance; (c) in making such appeal, the Indemnitee shall only be required to make a good faith attempt to effect an appeal by a writ of certiorari or otherwise and (d) the City shall have furnished the Indemnitee with an opinion of independent tax counsel selected by the City and reasonably satisfactory to the Indemnitee to the effect that there is a

1 substantial likelihood (although not necessarily more likely than not) that
2 such adverse judicial determination will be reversed or substantially modified
3 for the position asserted in such appeal.

4 Section 16. Waiver of Jury Trial. The City will waive its right to a jury trial in any suit,
5 action or proceeding arising as a result of a breach by the City of a monetary obligation under
6 any of the documents to which the City is a party under the Transaction.

7 [Section 17. Proposed Waiver of the Requirements of Sections 12B and 12C of the
8 Administrative Code. The Director of Transportation of the MTA has requested, in
9 accordance with the provisions of Sections 12B.5-1(d) and 12C.5-1(d) of the Administrative
10 Code of the City and County of San Francisco, that the requirements of Section 12B and 12C
11 be waived for any agreement authorized by this Resolution to which the City and the Lender
12 are parties, the City and the Strip Surety Provider are parties, or the City and the Payment
13 Undertaker are parties.]

14 Section 18. Findings in Accordance with the Law. In accordance with the applicable
15 law, the Board hereby finds and determines that the Transaction (including amounts required
16 to be deposited and invested under the Operational Documents) described in the Transaction
17 Summary is designed to reduce the amount or duration of payment, currency, rate, spread or
18 similar risk to the City or enhance the relationship between risk and return with respect to the
19 investments made pursuant to or in connection with the Transaction.

20 Section 19. Modification, Changes and Additions. The Mayor or his authorized
21 designee executing a document approved herein, in consultation with the City Attorney, is
22 hereby authorized to approve and make such modifications, changes or additions to said
23 document as may be necessary or advisable, provided that such modification, change or
24 addition (i) shall not extend the term of the Sublease beyond thirty (30) years [or (ii) provide
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1 for a net present value benefit to the City of less than 6% of the appraised value of the Rail
2 Cars]. The approval as to form by the City Attorney and the approval by the Mayor or his
3 designee of any modification, change or addition to any of the aforementioned documents
4 shall be evidenced conclusively by the execution and delivery of the document in question.
5 Any changes, additions or modifications by the Mayor or his designee should not substantially
6 alter the agreements as approved by the Board of Supervisors. If any such changes,
7 additions or modifications are substantive, additional Board of Supervisors approval is
8 required.

9 Section 20. Execution of Documents. The documents approved herein may be
10 executed and delivered by the Mayor or his authorized designee, and the Clerk of the Board
11 or her designee is hereby authorized to attest to, the execution of such documents, with such
12 changes, additions and modifications (including any schedules, to be attached thereto, which
13 will be prepared on or around the closing date of the Transaction) as the City Attorney may
14 approve as to form.

15 Section 21. Ratification; General Authority. All actions heretofore taken by the officers
16 and agents of the City with respect to the Transaction are hereby approved, confirmed and
17 ratified, and the proper officers of the City are hereby authorized and directed, for and in the
18 name of the City, to do any and all things and take any and all actions and execute any and all
19 certificates, agreements and other documents, including but not limited to those documents
20 described in the Transaction Summary, the Participation Agreement or the Sublease and
21 other documents herein approved, which they, or any of them, may deem necessary or
22 advisable in order the consummate the Transaction and to effectuate the purposes thereof
23 and of the documents herein approved in accordance with this Resolution. Any such
24 agreements or actions should result in a transaction that is substantially the same as that
25 approved by the Board of Supervisors. If any such agreements or actions result in a

1 transaction that differs substantially from that approved by the Board of Supervisors,
2 additional Board of Supervisors approval is required.

3 Section 22. Documents on File. All documents referenced herein as being on file with
4 the Clerk of the Board are located in File No. _____.

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6 APPROVED AS TO FORM

7 DennisJ. Herrera
8 City Attorney

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10 By: _____
11 Mark Blake
12 Deputy City Attorney

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