

**EXHIBIT**

**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR  
PURCHASE OF SWIMMING POOL CHEMICALS, SUPPLIES AND EQUIPMENT  
WITH  
PROGRESSIVE COMMERCIAL AQUATICS, INC.**

|                             |   |                                    |
|-----------------------------|---|------------------------------------|
| <b>THE STATE OF TEXAS</b>   | § |                                    |
|                             | § |                                    |
| <b>CITY OF ROUND ROCK</b>   | § | <b>KNOW ALL BY THESE PRESENTS:</b> |
|                             | § |                                    |
| <b>COUNTY OF WILLIAMSON</b> | § |                                    |
| <b>COUNTY OF TRAVIS</b>     | § |                                    |

**THAT THIS AGREEMENT** for the purchase of swimming pool chemicals, supplies and equipment, and for related goods (referred to herein as the "Agreement"), is made and entered into on this the \_\_\_\_ day of the month of \_\_\_\_\_, 2019 by and between the **CITY OF ROUND ROCK**, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and **PROGRESSIVE COMMERCIAL AQUATICS, INC.**, whose offices are located at 2510 Farrell Road, Houston, Texas 77073 (referred to herein as "Vendor").

**RECITALS:**

**WHEREAS**, City desires to purchase certain goods, specifically swimming pool chemicals, supplies and equipment, and City desires to procure same from Vendor; and

**WHEREAS**, City is a member of the Buy Board Cooperative Purchasing Program ("Buy Board") and Vendor is an approved Buy Board vendor through Buy Board Contract # 533-17; and

**WHEREAS**, City desires to purchase certain goods from Vendor through Buy Board as set forth herein; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

**NOW, THEREFORE, WITNESSETH:**

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follow:

## **1.01 DEFINITIONS**

A. **Agreement** means the binding legal contract between City and Vendor whereby City agrees to buy specified goods and Vendor is obligated to provide said goods.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods** mean the specified supplies, materials, commodities, or equipment.

F. **Vendor** means Progressive Commercial Aquatics, Inc., its successors or assigns.

## **2.01 EFFECTIVE DATE, TERM**

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

B. This Agreement shall terminate May 31, 2020.

C. City reserves the right to review the relationship with Vendor at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

## **3.01 CONTRACT DOCUMENTS AND EXHIBITS**

The goods which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the Contract Documents. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference to the terms and conditions set forth in pages one (1) through nine (9) of this Agreement

## **4.01 ITEMS**

A. The goods which are the subject matter of this Agreement are described generally in the attached Exhibit "A."

B. This Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions.

C. Vendor shall satisfactorily provide all deliverables described in Exhibit "A" within the contract term specified. A change in the Scope of Services or any term of this Agreement, must be negotiated and agreed to in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

#### **5.01 COSTS**

A. City agrees to pay for supplies during the term of this Agreement at the pricing set forth at in Exhibit "A." Vendor specifically acknowledged and agrees that City is not obligated to use or purchase any estimated annual quantity of goods. Only if, and when needed by City, the costs listed on Exhibit "A" shall be the basis of any charges collected by Vendor.

B. The City shall be authorized to pay the Vendor an amount not-to-exceed **Ninety Thousand and No/100 Dollars (\$90,000.00)** for the term of this Agreement.

#### **6.01 INVOICES**

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received; and
- D. Delivery or performance dates.

#### **7.01 NON-APPROPRIATION AND FISCAL FUNDING**

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the goods as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.

#### **8.01 PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made

by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

#### **9.01 GRATUITIES AND BRIBES**

City may, by written notice to Vendor, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

#### **10.01 TAXES**

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges.

#### **11.01 ORDERS PLACED WITH ALTERNATE VENDORS**

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

#### **12.01 CITY'S REPRESENTATIVE**

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Rick Atkins  
Parks and Recreation Director  
301 West Bagdad Avenue, Suite 250  
Round Rock, Texas 78664  
(512) 341-3344  
[ratkins@roundrocktexas.gov](mailto:ratkins@roundrocktexas.gov)

### **13.01 INSURANCE**

Vendor shall meet all City of Round Rock Insurance Requirements as set forth at: [http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr\\_insurance\\_07.20112.pdf](http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf).

### **14.01 RIGHT TO ASSURANCE**

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

### **15.01 DEFAULT**

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- C. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

### **16.01 TERMINATION AND SUSPENSION**

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall

discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

#### **17.01 INDEMNIFICATION**

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

#### **18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES**

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel and will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel during the term of this Agreement.

#### **19.01 ASSIGNMENT AND DELEGATION**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

#### **20.01 NOTICES**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;  
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

**Notice to Vendor:**

Progressive Commercial Aquatics, Inc.  
2510 Farrell Road  
Houston, TX 77073

**Notice to City:**

City Manager  
221 East Main Street  
Round Rock, TX 78664

AND TO:      Stephan L. Sheets, City Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

**21.01 APPLICABLE LAW; ENFORCEMENT AND VENUE**

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

**22.01 EXCLUSIVE AGREEMENT**

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

**23.01 DISPUTE RESOLUTION**

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

**24.01 SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any

void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

## **25.01 MISCELLANEOUS PROVISIONS**

**Standard of Care.** Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

**Time is of the Essence.** Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

**Force Majeure.** Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.

**Multiple Counterparts.** This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

**City of Round Rock, Texas**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

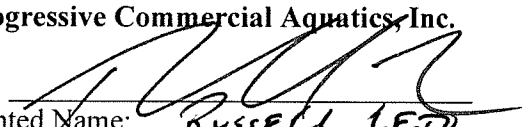
**Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney

**Progressive Commercial Aquatics, Inc.**

By:   
Printed Name: RUSSELL LETO  
Title: CFO  
Date Signed: 11/11/2019

# Exhibit "A"

City of Round Rock, Texas  
Price Sheet  
Progressive Commercial Aquatics  
BuyBoard Contract 533-17

The City of Round Rock would like to enter into a contract with Progressive Commercial Aquatics, Inc. per the terms of Buy Board Contract 533-17. The City intends to purchase from this contract Swimming Pool Chemicals, Supplies and Equipment in an amount of \$90,000 per year for a total not to exceed \$90,000.

Contract Term: Effective from date of execution and will expire on 05/31/2020, per the terms of BuyBoard Contract No. 533-17.

Special Instructions: Complete pricing below and submit copy of price list or catalog.

## Section 1: Swimming Pool Water Treatment Chemicals, Supplies and Equipment

| Item # | Short Description                                                                                 | Full Description                                                                                                                                                                             | State Percent (%) of Discount of Catalog/Pricelist | State Name of Catalog/Pricelist                                         | Exceptions to Discount |
|--------|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|-------------------------------------------------------------------------|------------------------|
| 1      | Discount (%) Off Catalog/Pricelist for Swimming Pool Chemicals                                    | Please state the discount (%) off catalog/pricelist for Swimming Pool Chemicals. Catalog/Pricelist MUST be included or proposal will not be considered.                                      | <u>10</u> %                                        | PCA Chemical list<br>Accutab 5; blue list<br>Acid Rite list             |                        |
| 2      | Discount (%) Off Catalog/Pricelist for Swimming Pool Chemical Feed Systems                        | Please state the discount (%) off catalog/pricelist Swimming Pool Chemical Feed Systems. catalog/Pricelist MUST be included or proposal will not be considered.                              | <u>10</u> %<br><u>25</u> %                         | PCA Accutab feeders<br>PCA Acid Rite feeders<br>PCA chemical feed pumps | (Parts 10%)            |
| 3      | Discount (%) Off Catalog/Pricelist for Swimming Pool Mechanical Equipment                         | Please state the discount (%) off catalog/pricelist Swimming Pool Mechanical Equipment (Pumps, Motors, Filters, etc.) Catalog/Pricelist MUST be included or proposal will not be considered. | Energy Rite - <u>17</u> %<br><u>23</u> %           | 17% off<br>copperfin II price list<br>AquaS price list                  |                        |
| 4      | Discount (%) Off Catalog/Pricelist for Swimming Pool Water Testing Products                       | Please state the discount (%) off catalog/pricelist Swimming Pool Water Testing Products Catalog/Pricelist MUST be included or proposal will not be considered.                              | <u>5</u> %                                         | Handia/Aquarianes list                                                  |                        |
| 5      | Discount (%) Off Catalog/Pricelist for Swimming Pool Automatic Cleaning Equipment                 | Please state the discount (%) off catalog/pricelist Swimming Pool automatic Cleaning Equipment (Vacuums, etc.) Catalog/Pricelist MUST be included or proposal will not be considered.        | <u>20</u> %<br><u>20</u> %                         | PCA Manual vac list<br>PCA Auto vac list                                |                        |
| 6      | Discount (%) Off Catalog/Pricelist for Swimming Pool Underwater Lights and Electrical Accessories | Please state the discount (%) off catalog/pricelist Swimming Pool Underwater Lights and Electrical Accessories Catalog/Pricelist MUST be included or proposal will not be considered.        | <u>20</u> %                                        | PCA lighting price list                                                 |                        |
| 7      | Discount (%) Off Catalog/Pricelist for Swimming Pool Main Drains, Fittings, and Skimmers          | Please state the discount (%) off catalog/pricelist Swimming Pool Main Drains, Fittings, and Skimmers Catalog/Pricelist MUST be included or proposal will not be considered.                 | <u>4</u> %                                         | Neptune Benson list                                                     |                        |
| 8      | Discount (%) Off Catalog/Pricelist for Swimming Pool Coatings and Compounds                       | Please state the discount (%) off catalog/pricelist Swimming Pool Coatings and Compounds Catalog/Pricelist MUST be included or proposal will not be considered.                              | <u>6</u> %<br><u>5</u> %                           | PCA spray deck<br>Plaster                                               |                        |
| 9      | Discount (%) Off Catalog/Pricelist for Swimming Pool Covers and Storage Reels                     | Please state the discount (%) off catalog/pricelist Swimming Pool Covers and Storage Reels. Catalog/Pricelist MUST be included or proposal will not be considered.                           | <u>12</u> %                                        | spectrum pricelist                                                      |                        |
| 10     | Discount (%) Off Catalog/Pricelist for Swimming Pool Furniture and Supplies                       | Please state the discount (%) off catalog/pricelist Swimming Pool Furniture and Supplies. Catalog/Pricelist MUST be included or proposal will not be considered.                             | <u>12</u> %                                        | spectrum pricelist                                                      |                        |
| 11     | Discount (%) Off Catalog/Price list for Swimming Pool Ladders, Rails, Slides and Diving Boards    | Please state the discount (%) off catalog/pricelist Swimming Pool Ladders, Rails, Slides and Diving Boards Catalog/Pricelist MUST be included or proposal will not be considered.            | <u>12</u> %                                        | spectrum pricelist                                                      |                        |
| 12     | Discount (%) Off Catalog/Pricelist for Swimming Life Jackets                                      | Please state the discount (%) off catalog/pricelist Swimming Pool Life Jackets Catalog/Pricelist MUST be included or proposal will not be considered.                                        | <u>/</u> %                                         | N/A                                                                     |                        |
| 13     | Discount (%) Off Catalog/Pricelist for Swimming Pool Repair Parts                                 | Please state the discount (%) off catalog/pricelist Swimming Pool Repair Parts Catalog/Pricelist MUST be included or proposal will not be considered.                                        | <u>/</u> %                                         | N/A                                                                     |                        |

# Exhibit "A"

|                                                                                                                                                                         |                                                                                                                            |                                                                                                                                                                                                                    |                          |                                                                    |                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------------------------------------------|---------------------------------|
| 14                                                                                                                                                                      | Discount (%) Off Catalog/Pricelist for All Other Related Swimming Pool Products                                            | Please state the discount (%) off catalog/pricelist All Other Related Swimming Pool Products Catalog/Pricelist MUST be included or proposal will not be considered.                                                | 20%<br>15%<br>%          | chemical controllers<br>chemical parts                             |                                 |
| <b>Section II: Installation and Repair Service</b>                                                                                                                      |                                                                                                                            |                                                                                                                                                                                                                    |                          |                                                                    |                                 |
| Item #                                                                                                                                                                  | Short Description                                                                                                          | Full Description                                                                                                                                                                                                   | Not to Exceed Labor Rate | Detailed Information on Hourly Labor Rate                          | Exceptions to Hourly Labor Rate |
| 15                                                                                                                                                                      | Not to Exceed Hourly Labor Rate for Installation/Repair of Swimming Pool Water Treatment Chemicals, Supplies and Equipment | Hourly Labor Rate for Installation/Repair of Swimming Pool Water Treatment Chemicals, Supplies and Equipment- State the <u>Not to Exceed</u> hourly rate for Installation/Repair Service of Equipment and Products | \$ 110 Per Hour          | Per person on a job site<br>(usually discounted on large projects) |                                 |
| 16                                                                                                                                                                      | Not to Exceed Hourly Labor Rate for Installation/Repair of Swimming Pool Coatings and Compound                             | Hourly Labor Rate for Installation/Repair of Swimming Pool Coatings and Compound- State the <u>Not to Exceed</u> hourly rate for Installation/Repair Service of Equipment and Products                             | \$ 110 Per Hour          | Per person on a job site<br>(discounted on large projects)         |                                 |
| Information Only: The City of Round Rock reserves the right to order other products from the attached MSRP Sheet per the discounts quoted in BuyBoard Contract #524-17. |                                                                                                                            |                                                                                                                                                                                                                    |                          |                                                                    |                                 |
| COMPANY NAME: <u>Progressive Commercial Aquatics</u>                                                                                                                    |                                                                                                                            |                                                                                                                                                                                                                    |                          |                                                                    |                                 |
| SIGNATURE OF AUTHORIZED REPRESENTATIVE:                                                |                                                                                                                            |                                                                                                                                                                                                                    |                          |                                                                    |                                 |
| PRINTED NAME: <u>Myles Phelps</u>                                                                                                                                       |                                                                                                                            |                                                                                                                                                                                                                    |                          |                                                                    |                                 |
| PHONE NUMBER: <u>949 606 5869</u>                                                                                                                                       |                                                                                                                            |                                                                                                                                                                                                                    |                          |                                                                    |                                 |
| EMAIL ADDRESS: <u>Mylesproaquatic@gmail.com</u>                                                                                                                         |                                                                                                                            |                                                                                                                                                                                                                    |                          |                                                                    |                                 |