

**INTERLOCAL AGREEMENT BETWEEN  
THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.  
AND THE VILLAGE OF VOLENTE**

This Interlocal Agreement (“ILA”) is made by and between the Brushy Creek Regional Utility Authority, Inc. (“BCRUA”), a local government corporation of the State of Texas, created and existing under the laws of the State, including Subchapter D of Chapter 431 as amended, Texas Transportation Code, and created by the City of Cedar Park, Texas, the City of Leander, Texas, the City of Round Rock, Texas all home-rule municipalities and political subdivisions of the State, (individually the “City”; collectively the “Cities”) and the Village of Volente, Texas (“Volente” or “Village”), a Texas Type-B, general-law municipality. The BCRUA and Volente are collectively referred to herein as the “Parties.”

**RECITALS**

**WHEREAS**, the Cities have a governmental duty and an obligation to preserve and protect the public health, safety, and welfare of their more than 500,000 citizens by providing a dependable and adequate source of safe drinking water; and

**WHEREAS**, the BCRUA was created by the Cities to design, construct and operate a regional water transmission and treatment system to provide the Cities with drinking water; and

**WHEREAS**, each of the Cities has contracted with the Lower Colorado River Authority for water stored in Lake Travis; and

**WHEREAS**, the BCRUA has completed construction of a 17 MGD water treatment plant (the “Treatment Plant”) located in the City of Cedar Park; and

**WHEREAS**, in order for the Cities to have a dependable method of accessing their contracted water in times of severe drought, it is necessary for the BCRUA to design, construct, and operate a deep-water intake facility and maintenance building (the “Intake Facility”), a raw water transmission line, and a pumping facility (the “Pumping Facility”), (collectively referred to as the “System”) to transmit the water from Lake Travis to the Treatment Plant; and

**WHEREAS**, after receiving the results of an engineering study, the BCRUA determined that certain property within the corporate limits of Volente (“Site 4”) (*see Exhibit A* attached to this ILA), was the preferred site for the Intake Facility; and

**WHEREAS**, Site 4 is located entirely within the corporate limits of the Volente and is zoned for residential use; and

**WHEREAS**, Volente preferred that the Intake Facility and the Pumping Facility be located on certain property previously owned by LCRA (“Site 8”) (see **Exhibit B** attached to this ILA); and

**WHEREAS**, following significant negotiation, BCRUA and Volente entered into a Memorandum of Understanding (“MOU”) (See **Exhibit C** attached to this ILA) which provided that Volente would support Site 4 as the location of the Intake Facility, if BCRUA would locate the Pumping Facility on Site 8, and construct an underground tunnel (“Tunnel”) instead of an open-cut trench to house the raw water transmission line; and

**WHEREAS**, with Volente’s support, BCRUA’s request to move the Pumping Facility to Site 8 was approved; and

**WHEREAS**, changing the location of the Pumping Station from Site 4 to Site 8 and constructing the Tunnel instead of an open-cut trench will significantly increase the cost to the BCRUA; and

**WHEREAS**, Volente understands and agrees that the Intake Facility will now be located on Site 4, and the Tunnel will be constructed in part within the corporate limits of Volente; and

**WHEREAS**, the Village of Volente is not included in BCRUA’s plan to provide a dependable and adequate source of water to the Cities; and

**WHEREAS**, the construction of the Intake Facility and Tunnel will take multiple years to complete; and

**WHEREAS**, Volente has an obligation to preserve and protect the public health, safety, and welfare of its residents by reasonably regulating development within its corporate limits; and

**WHEREAS**, in furtherance of said obligation, Volente has adopted the Ordinances regulating development within its corporate limits; and

**WHEREAS**, BCRUA agrees to comply with Volente’s Ordinances regulating development within the corporate limits of Volente; and

**NOW THEREFORE**, the BCRUA and Volente now wish to set forth their agreement regarding the design, construction, and operation of the System in Volente, as set forth below:

## ARTICLE I DEFINITIONS

“**BCRUA**” means the Brushy Creek Regional Utility Authority, a local government corporation created by the home rule cities of Cedar Park, Leander, and Round Rock to provide a dependable and adequate supply of treated water to their citizens.

“**BCRUA Project**” means the regional water transmission and treatment system project including the Intake Facility and Tunnel to be constructed within the Village of Volente.

“**Code**” means the Village of Volente Code of Ordinances.

“**Intake Facility**” means the deep-water intake facility, maintenance building, and accessory facilities to be constructed and operated on Site 4, for the purpose of accessing raw water from Lake Travis.

“**Ordinances**” means the validly adopted ordinances of the Village of Volente regulating development and construction in the Village.

“**Pumping Facility**” means the pumps, buildings, and related facilities to be constructed and operated on Site 8 for the purpose of pumping raw water to the Treatment Plant.

“**Site 4**” means the tract of land described in **Exhibit A** owned by the BCRUA in Volente on which the Intake Facility will be constructed.

“**Site 8**” means the tract of land described in **Exhibit B** owned by the BCRUA on which the Pumping Facility will be constructed.

“**System**” means the BCRUA Project and the Pumping Facility.

“**Tunnel**” means the underground tunnel for the raw water transmission line between the Intake Facility and the Pumping Facility, which will cross under Lime Creek Road at approximately the following locations: 23+50, 27+00 and 31+00 near Sandy Creek Marina; 37+00 approximately 0.3 miles north of the intersection of Lime Creek Road and West Drive along Lime Creek Road; and 49+50 approximately 0.1 miles south of the intersection of Lime Creek Road and West Drive along Lime Creek Road. The path of the Tunnel is generally shown in **Exhibit D**.

“**Volente**” or “**Village**” means the Village of Volente, a Texas Type-B, general law city.

## ARTICLE II BCRUA’S ACKNOWLEDGMENTS AND REPRESENTATIONS

**2.01.** BCRUA acknowledges and agrees that Volente has a legitimate governmental interest in protecting the public health, safety, and welfare of its citizens by regulating development in the corporate limits of Volente. In furtherance of the aforesaid interest, Volente has adopted the Ordinances to regulate development within the corporate limits of Volente. With respect to the design, construction, and operation of the Intake Facility and Tunnel, BCRUA agrees to deal with

Volente in good faith with respect to complying with the applicable development regulations of Volente as set forth in the Ordinances and the MOU.

**2.02.** In accordance with 30 TAC 290.41, raw water intakes shall not be located within 1,000 feet of boat launching ramps, marinas, docks, or floating fishing piers which are accessible by the public. A restricted zone of 200 feet radius from the raw water intake works shall be established and all recreational activities and trespassing shall be prohibited in this area.

### **ARTICLE III VOLENTE'S ACKNOWLEDGMENTS AND REPRESENTATIONS**

BCRUA has determined that the Intake Facility and Tunnel are critical components of the System to access raw water in Lake Travis in order to provide drinking water to the Cities. Volente acknowledges that the Intake Facility and Tunnel are critical components and that Site 4 is the agreed location for the Intake Facility and that the Tunnel will be constructed in part within Volente's corporate limits. With respect to the design, construction and operation of the Intake Facility on Site 4, and the Tunnel, Volente agrees to deal with the BCRUA in a reasonable fashion and in good faith with respect to imposing and enforcing the Ordinances. Volente also acknowledges that BCRUA changed the location of the Pumping Station in consideration of and in reliance on Volente's agreement to allow the BCRUA Project to be constructed in Volente.

### **ARTICLE IV COVENANT OF GOOD FAITH AND FAIR DEALING**

BCRUA and Volente each agree and covenant to deal with each other honestly, fairly, in good faith, and in accordance with the MOU so that they can discharge their respective duties to protect the public health, safety, and welfare of their respective citizens.

### **ARTICLE V USE, MAINTENANCE AND REPAIR OF ROADWAYS**

**5.01.** BCRUA and Volente agree to a Joint Pre-construction Condition Assessment of roads to be utilized for the BCRUA Project, to be conducted by a mutually agreed upon third party.

**5.02.** During the construction phase, BCRUA agrees to repair any damage directly and solely caused by vehicles or construction equipment utilized for the BCRUA Project within thirty (30) calendar days of inspection by BCRUA or notification of damage by Volente. BCRUA agrees to promptly report any such damage to the Village.

**5.03.** At the time of the completion of the project, there shall be a Post-Construction Condition Assessment with BCRUA and Village representatives. This is to perform a joint assessment of post-construction road conditions and recommend a course of action for final improvements to return the roads to an acceptable condition or at a minimum the condition determined at the Pre-construction Condition Assessment.

**5.04.** Within ninety (90) calendar days of completion of the project, BCRUA agrees to repair any damage directly and solely caused by vehicles or construction equipment utilized for the BCRUA

Project. BCRUA agrees to provide or cause to be provided the Village with a two-year warranty bond for the said repairs.

## **ARTICLE VI TRAFFIC AND CONSTRUCTION**

**6.01.** At least 60 days prior to the mobilization at Site 4, BCRUA shall provide the Village a Traffic Management Plan (“TMP”) which shall be developed to help with the mobility, safety, and construction of the BCRUA Project. The Traffic Management Plan establishes the practices for traffic at work sites (both day and night, including manned and unmanned sites) and during planned and unplanned events. The Contractor must develop the TMP and seek approval from the Village’s Project Engineer, which shall not be unreasonably withheld or delayed.

**6.02.** The TMP’s objectives are to:

- a. Provide appropriate transitions into work sites with focus on providing efficient traffic flows;
- b. Protect all personnel and road users from potential harm; and
- c. Establish the minimum traffic management levels including any reviews necessary as a result of changing traffic conditions over the duration of the BCRUA Project.

**6.03.** The TMP must include at a minimum the following:

- a. A documented process for preparation, review and approval for revisions or alterations of the Traffic Management Plan;
- b. Contact details of the Contractor, Engineer, emergency services and other identified stakeholders;
- c. Traffic Control Plans (TCP), a narrative supporting the basis or rationale for the TCP, etc., for implementation of traffic control while undertaking each phase of the construction (if the construction requires traffic control measures not covered by standard codes of practice, including the Texas Manual of Uniform Traffic Control Devices - TMUTCD);
- d. The Contractor’s strategy for informing the general public and adjacent landowners about the nature of the planned work activities or event, the implication of the traffic control plan (e.g. detours) and their role in maintaining the overall safety of the site including the approach for maintaining the roads and routine cleaning;
- e. Construction load considerations;
- f. Haul routes will be identified during design and agreed to by the Village’s Project Engineer. This will include the agreed to work hours when such routes will be normally used;
- g. TMP will identify the days of the week and weekends of the year that construction traffic will be prohibited from operating in the Village; and
- h. Vehicle and truck haul routes during construction of the facilities.

**6.04.** BCRUA agrees to comply with the terms and conditions of the TMP throughout the construction of the BCRUA Project.

**6.05.** BCRUA agrees to use reasonable best efforts to assemble large equipment and sections of the Intake System outside of the Village. BCRUA agrees to use reasonable best efforts to transport large equipment and sections of the Intake System to Site 4 via barge.

**6.06.** BCRUA agrees that all trucks carrying spoils from Site 8 will not be allowed to come through the Village.

**ARTICLE VII  
SAFETY AND REPORTING**

**7.01.** BCRUA agrees to provide to the Village 24-hour emergency contacts for the maintenance and storage building.

**7.02.** BCRUA shall establish and maintain a complaint triage process with designated points of contact and response for any concerns regarding the construction of the BCRUA Project.

**7.03.** BCRUA agrees to install a perimeter fence that is eight feet tall at Site 4. No razor wire or cyclone fencing shall be used.

**ARTICLE VIII  
MONITORING WELLS AND PROTECTION OF  
PRIVATE WELLS**

Recognizing the importance of private domestic groundwater wells in Volente, BCRUA has established a groundwater well monitoring program to proactively categorize and identify groundwater wells. The groundwater well program includes an inventory of existing wells within 400 feet on either side of the Tunnel. BCRUA has contacted property owners with private domestic groundwater wells within 400 feet on either side of the Tunnel multiple times seeking voluntary cooperation to collect additional information including water level and water quality data on these wells. Volente understands that the success of the program depends on the voluntary cooperation of the affected landowners and Volente is not responsible for residents providing BCRUA access to wells on private property.

**ARTICLE IX  
VOLENTE'S ACCESS TO WATER**

After the BCRUA System is constructed Volente would like to have access to the System to supply water to its citizens. The BCRUA agrees to consider any such request in good faith.

**ARTICLE X  
REIMBURSEMENT FOR PROFESSIONAL SERVICES**

**10.01.** BCRUA agrees to reimburse Volente the not-to-exceed sum of \$100,000.00 for past, present and future engineering and attorney's fees accrued for: the negotiation and preparation of this Agreement; the review of design documents and the applications for permits; and the inspections and approvals for the construction of the Intake Facility and Tunnel.

**10.02.** BCRUA will provide periodic reports on the status of the BCRUA Project to Volente's designated point of contact.

**ARTICLE XI**

## APPROVAL OF DEVELOPMENT AND CONSTRUCTION PERMITS

**11.01.** Volente acknowledges that the Cities have the power of condemnation and that Site 4 was acquired by the Cities on behalf of the BCRUA for a public and governmental purpose. BCRUA agrees to submit a Short Form Final Plat in accordance with Section 9.03.059 of the Code.

**11.02.** Volente acknowledges that the Cities and the BCRUA are governmental entities and that the construction and operation of the BCRUA Project is a governmental purpose to provide for the health, safety and welfare of over 500,000 people. Volente acknowledges that BCRUA submitted a Rezoning Application and Conditional Use Permit Application on July 24, 2019.

**11.03.** Volente acknowledges that the BCRUA has applied for eight variances as described in **Exhibit E**.

**11.04.** This ILA sets forth the exclusive list of approvals and requirements of Volente applicable to the design, development, construction, installation and operation of the System. The Village shall review and act upon the necessary applications and requirements in accordance with the schedule provided hereunder:

- a. Zone Change Application, Conditional Use Permit, and Variances shall be acted upon by the Village Planning and Zoning Commission on or before December 8, 2020, and by the Village Council on or before December 15, 2020.
- b. Short Form Final Plat and Site Plan Approval Application delivered to the Village on May 15, 2020, including the Site Plan Approval Revision delivered to the Village on June 26, 2020, in response to Village Comments received by BCRUA on May 22, 2020, and attached hereto as **Exhibit F**, including irrigation plan, the water quality plan, the temporary and permanent sedimentation and erosion control plans, the landscaping plan, the driveway plan, and tree removal permit application included with the Site Plan application, shall be acted upon by the Village Planning and Zoning Commission on or before January 19, 2021, and by the Village Council on or before January 26, 2021.

**11.05.** After the necessary approvals have been obtained by the BCRUA pursuant to this Article, the BCRUA will be entitled to proceed with the construction, maintenance, and operation of the System. In the event of a conflict between an ordinance or regulation of the Volente Code and this ILA, the ILA will control.

**11.06.** The BCRUA agrees to work with Volente to add or modify erosion/sediment controls on the BCRUA Project Site as needed to comply with applicable LCRA regulations. The tree removal permit approved herein shall entitle the BCRUA to remove trees from the right-of-way for the construction of the driveway.

**11.07.** BCRUA is authorized to remove trees necessary for construction of the Intake Facility on Site 4 and construction of the Jackson Street Extension as shown in Site Plan Approval application. BCRUA agrees to mitigation for the removal of trees from Site 4 by replanting trees on Site 4 in accordance with Village Ordinances. BCRUA is authorized to remove trees in Village right-of-way necessary for the construction of the Jackson Street Extension without a requirement to mitigation.

**11.08.** The maintenance building located on Site 4 will be built in substantial accordance with the elevation plans attached hereto as **Exhibit G** and will be constructed in accordance with the International Building Code, 2009 Edition, or more recent edition.

**11.09.** BCRUA is authorized to install and maintain in place for the duration of construction of the System surface monitoring instruments within the right-of-way of Lime Creek Road adjacent to the locations where the Tunnel crosses under Lime Creek Road. The instrumentation will consist of the following two types of instruments: (a) a Type 1 Instrument, which is a shallow surface monitoring point consisting of a steel rod embedded below ground and protected with a shallow casing (approximately 12-inch-deep and 3-inch-diameter) and cap; and (b) Three Type 1 Instrument, as generally shown on **Exhibit H** to be installed at each right-of-way crossing outside of the pavement.

**11.10.** The approvals set forth in this Agreement will not expire until the System is completed.

## **ARTICLE XII DISPUTE RESOLUTION**

**12.01.** The parties desire to resolve disputes arising under this Agreement without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between themselves.

**12.02.** At the written request of either party, the BCRUA General Manager and Volente's Mayor shall promptly negotiate informally and in good faith to resolve any dispute arising under this Agreement.

**12.03.** If the Parties cannot resolve the dispute within thirty (30) calendar days after the first negotiation meeting, the parties agree to refer the dispute to a mutually agreeable mediator. Each party shall pay half the cost of the mediation services.

**12.04.** The parties agree to continue performing their duties under this Agreement, which are unaffected by the dispute, during the negotiation and mediation process.

**12.05.** If mediation does not resolve the parties' dispute, the parties may pursue their legal and equitable remedies.

**12.06.** A party's participation in or the results of any mediation or other non-binding dispute resolution process under this section or provisions of this section shall not be construed as a waiver by a party of: (1) any rights, privileges, defenses, remedies or immunities available to a party; (2) a party's termination rights; or (3) other termination provisions or expiration dates of this interlocal agreement.

**12.07.** Nothing shall prevent either party from resorting to judicial proceedings if (a) good faith efforts to resolve a dispute under these procedures have been unsuccessful, or (b) interim resort to a court is necessary to prevent serious and irreparable injury to a party or to others.

## **ARTICLE XIII INSURANCE AND LIABILITY**



**13.01** BCRUA, including the individual Cities and all of BCRUA's or a Cities' Contractors and Subcontractors performing work within the Village shall provide the following insurance policies throughout the term of the Agreement, and shall provide to BCRUA and to the Village on request a copy of the insurance policy or relevant excerpts thereof demonstrating compliance with this provision:

- a. The Village of Volente shall be added as an additional named insured on all policies issued for work to be conducted within the Village, except for Workers Compensation Insurance.
- b. Worker's Compensation providing statutory coverage and Employer's Liability Insurance providing limits of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease-each employee, and One Million Dollars (\$1,000,000) disease-policy limit.
- c. Business Automobile Insurance providing One Million Dollars (\$1,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of Contractor owned or leased motor vehicles, including onsite and offsite operations. Limits may be satisfied using primary and excess/umbrella policies.
- d. Commercial General Liability Insurance providing limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of Contractor or any of its employees or subcontractors for whom Contractor is legally liable. Limits may be satisfied through the use of primary and excess/umbrella policies
- e. Contractor's Pollution Liability (CPL) Insurance providing limits of Two Million Dollars (\$2,000,000) per claim and aggregate. CPL coverage will provide for liability due to pollution conditions caused by or exacerbated by Contractor and will include coverage related to the remediation of pollutants and for third-party claims alleging bodily injury and/or damage to third-party property due to pollutants. Claims made coverage will include a retroactive date that predates all Work executed per this Agreement.
- f. Professional Liability insurance covering errors and omissions in the professional services performed on behalf of the Village, with limits of One Million Dollars \$1,000,000.
- g. Commercial Crime insurance with limits of \$1,000,000.
- h. Umbrella Excess Liability insurance that following the form of the underlying primary liability insurance required by this Agreement, with limits of Six Million Dollars \$6,000,000 each occurrence combined single limit.

**13.02.** BCRUA shall require all Contractors, including the Cities, Walker Partners and Subcontractors to add the Village and Village's directors, officers, employees, and

representatives as additional named insured in Contractor's commercial general liability, automobile liability, excess/umbrella, and Contractor's pollution liability policies for any work conducted within the Village.

**13.03. Certificates of Insurance ("COI").**

- a. The Parties shall provide a COI evidencing the required insurance policies, limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 12.01 and its subsections. Certificates of insurance will reference the project name as identified on the first page of this Agreement.
- b. In the event the COI provided indicates that any required insurance will expire during the period of this Agreement, the party shall furnish, on or before the expiration date, a renewed COI as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereafter has been procured and in effect.
- c. In the event a COI evidencing the renewed coverage is not available prior to the policy renewal date, that party shall provide to the other party, within fifteen (15) days of the policy's(ies') renewal date(s). The party shall furnish the insurance certificates to the other party immediately upon the first party's receipt.
- d. The Village shall be notified immediately if any COI that has expired, lapses or been cancelled.

**ARTICLE XIV  
GENERAL PROVISIONS**

**14.01. Authority.** This ILA is made in part under the authority conferred in Chapter 791, *Texas Government Code* and Section 552.001, *Texas Local Government Code*.

**14.02. Severability.** The provisions of this ILA are severable and, if any provision of this ILA is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this ILA shall not be affected, and this ILA shall be construed as if the invalid portion had never been contained herein.

**14.03. Payments from Current Revenues.** Any payments required to be made by a Party under this ILA shall be paid from current revenues or other funds lawfully available to the Party for such purpose.

**14.04. Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this ILA.

**14.05. Entire Agreement.** Except as otherwise expressly provided herein, this ILA contains the entire agreement of the Parties regarding the BCRUA Project and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.

**14.06. Amendments.** Any amendment of this ILA must be in writing and shall be effective if signed by the authorized representatives of the Parties.

**14.07. Applicable Law; Venue.** This ILA shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Travis County, Texas.

**14.08. Specific Performance.** The parties shall have available to them equitable remedies to enforce this ILA, including, without limitation, the right to obtain a writ of mandamus or an injunction against the other party to enforce the terms of this ILA.

**14.09. Notices.** Any notices given under this ILA shall be effective if (i) forwarded to a Party by hand-delivery; (ii) sent by any electronic means of sending messages, including facsimile transmission and electronic mail (“Electronic Transmission”); or (iii) deposited with the U.S. Postal Service, postage prepaid, certified, to the address of the Party indicated below:

**BCRUA:** Karen Bondy, General Manager  
Brushy Creek Regional Utility Authority  
221 E. Main St.  
Round Rock, Texas 78664

With copy to: Stephan L. Sheets  
Sheets & Crossfield, P.C.  
309 E. Main St.  
Round Rock, Texas 78664

**VILLAGE OF VOLENTE:** Jana Nace, Mayor  
Village of Volente  
16100 Wharf Cove  
Volente, Texas 78641

With copy to: Alan Bojorquez  
Bojorquez Law Firm, P.C.  
11675 Jollyville Rd. Ste 300  
Austin, Texas 78759

Each notice sent in accordance with this section shall be deemed to have been received at the time on the day it was delivered at such address, at the beginning of business on the third (3rd) Business Day after it was mailed, or one (1) hour after they were sent on the same day it was sent by Electronic Transmission, or at the start of business on the first (1st) Business Day thereafter if the day on which it was sent by Electronic Transmission was not a Business Day. Either party may change its address for notice by giving notice to the other party as provided in this section.

**14.10. Force Majeure.** Parties shall not be deemed in violation of this ILA if prevented from performing any of their obligations hereunder by reasons for which they are not responsible or circumstances beyond their control. However, notice of such impediment or delay in performance

must be timely given, and all reasonable efforts undertaken to mitigate its effects.

**14.11. Counterparts.** This ILA may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

**14.12. Authority.** Each party represents and warrants that it has the full right, power and authority to execute this ILA.

**14.13. Effective Date.** This ILA is effective on the date last executed below:

*The Remainder of This Page Left Intentionally Blank*

(Signatures on following pages)

DRAFT

**BRUSHY CREEK REGIONAL UTILITY  
AUTHORITY**

By: \_\_\_\_\_  
Rene Flores, President

Date: \_\_\_\_\_

DRAFT

**VILLAGE OF VOLENTE**

By: \_\_\_\_\_  
Jana Nace, Mayor

Date: \_\_\_\_\_

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