

RESOLUTION 22-07

**A RESOLUTION OF THE SOUTH WEBER CITY COUNCIL
APPROVING THE DAVIS AND WEBER COUNTIES CANAL COMPANY
ENCROACHMENT AGREEMENT**

WHEREAS, public works has need to access manholes and a retention basin which are located near Peachwood and Deer Run Drives; and

WHEREAS, it would be difficult logistically to move heavy equipment through residences for maintenance or repairs but can be accessed through the Davis and Weber Counties Canal Company's (DWCCC) property; and

WHEREAS, DWCCC has agreed to allow access and has outlined those conditions in an agreement; and

WHEREAS, Council has made time to thoroughly review the agreement and agree to the conditions outlined;

NOW THEREFORE BE IT RESOLVED by the Council of South Weber City, Davis County, State of Utah, as follows:

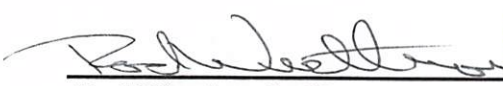
Section 1. Approval: The Access Encroachment License Agreement with Davis & Weber Counties Canal Company as attached in Exhibit 1 is hereby approved.

Section 2: Repealer Clause: All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

PASSED AND ADOPTED by the City Council of South Weber, Davis County, on the 11th day of 2022.

Roll call vote is as follows:

Council Member Dills	FOR	AGAINST
Council Member Petty	FOR	AGAINST
Council Member Soderquist	FOR	AGAINST
Council Member Alberts	FOR	AGAINST
Council Member Halverson	FOR	AGAINST


Rod Westbroek, Mayor



Attest: Lisa Smith, Recorder

EXHIBIT 1
ACCESS ENCROACHMENT LICENSE
AGREEMENT

ACCESS ENCROACHMENT LICENSE AGREEMENT

THIS ACCESS ENCROACHMENT LICENSE AGREEMENT (“**Agreement**”) is entered into as of this 11th day of January 2022 (“**Effective Date**”), by and between Davis & Weber Counties Canal Company, a Utah Nonprofit Mutual Water Company (“**Company**”), and South Weber City (“**Licensee**”). Company and Licensee may be referred to individually as “**Party**” or collectively as “**Parties**”.

RECITALS

A. Company is the owner of certain real property, easements, and/or rights of way associated with its water conveyance system and related facilities (“**Company Property**”).

B. Company has constructed ditches, concrete canal, pipeline, box culvert, and related facilities (“**Company Facilities**”) on or within the Company Property which are used to deliver water.

C. Licensee seeks the right to access and traverse along the canal west of Peachwood Drive and east of Deer Run Drive in order to maintain and clean storm drain ponds, which will access or encroach upon Company Property or Company Facilities as more specifically described on Exhibit A hereto (“**Access Area**”).

In consideration of the payment of a license fee and in further consideration of the mutual promises and covenants set forth herein the Parties agree as follows:

AGREEMENT

1. Licensee is granted the right to access and traverse the Access Area as set forth on Exhibit A. Any modification to the Access Area must be submitted to the Company, in advance of any work being done, for review and approval.

2. This Agreement will take effect on the Effective Date and shall continue until terminated as provided herein.

3. Licensee shall at all times be solely responsible for any damages or disturbance of the Access Area. Licensee is responsible for fencing, security measures, as well as not damage Company Facilities due to the access/encroachment. Access Area shall be kept in good repair and shall be maintained and operated in a manner that will not adversely impact Company Property or Company Facilities.

4. Licensee shall not enter Access Area without first notifying Company canal supervisor.

5. Licensee shall reimburse Company for any additional operation and maintenance costs incurred by the Company as a result of the Access Area. Company will provide Licensee a written invoice detailing additional or extraordinary operation or maintenance expenses related

to Company Facilities incurred by Company as a result of the Access Area and Licensee will pay the invoice within thirty (30) day of its receipt.

6. Company reserves the right to inspect the Access Area at any time during its operation or use by Licensee. If costs are incurred by Company due to additional oversight, Company shall be paid by Licensee as set forth in Paragraph 5 of this Agreement.

7. If at any time, Company determines, in its sole discretion, that Company Facilities subject to this Agreement require repair or replacement, Licensee may be restricted or temporarily prohibited on accessing Company Property, in order for the Company to perform such repair or replacement, as Company deems necessary.

8. Licensee will indemnify and hold harmless Company and its principals, agents, and employees, from and against all claims, loss, liability, suits, and damages, including attorneys' fees, charges, or expenses for injury or damages to any persons or property that may result from this Agreement, including, but not limited to, damages to Company or any third party as a result of Licensee's encroachment upon Company Property or Company Facilities. It is the intent of the Parties that this indemnity be construed broadly in order to protect Company from any and all incidences resulting from Licensee's encroachment of Company Property. This indemnity does not include claims resulting from Company's gross negligence or willful misconduct.

9. Licensee will maintain insurance. Said insurance is to rectify any damage due to activities or use of property, and any related liabilities.

10. The right to cross or encroach upon Company Property created under this Agreement is not an easement or other perpetual interest in Company Property. No interest will be perfected under the doctrines of adverse possession, prescription, or other similar doctrines of law based on adverse use, as the use permitted is entirely permissive in nature.

11. This Agreement may be terminated if Company, in its sole but reasonable discretion, determines that Licensee has not complied with the terms of this Agreement by giving Licensee twenty (20) days prior notice of the default, during which Licensee will have an opportunity to cure the default and avoid termination. If this Agreement is terminated, Company will have the right to pursue any and all claims against Licensee related to the encroachment of Company Property including removal of any improvements within Access Area from Company Property.

12. This Agreement may not be assigned or transferred by Licensee without the prior written consent of Company, which consent will not be unreasonably withheld.

13. This Agreement constitutes the entire agreement between the parties and cannot be altered except through a written instrument signed by the Parties. This Agreement supersedes all previous agreements, whether written or oral.

14. This Agreement will be enforced and governed under the laws of the State of Utah.

15. In the event an action is filed as a result of a dispute arising out of this Agreement, Company will be entitled to reasonable attorneys' fees.

[SIGNATURE PAGES FOLLOW]

The Parties have executed this Access Encroachment Agreement to be effective as of the date first written above.

Company

By: _____
Its: _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____ in his/her capacity as _____ of the Davis and Weber Counties Canal Company.

NOTARY PUBLIC
Residing at: _____

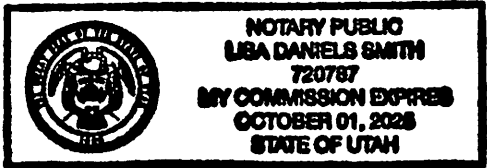
My Commission Expires:

Licensee South Weber City

By: *[Signature]*
Its: City Manager David Larson

STATE OF UTAH)
: ss.
COUNTY OF DAVIS)

The foregoing instrument was acknowledged before me this 12th day of January 2022, by David Larson in his/her capacity as the City Manager of South Weber City.



[Signature]
NOTARY PUBLIC
Residing at: 1600 E South Weber Dr, South Weber

My Commission Expires: 10-01-2025



CONSULTING ENGINEERS

6080 Fashion Point Drive South Ogden, Utah 84403
 (801) 476-9767 www.jonescivil.com

**SOUTH WEBER CITY CORPORATION
 DWCCC CANAL ACCESS**

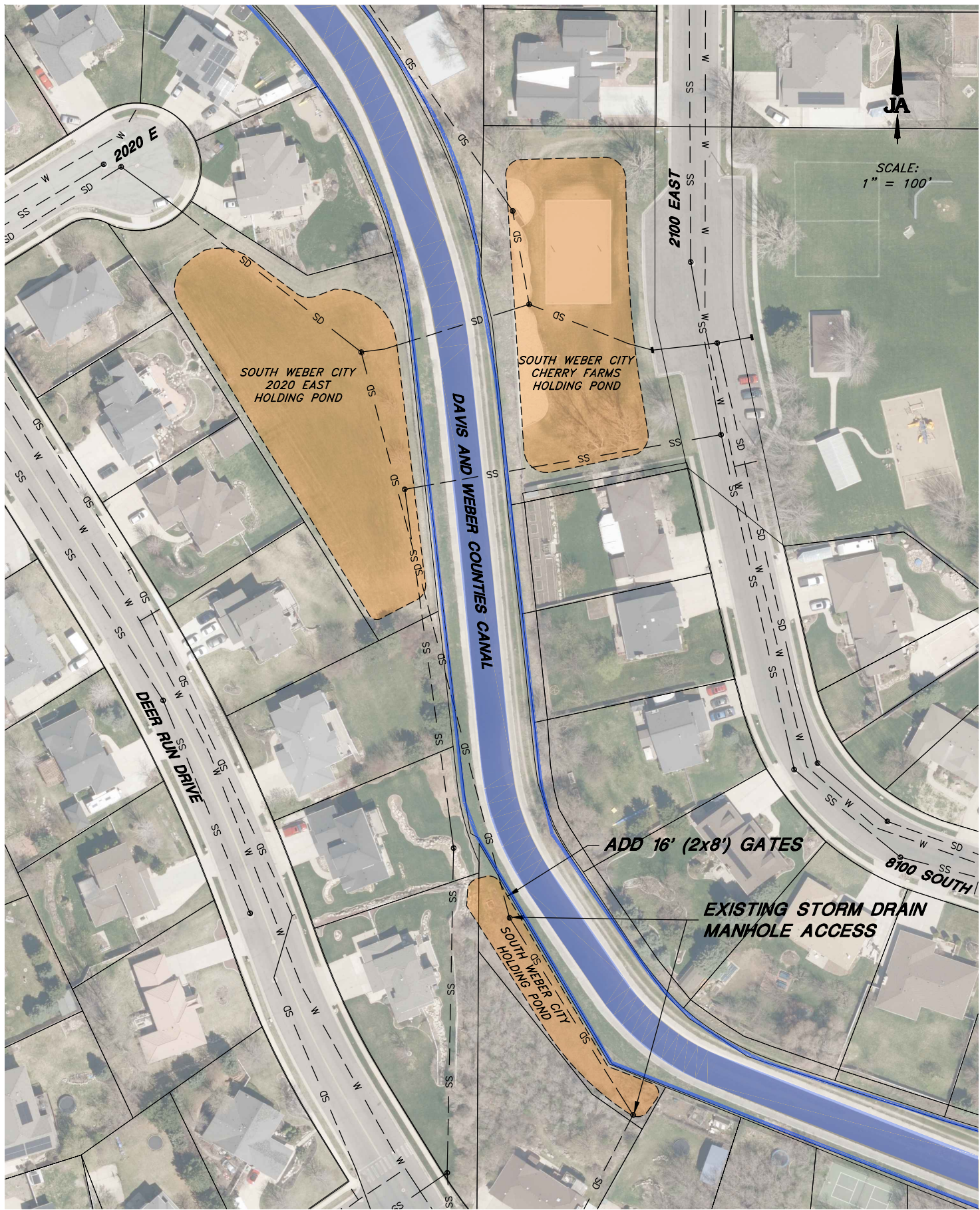
EXHIBIT A - PEACHWOOD TO 1900 EAST

SHEET:

A

OF 1 SHEETS

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DWCCC CANAL ACCESS

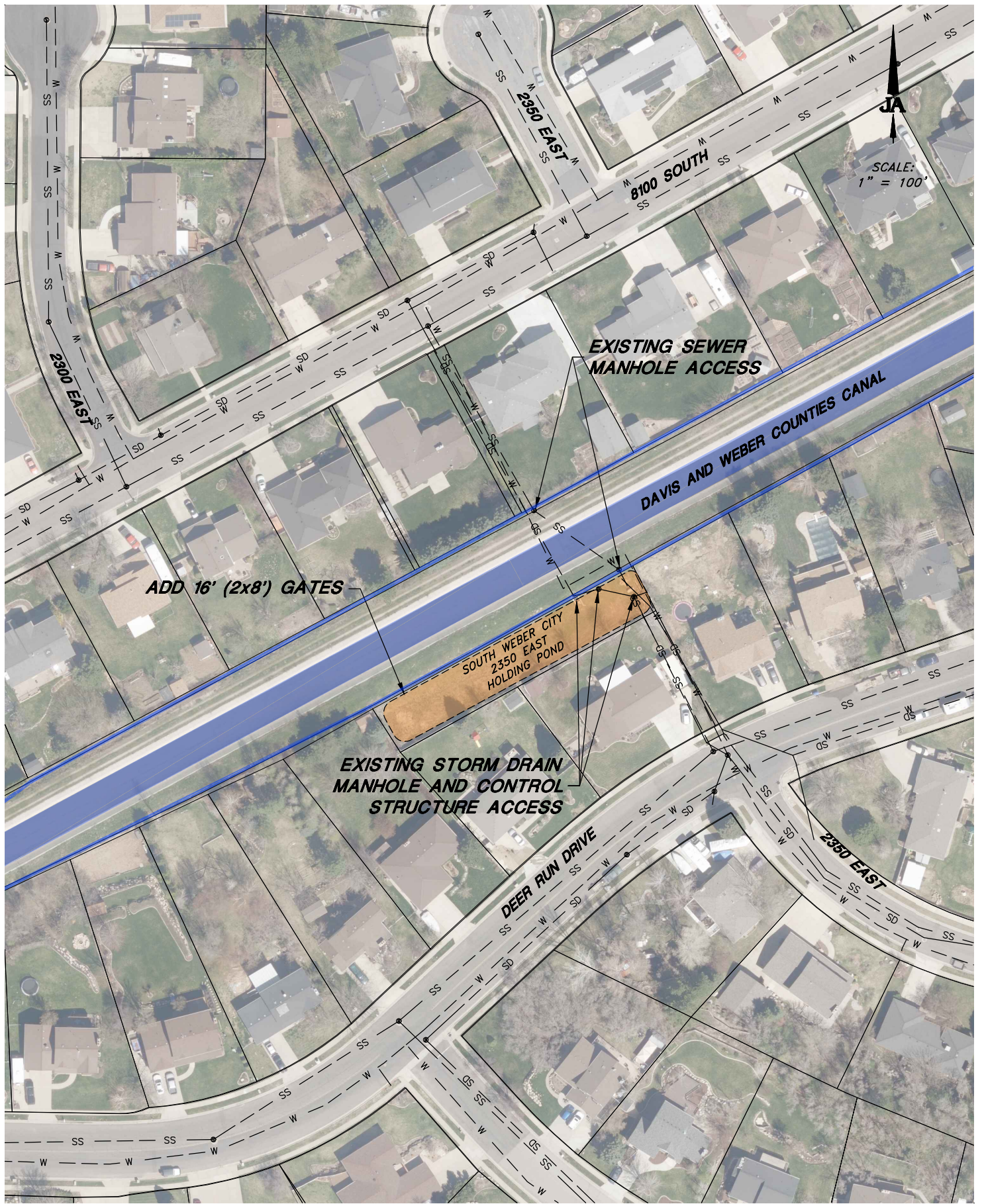
EXHIBIT B

SHEET:

B

OF 1 SHEETS

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**SOUTH WEBER CITY CORPORATION
 DWCCC CANAL ACCESS**

EXHIBIT C

SHEET:

C

OF 1 SHEETS

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