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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: December 2, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Agenda Item No. 9(A)(1)

Resolution No. R-1350-08

Subject: Amendment to Agreement between Animal Services and the Humane Society of Greater Miami

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It is recommended that the Board of County Commissioners (Board) approve an amendment to the Mobile Animal Clinic (M.A.C.) Partnership agreement between Animal Services and the Humane Society of Greater Miami/Adopt-A-Pet (HSGM) approved by the Board in 2007, extending the term and amending the agreement for one year.

Scope

In a combined effort to offer this much needed service in the community, qualifying low-income constituents will be eligible for free spay/neuter services on the M.A.C. unit when scheduled through the HSGM. For those who do not qualify, spay/neuter services will be offered at low cost along with other preventive care such as vaccinations.

Fiscal Impact/Funding Source

The M.A.C. unit is paid in full, and continues to be utilized by Animal Services for adoption and community events. Fixed costs associated with the bus, i.e. insurance, gas, maintenance, etc. are reflected in the departmental budget projections. The HSGM will incur other costs associated with spay/neuter surgeries as per the agreement (attachment A). This partnership will not adversely affect the Animal Services budget.

Track Record/Monitor

The Humane Society of Greater Miami operates a shelter at 16101 West Dixie Highway in North Miami Beach and since January of 2008, has occupied the spay/neuter clinic previously run by Animal Services, providing spay/neuter surgery and preventive care. Emily Marquez-Dulin, the Executive Director of the Humane Society of Greater Miami will be responsible for the contract.

Background

On December 18, 2007, the Board approved Resolution R-1378-07 establishing a partnership with the HSGM. At that time, the HSGM received grant money specifically to provide free spay/neuter services to low income pet owners and utilized the mobile unit for that project completing 1,500 surgeries. Since they have fulfilled their responsibilities with regards to that grant, the organization now wishes to use the unit for combined low cost and free surgery services.

The M.A.C. unit was purchased by Miami-Dade County in 1994 and has since been predominantly used as a mobile spay/neuter clinic. Currently Animal Services handles over 34,000 pets per year. The overpopulation crisis can only be addressed through low cost, high volume spay/neuter programs. No single organization or Miami-Dade County department can solve this overwhelming problem on its own and therefore the Animal Services department has been pursuing a variety of partnerships so that low cost surgeries continue to be available for the public.

Alina T. Hudak

Alina Hudak
Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: December 2, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 9(A)(1)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(1)
12-2-08

RESOLUTION NO. **R-1350-08**

RESOLUTION APPROVING EXECUTION OF AMENDED AGREEMENT WITH HUMANE SOCIETY OF GREATER MIAMI/ADOPT-A-PET TO OPERATE MOBILE ANIMAL CLINIC AND AUTHORIZING THE COUNTY MAYOR OR DESIGNEE TO EXERCISE CANCELLATION PROVISIONS AND PROVISIONS RELATING TO PRIOR WRITTEN APPROVAL CONTAINED THEREIN

WHEREAS, there is an overpopulation of companion animals in Miami-Dade County; and

WHEREAS, the COUNTY, through its Animal Services Department, owns a Mobile Animal Clinic (the "MAC"); and

WHEREAS, the Humane Society Of Greater Miami/Adopt-A-Pet, Inc. (the "HSGM") is a registered Florida non-profit corporation, organized for, among others, the purposes of caring for shelter animals and reducing the animal overpopulation problem; and

WHEREAS, on December 18, 2007, this Board adopted Resolution No. R-1378-07, approving an agreement between the COUNTY and the HSGM to allow the HSGM to operate the MAC to provide free spay/neuter services; and

WHEREAS, the Animal Services Department currently does not have the financial resources to operate the MAC, and the MAC accordingly will not be used for County purposes; and

WHEREAS, the HSGM has requested to amend the agreement approved by Resolution No. R-1378-07 to lease the MAC on a non-exclusive basis and to be permitted to charge modest fees to provide low-cost spay/neuter surgeries and vaccinations and other preventive care to the pets of Miami-Dade County residents on a not-for-profit basis,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves an amended agreement with the Humane Society Of Greater Miami/Adopt-A-Pet, Inc. (the "HSGM"), in substantially the form attached hereto and made a part hereof, which supersedes the agreement approved by Resolution No. R-1378-07 and which provides the HSGM with the use of the Animal Services Department's Mobile Animal Clinic (the "MAC") on a non-exclusive basis for a 1-year term, renewable for two 1-year terms, for a rent of $1.00 per year. In addition, this Board authorizes the County Mayor or designee to exercise all provisions requiring the HSGM to obtain prior written approval from the County and all cancellation provisions contained therein.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Joe A. Martinez** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman **aye**
Barbara J. Jordan, Vice-Chairwoman **aye**

Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Joe A. Martinez	**aye**	Dennis C. Moss	**aye**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of December, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Dennis A. Kerbel

AMENDED AGREEMENT

THIS AMENDED AGREEMENT made on the day of , 200 , by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, herein referred to as the "COUNTY" or the "LESSOR," and the HUMANE SOCIETY OF GREATER MIAMI/ADOPT-A-PET, INC., 16101 W. Dixie Highway, Miami, FL 33160, hereinafter referred to as the "HSGM" or the "LESSEE,"

W I T N E S S E T H:

WHEREAS, there is an overpopulation of companion animals in Dade County; and

WHEREAS, the COUNTY, through its Animal Services Department, owns a Mobile Animal Clinic (the "MAC") but currently does not have the financial resources to operate the MAC to provide spay/neuter services to the pets of Miami-Dade County residents; and

WHEREAS, the COUNTY previously entered into an agreement with the HSGM, pursuant to Resolution No. R-1378-07, adopted on December 18, 2007, through which the HSGM volunteered to operate the MAC to provide free spay/neuter surgeries to the pets of qualified Miami-Dade County residents; and

WHEREAS, the HSGM has provided 1,500 free spay/neuter surgeries to the pets of qualified Miami-Dade County residents and has otherwise fulfilled its obligations under the prior agreement; and

WHEREAS, the parties now seek to expand the terms under which the HSGM may operate the MAC, to permit the HSGM to lease the MAC on a non-exclusive basis and to permit the HSGM to charge modest fees to provide low-cost spay/neuter surgeries and vaccinations and other veterinary care to the pets of Miami-Dade County residents on a not-for profit basis,

NOW THEREFORE, the COUNTY, for and in consideration of the restrictions and covenants herein contained, hereby leases to the HSGM and the HSGM hereby agrees to lease from the COUNTY the Animal Services Department's Mobile Animal Clinic (the "MAC"), TO HAVE AND TO HOLD unto said LESSEE for a term of one (1) year, commencing upon

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approval of the Board of County Commissioners and acceptance of the vehicle, and terminating one year thereafter, for and at a total rental of 1 Dollar and 00/100 ($1.00) per year.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

1. PREVIOUS AGREEMENT SUPERSEDED. This Amended Agreement supersedes the agreement between the COUNTY and the HSGM that was approved by Resolution No. R-1378-07, adopted on December 18, 2007.

2. DEFINITIONS.

a. "Department" shall mean the Miami-Dade County Animal Services Department.

b. "Director" shall mean the Director of the Department.

c. "MAC" shall mean the Mobile Animal Clinic owned by the County and maintained by the Department.

d. "Qualified Resident" shall mean a resident of Miami-Dade County who receives federal assistance and who provides one of the following forms of proof of federal assistance:

i. Food stamps
ii. Medicaid
iii. Supplemental social security income
iv. Aid for Families with Dependent children
v. Jackson Clinic card

3. GRANT OF RIGHTS. The COUNTY hereby grants the HSGM the right to utilize the MAC to provide free spay/neuter surgeries and vaccines to the pets of Qualified Residents and to provide low-cost spay/neuter surgeries, low-cost preventive care (including, without limitation, rabies vaccines, core vaccines, vaccine boosters, and heartworm and fecal tests), and other low-cost veterinary services to the pets of Miami-Dade County residents, subject to the following provisions:

a. HSGM shall be responsible for providing the following:

i. All personnel necessary to operate the MAC, including without limitation 1 veterinarian and 2 veterinary technicians. One of the HSGM personnel will be a driver, who shall have the appropriate Florida driver's license and who shall obtain approval from the Risk Management Division of the COUNTY's General Services Administration prior to operating the MAC.

ii. The following equipment: oxygen for surgeries, suture supplies, surgical tools, and pharmaceutical supplies including pain relief for all surgery patients.

iii. All post-surgical cleaning

iv. Scheduling

v. Advertising and promotion through newspapers, television, and other media.

b. The COUNTY shall be responsible for providing the following:

i. Gasoline for the MAC

ii. The following surgical equipment: anesthesia machine, autoclave, surgery table, surgery lights

iii. Responsibility for any property damage to the MAC, whether the damage arose from the acts or omissions of HSGM or otherwise.

iv. Vehicle maintenance for the MAC

v. Advertising and promotion through 3-1-1 and County or Department website.

vi. Serving as the responsible veterinarian for the MAC premise permit.

c. HSGM shall make reasonable efforts to perform at least 24 surgeries per day that HSGM uses the MAC, distributed as follows: 6 female dogs; 6 male dogs; 6 female cats; 6 male cats.

d. HSGM shall establish a daily surgery schedule that accommodates reservations and walk-ins. HSGM shall make the MAC available for the excess reservations and walk-ins on the next day or as soon thereafter as feasible.

e. HSGM shall coordinate with the Department to establish a mutually agreeable schedule for use of the MAC.

4. INSURANCE. HSGM shall furnish, to the Department, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

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a. Worker's Compensation Insurance for all employees of the HSGM as required by Florida Statute 440.

b. Public Liability Insurance on a comprehensive basis in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

c. Automobile Liability Insurance covering all non-owned vehicle(s) used in connection with the agreement, in an amount not less than $500,000 combined single limit per occurrence for bodily injury and property damage; it is provided, however, that HSGM shall not be obligated to obtain Automobile Liability Insurance covering the MAC.

d. Professional Liability Insurance in an amount not less than $250,000.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

> The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.
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> or
>
> The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

5. INDEMNIFICATION. The HSGM agrees to use reasonable care to prevent damage to the MAC unit. Except where related to property damage to the MAC as provided in section 3.b.iii. herein, the HSGM shall indemnify and hold harmless the COUNTY and its officers, employees, agents, and instrumentalities from any and all liability, losses, or damages, including attorneys' fees and costs of defense, which the COUNTY or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising to third parties or to HSGM or its employees, agents, servants, partners, principals, or subcontractors from the operation of the MAC by the HSGM or

its employees, agents, servants, partners, principals, or subcontractors. The HSGM shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon, except where related to property damage to the MAC as provided in section 3.b.iii. herein. The HSGM expressly understands and agrees that any insurance protection provided by the HSGM shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the COUNTY or its officers, employees, agents, and instrumentalities as herein provided.

6. TERMINATION. Either party may terminate this Agreement at any time and for any reason. The party who wishes to terminate the Agreement shall endeavor to give written notice thereof to the other party at least 30 days prior to termination.

7. OPTION TO RENEW. Provided this Agreement is not otherwise in default, LESSEE is hereby granted the option to extend this Agreement for two (2) additional one (1) year renewal option periods upon the same terms and conditions by giving LESSOR notice in writing at least sixty (60) days prior to the expiration of this Agreement or any extension thereof.

8. NO LIABILITY FOR PERSONAL PROPERTY. All personal property placed or moved in the MAC shall be at the risk of LESSEE or the owner thereof. LESSOR shall not be liable to LESSEE for any damage to said personal property unless caused by or due to negligence of LESSOR, LESSOR's agents or employees, subject to all limitations of Florida Statutes, Section 768.28.

9. LESSOR'S RIGHT OF ENTRY. LESSOR or any of its agents shall have the right to enter the MAC during the LESSEE's established operating hours, upon the giving of twenty-four (24) hours' prior notice, to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Agreement.

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10. PEACEFUL POSSESSION. Subject to the terms, conditions, and covenants of this Agreement, LESSOR agrees that LESSEE shall and may peaceably have, hold, and enjoy the MAC, without hindrance or molestation by LESSOR.

11. SURRENDER OF PREMISES. LESSEE agrees to surrender to LESSOR, at the end of the term of this Agreement or any extension thereof, the MAC in as good condition as it was at the beginning of the term of this Agreement, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted.

12. LIABILITY FOR DAMAGE OR INJURY. LESSOR shall not be liable for any damage or injury which may be sustained by any party or person on the MAC other than the damage or injury caused by the negligence of LESSOR, its officers, employees, agents, invitees, or instrumentalities, subject to all limitations of Florida Statutes, Section 768.28.

13. SUCCESSORS IN INTEREST. It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

14. PERMITS, REGULATIONS & SPECIAL ASSESSMENTS. LESSEE covenants and agrees that during the term of this Agreement, LESSEE will obtain any and all necessary approvals and that all uses of the MAC will be in conformance with all applicable laws, including all applicable zoning regulations. LESSOR will obtain veterinary premise permit for the MAC. Any and all charges, taxes, or assessments levied against the MAC shall be paid by LESSOR and failure to do so will constitute a breach of this Agreement.

15. FORCE MAJEURE. LESSOR and LESSEE shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of the Agreement when prevented from so doing by cause or causes beyond LESSOR's or LESSEE's control, excluding filing of bankruptcy, but

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which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of LESSOR or LESSEE.

16. WAIVER. If, under the provisions hereof, LESSOR or LESSEE shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of LESSOR's or LESSEE's rights hereunder, unless expressly stated in such settlement agreement. No waiver by LESSOR or LESSEE of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by LESSOR or LESSEE of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by LESSEE or receipt by LESSOR of lesser amount than the monthly installments of rent (or additional rent obligations stipulated) shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to LESSOR be deemed an accord and satisfaction and LESSOR may accept such check or payment without prejudice to or waiver of LESSOR's right to recover the balance of such rent or other amount owed or to pursue any other remedy provided in this Agreement. No reentry by LESSOR and no acceptance by LESSOR of keys from LESSEE shall be considered an acceptance of a surrender of this Agreement.

17. DEFAULT OF LESSEE. If LESSEE shall violate or fail to perform any of the other conditions, covenants, or agreements herein made by LESSEE, and if such violation or failure continues for a period of thirty (30) days after written notice thereof to LESSEE by LESSOR, and further, if LESSEE shall be diligently attempting to cure such failure to perform any other conditions, covenants, or agreements, the time to cure such failure shall be extended for so long as LESSEE shall diligently prosecute such cure, then LESSOR may proceed with any remedy available at law or in equity in the State of Florida or by such other proceedings, including reentry and possession, as may be applicable. All rights and remedies of LESSOR under this Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to LESSOR under applicable law.

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18. ADDITIONAL PROVISIONS.

1. Mechanic's, Materialmen's and Other Liens

LESSEE agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the MAC for work or materials furnished to LESSEE; it being provided, however, that LESSEE shall have the right to contest the validity thereof. LESSEE shall immediately pay any judgment or decree rendered against LESSEE, with all proper costs and charges, and shall cause any such lien to be released off record without cost to LESSOR.

2. Non-Discrimination

The Board of County Commissioners declared and established as a matter of policy, by Resolution No. 9601 dated March 24, 1964, that there shall be no discrimination based on race, color, creed, or national origin and Resolution No. 85-92 dated January 21, 1992, that there shall be no discrimination on the basis of disability in connection with any County property or facilities operated or maintained under lease agreement, license, or other agreement from MIAMI-DADE COUNTY or its agencies.

LESSEE agrees to comply with the intention of Resolution No. 9601 dated March 24, 1964 and Resolution No. 85-92 dated January 21, 1992, involving the use, operation, and maintenance of the property and facilities included in this Agreement.

19. HOLDOVER. If LESSEE, with LESSOR's consent, remains in possession of the MAC after expiration of the term and if LESSOR and LESSEE have not executed an expressed written agreement as to such holding over, then such occupancy shall be a tenancy from month to month. In the event of such holding over, all of the terms of the Agreement shall remain in force and effect on said month to month basis.

20. APPLICABLE LAW. This Agreement, including its interpretation and enforcement, shall be governed by, and construed in accordance with, the laws of the State of Florida, except for the rules pertaining to conflict of laws, which would provide for application of the laws of another jurisdiction. The COUNTY and the HSGM hereby submit to the *in personam* jurisdiction and venue of the courts located in Miami-Dade County, Florida, and of the U.S. District Court for the Southern District of Florida and the Eleventh Judicial District Court of

the State of Florida. In any action for breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its costs and attorneys' fees incurred in bringing or defending against such claim.

21. NOTICES. Any notices permitted or required to be given under this Agreement must be sent, either by personal delivery, first class mail (return receipt requested), or recognized overnight courier services (e.g., Federal Express or DHL), to the following addresses:

a. If to the COUNTY:

Miami-Dade County Animal Services Department
7401 NW 74th Street
Miami, FL 33166-2493
Attention: Dr. Sara Pizano, Director
Facsimile: (305) 884-3447

b. If to the HSGM:

Humane Society of Greater Miami/Adopt-A-Pet, Inc.
16101 W. Dixie Highway
North Miami Beach, Florida 33160
Attention: Emily Marquez, Executive Director
Facsimile: 305-696-4434

22. ASSIGNMENT. This Agreement shall not be assignable.

23. WRITTEN AGREEMENT. This Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by resolution approved by the Board of County Commissioners.

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IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(CORPORATE SEAL)

Laurie Hoffman
WITNESS

Stephanie Dethomas
WITNESS

Emily Paiquez
Executive Director
(LESSEE)

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By:_____
DEPUTY CLERK

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
Carlos Alvarez
Mayor (LESSOR)

STATE OF FLORIDA
COUNTY OF MIAM-DADE

BEFORE ME, the undersigned authority, personally appeared _____, to me well known and known to me to be the individual described in and who executed the foregoing instrument as the _____ of _____, and acknowledged to and before me that he executed such instrument as such _____ of said _____, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this ___ day of _____, _____.

(SEAL)

Signature: _____
Title: Notary Public
Name: [Print or type]_____
Serial No., if any:_____
My commission expires:_____

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