TOWN OF LOXAHATCHEE GROVES

RESOLUTION NO. 2015-06

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE TOWN OF LOXAHATCHEE GROVES AND BLACKBAUD, INC., FOR MUNICIPAL FINANCIAL SYSTEM SOFTWARE AS A SERVICE (SAAS); AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Town is in need of Municipal Financial System Software as a Service (SaaS), and engaged in a procurement process to obtain such; and,

WHEREAS, on October 27, 2014, the Town's Finance and Audit Advisory Committee (FAAC) heard presentations from three(3) potential bidders that provide SaaS, and requested that Town staff review information that was provided at the presentation and contact references, and report findings and recommendation for selection to the FAAC at the FAAC's next meeting; and,

WHEREAS, on November 4, 2014, Town staff recommended Blackbaud, Inc., for Municipal Financial SaaS to the FAAC; and,

WHEREAS, on December 2, 2014, the Town Council approved the FAAC and Town Management's recommendation to select Blackbaud as the Town's provider for Municipal (SaaS); and,

WHEREAS, the Town staff and Town Attorney have formulated an agreement with Blackbaud, a copy of which is attached hereto; and,

WHEREAS, the Town Council finds it is in the best interest of the Town of Loxahatchee Groves to approve the Agreement with Blackbaud.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2. The Town Council of the Town of Loxahatchee Groves approves the Agreement with Blackbaud, Inc., for Municipal Software as a Service (SaaS), attached hereto and incorporated herein, and authorizes the appropriate Town Officials to execute same.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 5. This Resolution shall become effective immediately upon its passage and adoption.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AND THIS 20TH DAY OF JANUARY, 2015.

ATTEST:

Janet K. Whipple

Janet K. Whipple, Town Clerk

APPROVED AS TO LEGAL FORM:

Office of the Town Attorney

TOWN OF LOXAHATCHEE GROVES, FLORIDA

David Browning

Mayor David Browning

Ronald W. Jarriel

Vice Mayor Ron Jarriel

absent

Council Member Tom Goltzené

Council Member Ryan Liang

Council Member Jim Rockett

AGREEMENT FOR MUNICIPAL SOFTWARE AS A SERVICE

original agreement on file

COPY

blackbaud
your passion ▸ our purpose

Order Form

The fees and terms quoted in this Order Form ("Order Form") are valid until 1/30/2015. This Order Form and the purchases set forth herein are subject to and governed by the Blackbaud Solutions Agreement available at https://www.blackbaud.com/files/BlackbaudSolutionsAgreement.pdf and by signing this Order Form you agree to be bound by the Blackbaud Solutions Agreement.

Client Information

Issued to:
Town of Loxahatchee

Mailing address:
14579 Southern Boulevard Suite 2
Loxahatchee Groves, FL 33470

Principal contact:
Perla Underwood

Principal contact email:
punderwood@loxahatcheegrovesfl.gov

Net Terms:
NT15

Bill to:
Town of Loxahatchee

Billing address:
14579 Southern Boulevard Suite 2
Loxahatchee Groves, FL 33470

Billing contact:
Perla Underwood

Billing contact email:
punderwood@loxahatcheegrovesfl.gov

Order Form No.:
Q-00050535

Order Summary

	One Time Fees	Annual Recurring Fees	Total Recurring Fees
Subscriptions		$5,810.76	$26,653.80
Software	$0.00		
Services	$10,850.00		
Maintenance		$0.00	$0.00
Totals	$10,850.00	$5,810.76	$26,653.80
Grand Total	$37,503.80		

Signatures

IN WITNESS WHEREOF, the parties have caused this Order Form to be executed by their duly authorized representatives.

AGREED:

Client: **Town of Loxahatchee**

By: {{_es_signer signature}} David Browning

Name: {{_es_signer fullname}} David Browning

Title: {{_es_signer title}} Mayor

Date: {{_es_signer date}} 1-29-2015
(Effective Date)

Kevin Mooney
Blackbaud Authorized Signature

Kevin Mooney
Print Name

President, General Markets Business Unit
Title

1/30/2015

blackbaud
your passion › our purpose

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AGREED :

Client: Town of Loxahatchee

By: {{_es_:signer:signature}} David Browning

Name: {{_es_:signer:fullname}} David Browning

Title: {{_es_:signer:title}} Mayor

Date: {{_es_:signer:date}} 1-29-2015

(*Effective Date)

Subscription

Type	Monthly Price	Adjusted Price	Annual Fees	UoM/Qty	Term Length (months)	Total Fees	Billing
FE.NXT Pro Subscription Offer	$499.00	$384.23	$4,610.76	User/1	60	$23,053.80	Annual
Learn: The Financial Edge More	$166.67	$100.00	$1,200.00	User/3	36	$3,600.00	Annual
Subtotal*						$26,653.80	

Services

Type	Price	Adjusted Price	UoM/Qty	Total Fees	Billing
FE7 Pro Service for NXT Offer	$19,000.00	$9,500.00	Each/1	$9,500.00	100% upon completion
GL Detail Import for FE (3 years)	$2,700.00	$1,350.00	Each/1	$1,350.00	100% upon completion
Subtotal*				$10,850.00	

General Terms

Fees are in **USD**

Our records indicate that you are taxable. Blackbaud may charge sales tax on all or a portion of this purchase, depending on state law. If you provide a valid exemption certificate at a later date, you will not receive a credit for sales tax billed prior to receipt of the exemption certificate. If you feel this is incorrect, please send a valid certificate to: SalesTaxExemptCertificates2@blackbaud.com.

Processing of online financial transactions through the Blackbaud offerings purchased on this Order Form is subject to and governed by the http://www.blackbaud.com/files/bbms/bbpstc.pdf and by signing this Order Form you agree to be bound by the BBPS Addendum.

The services to be provided are described in the accompanying Statement of Work. Additional Operating Guidelines and General Assumptions applicable to your Statement of Work can be found at https://www.blackbaud.com/files/sow/BlackbaudProfessionalServicesGuidelinesandAssumptions.pdf.

The subscription charges listed on this Order Form are for this purchase only. If you currently receive a subscription from Blackbaud, the above charges may be added to those and prorated to coincide with your current maintenance renewal date.

The term of your Subscription commences on the day you execute this Order Form and continues for the duration set forth in the applicable line item above. Subscriptions are billed according to the schedule set forth above.

Your Blackbaud Learn® subscription includes access to specific instructor-led online and self-paced training for everyone at your organization. Classes have minimum attendance requirements and may be rescheduled if those requirements are

not met. Please check course schedules frequently. Blackbaud may cancel scheduled classes up to ten (10) days prior to the scheduled start of the class for instructor-led classroom training classes and up to three (3) days prior to the scheduled start of the class for instructor-led online training classes. In most instances, a minimum of five (5) attendees per class are required for a class to be held. All available seats are distributed on a first come first served basis. Cancellations, last-minute schedule changes, and no-shows are subject to a fee. Please see our cancellation policy at https://www.blackbaud.com/nonprofit-training/help/cancellation-policy. This is a renewable subscription which is billed annually in advance. The term of your subscription commences on the day you execute this Order Form and continues for the duration set forth in the applicable line item above.

A description of the services provided for our Hosting and Software as a Service solution is available at http://www.blackbaud.com/files/maint/HostingSaaSDescription.pdf. As part of this subscription Blackbaud will provide default storage space as outlined in the Hosting/SaaS Description for each application operated from the Blackbaud data center. Should you need to exceed this allocation for any of the applications operated by Blackbaud, additional space may be purchased in 5 GB increments for a fee of $1200 per annual period.

FE7 Pro Service for NXT Offer	https://www.blackbaud.com/files/sow/ACSFENXTPROFPEFinancialEdgeNXTProfessionalImplementation.pdf
GL Detail Import for FE (3 years)	www.blackbaud.com/files/sow/ACSFE3GLHISTFPE3YearGLDetailSOWv2.pdf

Blackbaud Solutions Agreement

This Blackbaud Solutions Agreement (**"Agreement"**), effective as of the date of Client's signature on the Order Form (**"Effective Date"**), is made by and between Blackbaud, Inc., a Delaware corporation having a place of business at 2000 Daniel Island Drive, Charleston, SC 29492, and Client. **"Blackbaud"** means Blackbaud, Inc. and its affiliates and subsidiaries. **"Client"** means the client set forth on the Order Form. **"Party"** means Blackbaud or Client. **"Parties"** means Blackbaud and Client collectively.

The Parties agree as follows:

1. DEFINITIONS.

Defined terms shall have the meanings set forth in this Agreement.

2. ORDERING PROCEDURE.

Blackbaud will furnish to Client and Client will pay for Blackbaud software (**"Software"**), subscription(s), including application services and payment services (**"Subscription"** or **"Application Services"**), support and maintenance (**"Maintenance"**), and other professional, consulting or training services (**"Services"**) detailed in the applicable order form (**"Order Form"**). Software, Subscriptions, Maintenance, and Services are each individually a **"Blackbaud Solution"** and collectively **"Blackbaud Solutions."** The Order Form along with its attachments, which may include a statement of work (**"SOW"**), constitutes the complete and entire Agreement, and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. In the event of any conflict among the terms of this Agreement, an Order Form, or a SOW, the following order of precedence shall apply: (1) Order Form; (2) Agreement; (3) SOW.

3. FEES, EXPENSES, & PAYMENT.

a. **Fees, Duties, and Taxes.** Fees are described in the applicable Order Form. Such fees are exclusive of all duties and taxes imposed on the provision of goods and services (**"Taxes"**). Unless Client provides Blackbaud with a valid tax exemption certificate on or before the Effective Date of this Agreement, Client will be responsible for all Taxes. Client shall maintain a current tax exemption certificate on file with Blackbaud and promptly notify Blackbaud if Client's tax status changes.

b. **Expenses.** Client shall reimburse Blackbaud for all reasonable and necessary travel and living expenses Blackbaud incurs performing Services, all such expenses to be incurred pursuant to Blackbaud's then-current travel policy.

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c. **Invoices.** Initial invoices for Software, Subscriptions, and Maintenance will be issued immediately following Order Form signature. All other invoices will be issued as follows: (i) invoices for Services will be issued in accordance with the applicable SOW; (ii) renewal invoices for Subscriptions and Maintenance will be issued at least thirty (30) days prior to the start of the renewal term.

d. **Payments and Late Payments.** Payment is due within fifteen (15) days of invoice date and all payments must be made without deduction or offset, except for those amounts for which there is a good faith dispute. Renewal invoices are due within thirty (30) days of invoice date. All payments are non-refundable (except as set forth in Section 8 (a)(i) below). All invoices shall be deemed final and binding unless Client notifies Blackbaud in writing of any alleged discrepancies no later than thirty (30) days from the date of such invoice. Blackbaud reserves the right to invoice Client the lesser of 1.5% per month or the highest interest rate allowable under applicable laws for any outstanding invoice (other than those under good faith dispute) not paid within thirty (30) days after receipt.

4. **CONFIDENTIAL INFORMATION.**

a. **Definitions. "Confidential Information"** means (i) all information disclosed by the Owner to the Recipient orally, electronically, visually or in a tangible form which is either (a) marked as "confidential" (or with a similar legend), (b) is identified at the time of disclosure as being confidential, or (c) should be reasonably understood to be confidential or proprietary; and (ii) the terms of this Agreement, Order Form(s), SOW(s), and any proposals or other documents that preceded this Agreement. Confidential Information includes pricing, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, donor, prospect, and donation information, employee information, financial information, confidential information concerning Owner's business or organization, information concerning any of Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and software. **"Owner"** means the Party providing Confidential Information to the Recipient. **"Recipient"** means the Party receiving Confidential Information from the Owner.

b. **Ownership of Confidential Information.** Recipient shall not obtain any rights, title, or interest in any Confidential Information of Owner.

c. **Treatment of Confidential Information.**

i. Recipient shall only (i) use Owner's Confidential Information to carry out the purposes of this Agreement; and (ii) disclose Owner's Confidential Information to those third parties operating under non-disclosure provisions no less restrictive than those set forth in this Section 4 and who have a "need to know" based on reasonable business justifications. Each Party shall protect the other Party's Confidential Information using the same degree of care it uses to protect its own confidential and proprietary information, but in any case not less than reasonable care, and shall protect the other Party's Confidential Information in accordance with applicable laws.

ii. This Agreement imposes no obligation upon the Parties with respect to Confidential Information which either Party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to any Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided Recipient promptly gives notice to Owner of such disclosure (to the extent legally permissible) and undertakes reasonable efforts to limit such disclosure.

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5. LICENSE AND ACCESS.

a. **License Grant.** Blackbaud grants to Client, and Client accepts, an irrevocable (subject to Section 5(b) below), nontransferable, nonassignable, nonsublicensable, nonexclusive, and perpetual (subject to Section 5(b) below) license to use one (1) copy of the Software in machine readable object code form only (**"License"**). The License includes the right to use the applicable manuals and documentation that Blackbaud generally provides or makes available for Blackbaud Solutions (**"Documentation"**) solely for the furtherance of Client's internal business purposes. The License extends to the computer program delivered by Blackbaud and updates provided by Blackbaud pursuant to Client's continued enrollment in Maintenance and, where applicable, applications created by or on behalf of Client utilizing the Application Programming Interface, Software Development Kit, or Visual Basic for Application contained in the Software (**"Blackbaud Tools"**). Client may only install and use the Software (i) in accordance with Section 5(f) below, and (ii) in a manner that ensures that Client's simultaneous use of and access to the Software will be limited as set forth in the applicable Order Form. Unless otherwise expressly set forth in an Order Form, Client shall not share Licenses with subsidiaries or affiliates without the express written agreement of Blackbaud and Client's payment of additional License fees.

b. **License Termination.** Unless terminated pursuant to this Section 5(b), the License is effective in perpetuity. Client may terminate a License at any time by providing written notice to Blackbaud. Blackbaud shall have the right to terminate a License by providing written notice to Client (i) upon Client's failure to pay when due any undisputed invoices issued pursuant to this Agreement, provided that Blackbaud has given Client at least five (5) days prior notice of Blackbaud's intention to terminate the License and Client fails to pay the undisputed invoice during that five (5) day period, (ii) upon Client's failure to cure a material default pursuant to Section 15(b), or (iii) if Blackbaud is unable, using commercially reasonable efforts, to obtain the right for Client to continue using the Software if the Software becomes the subject of an infringement claim for which Blackbaud is indemnifying Client pursuant to Section 8 below. Within fifteen (15) days of the effective date of termination of a License Client shall return all copies of the Software to Blackbaud or certify in writing to Blackbaud that it has destroyed or erased all copies of the Software.

c. **Subscription Access.** Blackbaud grants to Client, and Client accepts, a nonassignable, nontransferable, nonsublicensable, and nonexclusive right to access the Subscription and use the Subscription and Documentation solely for the furtherance of Client's internal business purposes during the Subscription term set forth on the Order Form. Subscriptions will not be provided to Client on any form of media and will not be installed on any servers or other computer equipment owned or otherwise controlled by Client. During the Subscription term Blackbaud shall provide Client with secure access to the latest supported version of the Subscription, to be accessed and used by Client through the use of the Internet. Blackbaud shall provide Client with administrator rights permitting secure administrator access and allowing the administrator to create other users to access the Subscription. Client agrees that it has elected to access the Blackbaud offering through a Subscription and that this Agreement confers no right to convert the Subscription to a License as described in Section 5(a). Client's use of the Subscription is subject to the scope of the use provisions above and unless otherwise expressly set forth in an Order Form, Client shall not share Subscriptions with subsidiaries or affiliates without the express written agreement of Blackbaud and Client's payment of additional Subscription fees.

d. **Subscriptions and Maintenance.** Unless cancelled in accordance with this section, Subscriptions and Maintenance shall renew for consecutive one (1) year terms following the initial term set forth on the Order Form. Renewal fees for Subscriptions and Maintenance are subject to an adjustment, such adjustment to be included in the renewal notice. Client may cancel a Subscription or Maintenance by providing written notice to Blackbaud at least forty-five (45) days prior to the start of the renewal term. No credit or refunds

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will be given for partial Subscription or Maintenance periods. Cancellations will become effective as of the final day of the then-current term. Reinstatement of a lapsed Subscription or Maintenance requires full payment of fees that would have been due from the expiration of the last active term through the reinstatement date.

e. **Copyright.** Blackbaud Solutions (i) contain trade secret and proprietary information owned by Blackbaud or its third party licensors and (ii) are protected by United States and international copyright laws and trade provisions. Except for copies as may be required by Client for backup or archival purposes, Client may not disclose, copy, transfer or transmit Blackbaud Solutions for any purpose. All permitted copies of Blackbaud Solutions must retain Blackbaud's copyright and other proprietary notices and be identified as Blackbaud Confidential Information. Client agrees that all right, title, and interest in and to Blackbaud Solutions remains with Blackbaud and its third party licensors.

f. **System Requirements.** Certain Blackbaud Solutions may only be used or accessed from Client's computer systems that meet the Blackbaud system requirements published at https://www.blackbaud.com/systemrequirements, which Client acknowledges it has reviewed.

g. **Suspension; Acceptable Use Policy.** Blackbaud may suspend Client's use of or access to Blackbaud Solutions upon written notice to Client (i) in response to Client's failure to pay when due any undisputed invoices issued pursuant to this Agreement, provided that Blackbaud has given Client at least five (5) days prior notice of Blackbaud's intention to suspend the Blackbaud Solution and Client fails to pay the undisputed invoice during that five (5) day period, or (ii) in response to a violation by Client of the acceptable use policy posted at: http://internet.blackbaud.com/aup (**"AUP"**). Blackbaud will lift any payment-related suspension promptly following Client's payment of the undisputed invoice on which the suspension is based. When exercising its right to suspend a Blackbaud Solution for a breach of the AUP, Blackbaud will respond in a manner proportionate to the severity of the violation (e.g., when a single user has breached the AUP, by suspending Subscription access to the user rather than suspending all users or Blackbaud Solutions). With respect to any suspension, Blackbaud and Client agree to work together in good faith to address the violation in a reasonable manner, to prevent similar violations in the future, and to reinstate the suspended Blackbaud Solution as quickly as possible.

6. SECURITY.

Blackbaud will use commercially reasonable efforts to maintain database security for online financial transactions and Client Confidential Information. Blackbaud uses industry standard encryption technologies to transmit Client Confidential Information. Blackbaud also employs industry standard network security techniques including firewalls, virus and intrusion detection, and authentication protocols. With respect to online financial transactions conducted through Blackbaud Solutions the relevant portions of the applicable Blackbaud Solution are maintained in compliance with the Payment Card Industry Data Security Standard (**"PCIDSS"**). Client understands that Blackbaud Solutions include sending email and publishing web-pages over the Internet using SMTP or HTTP protocols, and that these standard protocols do not support many enhanced data security protections. In no case will the use of the Internet in this manner be deemed to violate Blackbaud's obligations under this Agreement. Blackbaud reserves the right, in its sole discretion, to change or modify its data security program at any time, but at all times will maintain commercially reasonable database security. Client shall take commercially reasonable security precautions to prevent unauthorized or fraudulent use of Blackbaud Solutions by Client, Client's employees, agents or any other third parties.

Continued

7. CLIENT OBLIGATIONS.

a. Client Control. Client shall be solely responsible for administering and monitoring the use of login IDs and passwords by its administrators and users. Upon the termination of employment of any such Client administrator or user Client will immediately terminate access by the login ID and password of that individual to Blackbaud Solutions. Client shall be responsible for using commercially reasonable practices to protect Client Confidential Information it shares with Blackbaud. Blackbaud is not responsible for any damages resulting from Client's failure to manage the confidentiality of its login ID and passwords. Blackbaud will not solicit any contributions for or on behalf of Client, and will not employ or procure any person to do so.

b. Prohibited Uses. Client shall not modify, rent, sublease, sublicense, assign, use as a service bureau, copy, lend, adapt, translate, sell, distribute, derive works from, decompile, or reverse engineer Blackbaud Solutions, except as explicitly permitted hereunder. Unless otherwise expressly set forth in an Order Form, Blackbaud Solutions shall be used solely by Client, and not (by implication or otherwise) by any subsidiary or affiliate of Client. In addition, Client shall not use Blackbaud Solutions for any benchmarking or competitive purposes. Client shall not: (a) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs in, to or from Blackbaud Solutions; (b) interfere with or disrupt the integrity or performance of Blackbaud Solutions, or the data contained therein; (c) use Blackbaud Solutions in a manner inconsistent with applicable Documentation; or (d) attempt to gain unauthorized access to Blackbaud Solutions or related systems or networks.

8. INDEMNITY.

a. Patent and Copyright Indemnity.

i. Blackbaud shall indemnify and defend Client against any third party claims that Blackbaud Solutions as delivered or made available to Client infringe any United States or Canadian patent, trademark, or copyright owned by such third party. Blackbaud shall, in its reasonable judgment and at its option and expense: (a) obtain for Client the right to continue using the affected Blackbaud Solution; (b) replace or modify the Blackbaud Solution so that it becomes non-infringing while giving equivalent performance; or (c) if Blackbaud cannot obtain the remedies in (a) or (b), as its sole obligation, terminate the License or access to the infringing Blackbaud Solution and refund any pre-paid Subscription or Maintenance fees related to such Blackbaud Solution.

ii. Notwithstanding Section 8(a)(i), Blackbaud shall have no liability to indemnify and defend Client to the extent (a) the alleged infringement is based on infringing information, data, software, applications, services, or programs created or furnished by or on behalf of Client; (b) the alleged infringement is the result of a modification made by anyone other than Blackbaud; or (c) Client uses the Blackbaud Solution other than in accordance with this Agreement, any Documentation or any delivered Documentation under a SOW(s).

iii. This Section states the entire liability of Blackbaud with respect to any type of infringement claim.

b. Client Indemnity. Client shall indemnify and defend Blackbaud from and against any third party claim arising from Client's breach of the AUP or Section 7, Client Obligations.

c. Mutual Indemnity. Each Party shall indemnify and defend the other Party against any third party claims arising from the indemnifying Party's gross negligence or willful misconduct.

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d. **Indemnification Procedures.** The indemnified Party shall give the indemnifying Party prompt written notice of any claims for indemnification and the indemnified Party agrees to relinquish control of defending any such claim to the indemnifying Party, including the right to settle; provided however, that the indemnifying Party will not settle any such suit or claim without the indemnified Party's prior written consent if such settlement would be materially adverse to the indemnified Party's interests.

9. REPRESENTATIONS, WARRANTIES, AND DISCLAIMER.

a. **Mutual Representations and Warranties.** Each Party represents and warrants that (i) it has the right and power to enter into this Agreement, (ii) an authorized representative has accepted this Agreement, and (iii) it will comply with all applicable laws and regulations pertaining to this Agreement.

b. **Blackbaud Warranties.**

i. Services. Blackbaud warrants that the Services will be performed in a professional and workmanlike manner in accordance with industry standards.

ii. Software and Subscriptions. Blackbaud warrants that Software and Subscriptions will perform substantially in conformance with the functional specifications in the then-current Documentation, provided that, in the case of Software, Client maintains active enrollment in Maintenance. This warranty does not apply if the Software or Subscription is not administered in accordance with the applicable instructions and training provided by Blackbaud. If the Software or Subscription fails to operate as warranted in this Section and Client notifies Blackbaud in writing of the nature of the non-conformance, Blackbaud will use commercially reasonable efforts to promptly repair or replace the non-conforming Software or Subscription without charge. The foregoing provides Client's sole and exclusive remedy for breach of this warranty.

c. **Disclaimer.** Other than applications made by or on behalf of Client using the Blackbaud Tools and within the scope of Section 5(a), any modifications that Client makes to Blackbaud Solutions will void any warranty obligations set forth in this Agreement as well as any Maintenance. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 9, BLACKBAUD EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER BLACKBAUD EXPRESSLY EXCLUDES ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY.

10. LIMITATION OF LIABILITY.

a. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8 AND CLIENT'S PAYMENT OBLIGATIONS, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE GREATER OF (X) $25,000 OR (Y) THE AMOUNT OF FEES PAID OR PAYABLE BY CLIENT FOR THE BLACKBAUD SOLUTION FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

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b. Blackbaud shall have no liability under this Agreement with respect to: (i) customizations created by or on behalf of Client; (ii) use of Blackbaud Solutions by or on behalf of Client other than in accordance with this Agreement and the Documentation; (iii) combination use, failures or incompatibility caused by third party software or hardware not supplied by Blackbaud; (iv) modifications to Blackbaud Solutions other than those contemplated in Section 9(c); (v) Client's failure to timely install updates to Blackbaud Solutions; or (vi) compliance with designs, plans or specifications furnished by or on behalf of Client.

11. OWNERSHIP.

a. **Client Ownership and License.** Subject to the rights of Blackbaud set forth below, Client has all right, title, and interest in and to all Client Confidential Information and all Client-provided artwork, logos, trade names, and trademarks (**"Client Content"**). Solely to the extent necessary for Blackbaud and its agents to perform their obligations under this Agreement, Client grants to Blackbaud and its suppliers a non exclusive, fully paid-up license to use, reproduce, store, modify, and publicly display Client Confidential Information and Client Content.

b. **Blackbaud Ownership and License.** Subject to the rights of Client set forth above, Blackbaud has all right, title, and interest in and to any expressions and results of Blackbaud Solutions, the work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, other technical information, and all derivatives of the foregoing created in connection with this Agreement (**"Work Product"**). Blackbaud grants to Client a nonexclusive, fully paid-up license to use Work Product, solely to the extent necessary for Client and its end users to use Blackbaud Solutions in accordance with this Agreement. If Client provides any feedback, comments, suggestions, ideas, requests, or recommendations for modifications or improvements to Blackbaud (**"Feedback"**), Client hereby assigns all right, title, and interest in any such Feedback to Blackbaud to be used for any purpose. All rights not expressly granted to Client hereunder are reserved by Blackbaud.

c. **Results.** Client agrees that Blackbaud may (a) aggregate benchmarking results of Client's use of Blackbaud Solutions with results of other clients' use (collectively **"Results"**), and (b) use and disclose the Results for any purpose provided that the Results do not individually identify Client, Client's Confidential Information, or Client's use of Blackbaud Solutions.

12. NOTICE.

All notices or other communications referenced under this Agreement shall be made in writing and, in the case of Blackbaud, sent to the address designated above, or in the case of Client, sent to the address set forth on the Order Form, or as designated from time to time in writing by the Parties. All notices shall be deemed given to the other Party if delivered receipt confirmed using registered or certified first class mail, postage prepaid, or recognized courier delivery. Operational notices, such as those related to payments or renewals, may be delivered in any reasonable manner, including email.

13. FORCE MAJEURE.

Neither Party shall be liable for any failure to perform its obligations under this Agreement if prevented from doing so by a cause or causes beyond its reasonable control (each such cause, a **"Force Majeure"**). Any delay in performance due to Force Majeure will be excused for the duration of the event of Force Majeure and the obligations of the Parties will resume immediately upon written notice from the non-performing Party that it is again able to perform.

Continued

14. DISPUTE RESOLUTION; GOVERNING LAW.

Disputes and claims arising out of this Agreement first will be submitted to senior management of both Parties for amicable resolution. If the Parties cannot settle the matter within a reasonable period of time, the dispute or claim shall be submitted to and resolved exclusively by arbitration conducted in accordance with American Arbitration Association rules, with one (1) arbitrator appointed to conduct arbitration and arbitration taking place in a mutually agreed location. Any decision in arbitration shall be final and binding upon the Parties. Judgment may be entered thereon in any court of competent jurisdiction. Notwithstanding the foregoing, either Party may sue in any court for infringement of its proprietary or intellectual property rights or to seek injunctive relief and Blackbaud may sue in any court to collect unpaid amounts. CLIENT AND BLACKBAUD EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING ARISING UNDER OR RELATED TO THIS AGREEMENT. This Agreement shall be governed by the laws of the State of New York, excluding choice of law principles.

15. TERM AND TERMINATION.

a. **Term.** The term of this Agreement shall commence on the Effective Date and continue unless terminated in accordance with this Section 15.

b. **Default.** Unless otherwise specified in this Agreement , either Party may terminate this Agreement if the other Party materially defaults in performing any of its obligations under this Agreement and the default remains uncured for at least thirty (30) days following receipt of written notice from the nondefaulting Party. Upon written notice from either Party, this Agreement shall also terminate upon (i) the making of an assignment for the benefit of creditors by a Party, or (ii) the dissolution of a Party.

c. **Effect of Termination.** Upon termination of this Agreement or termination of a Blackbaud Solution, Blackbaud may immediately cease providing any such terminated offering. Where Blackbaud hosts Client's database, Blackbaud will provide a copy of such database to Client upon termination. To the extent an archive copy of Client's database or Client Confidential Information was created by Blackbaud during the course of performing its obligations under this Agreement, Client agrees that Blackbaud may retain such copies following termination subject to Blackbaud's internal practices for record destruction. If this Agreement is terminated for any reason, Client shall nonetheless be obligated to pay Blackbaud upon such termination any and all accrued and unpaid fees and expenses due and payable to Blackbaud as of the date of termination.

16. MUTUAL PUBLICITY.

Except for disclosures required by law, each Party agrees not to issue a press release or public statement relating to this Agreement or its terms or use the other Party's name, logo, or other identifying information unless in each case the other Party has provided written consent, which shall not be unreasonably withheld. Any such disclosures or uses of name, logos, and identifying information shall be in good taste, shall not be disparaging and shall uphold the professional standards and goodwill associated with the other Party.

17. STATUTORY EXCEPTIONS.

For clients who are qualified public educational or government institutions: Any part of this Agreement, such as, by way of example, all or part of the indemnification section, which may be invalid or unenforceable against Client because of applicable state or federal law, shall be deemed invalid or unenforceable, as the case may be, and instead construed in a manner most consistent with applicable governing law. If required by law this Agreement will be governed by applicable state or federal law.

Continued

18. GENERAL.

Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. No failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by a duly authorized representative of each Party. If any provision of this Agreement is held to be unenforceable, the other provisions shall remain in full force and effect. No purchase order or other ordering document that purports to modify or supplement the printed text of this Agreement or any attached or referenced document shall add to or vary the terms of this Agreement. All proposed modifications, variations, edits, or additions to this Agreement, Order Form(s) or SOW(s) are objected to and deemed material unless otherwise mutually agreed to in writing. Order Forms may be executed in counterparts, which together form one legal instrument. An executed copy of an Order Form made by reliable means shall be considered an original. Either Party may assign its rights or obligations under this Agreement with the non-assigning Party's written consent, such consent not to be unreasonably withheld, provided, however, that Blackbaud may assign its rights and obligations in connection with a change of control without Client's consent. Except as explicitly stated in this Agreement, nothing in this Agreement is intended to confer on third party any right, benefit or remedy of any nature. Blackbaud performs its obligations under this Agreement as an independent contractor, not as an employee of Client. Nothing in this Agreement is intended to construe the existence of a partnership, joint venture, or agency relationship between Client and Blackbaud. Client shall not contract for services related to the Services detailed in the applicable SOW(s) with any current or former Blackbaud employees or subcontractors for a period of six (6) months from the date their agreement or employment relationship with Blackbaud terminated. Blackbaud shall at all times during the Term maintain in effect commercially reasonable insurance coverage which will in no event be less than the following insurance: (i) workers' compensation and employers liability insurance as required by law; and (ii) commercial general liability insurance with a general aggregate liability limit of not less than $2,000,000. Upon written request, Blackbaud will provide Client with a copy of its current certificate of insurance for coverage listed above

Any provision of this Agreement that contemplates performance or observance subsequent to termination of the Agreement, regardless of the date, cause or manner of such termination, shall survive such termination and shall continue in full force and effect.

Client has accepted this Agreement by the signing of the Order Form by a duly authorized officer or officer representative.

BSA Addendum

The Agreement between the Town of Loxahatchee Groves, a municipality organized under the laws of the State of Florida, with an address of 14579 Southern Boulevard, Suite 2, Loxahatchee Groves, Florida 33470 ("Client") and Blackbaud, Inc. ("Blackbaud") is hereby modified as follows:

1. Section 3.c is hereby deleted and replaced with the following:

   "Invoices. Initial invoices for Software, Subscriptions, and Maintenance will be issued immediately following Order Form signature. All other invoices will be issued pursuant to Florida's Local Government Prompt Payment Act, sections 218.70 – 218.80, Florida Statutes."

2. Section 3.d is hereby deleted and replaced with the following:

   "All terms regarding payment, late payment, and interest charges shall be consistent with Florida's Local Government Prompt Payment Act, sections 218.70 – 218.80, Florida Statutes."

3. Section 4 of the Agreement is hereby modified to insert the following as a new Section 4.d:

   "Blackbaud acknowledges that Client is subject to the requirements of the Florida's 'Sunshine Laws,' Chapters 119 and 286, Florida Statutes, and agrees to provide Client with reasonable assistance and information as and when necessary to enable Client to comply with any information disclosure requirements. Client acknowledges that certain information, including this Agreement and all aspects of the Blackbaud Solutions, including pricing, methodology and Documentation, is confidential and proprietary to Blackbaud and if disclosed would prejudice Blackbaud's commercial interests. Client agrees to take Blackbaud's position fully into account and not to prejudice their commercial interests and to undertake a full and meaningful consultation, prior to any decision to disclose such information."

4. The first two sentence of Section 5.d are hereby deleted and replaced with the following:

   Unless cancelled in accordance with this section, Subscriptions and Maintenance may renew for consecutive one (1) year terms following the initial term set forth on the Order Form provided the Parties agree to the additional term in writing. Renewal fees for Subscriptions and Maintenance are subject to an adjustment, such adjustment to be included in the renewal notice and provided to Client at least one-hundred twenty (120) days prior to the end of the term of the Agreement.

5. Section 12 of the Agreement is hereby deleted and replaced with the following:

   "Whenever any Party desires to give notice referenced under this Agreement unto any other Party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the Party for whom it is

intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Operational notices, such as those related to payments or renewals, may be delivered in any reasonable manner, including email. For the present, the Parties designate the following as the respective places for giving of notice:

CLIENT: Town of Loxahatchee Groves
Attention: William Underwood, Town Manager
14579 Southern Boulevard, Suite 2
Loxahatchee Groves, FL 33470

WITH COPY TO: Michael D. Cirullo, Town Attorney
Goren, Cherof, Doody, & Ezrol, P.A.
3099 E. Commercial Boulevard, Suite 200
Ft. Lauderdale, FL 33308

BLACKBAUD: Blackbaud, Inc.
Attention: General Counsel
2000 Daniel Island Drive
Charleston, SC 29492

6. Section 14 is hereby revised to replace "New York" with "Florida."

7. The following is added as a new Section 19:

"**19. FLORIDA INFORMATION PROTECTION ACT**. The Parties agree and understand that in fulfilling their obligations under the Agreement they may handle, at least in part, "customer records" that contain "personal information," as defined in the Florida Information Protection Act, section 501.171, Florida Statutes (the "Act"). Accordingly, as required by the Act, each Party agrees to maintain safeguards to protect customer records containing such personal information, in whatever form retained and stored, from a breach of security. If personal information in the possession or control of Blackbaud are breached in the manner set forth in the Act, Blackbaud shall promptly notify Client as indicated herein, and the Parties shall work together as required by the Act to:

a. Investigate the alleged breach and determine if an actual breach has occurred, which may include the use of law enforcement officials mutually determined by the Parties; and
b. Provide all legally required notices to consumers and governmental agencies as required by the Act; and
c. The procedures specified herein shall not supersede any requirements specified by the Act. The provisions of the Act, as may be amended from time to time, shall prevail in the event of any conflict."

8. The following is added as a new Section 20:

"**20. SOVEREIGN IMMUNITY.** Nothing in the Agreement is intended, nor shall be construed or interpreted, to waive or modify the immunities and limitations on liability provided for in section 768.28, Florida Statutes, as may be amended from time to time, or any successor statute thereof."

9. The following is added as a new Section 21:

"**COMPLIANCE WITH FLORIDA'S PUBLIC RECORDS ACT.** To the extent required by section 119.0701, Florida Statutes, Blackbaud shall (a) keep and maintain public records that ordinarily and necessarily would be required by Client in order to perform the service; (b) provide the public with access to such public records on the same terms and conditions

that the Client would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and (d) Blackbaud shall meet all requirements for retaining public records and transfer to the Client, at no cost, all public records in possession of the Blackbaud upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the Client in a format that is compatible with the information technology systems of the agency."

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their respective authorized representatives.

TOWN OF LOXAHATCHEE GROVES

David Browning

Authorized Signature

David Browning Mayor

Printed Name and Title

Kevin W Mooney

Authorized Signature

Kevin Mooney, President GMBU

Printed Name and Title

APPROVED AS TO FORM

Town Attorney

that the Client would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and (d) Blackbaud shall meet all requirements for retaining public records and transfer to the Client, at no cost, all public records in possession of the Blackbaud upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the Client in a format that is compatible with the information technology systems of the agency."

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their respective authorized representatives.

TOWN OF LOXAHATCHEE GROVES	Blackbaud, Inc.
David Browning	
Authorized Signature	Authorized Signature
David Browning Mayor	
Printed Name and Title	Printed Name and Title

APPROVED AS TO FORM

Town Attorney