AGREEMENT FOR LIGHTONSITES

THIS AGREEMENT FOR LightOnSites ("SOFTWARE SYSTEM") is made and entered into this 16th day of June, 2020, by and between the City of Beaumont, a municipal corporation whose address is 550 E. 6th Street, Beaumont, California 92223 ("CITY") and GoTime Control, Inc., a California corporation whose address is 460 W Lambert Rd., Unit C, Brea, CA 92821, ("CONTRACTOR") .

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties to this Agreement:

A.   CITY desires to engage CONTRACTOR to modify and upgrade the City's park lighting system at Stewart Park and Sports Park by installing lighting technology to allow for the public to access lighting system via WEB based app in addition the City wishes to add the LOS-Pay-To-Play option.

B.   CONTRACTOR has made a proposal ("Proposal") to the CITY to provide such modification and upgrades to park light systems for the ability to use the lights with a mobile app. Proposal is attached hereto as Exhibit "A"; and

C.   CONTRACTOR represents that it is fully qualified and licensed under the laws of the State of California to perform the services contemplated by this Agreement in a good and professional manner.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual covenants contained herein, CITY and CONTRACTOR agree as follows:

1.   <u>Term of Agreement.</u> This Agreement is effective as of the Effective Date and shall continue until terminated as provided for herein. Notwithstanding anything in this Agreement to the contrary, this Agreement shall automatically terminate one (1) year after the Effective Date unless extended by the   City Council of the CITY.

2.   <u>Scope of Service.</u> CONTRACTOR agrees to modify and upgrade existing park lighting control system at Stewart Park and Sports Park by installing lighting technology called to turn on the lights via mobile accessible WEB app as outlined in Exhibit "A". All Software Systems shall perform in the manner and according to the timeframe set forth in the Proposal. CONTRACTOR designates William Rinear as CONTRACTOR'S professional responsible for overseeing the project provided by CONTRACTOR.

3.   <u>Associates and Subcontractors.</u> CONTRACTOR may, at CONTRACTOR's sole cost and expense, employ such competent and qualified independent associates, subcontractors and consultants as CONTRACTOR deems necessary to perform the Software System; provided, however, that CONTRACTOR shall not subcontract any of the Software System without the written consent of CITY. CONTRACTOR has a legal valid and binding license allowing it to provide the Software System using software of Lights on Solutions, Inc. and other subcontractors. City shall not be required to contract with or otherwise communicate with Lights on Solutions, Inc. or the other subcontractors. Contractor provides a turnkey solution.

4.   <u>Compensation.</u>

4.01   CONTRACTOR shall be paid at the rates set forth in the Proposal, Exhibit A,

and shall not exceed Thirty-Three Thousand Four Hundred Thirteen Dollars and 4 cents ($33,413.04) for the installation of the Software System and its operation for the initial one year term.   After the first year, if City elects to extend the term of this Agreement, the annual fee for the Software System shall be Two Thousand Forty Dollars ($2,040.00). CONTRACTOR shall not increase any rate for the Software System, or charge for any related or unrelated goods or Software System without the prior written consent of the CITY.

       4.02   Exhibit "A" "Stewart Park / LOS Pay-to-Play (option) : In addition to the amount set forth in Section 4.01 during the term of this Agreement only, CONTRACTOR shall collect from the third party user, but not the City, the amounts in the user fee schedule. The User fee Schedule to be set at time of system installation. If Exhibit "A" "Stewart Park / LOS Pay-to-Play option is accepted the fees charged to the city will be eight percent (8%) of the transaction amount or forty-two cents ($0.42), whichever is higher, of each transaction for the mobile app use of lighting.

       4.03   Pay-To-Play funds transfer CONTRACTOR shall transfer to CITY, on or before the fifteenth (15th) of each month, funds generated form the Play-To-Play Software System use option for the previous month in accordance with Section 4.02 above. The City will receive a use "Statement" based on parameters set at time of system operation. CITY shall have the right to review and audit all uses base on the Pay-to-Play. This review and audit may include, but not be limited to CITY's:

       a.   Determination that any fee charged is consistent with this Agreement's approved schedule;

       b.   Determination that the multiplication of the percentage billed times the approved rates is correct;

       c.   Determination that each charge is the usual, customary, and reasonable charge for the particular item. If CITY determines an item charged is greater than usual, customary, or reasonable, or is duplicative, ambiguous, excessive, or inappropriate, CITY shall either return the bill to CONTRACTOR with a request for explanation or adjust the payment accordingly, and give notice to CONTRACTOR of the adjustment.

5. <u>Insurance.</u> CONTRACTOR hereby agrees to be solely responsible for the health and safety of its employees and agents in performing the Software System under this Agreement and shall comply with all laws applicable to worker safety including but not limited to Cal-OSHA. Therefore, throughout the duration of this Agreement, CONTRACTOR hereby covenants and agrees to maintain insurance in conformance with the requirements set forth below. Attached hereto as **Exhibit "C"** are copies of Certificates of Insurance and endorsements as required by Section 5. If existing coverage does not meet the requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so. CONTRACTOR shall provide the following types and amounts of insurance:

       5.01   Commercial general liability insurance in an amount of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate; CONTRACTOR agrees to have its insurer endorse the general liability coverage required herein to include as additional insured's CITY, its officials, employees and agents. CONTRACTOR also agrees to require all contractors and subcontractors to provide the same coverage required under this Section 5.

5.02   Business Auto Coverage in an amount no less than $1 million per accident. If CONTRACTOR or CONTRACTOR's employees will use personal autos in performance of the Software System hereunder, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person.

5.03   Workers' Compensation coverage for any of CONTRACTOR's employees that will be providing any Software System hereunder. CONTRACTOR will have a state-approved policy form providing statutory benefits as required by California law. The provisions of any workers' compensation will not limit the obligations of CONTRACTOR under this Agreement. CONTRACTOR expressly agrees not to use any statutory immunity defenses under such laws with respect to CITY, its employees, officials and agents.

5.04   Optional Insurance Coverage. Choose and check one: Required _ /**Not Required _X_;** Errors and omissions insurance in a minimum amount of $2 million per occurrence to cover any negligent acts or omissions committed by CONTRACTOR, its employees and/or agents in the performance of any Software System for CITY.

6.   General Conditions pertaining to Insurance Coverage

6.01   No liability insurance coverage provided shall prohibit CONTRACTOR from waiving the right of subrogation prior to a loss. CONTRACTOR waives all rights of subrogation against CITY regardless of the applicability of insurance proceeds and shall require all contractors and subcontractors to do likewise.

6.02   Prior to beginning the Software System under this Agreement, CONTRACTOR shall furnish CITY with certificates of insurance, endorsements, and upon request, complete copies of all policies, including complete copies of all endorsements. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

6.03   All required policies shall be issued by a highly rated insurer with a minimum A.M. Best rating of "A:VII"). The insurer(s) shall be admitted and licensed to do business in California. The certificates of insurance hereunder shall state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to CITY.

6.04   Self-insurance does not comply with these insurance specifications. CONTRACTOR acknowledges and agrees that that all insurance coverage required to be provided by CONTRACTOR or any subcontractor, shall apply first and on a primary, non-contributing basis in relation to any other insurance, indemnity or self-insurance available to CITY.

6.05   All coverage types and limits required are subject to approval, modification and additional requirements by CITY, as the need arises. CONTRACTOR shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY's protection without CITY's prior written consent.

6.06   CONTRACTOR agrees to provide immediate notice to CITY of any claim or loss against CONTRACTOR or arising out of the Software System performed under this Agreement. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

7.   Obligations of CONTRACTOR.

7.01   CONTRACTOR agrees   that the Software System will perform in accordance with the terms and conditions of this Agreement and the Proposal. In the event that the terms of the Proposal shall conflict with the terms of this Agreement, or contain additional terms other than that outlined in Exhibit 'A' to be provided and the price for the Software System that are binding on City, the terms of this Agreement shall govern and said additional or conflicting terms shall be of no force or effect. Standard of Care; Performance of Employees. CONTRACTOR shall perform that outlined in Exhibit A under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed in the same industry. CONTRACTOR represents and maintains that it is skilled in providing the modification.   CONTRACTOR shall correct any defects or errors to the system at its own cost and expense and without reimbursement from the City,

7.02   Except as otherwise agreed by the parties, CONTRACTOR will supply all personnel, materials and equipment required to perform the modification, upgrade and installation of lighting control system. CONTRACTOR shall provide its own offices, telephones, vehicles and computer hardware and set its own work hours. CONTRACTOR will determine the method, details, and means of delivering the Software System under this Agreement.

7.03   CONTRACTOR is responsible for paying, when due, all income and other taxes, fees and withholding, including withholding state and federal taxes, social security, unemployment and worker's compensation, incurred as a result of the compensation paid under this Agreement. CONTRACTOR agrees to indemnify, defend and hold harmless CITY for any claims, costs, losses, fees, penalties, interest, or damages suffered by CITY resulting from CONTRACTOR's failure to comply with this provision.

7.04   CONTRACTOR represents that it possesses all required intellectual property licenses necessary or applicable to the delivery of the System under this Agreement and the Proposal, and shall obtain and keep in full force and effect all intellectual property licenses required to deliver the Software System at its sole cost and expense.

7.05   CONTRACTOR shall be solely responsible for obtaining Employment Eligibility Verification information from CONTRACTOR's employees, in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a), and shall ensure that CONTRACTOR's employees are eligible to work in the United States.

7.06   CONTRACTOR shall comply with all applicable local, state and federal laws, rules, regulations, entitlements and/or permits applicable to, or governing the Software System.

8.   Ownership of Software System

8.01   Ownership. All documents, ideas, concepts, electronic files, drawings, photographs, and any and all other writings, including drafts thereof, prepared, created, or provided by Contractor in the course of performing the Software System, including any and all intellectual and proprietary rights arising from the creation of the same (collectively,

"Software System"), are considered to be owned in full by GoTime Control, Inc. All Software System shall be licensed for use by the Contractor for the benefit of the City at no additional cost.

8.02   Assignment of Intellectual Property Interests. The City acknowledges that GoTime Control, Inc. retains all ownership rights, and all common law and statutory copyrights, trademarks, and other intellectual and proprietary property rights relating to the Software System provided that Go Time Control, Inc. has the right and license to provide the Software System to City as provided herein.

8.03   Title to Intellectual Property. Contractor warrants and represents that it has secured all necessary licenses, consents, or approvals to use and instrumentality, thing, or component as to which any intellectual property right exists, including computer software, used in the providing the   Software System and/or materials produced under this Agreement. Under this Agreement, the City has full license to use the Software System; the City does not have full legal title to reproduce any of the Software System. Contractor shall defend, indemnify, and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials, harmless from any loss, claim, or liability in any way related to a claim that City's use of Software System is violating federal, state or local law, or any contractual provisions, relating to trade names, licenses, franchises, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret, or trademarked documents, materials, software, equipment, devices, or processes used or incorporated in the Software System and materials produced under this Agreement. In the event the City's use of any of the Software System is held to constitute an infringement and any use thereof is enjoined, Contractor, at its expense, shall: (a) secure for City the right to continue using the Software System by suspension of any injunction or by procuring a license or licenses for City; OR (b) modify the Software System so that it becomes non-infringing.

9.   Indemnification

9.01   CONTRACTOR and CITY agree that CITY, its employees, agents and officials should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, defense costs, court costs or any other costs arising out of or in any way related to the performance of this Agreement by CONTRACTOR or any subcontractor or agent of either as set forth herein. Accordingly, the provisions of this indemnity are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to CITY. CONTRACTOR acknowledges that CITY would not enter into this Agreement in the absence of the commitment of CONTRACTOR to indemnify and protect CITY as set forth herein.

a.   To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless CITY, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, damages or costs of any kind, whether actual, alleged or threatened, actual attorneys' fees incurred by CITY, court costs, interest, defense costs, including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of, or in any way attributable actually, allegedly or impliedly, in whole or in part to the performance of this Agreement. CONTRACTOR's obligation to defend, indemnify and hold harmless shall include any and all claims, suits and proceedings in which CONTRACTOR (and/or CONTRACTOR's agents and/or employees) is alleged to be an employee of CITY. All obligations under this provision are to be paid by CONTRACTOR as they are incurred by CITY.

b.   Without affecting the rights of CITY under any provision of this Agreement or this Section, CONTRACTOR shall not be required to indemnify and hold harmless CITY as set forth above for liability attributable solely to the fault of CITY, provided such fault is determined by agreement between the parties or the findings of a court of competent jurisdiction.

10.   Status of CONTRACTOR.

10.01   CONTRACTOR shall perform the Software in CONTRACTOR's own way as an independent contractor, and in pursuit of CONTRACTOR's independent calling, and not as an employee of CITY.

10.02   CONTRACTOR agrees that it is not entitled to the rights and benefits afforded to CITY's employees, including disability or unemployment insurance, workers' compensation, retirement, CalPers, medical insurance, sick leave, or any other employment benefit. CONTRACTOR is responsible for providing, at its own expense, disability, unemployment, workers' compensation and other insurance, training, permits, and licenses for itself and its employees and subcontractors.

11.   Ownership of Documents; Audit.

11.01   All draft and final reports, plans, drawings, studies, maps, photographs, specifications, data, notes, manuals, warranties and all other documents of any kind or nature prepared, developed or obtained by CONTRACTOR in connection with providing the Software System performed for the CITY shall become the sole property of CITY, and CONTRACTOR shall promptly deliver all such materials to CITY upon request. At the CITY's sole discretion, CONTRACTOR may be permitted to retain original documents, and furnish reproductions to CITY upon request, at no cost to CITY.

11.02   CONTRACTOR shall retain and maintain, for a period not less than four years following termination of this Agreement, all time records, accounting records and vouchers and all other records with respect to all matters concerning Software System performed, compensation paid and expenses reimbursed. At any time during normal business hours and as often as CITY may deem necessary, CONTRACTOR shall make available to CITY's agents for examination all of such records and shall permit CITY's agents to audit, examine and reproduce such records.

12.   Miscellaneous Provisions.

12.01   This Agreement, which includes all attached exhibits, supersedes any and all previous agreements, either oral or written, between the parties hereto with respect to delivering the Software System by CONTRACTOR for CITY and contains all of the covenants and agreements between the parties with respect to the delivery of such Software Systems in any manner whatsoever. Any amendment or modification of this Agreement will be effective only if it is in writing signed by both parties.

12.02   CONTRACTOR shall not assign or otherwise transfer any rights or interest in this Agreement without the prior written consent of CITY. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

12.03   CONTRACTOR shall timely file FPPC Form 700 Conflict of Interest Statements with CITY if required by California law and/or the CITY's conflict of interest policy.

12.04   If any legal action or proceeding, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which that party may be entitled.

12.05   This Agreement is made, entered into and shall be performed in the County of Riverside in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California. Venue for any legal action regarding the performance of this Agreement or the interpretation of this Agreement shall be in the superior court for the County of Riverside.

12.06   CONTRACTOR covenants that neither it nor any officer or principal of its firm has any interest, nor shall they acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the delivery of the Software System . CONTRACTOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by it as an officer, employee, agent, or subcontractor.

12.07   CONTRACTOR has read and is aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflicts of interest of public officers and employees. CONTRACTOR agrees that they are unaware of any financial or economic interest of any public officer or employee of the CITY relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the CITY may immediately terminate this Agreement by giving notice thereof. CONTRACTOR shall comply with the requirements of Government Code section 87100 et seq. and section 1090 in the performance of and during the term of this Agreement.

12.08   Improper Consideration. CONTRACTOR shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, services, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the CITY in an attempt to secure favorable treatment regarding this Agreement or any contract awarded by CITY. The CITY, by notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of the CITY with respect to the proposal and award process of this Agreement or any CITY contract. This prohibition shall apply to any amendment, extension or evaluation process once this Agreement or any CITY contract has been awarded. CONTRACTOR shall immediately report any attempt by any CITY officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from CONTRACTOR.

12.09   Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the entire balance of this Agreement not so affected shall remain in full force and effect.

13.   Notices. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof by first class mail, return receipt requested, postage prepaid, and addressed as follows, followed by facsimile transmission (if facsimile information is available). Notice shall be deemed communicated two (2) business days from the time of mailing if mailed asprovided in this paragraph. All notices shall be addressed as follows:

City: Elizabeth Gibbs

Community Services Director
550 E 6th Street
Beaumont, CA 92223
(951) 769-8522
egibbs@beaumontca.gov

Contractor: William Rinear
President Gotime Control, Inc
460 W Lambert Rd., Unit C
Brea CA 92822
william.rinear@lightsonsites.com

IN WITNESS WHEREOF, the parties hereby have made and executed this Agreement to be effective as of the day and year first above-written.

CITY: CONTRACTOR:

CITY OF BEAUMONT   GoTime Control, Inc., a California corporation

By: _____   By: _____
    Todd Parton, City Manager

                                     Print Name: _____

                                      Title: _____