

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 16, 2023 AGENDA

Subject:	Type:	Submitted By:
SOFTWARE AGREEMENT & PURCHASE – PARKING GARAGES	◆ RESOLUTIONS (2) ORDINANCE RECEIVE/FILE	RYAN SOUTH INFORMATION TECHNOLOGY MANAGER

SYNOPSIS

A resolution has been prepared to authorize a Software Agreement with Fisher Parking & Security, Inc. to provide parking management software for Parking Garage No. 1 and Parking Garage No. 2 and authorize the purchase of TIBA SPARK Suite Platform from Fisher Parking & Security, Inc in an annual amount not to exceed \$9,936.

FISCAL IMPACT

The FY23/FY24 Biennial Budget provides funding for the proposed purchase.

RECOMMENDATION

Approval.

BACKGROUND

The City currently uses TIBA Parking Systems equipment and SmartPark software to control parking in Garage No. 1. Since the completion of Garage No. 1, parking software and technology has advanced and TIBA now offers a cloud-based, web environment called TIBA SPARK that allows us to control, manage, and monitor all city parking facilities from a central location from any device with a web browser. With SPARK being a cloud-based platform, physical software and servers are no longer required, which can help reduce operating costs and staff time to manage the systems. Using the SPARK software parking control solution will provide the City with an unmatched parking management system, which will ultimately lead to a better visitor experience.

When Garage No. 2 was designed, TIBA was selected to ensure both facilities were operating with the same equipment and software. During construction, SPARK was selected as the platform for Garage No. 2. SPARK is a “Software as a Service” (SaaS) solution that requires a five-year subscription term, of which two years must be paid upfront since that is the warranty requirement of our contractor. Therefore, they will be required to pay this fee within the scope of the Garage No. 2 contract.

To provide the most seamless experience and integration between the two garages, we must also bring Garage No. 1 into the SPARK system. Since Garage No. 1 is not the contractor’s responsibility, the City must pay two-years upfront for the site totaling \$9,936. After the initial two years of the five-year term, the City will be responsible for an annual payment of \$9,936 for the life of the system for both sites.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A SOFTWARE AGREEMENT WITH FISHER PARKING & SECURITY, INC TO PROVIDE PARKING MANAGEMENT SOFTWARE FOR PARKING GARAGE NO. 1 AND PARKING GARAGE NO. 2.

WHEREAS, the Mayor and City Council have determined that parking management software for Parking Garage No. 1 and Parking Garage No. 2; and

WHEREAS, the FY23/FY24 Biennial Budget provides funding for the proposed service,

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, hereby authorize the execution of a Software Agreement with Fisher Parking & Security, Inc for Parking Garage No.1 and Parking Garage No. 2.

PASSED AND APPROVED THIS 16TH DAY OF MAY 2023.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, MMC
City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE PURCHASE OF TIBA SPARK SUITE PLATFORM FROM FISHER PARKING & SECURITY, INC IN AN AMOUNT NOT TO EXCEED \$9,936.00.

WHEREAS, the City Council of the City of La Vista has determined that the purchase of TIBA SPARK Suite Platform is necessary; and

WHEREAS, the FY23/FY24 Biennial Budget provides funding for the proposed purchase; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the city administrator secure Council approval prior to authorizing any purchase over \$5,000.00;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the purchase of TIBA SPARK Suite Platform from Fisher Parking & Security, Inc in an amount not to exceed \$9,936.00.

PASSED AND APPROVED THIS 16TH DAY OF MAY 2023.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk

PLEASE READ THIS AGREEMENT BEFORE USING TIBA SOFTWARE by FISHER. BY ACCESSING OR USING THE TIBA PARKING FACILITY MANAGEMENT SOFTWARE OR SERVICES OFFERING, YOU ("the Customer") SIGNIFY ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS, OR USE THE SERVICES. This Software Service Agreement ("Agreement") is entered into between Customer: City of La Vista, Nebraska ("Customer") with its principal place of business at: 8116 Park View Blvd, La Vista, NE 68128 and Fisher Parking & Security, Inc. a Missouri corporation ("FISHER"), with its principal place of business at 15014 NE 116th Street, Kearney, Missouri 64060. FISHER and Customer agree that the following terms and conditions will apply to the services provided under this Agreement and Orders placed thereunder.

1. DEFINITIONS

"Administrator User" means each Customer employee designated by Customer to serve as technical administrator of the Software Services on Customer's behalf. Each Administrator User must complete training and qualification requirements reasonably required by FISHER and/or TIBA Parking, LLC. ("TIBA")

"Customer Content" means all data and materials provided by Customer to FISHER and/or TIBA for use in connection with the Software Services, including, without limitation, customer applications, data files, and graphics.

"Documentation" means the user guides, online help, release notes, training materials and other documentation provided or made available by FISHER and/or TIBA to Customer regarding the use or operation of the Software Services.

"Host" means the physical or virtual server and commercial operating system on which the TIBA brand facility management Software is installed, which is owned and operated by Customer, FISHER and/or TIBA or its subcontractors.

"User" means a named individual to whom Customer has granted access to use the System on Customer's behalf, regardless of whether or not the User actually accesses the Software. Users may be Customer's employees, consultants, contractors, or agents.

"Maintenance Services" means the support and maintenance services provided by FISHER and/or TIBA to Customer pursuant to this Agreement.

"Other Services" means all technical and non-technical services performed or delivered by FISHER under this Agreement, including, without limitation, implementation services and other professional services, training and education services but excluding the Software Services and the Maintenance Services. Other Services will be provided on a time and material basis at such times or during such periods, as may be specified in a Schedule and mutually agreed to by the parties. All Other Services will be provided on a non-work for hire basis.

"Schedule" is a written list of TIBA licensed software modules included in this Software Agreement or executed separately by FISHER and Customer for the purpose of purchasing or subscribing to the Software Services under the terms and conditions of this Software Agreement

"Software" means the object code version of any software to which Customer is provided access as part of the Service, including any updates or new versions.

"Software Services" refer to the specific FISHER and/or TIBA internet-accessible service identified in the Schedule defined in this agreement that provides use of TIBA's facility management Software that is hosted offsite by AWS in a location best determined by TIBA and AWS and made available to Customer over a network pursuant to this Agreement.

"AWS" is short for Amazon Web Services, a subsidiary of Amazon that provides on-demand cloud computing platforms and APIs to individuals, companies, and governments. AWS is utilized by TIBA for cloud hosting services.

"Subscription Term" shall mean that period specified in the Schedule during which Customer will have access and use of the Software through FISHER and/or TIBA's Software Services. The Subscription Term shall be 60-months

and renew for successive 12-month periods unless either party delivers written notice of non-renewal to the other party at least 45 days before the first day of any renewal term.

2. SOFTWARE SERVICES

- 2.1. During the Subscription Term, Customer will receive a nonexclusive, non-assignable, royalty free, worldwide right to access and use the Software Services solely for your internal business operations subject to the terms of this Agreement and up to the number of Users documented in the Schedule.
- 2.2. Customer acknowledges that this Agreement is a services agreement and FISHER and/or TIBA reserve the right not to be delivering copies of the Software to Customer as part of the Software Services.

3. CUSTOMER RESPONSIBILITIES

- 3.1. **Restrictions.** Customer shall not, and shall not as a result of failure to exercise reasonable care permit anyone to: (i) copy or republish the Software Services or Software, (ii) make the Software Services available to any person other than authorized Users, (iii) use or access the Software Services to provide service bureau, time-sharing or other computer hosting services to third parties, (iv) modify or create derivative works based upon the Software Services or Documentation, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the software used to provide the Software Services or in the Documentation, (vi) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software used to provide the Software Services, except and only to the extent such activity is expressly permitted by applicable law, or (vii) access the Software Services or use the Documentation in order to build a similar product or competitive product. Subject to the limited licenses granted herein, FISHER and/or TIBA shall own all right, title and interest in and to the Software, services, Documentation, and other deliverables provided under this Software Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and intellectual property rights therein. Customer agrees to assign all rights, title, and interest it may have in the foregoing to FISHER and/or TIBA.
- 3.2. **System Administrator; User Access.** Customer shall designate one or more System Administrators. System Administrators shall be responsible for managing User access, including adding and subtracting Users. The System Administrator shall exercise reasonable care to prevent multiple Users from sharing a password or username. Customer acknowledges and agrees that it is prohibited from sharing passwords and/or usernames with unauthorized users.
- 3.3. **Customer Data.** Customer owns all rights, title and interest in the Customer Data. Customer hereby grants to FISHER and/or TIBA, a non-exclusive, non-transferable non-sublicensable right and license to use, copy, transmit, modify, and display the Customer Data solely for purposes of Customer's use of the System. FISHER and/or TIBA shall not use the Customer Data except to improve the System and as necessary to perform its obligations hereunder.
- 3.4. **Sensitive Data. Customer Responsibilities.** Customer acknowledges that the System is not intended for use with protected health information under HIPAA, or other similarly sensitive personal information, and that Customer assumes all risk arising from use of any such sensitive information with the System, including the risk of any inadvertent disclosure or unauthorized access thereto. Customer shall exercise reasonable care, so Customer and Customer's Users' use of the System is in compliance with all applicable laws and governmental regulations and Customer acknowledges that Customer assumes all risk arising from any such use that is not compliant with applicable laws and regulations.

3.5. Security. Customer is solely responsible for maintaining the security of all usernames and passwords granted to it, for the security of its information systems used to access the System, and for its users' compliance with the terms of this Agreement. FISHER and/or TIBA, subject to exercise of reasonable care, will act as though any electronic communications it receives under Customer's usernames have been sent by Customer. Customer will immediately notify FISHER and/or TIBA if it becomes aware of any loss or theft or unauthorized use of any of Customer's passwords or usernames. FISHER and/or TIBA has the right at any time to terminate or suspend access to any User or to Customer if FISHER and/or TIBA reasonably believes that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or the network.

3.6. Compliance with Laws. Customer, Fisher, and TIBA shall comply with all applicable local, state, national and foreign laws in connection with its use of the Software Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data. Customer acknowledges that FISHER and/or TIBA exercises no control over the content of the information transmitted by Customer or the Users through the Software Services. Customer shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.

3.7. Customer Input. Customer is solely responsible for collecting, inputting, and updating all Customer Content stored on the Host, and shall exercise reasonable care so Customer Content does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark, or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious. Customer shall: (i) notify FISHER and/or TIBA immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to FISHER and/or TIBA immediately and use reasonable efforts to stop any unauthorized use of the Service that is known or suspected by Customer or any User, and (iii) not provide false identity information to gain access to or use the Service

4. Software maintenance and subscription Schedule. Owner shall acknowledge the software payment schedule outlined in this section. Terms of payment for the selected schedule shall be in accordance with section 5.

.1 Five Year SaaS with 2-Year Upfront software payment of \$9,936. The remaining 2-Year Upfront software payment of \$9,936.00 will be paid separate from this agreement. After the initial two years of the 5-year term, the City shall be responsible for an annual payment of \$9,936.00 for the remainder of the agreement term.

.2 [REDACTED] initial owner acknowledgement

TIBA SOFTWARE SCHEDULE – 2-Year Upfront	FEE
TIBA SPARK, Core System [site1]	\$ 414.00
TIBA SPARK, Core System [site2]	\$ 414.00
TIBA SPARK, eGuest + eCoupon	\$ 0.00
TIBA SPARK, TIB@PAY EMV	\$ 0.00
Monthly Price Total, 5-Year Term, Paid 2-Years Upfront	\$ 828.00

.3 Any 3rd party interfaces include TIBA interface only. Owner must contract with 3rd party independently.

.4 Unless agreed to by the parties all subscriptions at the end of each term shall be automatically renewed at the annual pricing level.

.5 Payment schedule. Initial FMS Software Fee is due at system startup and per selection due from that date forward for a period of five years. Annual payment level may be paid on a monthly or quarterly schedule. Please see section 5 for payment requirements.

.6 Customer contacts:

Customer Billing Information						
Company Name:	City of La Vista		TAX ID:	47-6050031	Tax Exempt:	<input type="checkbox"/> Yes
Street Address:	8116 Park View Blvd.					
City:	La Vista	State:	NE	ZIP:	68136	Country: USA
Contact Person:	Ryan South	E-mail:	rsouth@cityoflavista.org			
Tel:	402-331-4343	Fax:			Cell:	

Site Contact Information						
Facility Name:	Parking Garage #2					
Street Address:	7875 South 84 th Street					
City:	La Vista	State:	NE	ZIP:	68128	Country: USA
Contact Person:	Ryan South	E-mail:	rsouth@cityoflavista.org			
Tel:	402-331-4343	Fax:			Cell:	

5. ORDERS and PAYMENT

- 5.1. Customer shall order Software Services pursuant to the Deployment Schedule provided as an addendum to this agreement. All services acquired by Customer shall be governed exclusively by this Software Agreement and the applicable Deployment Schedule. In the event of a conflict between the terms of the Deployment Schedule and this Software Agreement, the terms of this Agreement shall take precedence.
 - 5.1.1. Invoicing. FISHER shall invoice Customer for all fees on the Schedule for the 2-Year Upfront software payment described in section 4.1 forty-five (45) days before the Effective Date outlined in the Deployment Schedule. Thereafter, Customer shall receive invoicing on a monthly, quarterly, or annual basis elected by Customer.
 - 5.1.2. Payments. Customer shall pay the 2-Year Upfront software payment described in section 4.1 within days after Customer receives the invoice. Customer thereafter will pay fees for services provided during a month within 45 days after the end of such month. Any Customer that chooses to enroll in monthly or quarterly billing shall place a credit card on-file for automatic billing. Except if this Agreement is terminated by Customer for cause, meaning material breach or nonperformance by FISHER or TIBA, fees are non-refundable. All fees are stated in United States Dollars and must be paid by Customer to FISHER in United States Dollars.
 - 5.1.2.1. Two Year upfront payment option shall be the monthly fee multiplied by 24 for the upfront payment total. All sequential years shall be invoiced annually.
 - 5.1.3. Renewal. At the term ending period all subscriptions shall extend on an annually paid basis. Pricing for term renewal shall be based on current pricing levels at the time of renewal.
 - 5.1.4. Taxes. FISHER shall bill Customer for applicable taxes as a separate line item on each invoice. Customer shall be responsible for payment of all sales and use taxes, value added taxes (VAT), or similar charges relating to Customer's purchase and use of the services. Customer shall not be liable for taxes based on FISHER's net income, capital, or corporate franchise.
 - 5.1.5. Future Orders. The status of this agreement shall permit Customer to order partial or entire system components compatible with this software platform anytime. The pricing for additional components and/or services shall be determined at the time of purchase based on current pricing levels and scope. Customer

shall have the right to increase the quantities and/or features scope of the Software service with 30 days written notice to FISHER.

6. TERM AND TERMINATION

- 6.1. Term of Agreement. The term of this Software Agreement shall begin on the Effective Date outlined in the Deployment Schedule and shall continue for five years. After the initial term period has expired the Software Agreement shall auto-renew until terminated by either party as outlined in this Section.
- 6.2. Joint Agreement. If the pricing schedule included in section 5 of this agreement is covered by multiple owner entities (“Joint Owner”) all owners shall be responsible for submitting payments in full for the entire system cost detailed in section 5. In the case the Joint Owner does not submit payments per section 5 of this document, then FISHER reserves the right to act according to section 6 of this agreement.
- 6.3. Termination. Either party may terminate this Software Agreement during or after the initial sixty (60) months of service upon a material breach by the other party that has not been cured within fifteen (15) days after receipt of notice of such breach or for no cause.
- 6.4. Suspension for Non-Payment. FISHER reserves the right to suspend delivery of the Software Services if Customer fails to timely pay any amounts due to FISHER under this Software Agreement, but only after FISHER notifies Customer of such failure and such failure continues for thirty (30) days. Suspension of the Software Services shall not release Customer of its payment obligations under this Software Agreement. Customer agrees that FISHER shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the Software Services resulting from Customer’s nonpayment.
- 6.5. Suspension for Ongoing Harm. FISHER reserves the right to suspend delivery of the Software Services if FISHER reasonably concludes that Customer or a Customer’s employee, representative or system user’s use of the Software Services is causing immediate and ongoing harm to FISHER, TIBA and/or others. In the extraordinary case that FISHER must suspend delivery of the Software Services, FISHER shall immediately notify Customer of the suspension and the parties shall diligently attempt to resolve the issue. FISHER shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the Software Services in accordance with this Section. Nothing in this Section will limit FISHER’s rights under the Section below.

6.6. Effect of Termination

- 6.6.1. Upon termination of this Software Agreement or expiration of the Subscription Term, FISHER and/or TIBA shall immediately cease providing the Software Services and all usage rights granted under this Software Agreement shall terminate.
- 6.6.2. If FISHER and/or TIBA terminates this Software Agreement due to a breach by Customer, then Customer shall immediately pay to FISHER all amounts then due under this Software Agreement for services provided to the date of termination. If Customer terminates this Software Agreement due to a breach by FISHER, then FISHER shall immediately repay to Customer all prepaid amounts for any unperformed Software Services scheduled to be delivered after the termination date or for any Software Services that were not provided in accordance with this Agreement before the termination date.
- 6.6.3. If Customer terminates this Agreement for convenience, then Customer shall immediately pay to FISHER all amounts then due under this Software Agreement and to become due during the remaining term of this Software Agreement.
- 6.6.4. Upon termination of this Software Agreement, all Customer Content in the possession or control of FISHER, TIBA or any subcontractor of Fisher or TIBA immediately shall be returned to Customer, and upon

subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall immediately return such information or destroy such information and provide written certification of such destruction, provided that the receiving party may permit its legal counsel to retain one archival copy of such information in the event of a subsequent dispute between the parties.

7. WARRANTIES

- 7.1. **Warranty.** FISHER and/or TIBA represents and warrants that it will provide the Software Services in a professional manner consistent with general industry standards and that the Software Services will perform substantially in accordance with the written specification, if available.
- 7.2. **FISHER WARRANTS THAT THE SOFTWARE SERVICES WILL PERFORM IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH THE PROJECT SPECIFICATION, IF AVAILABLE FISHER DOES NOT GUARANTEE THAT THE SOFTWARE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED. IF AN ERROR OCCURS WITH THE SOFTWARE SERVICES AS A RESULT OF A 3RD PARTY ISSUE, FISHER WILL WORK WITH THE 3RD PARTY TO RESOLVE WHERE POSSIBLE.**
CUSTOMER ACKNOWLEDGES THAT FISHER DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SOFTWARE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY FISHER and/or TIBA (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. NEITHER FISHER NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED OR VIRUS-FREE OR ERROR-FREE.

8. LIMITATION OF LIABILITY

- 8.1. **NEITHER PARTY (NOR ANY LICENSOR OR OTHER SUPPLIER OF PRODUCTS) SHALL BE LIABLE FOR INCIDENTAL DAMAGES OR, DAMAGES FOR LOST BUSINESS OR, PROFITS, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), EVEN IF FORESEEABLE OR THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

9. CONFIDENTIALITY

- 9.1. **Definition.** "Confidential Information" means any information disclosed by a party to the other party, directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as "confidential" or "proprietary," (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be "confidential" or "proprietary" within 30 days of such disclosure, (c) is specifically deemed to be confidential by the terms of this Software Agreement, or (d) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself. Confidential Information will also include information disclosed by third parties to a disclosing party under an obligation of confidentiality. Subject to the display of Customer Content as contemplated by this Software Agreement, Customer Content is deemed Confidential Information of Customer. FISHER and/or TIBA software and Documentation are deemed Confidential Information of FISHER and/or TIBA.
- 9.2. **Confidentiality.** During the term of this Software Agreement and for five (5) years thereafter (perpetually in the case of software), each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Software Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to

prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Neither party shall reverse engineer, disassemble, or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information, and which are provided to the party hereunder. Each party may disclose Confidential Information of the other party on a need-to-know basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving party.

9.3. **Exceptions.** Confidential Information excludes information that: (a) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (b) is known to the receiving party, without restriction, at the time of disclosure or becomes known to the receiving party, without restriction, from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (c) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Each party may disclose the existence of this Software Agreement and the relationship of the parties but agrees that the specific terms of this Software Agreement will be treated as Confidential Information; provided, however, that each party may disclose the terms of this Software Agreement to those with a need to know and under a duty of confidentiality such as accountants, lawyers, bankers and investors, and provided further, Customer may disclose this Software Agreement at an open public meeting of Customer or in response to a request for records pursuant to applicable laws, rules or regulations.

10. GENERAL PROVISIONS

10.1. **Non-Exclusive Service.** Customer acknowledges that Software Services is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict FISHER and/or TIBA's ability to provide the Software Services or other technology, including any features or functionality first developed for Customer, to other parties.

10.2. **Personal Data.** Customer hereby acknowledges and agrees that FISHER's performance of this Software Agreement may require FISHER and/or TIBA to process, transmit and/or store Customer personal data or the personal data of Customer employees and Affiliates. By submitting personal data to FISHER and/or TIBA, Customer agrees that FISHER and its Affiliates may process, transmit and/or store personal data only to the extent necessary for, and for the sole purpose of, enabling FISHER and/or TIBA to perform its obligations to under this Software Agreement. In relation to all Personal Data provided by or through Customer to FISHER and/or TIBA, Customer will be responsible as sole Data Controller for complying with all applicable data protection or similar laws such as EU Directive 95/46/EC and laws implementing that Directive that regulate the processing of Personal Data and special categories of data as such terms are defined in that Directive. Customer agrees to obtain all necessary consents and make all necessary disclosures before including Personal Data in Content and using the Enabling Software and TIBA Software. Customer confirms that Customer is solely responsible for any Personal Data that may be contained in Content, including any information which any TIBA Software User shares with third parties on Customer's behalf. Customer is solely responsible for determining the purposes and means of processing Customer Personal Data by FISHER and/or TIBA under this Agreement, including that such processing according to Customer's instructions will not place FISHER and/or TIBA in breach of applicable data protection laws. Prior to processing, Customer will inform FISHER and/or TIBA about any special categories of data contained within

Customer Personal Data and any restrictions or special requirements in the processing of such special categories of data, including any cross-border transfer restrictions. Customer is responsible for ensuring that the TIBA Software meets such restrictions or special requirements. FISHER and/or TIBA to process any Personal Data that meets the requirements set forth in this Section according to these Terms of Use.

- 10.3. Assignment. Neither party may assign this Software Agreement or any right under this Software Agreement, without the consent of the other party, which consent shall not be unreasonably withheld or delayed. This Software Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Either party may employ subcontractors in performing its duties under this Software Agreement, provided, however, that such party shall not be relieved of any obligation under this Software Agreement.
- 10.4. Notices. Except as otherwise permitted in this Software Agreement, notices under this Software Agreement shall be in writing and shall be deemed to have been given (a) five (5) business days after mailing if sent by registered or certified U.S. mail, (b) when transmitted if sent by facsimile, provided that a copy of the notice is promptly sent by another means specified in this section, or (c) when delivered if delivered personally or sent by express courier service. All notices shall be sent to the other party at the address set forth on the cover page of this Software Agreement.
- 10.5. Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, such party or any subcontractor is prevented from performing any obligation or Service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of terrorism or war, epidemics, communication line failures, and power failures. Customer shall not be required to pay for any performance Fisher or TIBA fails to provide pursuant to this Section 11.5.
- 10.6. Waiver. No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this Software Agreement shall not constitute a waiver of any other or subsequent breach.
- 10.7. Severability. If any term of this Software Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this Software Agreement shall remain in full force.
- 10.8. Entire Software Agreement. This Software Agreement (including all Schedules and exhibits) contains the entire agreement of the parties and supersedes all previous oral and written communications by the parties, concerning the subject matter of this Software Agreement. This Software Agreement may be amended solely in a writing signed by both parties. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and shall be void unless specifically accepted in writing by the party against whom their enforcement is sought; mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.
- 10.9. Survival. Sections 3, 6, and 8 through 12 of this Software Agreement shall survive the expiration or termination of this Software Agreement for any reason.
- 10.10. Publicity Subject to prior written approval of the City Administrator of Customer or her/his designee: (a) FISHER and/or TIBA may include Customer's name and logo in its customer lists and on its website, and (b). Upon signing, FISHER and/or TIBA may issue a high-level press release announcing the relationship and the manner in which Customer will use the Software solution. FISHER and/or TIBA shall seek and receive prior written approval and coordinate its efforts with appropriate City Administrator of Customer or her designee to secure approval of the press release.
- 10.11. Independent Contractor. The parties have the status of independent contractors, and nothing in this Software Agreement nor the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this Software Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party's personnel.

Agreement Between:
Contract Type:

Owner and Contractor
PARKING SOFTWARE AGREEMENT

Document No. FPSPRK

10.12. **Governing Law.** This Software Agreement shall be governed by the laws of the State of Nebraska, excluding its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

10.13. **Compliance with Laws.** FISHER shall comply with all applicable local, state, and national laws in connection with its delivery of the Software Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data.

10.14. **Dispute Resolution.** Customer's satisfaction is an important objective to FISHER in performing its obligations under this Software Agreement. Except with respect to intellectual property rights, if a dispute arises between the parties relating to the interpretation or performance of this Software Agreement or the grounds for the termination hereof, the parties agree to hold a meeting within fifteen (15) days of written request by either party, attended by individuals with decision-making authority, regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute prior to pursuing other available remedies. If, within 15 days after such meeting, the parties have not succeeded in resolving the dispute, either party may protect its interests by any lawful means available to it.

10.15. **Signatures.** This Software Agreement may be executed in multiple counterparts, each of which when executed will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Software Agreement by facsimile or other electronic transmission (including via pdf) will be effective as delivery of a manually executed counterpart.

CUSTOMER

Fisher Parking & Security, Inc.

(Authorized Signature)

(Authorized Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

Agreement Between:
Contract Type:

Owner and Contractor
PARKING SOFTWARE AGREEMENT

Document No. FPSPRK

TIBA SPARK
SUBSCRIPTION

BY

Since 1985
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SOFTWARE

SOFTWARE SERVICE PRICING

[SaaS 2-YR Upfront Summary]

Software as a Service SOLUTION

Description	MONTH
SPARK UI, Facility Management Platform (1-Site)	\$ 414.00
SPARK UI, Facility Management Platform (2-Site)	\$ 414.00
SPARK UI, Tib@PAY [EMV]	\$ 0.00
SPARK UI, Onboarding (Site 1)	\$ 0.00
SPARK UI, Onboarding (Site 2)	\$ 0.00
TIBA FMS, 2-Year Upfront SaaS Base System Monthly Total - Site1	\$ 414.00
TIBA FMS, 2-Year Upfront SaaS Base System Monthly Total - Site2	\$ 414.00

SaaS Payment:

City of LaVista shall pay the 1st two years of the 5-year term for the parking portfolio software subscription upfront by a payment of \$9,936.00. This payment amount is based on a change order written by Sampson Construction, the City's construction contractor for the Garage 2 project to Fisher for a value of \$9,936.00. After the initial two years of the 5-year term the City shall be responsible for an annual payment of \$9,936.00 for the life of the system.