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**BILL NO. S-16-04-11**

SPECIAL ORDINANCE NO. S-47-16

AN ORDINANCE approving FINANCIAL SERVICES AGREEMENT - ONE (1) YEAR CONTRACT EXTENSION between STAR FINANCIAL BANK and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

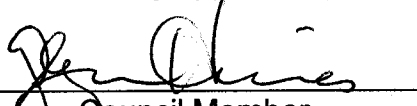
**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

**SECTION 1.** That the FINANCIAL SERVICES AGREEMENT - ONE (1) YEAR CONTRACT EXTENSION by and between STAR FINANCIAL BANK and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

one (1) year extension to the existing five (5) year contract for various billing and payment processing services to Fort Wayne City Utilities:

involving a total cost of FOUR HUNDRED THOUSAND DOLLARS - (\$400,000.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney



February 29, 2016

Board of Public Works  
City of Fort Wayne  
Citizens Square  
Fort Wayne, Indiana 46802

Re: Financial Services Agreement Between the City of Fort Wayne  
and STAR Financial Bank Dated July 7, 2010

Ladies and Gentlemen:

STAR has been providing various billing and payment processing services to Fort Wayne City Utilities under the above-referenced Financial Services Agreement. Per paragraph 8.0 of the Agreement, the contract was to end on December 31, 2015.

STAR has been advised that the city desires to extend the Agreement for a one-year term under the current terms and conditions to end on December 31, 2016.

Please let this letter serve as a one-year extension provided a second copy of this letter is countersigned by the Board of Public Works on behalf of the city.

Very truly yours,

Richard Beck  
Senior Vice President  
127 West Berry Street  
Fort Wayne, IN 46802  
P: (260) 467-5545  
F: (260) 467-5560  
richard.beck@starfinancial.com

starfinancial.com

Anderson: (765) 622-4100  
Angola: (260) 665-2151  
Columbia City: (260) 248-6000  
Elwood: (765) 552-4500

Fishers: (317) 566-3194  
Fort Wayne: (260) 467-5500  
Greenfield: (317) 467-7600  
Indianapolis: (317) 566-7300

Kendallville: (260) 349-3700  
Kokomo: (765) 868-3800  
Marion: (765) 651-6800  
Muncie: (765) 751-3500

New Castle: (765) 593-5100  
Noblesville: (317) 566-3180  
Tipton: (765) 675-5400  
48 Indiana offices

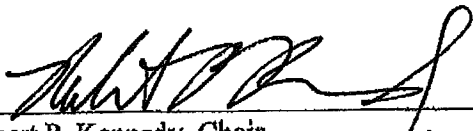
24/7 Telephone Banking:  
(888) 395-2447  
Toll-free for all locations:  
(800) 395-7827

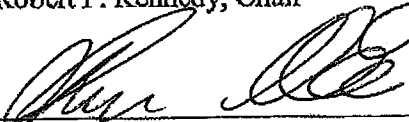
Accepted and agreed to this 23 day of March, 2016.


APPROVED FOR CITY

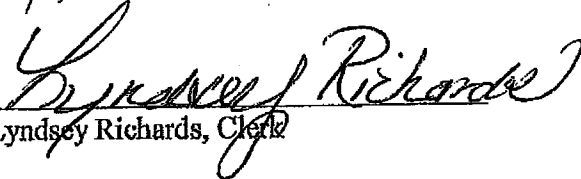
CITY OF FORT WAYNE, INDIANA

BOARD OF PUBLIC WORKS

BY:   
Robert P. Kennedy, Chair

BY:   
Kumar Menon, Member

BY:   
Mike Avilla, Member

ATTEST:   
Lyndsey Richards, Clerk

APPROVED as to form and legality

DATE: 3/23/16

**Financial Services Agreement**

**Billing, Payment Processing and Certain Banking Services**

This Agreement is by and between

**City of Fort Wayne (CITY or City)**

By and through its

Board of Public Works  
City of Fort Wayne  
420 City-County Building  
One Main Street  
Fort Wayne, IN 46802

and

**STAR Financial Bank (BANK or Supplier)**

~~127 West Berry Street~~  
Fort Wayne, IN 46802

Who agree as follows:

CITY hereby engages BANK to perform the services set forth in Scope of Services and BANK agrees to perform the Services for the compensation set forth in Attachment B (Compensation). BANK shall be authorized to commence the Services upon execution of this Agreement and written authorization to proceed from CITY. CITY and BANK agree that these signature pages, together with attachments referred to therein, constitute the entire Agreement ("Agreement") between them relating to the Services.

RECEIVED  
AUG. 04 2010

DATA CONTROL

*Rec'd  
from  
Maggie  
Customer  
Relations  
MSF*

**APPROVALS**

**APPROVED FOR CITY**

**CITY OF FORT WAYNE, INDIANA**

**BOARD OF PUBLIC WORKS**

BY: \_\_\_\_\_  
Regina A. Kostoff, Chair

BY: *Kumar Menon*  
Kumar Menon, Member

BY: *John Suarez*  
John Suarez, Member

ATTEST: *Marilyn Huth*  
Marilyn Huth, Clerk

DATE: *July 7, 2010*

**APPROVED as to form and legality.**

**STAR Financial Bank**

BY: *Ronald Beck*  
Ronald E. Beck, Senior Vice President

DATE: *7-8-2010*

## A. GENERAL

Bank shall provide to the CITY certain financial, billing and Web Hosting services for Fort Wayne City Utilities (Utilities) as generally outlined in Attachment A and more specifically to which this scope of services applies.

## B. SCOPE of SERVICES:

### 1.0 Web Hosting

1.1 Bank shall create, maintain, update, and manage Web Site for the Utilities' customers:

- a. The Web Site's appearance, convenience and ease of access and maneuverability will be to the CITY's specifications. BANK shall modify the Web Site from time to time at CITY's request.
- b. Electronically, customers will be able to pay by check or credit card, review current invoice and 12 months of previous invoice history, send e-mails to CITY management, and apply for utility services, and update basic customer information.
- c. Provide a secure environment for both the CITY and the customer's protection and privacy.

### 2.0 Billing Services:

2.1 Upon the daily receipt of billing and payment files ("Bill Print Files") of Utilities' customers from the CITY via e-mail, BANK shall process daily the paper or electronic billing to Utilities' customers

2.2 Bills to customers may take the form of a printed bill, an automated clearinghouse debit of the customer's bank account or an e-mail notification to the customer of the sum due the CITY for utility services, at customer's option.

2.3 If the customer requests an electronic bill, the BANK will send the e-mail billing to the customer. Customer will then have the option to access a hyperlink (the Web Site managed by the BANK). Customer will be able to schedule the payment date and the dollar amount. The system will automatically default back to the regular payment amount and the regular payment date. The BANK will store the payment in the database until the designated due date, and then the BANK will process the payment. Funds will be deposited into the CITY's bank account. The payment detail file will be forwarded to the CITY by the BANK on a daily basis.

2.4 If the customer receives a paper bill, the BANK will print, fold, stuff, and apply postage and deliver the bills for mailing to the U.S.

Post Office. The CITY will supply the BANK with stationary and envelopes for processing and will pay actual postage cost as invoiced by the BANK. At this point the customer has two choices: one would be to mail their payment in to the CITY, and the other would be to go online and access the Web Site. At the Web Site the customer can sign-up for the e-billing, in which the customer again inputs payment information and schedules the payment. Electronically the payment will be deposited into the CITY's bank account.

2.5 The Bill Print Files will be ready to transmit electronically from the CITY to the BANK every evening by 10:00 PM. The BANK will, during the course of the evening, print the bills and prepare them for mailing the morning of the next Business Day. A Business Day is Monday through Friday except federal banking holidays. The system is set up to flag pre-determined exception bills that will be pulled out of the processing. Any exception bills (Special Handling) will be returned back to the CITY via courier the next day. At the same time, the courier will pick up the previous day's exception items and return them to the BANK for mailing.

2.6 On a monthly basis the CITY may include statement stuffers. The CITY will deliver the statement stuffers to the BANK for inclusion with mailed bills and e-mailed bills.

2.7 As bills are sent out to customers and address changes are detected by returned mail, a change log will be created by the BANK. The BANK will set this file up so that the CITY can dial up and download the change file into their system updating all changes. The primary objective is to never send out a bill with incorrect mailing information whether it is a paper or electronic bill. The BANK is relying upon the accuracy of the CITY. No obligation exists on the BANK's part to conduct an independent study of the accuracy.

2.8 BANK will process ACH automatic debits for those customers which have authorized the payment of their bills by debit to their respective bank accounts.

2.9 BANK shall credit daily to the CITY's designated bank account all sums received by BANK through the electronic or ACH collection and shall provide electronically to CITY payment files for the CITY to post to their system.

2.10 The ultimate collection responsibility of past due or unpaid utility payments shall be borne solely by the CITY.

### 3.0 Lock Box Services:

- 3.1. BANK, acting as agent for CITY, will rent, service and have sole access to Post Office Box Number 2269, at the postal facility in Fort Wayne, Indiana (the "Lockbox") for the purpose of collecting all mail deposited therein. BANK will pick up all mail in the Lockbox once each Business Day and will schedule those pick-ups based on postal mail availability as determined by BANK.
- 3.2. CITY agrees to prepare and mail invoices for all accounts with clear Instructions for proceeds to be forwarded to the Lockbox at the following address:

City Utilities  
P. O. Box 2269  
Fort Wayne, IN 46801-2269

- 3.3. Subject to specific exceptions set forth on Attachment C attached hereto, BANK will endorse all checks, drafts and money orders (herein collectively referred to as "Items" and each as an "Item") contained in such mail in the following manner:

CREDITED TO ACCOUNT OF  
WITHIN NAMED PAYEE

STAR FINANCIAL BANK  
FORT WAYNE, IN

provided that all Items are made payable to any of the following payees or any close resemblance thereto:

City Utilities	Fort Wayne City Utilities
City Utilities of Fort Wayne	Fort Wayne Water
Fort Wayne Utilities	City of Fort Wayne Water
FW Utilities	Municipal Utilities

Items made payable to other than those stated above will be forwarded unprocessed to CITY for further disposition.

- 3.4. BANK will process for collection all such Items received, and will, on each Business Day, provisionally credit the total amount thereof to the account of CITY maintained with the BANK, Account # 51016165 (the "Account") until 5:00 P.M., Indiana time, each Business Day. BANK will process for collection and provisionally credit the Account for all amounts received at the BANK'S SERVICE CENTER located at 6230 Bluffton Road, Fort Wayne, Indiana 46809, by 12:00 P. M. each Business Day. Notwithstanding anything to the contrary in this Agreement, BANK will not be liable if the amount of the Items are deposited later than as stated above, but within the time provided by law or regulation. BANK will debit the Account in the amount of any Item for which

provisional credit has been given but which is returned to BANK unpaid.

- 3.5 BANK will examine each Item for compliance with the requirements specified by CITY in Attachment C. If an Item does not meet the requirements specified therein, BANK will return such Item to CITY for further disposition.
- 3.6 BANK will examine all Items for any discrepancies between the written and numerical dollar amounts. If a discrepancy is identified, BANK will provisionally credit CITY for the written amount of the Item.
- 3.7 BANK will examine all Items for any discrepancies between the written amount of the check and the amount of the enclosed invoice or remittance advice. BANK will, upon a best efforts basis, identify any discrepancies between the amount of the Item and the amount stated on any such enclosed invoice or advice and process the Items as instructed by CITY and outlined in Attachment C.
- 3.8 BANK will maintain for a period of seven (7) years a digital image record of all Items deposited to CITY'S account. Upon receipt of a request from the CITY, BANK will provide CITY with images of the Items processed on that day in order to reconstruct a specific day's deposit. Unless due to grossly negligent or intentional act or omission of the BANK, BANK shall not be responsible for any failure to provide such a record due to oversight, equipment or software failure, or the inability to obtain software or equipment. CITY agrees to compensate BANK promptly for any expenses incurred as a result of such deposit reconstruction.
- 3.9 On a daily basis, BANK agrees to digitally image for CITY all enclosures and communications received in the Lockbox, not related to a specific payment, and position these images at the end of the daily file.
- 3.10 CITY will instruct all of its customers not to send any returned merchandise to the Lockbox. BANK will forward any merchandise to the CITY at the expense of CITY.

3.11 BANK shall use its best efforts to sort through and examine items and bring to the attention of CITY items containing statements such as "payment in full" or other words intended by payors thereof to indicate accord and satisfaction or other similar legal concept upon the payment thereof. BANK shall have no liability to CITY for any failure to detect or report such statements and BANK shall have no liability for processing such items in the normal course of business notwithstanding the existence or any such statement unless due to the grossly negligent act or omission of the BANK.

4.0 Cashiering Support (Point of Customer Contact; front-end processing)

4.1 BANK will host Aptera's customized front-end software on BANK's servers.

4.2 BANK will receive electronic front-end file for cash and checks (Check 21 compliant) from CITY and deposit funds.

4.3 BANK will merge or coordinate front-end customer payments' file with lockbox customer payment file and transmit file electronically back to the CITY.

4.4 BANK will ensure that deposits and applied payments are in balance.

5.0 Credit Card Processing

5.1 If CITY selects a third party vendor and if BANK is the depository bank, Bank will accept deposits consistent with the provisions of Item 2.8 above.

5.2 If CITY directly contracts with a Credit Card Merchant, CITY may select BANK as depository bank and establish such procedures to fully automate the deposit and file transfer activities. Pricing will be consistent with other deposits and file transfers.

6.0 Third Party Processing

6.1 The CITY from time to time will enter into third party electronic deposit and file transfer arrangements. CITY will consider BANK as an intermediary depository and if selected, will coordinate the data transfer and bank deposits. Pricing will be consistent with other deposits and file transfers. *will*

General Terms and Conditions:

7.0 Fees and Payment Terms: BANK shall be compensated monthly by CITY for its services based on Attachment B. The effective date for the pricing on Schedule B shall be the effective date of this contract. The

rates in Attachment B shall change each year at 50% of the change of the Midwest CPI Index based on the previous year starting with January 1, 2012 and then annually on each successive January 1<sup>st</sup>.

- 8.0 Term of Agreement: Unless modified or terminated by the parties, this Agreement shall terminate after five years from January 1<sup>st</sup>, 2011, or December 31, 2015.
- 9.0 Any other terms herein to the contrary notwithstanding, this Agreement shall be deemed to be amended automatically, without notice to either party, to comply with any statute, regulation, or ruling (or amendment thereof) of any government agency having jurisdiction over the BANK, the CITY or the Utilities. This Agreement shall be deemed to have been made in the state of Indiana and shall be construed in accordance with, and governed by, the laws of that state.
- 10.0 This Agreement contains the entire terms of the agreement between BANK and CITY regarding this Financial Services Agreement, and may not be modified or terminated except in writing signed by both parties. All communications intended to be delivered to BANK shall be delivered in writing, postage prepaid, or by courier to the BANK at:

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STAR FINANCIAL BANK  
Commercial Services Department  
P. O. Box 11409-1409  
Fort Wayne, IN 46858-1409

and to the CITY at the address set forth on the signature page of this Agreement unless notice of any other address is given to the Bank in writing.

- 11.0 This Agreement may be terminated by either BANK or CITY at any time upon at least ninety (90) days' prior written notice to the other. After the effective date of termination, BANK will have no responsibility for any items received in the terminated Lockbox except that the BANK shall forward to the CITY by regular mail all items received by the BANK to CITY's address of record for a period of one hundred eighty (180) days after the effective date of termination. After such time, BANK will return all items received in terminated box to sender. Such termination shall have no effect on the right or responsibilities of the parties hereto with respect to items processed prior to the effective date of termination.
- 
- 12.0 The waiver by either party of a provision of this Agreement shall not constitute a waiver of or prejudice said party's right otherwise to demand strict compliance with that provision or any provision in the future.
- 13.0 Notwithstanding anything to the contrary provided in this Agreement, BANK will not be liable for any of its acts or omissions under this Agreement except to the extent that such acts or omissions constitute negligence or intentional acts or omissions to act by BANK; and in no

event shall BANK'S liability hereunder exceed the face amount of the disputed items in question.

14.0 Confidentiality:

14.1 Bank shall maintain the confidentiality of all proprietary CITY information.

14.2 Bank will comply with all Federal, State and local laws in its performance of this Agreement. Bank will maintain the confidentiality of CITY customer information.

15.0 BANK Is Not Affiliated With CITY:

15.1 BANK is retained by the CITY for the sole purpose and to the extent set forth in this Agreement. BANK's relationship with the CITY during the term of this Agreement, shall be that of an independent contractor. BANK shall have the right to select the means, manner and method of performing its services under this Agreement. BANK shall not be considered to be an employee, partner, or agent of the CITY by reason of the provisions of this Agreement or otherwise.

15.2 BANK may from time to time make enhancements to the existing program. Prior to development and implementation of such enhancements, the BANK will obtain CITY's approval. CITY may submit requests to the BANK's Programming Department for any enhancement requests for consideration.

16.0 CITY's Standard Terms and Conditions are incorporated as Attachment D.

**Attachment A  
STAR BANK  
Contract Services**

- **Web Hosting**
  - Internet payment processing (Checks and Credit Cards)
    - Electronic file to City Utilities
    - Deposit to Bank
  - Web site maintenance
  - Bill Inquiries
  - Ability to send Customer Service emails
  - Ability to send form for New Service set ups
  - Update information online for customer (Such as change of online information)
  - Account History
    - Payment history
    - Amount due
    - Account Status
  - Management/Customer service rep inquiries and reporting
- **Credit Card Processing – third party or direct Merchant arrangement**
  - Collection and processing of credit cards payments
    - Internet, cashier (kiosk), call center phone payments
  - Electronic file to clearing house
  - Electronic file to City Utilities for posting of payments
  - Reporting, balancing and reconciliation
- **Lockbox**
  - Payment processing of lockbox
    - Electronic file to City Utilities for posting of payments
    - Depositing into account
  - Arranging courier service for pick up from post office/lockbox
  - Returning of misc. items/correspondence
  - Record retention of payment coupons
  - Reporting, balancing and reconciliation
    - Audit Trail – on-line access – 6 months; CD permanent file
- **Cashier**
  - Check 21 -- host software on banks servers
  - Receive electronic file for cash/checks
  - Payment processing of cashier receipts
    - Electronic file to City Utilities for posting of payments
    - Depositing into bank account
  - Reporting, balancing and reconciliation
- **Billing**
  - Accept Utilities e-file and execute billing
    - E-bills (including inserts)
    - Printing of bills
  - Ordering of supplies, manage postage account
  - Stuff and mail bills
  - Printing and mailing of disconnect letters
  - Supply City Utilities with customer e-mail addresses (new and changed)
- **Third Party payment processing capabilities**
  - Accept e-file, deposit funds, and create e-file for posting

**Attachment B  
STAR BANK  
Compensation**

(US\$)

<u>Description of Service</u>	<u>Unit of Measure</u>	<u>Unit Cost</u>
Courier Service		included
Web Site Hosting		Included
Maintenance Fee	month	10,000
Credits	each	0.340
On-Us Deposited Items	each	0.050
Transit Items #/1	each	0.050
Return Item Fee/Chargeback Fee	each	5.000
ACH Credit Rec'd	each	0.050
ACH Reversal	each	7.000
ACH Debit Rec'd	each	0.050
ACH Origination - Per Item	each	0.100
ACH Returned Item/Chargeback	each	5.000
ACH Notice of Change	each	5.000
Star link ACH Monthly	month	10,250
Star link Online Banking	each	0.100
LKBX-Retail App-Monthly	month	150,000
LKBX-Retail Prnts Processed	each	0.123
LKBX-Non-Processable Prnts	each	0.350
LKBX-Browser Research-Monthly	month	30,000
LKBX-User IDs-Monthly	month	1,000
Print Utility Bill	each	0.035
Fold & Stuff Utility Bill	each	0.020
Insert Stuffer	each	0.010
Disconnect - Print, Fold, & Stuff	each	0.055
Electronic Bill	each	0.270
Electronic Bill Setup	each	1,500
Star Pay Processing	each	0.070
Express Pay Processing	each	0.070
Cash Deposited per \$100	each	0.110

	0.16768% of
	avg dally
	balance per
	month
FDIG Insurance Fee (\$\$)	Actual
Postage & Mailing Expense (\$\$)	
Development/Programming In	
excess of 20 hours per year	\$75 per hour

**Attachment C**  
**STAR BANK**  
**Specific Lockbox Processing Requirements**

The BANK is expected to process:

- Missing Payor Signature
- Missing Issue Date
- Canadian US\$ checks
- Post-dated Checks
- Stale-dated Checks
- Single or Multiple Invoice(s)/Remittance Advice(s), with Single or Multiple Check(s), In or Out of Proof
- Invoice(s) / Remittance Advice(s) containing "writing on face" will be digitally imaged at the "Beginning" of the daily payment files

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The BANK may return Unprocessed:

- Legal Endorsement (paid in full or final payment)
- Foreign Checks other than Canadian US\$ Checks
- Checks without Payment Stub

**ATTACHMENT D**  
**Standard Terms And Conditions**

1. **SERVICES.** Supplier agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Supplier warrants that the Services will be completed on or before the End Date. **TIME IS OF THE ESSENCE.** Supplier warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Supplier further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Supplier warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.
2. **INVOICES.** Supplier shall invoice the City for Services performed according to the Rates, Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Supplier hereunder until Supplier has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and rights to claim liens that could arise out of the performance of the Services have been waived. Payment of invoices shall not constitute acceptance of the Services, and invoices shall be subject to adjustment for defects in quality or any other failure of Supplier to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to supplier against any amount owed by Supplier or any of its affiliated companies to the City.
3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Supplier (to and shall) remain as independent contractors with respect to each other. The persons provided by Supplier to perform the Services shall be Supplier's employees and shall be under the sole and exclusive direction and control of Supplier. They shall not be considered employees of the City for any purpose. Supplier shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Supplier shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Supplier shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 12101 et seq., so as to enable any disabled person furnished by Supplier to perform the essential functions of the job. Supplier agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Supplier's failure to comply with this paragraph.
4. **INDEMNITY.** Supplier shall defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Supplier including such portion thereof due, or claimed to be due, to the negligence of the City except that Supplier shall have no duty to hold harmless the City for such portion of the foregoing proximately caused by negligence or misconduct of the City, and if any suit, claim, or demand was defended by Supplier, then the City will reimburse Supplier for its pro-rata share of the costs, expenses (including reasonable attorney's fees), and damages. The City may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Supplier's obligations to indemnify, defend, or hold harmless. Supplier shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the City and without an unconditional release of all liability by each claimant or plaintiff to the City.
5. **LIMITATION OF LIABILITY.** Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorney's fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Agreement, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.
6. **INSURANCE.** Supplier shall maintain in full force and effect during the performance of the Services the following insurance coverage; provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:
 

(a) Worker's Compensation	per statutory requirements.
(b) General Liability	\$1,000,000 minimum per occurrence \$1,000,000 aggregate
(c) Automobile Liability	\$1,000,000 minimum per occurrence
(d) Products Liability	\$1,000,000 minimum per occurrence
(e) Completed Operations Liability	\$1,000,000 minimum per occurrence

The Certificate of insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of insurance should be sent to the following address:  
City of Fort Wayne Purchasing Department  
1 East Main Street, Rm B-81  
Fort Wayne, IN 46802
7. **HAZARDOUS MATERIALS.** Supplier will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under federal, state, or local law as hazardous or toxic. Supplier must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
8. **PROGRESS REPORTS.** The Supplier shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
9. **CONFLICT OF INTEREST.** Supplier certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Supplier's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.
10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION.** Supplier further agrees that all information, data findings, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Supplier in furtherance of this contract—shall be the property of the City. The Supplier shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Supplier. By this contract the Supplier specifically waives and/or releases to the City any cognizable property right of the Supplier to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc.
11. **CONFIDENTIALITY OF CITY INFORMATION.** Supplier understands and agrees that data, materials, and information disclosed to Supplier may contain confidential and protected data. Therefore, the Supplier promises and assures that data, material, and information gathered, based upon or disclosed to the Supplier for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.
12. **COMPLIANCE WITH LAWS.** Supplier warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 providing for equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American With Disabilities Act, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974

and all applicable immigration laws and regulations including the 1988 Immigration Reform and Control Act et seq. Supplier agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Supplier's breach of such warranty.

13. **DEFAULT.** In the event that (a) Supplier breaches any warranty contained herein; (b) Supplier fails to provide the insurance certificates required herein; (c) Supplier or Supplier's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Supplier's performance of the Services violates applicable law; (e) Supplier admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (f) Supplier fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.
14. **TERMINATION.** In the event of default by Supplier under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Supplier as to the portion of the Services not yet rendered and to purchase substitute services at Supplier's expense. Supplier shall reimburse the City for the cost of such substitute services upon Supplier's receipt of an invoice therefor.
15. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.
16. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its sole convenience upon written notice to Supplier, and Supplier shall stop performing the Services on the date specified in such notice. The City shall have no liability as a result of such cancellation, except that the City will pay Supplier the Fees for completed Services accepted by the City and the actual incurred cost to Supplier for Services in progress. These payments shall not exceed the Aggregate Price.
17. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.
18. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address as may be specified by such other party by written notice sent or delivered in accordance herewith.
19. **ASSIGNMENT.** Any assignment, in whole or in part, of Supplier's rights or obligations under this Agreement without the prior written consent of the City shall be void. Supplier shall not use subcontractors to perform any part of the Services without the prior written consent of the City.
20. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event of any dispute or disagreement between the parties other with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.
21. **ACCESS TO RECORDS.** The Supplier shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the City or by any other authorized representative of city government. Copies thereof shall be furnished at no cost to the City if requested.
22. **NONDISCRIMINATION.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Supplier and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Supplier shall not discriminate with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
23. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Agreement shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and do not intended to affect the interpretation of the provisions hereof. This agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.



**CITY UTILITIES**

Thomas C. Henry, Mayor

*Engage • Innovate • Perform*

City of Fort Wayne  
City Utilities  
200 East Berry Street, Suite 270  
Fort Wayne, IN 46802  
260.427.8311

[www.cityoffortwayne.org/utilities](http://www.cityoffortwayne.org/utilities)

Date: March 28, 2016

To: Common Council Members

From: Justin Brugger, CU Chief Financial Officer

Re: Financial Services Agreement - STAR Contract

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STAR Financial Bank has been a business partner with the City Utilities since 2004. Over the last 12 years, we have developed jointly a customer oriented web site, electronic bill pay capabilities, bill print services, e-bill capabilities, and sophisticated front office software for our point of contact cashing function. Throughout this period, STAR has been responsive to change and has proven to be an excellent choice for a business partner. STAR is local vendor and the lockbox processing is local as well. This contract does not include general disbursements or payroll banking transactions.

City Utilities desires to extend its existing five-year contract with STAR by an additional year to prevent any potential disruption to our Customer Information System implementation. It is City Utilities intent to competitively bid these services in a new request for proposals in late 2016.

All terms and conditions remain the same, including annual CPI adjustments at one-half the change in Midwest CPI Index.

We respectfully recommend approval of the attached Financial Services Agreement with STAR Financial Bank.

**REPORT OF COMMITTEE ON FINANCE**

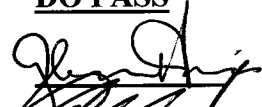





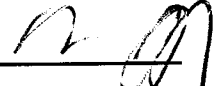

**April 19, 2016**

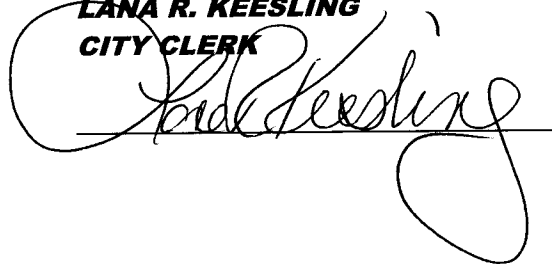
*Glynn Hines, Chair  
John Crawford, Co-Chair  
All Council Members*

AN ORDINANCE approving FINANCIAL SERVICES AGREEMENT - ONE (1) YEAR CONTRACT EXTENSION between STAR FINANCIAL BANK and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

**Involving a total cost of \$400,000.00**

**COMMITTEE ON FINANCE HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
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_____	_____	_____	_____

**LANA R. KEESLING  
CITY CLERK**  


Public Hearing Date, if applicable.

Read the first time in full and on motion by Councilman Hines.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilman Hines, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: April 26, 2016

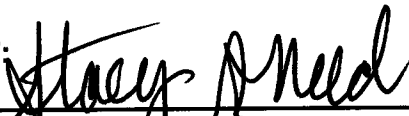
  
 \_\_\_\_\_  
 OFFICE OF THE CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

~~Appropriation~~ <sup>SPECIAL</sup> No. S-16-04-11 on the 26th day of April, 2016

ATTEST:

LANA R. KEESLING  
CITY CLERK

  
 \_\_\_\_\_  
 Deputy clerk

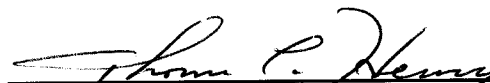
PRESIDING OFFICER

  
 \_\_\_\_\_

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th of April 2016, at the hour of 9:30 o'clock A.M. E.S.T.

Approved and signed by me this 27<sup>th</sup> day of APRIL

2016, at the hour of 5:00 O'clock PM E.S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR