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(1904-1980)
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(1903-1985)

May 16, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

RE: **MPSC Case No. U-14862**

Dear Ms. Kunkle:

Attached for electronic filing, please find Detroit Thermal, LLC's Application in the above-referenced matter.

If there are any questions or comments, do not hesitate to contact me. Thank you.

Sincerely,

Matthew M. Peck

Digitally signed by Matthew M. Peck
DN: CN = Matthew M. Peck, C =
US, O = Fischer, Franklin and Ford
Date: 2006.05.16 11:29:56 -04'00'

Matthew M. Peck

MMP:dmm

Attachments

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
Detroit Thermal, LLC for approval)
of a steam purchase agreement)

Case No. U-14862

APPLICATION

Detroit Thermal, LLC ("Detroit Thermal"), respectfully requests that this Honorable Commission approve a special contract for the supply of steam to the County of Wayne ("County"). In support of this Application, Detroit Thermal states as follows:

1. Detroit Thermal is an Ohio Limited Liability Company with its Michigan offices at 541 Madison Ave., Detroit, Michigan 48226. Detroit Thermal is presently engaged as a public utility in the business of, among other things, generating, purchasing, distributing, and selling steam energy to customers in the City of Detroit.

2. The Commission has jurisdiction over this matter pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

3. The County is a Michigan Charter County that is the most populous county in the State of Michigan and eleventh most populous county in the United States. The County owns and operates several of the buildings in the City of Detroit, such as the Wayne County Building, the Frank Murphy Hall of Justice, the Sheriff's Administration

Building, the County Jail, and the Juvenile Center, which utilize steam to heat and cool their facilities.

4. The County recently entered into negotiations with Detroit Thermal for the purpose of arriving at an equitable contract for the service of steam.

5. Detroit Thermal and the County fully explored several proposals for the service of steam including a rate incorporating a minimum annual load requirement that was also designed to annually adjust for volatility in the natural gas market.

6. Submitted herewith for Commission approval is the negotiated Steam Purchase Agreement (“Agreement”) between Detroit Thermal and its customer, the County, attached as Exhibit A. Contemporaneous with the submission of the instant Agreement to the Commission, Detroit Thermal and the County have also submitted the Agreement to the Wayne County Commission and Wayne County Executive for their respective approvals.

7. Detroit Thermal represents that the special contract’s provisions will not violate statutes, or Commission rules, orders, or clearly established policies.

8. This special contract is the product of good faith negotiations and compromise between Detroit Thermal and the County. The rates and other terms and conditions specified in the special contract for steam service are reasonable and in the public interest. None of the terms and conditions of service under the Agreement will cause Detroit Thermal to change the general operations of its steam systems, as those systems are currently utilized by other customers.

9. There are clear benefits in the special contract for Detroit Thermal, its members, and its other customers. These benefits include the County’s contribution to

Detroit Thermal's fixed costs and margins. Additionally the contract provides the substantial certainty that the County will continue purchasing steam from Detroit Thermal, bolstering the central district heating system as a whole. Indeed, the County has agreed to a minimum annual purchase of 169,200 thousand pounds of steam ("Mlbs."). This volume of steam represents approximately 6% of Detroit Thermal's estimated annual sales. The minimum annual purchase is subject to a contingency that provides for the closure or transfer of ownership of the Sheriff's Administration Building, whereby, the County would only be responsible for the fixed costs attributable to the reduction in load, below the minimum annual requirement directly stemming from the closure or transfer of that building.

Additionally, under the terms of the agreement, Detroit Thermal is reasonably insulated from volatility in the natural gas market as the contract contains a symmetrical annual gas cost adjustment mechanism. The gas cost adjustment mechanism will annually adjust the rate by comparing the weighted average NYMEX futures price for natural gas for the subsequent 12 months of the term to a weighted cost for natural gas of \$9.85 per million British thermal units ("MMBtu.").

10. There are clear benefits in the special contract for the County and for the public as well. The County is assured of steam supply certainty and rate predictability over the term of the contract. Indeed the prospect of rate predictability affords the County an avenue for planning and complying with its annual budget, a goal intimately tied to the general welfare and viability of the County and its constituents. The County will also benefit from the operation of the annual gas cost adjustment mechanism. If natural gas prices for the second and third years of the contract decrease below the \$9.85

per MMBtu, the County's overall rate will decrease according to the operation of the mechanism.

The Public will also benefit from the terms of the instant Agreement. The buildings the County owns and operates are essential to the operation and economic stability of Wayne County. The continued operation of these buildings is vital to the interests of the Public. The instant agreement ensures the one of the largest counties in the country will be able to heat its buildings during the winter and use steam for cooling purposes for during the summer; allowing for the continued operation of its facilities benefiting the County's elected officials, its employees and the County as a whole.

11. The rates contained in this contract are based upon the variable costs of providing steam to the County and a reasonable allocation to fixed costs benefiting Detroit Thermal and its customers. The Agreement is also premised upon the County's commitment to purchase a minimum annual volume, an annual \$0.15 adjustment to the base rate, and the incorporation of a gas cost adjustment mechanism to insulate against future volatility in the natural gas market. The resultant price contained in the contract is \$20.40 per Mlb. during the first 12 months of the Agreement, \$20.55 per Mlb. plus the annual variable adjustment (as explained below) during the second 12 months of the period, and \$20.70 per Mlb. plus the annual variable adjustment during the final 12 months of the contract.

12. The Annual Variable Adjustment to Base Rate Mechanism operation information provided below and in the accompanying Affidavit of C.E. French, attached as Exhibit B, demonstrates that the mechanism contained in the contract presented for Commission approval is reasonable.

The Annual Variable Adjustment to Base Rate Mechanism will be applied annually on the anniversary date of the Agreement. The adjustment will be added or subtracted from the Annual Base Rate listed in section 2.01 of the Agreement (\$20.55 per Mlb. for the second year of the contract and \$20.77 per Mlb. for the third year of the contract). The adjustment is calculated as the difference between the weighted average cost of a strip of natural gas for the twelve-month period May 2007-April 2008 and Nine Dollars and Eighty-Five cents (\$9.85) multiplied by a conversion factor of 0.857.¹ The weighted average cost (per MMBtu) of natural gas for the twelve month period shall be determined by applying the appropriate weighing factor to the average monthly closing price for each month during the last five natural gas trading days for the month preceding the anniversary date of the Agreement. The following table lists the weighting factors applied to each month in determining the weighted cost of gas:

Month	Weighting Factor
January	8%
Februray	7%
March	9%
April	6%
May	6%
June	9%
July	9%
August	11%
September	8%
October	8%
November	7%
December	11%

13. In support of this application, Detroit Thermal submits that the Commission previously approved a contract for steam service containing a monthly gas cost adjustment mechanism tied to NYMEX in Case No. U-14332.

¹ The Conversion factor of 0.857 is the MMBtu to Mlbs. conversion factor adopted by the MPSC in its September 8, 2005 Opinion and Order in MPSC Case No. U-13691, Detroit Thermal's general rate case.

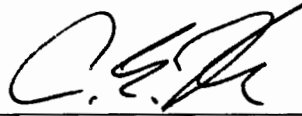
In Case No. U-14332, the Commission approved a contract for steam service between Detroit Thermal and one of its customers that contained a variable rate for service. The price contained in that contract was \$17.94 plus a monthly gas price adjustment mechanism that was tied to changes in the price for natural gas as listed on NYMEX.

14. At this time Detroit Thermal is not requesting, and the special contract does not require, any ratemaking determinations or any change in the rates or costs of service to other customers. Approval of the special contract will not alter or increase any existing steam rates paid by Detroit Thermal's other customers and, therefore, may be authorized by the Commission without notice or hearing as provided by MCL 460.6a(1); MSA 22.13(6a)(1).

WHEREFORE, Detroit Thermal requests that the Commission approve the Steam Purchase Agreement and requests any such other and additional relief as may be deemed appropriate.

Respectfully submitted,

DETROIT THERMAL, LLC.



C. E. French

President of Detroit Thermal, LLC

FISCHER, FRANKLIN & FORD



Arthur J. LeVasseur (P29394)

Matthew M. Peck (P66361)

Attorneys for Detroit Thermal, LLC

500 Griswold Street, Suite 3500

Detroit, MI 48226-3808

(313) 962-5210

Exhibit A

DETROIT THERMAL, LLC STEAM PURCHASE AGREEMENT

THIS AGREEMENT, between Detroit Thermal, LLC, an Ohio limited liability company, 541 Madison Street, Detroit, MI 48226, hereinafter called the "Company", and the County of Wayne, a Michigan charter county, billing address: 600 Randolph, 5th Floor, Detroit, MI 48226, hereinafter called the "Customer", is for a supply of steam to be delivered by the Company to the following locations:

Service Addresses:

525 Clinton, Detroit, MI 48226
1441 St Antoine, Detroit, MI 48226
570 Clinton, Detroit, MI 48226
1326 St Antoine, Detroit, MI 48226
640 Temple, Detroit, MI 48201
1333 E. Forest, Detroit, MI 48207
1350 E. Warren, Detroit, MI 48207

This Agreement supersedes any and all previous agreements for steam service provided by the Company to the above stated service addresses. Steam service shall be delivered by the Company and received and paid for by the Customer under the following terms and conditions:

1. TERM OF THE AGREEMENT

1.01 This Agreement shall be for a period of three years beginning on the Contract Commencement Date and ending at 5:00 p.m. on the last day of the period following the Contract Commencement Date.

1.02 The Contract Commencement Date shall be: May 1, 2006.

2. PRICE

2.01 Base Rate and Fixed Annual Adjustment. The Steam Service Rate shall be fixed for the first 12 months of the agreement term and the Base Rate Component shall increase by a fixed amount of \$0.15 per Mlb. annually on the anniversary of the Contract Commencement Date pursuant to the following schedule:

1 st Year—May 1, 2006-April 30, 2007	\$20.40 per Mlb.*
2 nd Year—May 1, 2007-April 30, 2008	\$20.55 per Mlb.*
3 rd Year—May 1, 2008-April 30, 2009	\$20.70 per Mlb.*

* Mlb. is equivalent to 1000 pounds of steam.

2.02 Annual Variable Adjustment to Base Rate. In addition to the fixed increase in the Base Rate Component set forth in Section 2.01, Steam Service Rates will be subject to a variable gas cost adjustment to be applied annually on the anniversary of the Contract

Commencement Date. For the period May 1, 2007 through April 30, 2008, the adjustment shall be made by adding to the applicable Base Rate of \$20.55 for the second year of the Agreement the difference between the weighted average cost of a strip of natural gas for the twelve-month period May 2007-April 2008 and Nine Dollars and Eighty-Five Cents (\$9.85) multiplied by a factor of 0.857. If the difference is a negative number, it shall be deducted from the applicable Base Rate (i.e. \$20.55 for year two and \$20.70 for year three) to determine the adjusted rate applicable for the second year. The average weighted cost (per MMBtu) of natural gas for the twelve month period shall be determined by applying the closing price, (determined as the average of the closing prices on the last five trading days preceding the termination/expiration trading date for the month preceding the anniversary date, i.e. April 2007) for natural gas futures at the Henry Hub as listed on the New York Mercantile Exchange ("NYMEX"). The variable adjustment for the third year of the agreement shall be determined in the same manner, except that the formula will use the average of the NYMEX closing prices for the last five trading days in April 2008 for gas futures in May 2008 through April 2009 and apply the adjustment to the Base Rate of \$20.70.

2.03 The Annual Variable Adjustment to Base Rate is calculated using the following formula:

Base Rate plus ((Average Weighted Cost of the NYMEX Strip minus \$9.85) * 0.857).

The weighting to be applied to the NYMEX price for each month and utilized to calculate the weighted average for the twelve-month strip of gas is as follows:

January	8%
February	7%
March	9%
April	6%
May	6%
June	9%
July	9%
August	11%
September	9%
October	8%
November	7%
December	11%

2.04 Minimum Annual Steam Purchase Requirement. The Customer hereby commits to purchase a minimum 169,200 Mlb. per year (i.e. May 1 –April 30) during the term of this Agreement, provided, however, that if (a) the Customer's purchase of steam is reduced because of force majeure, then the minimum annual steam purchase requirement shall be reduced by the amount of such reduction; and (b) if the Customer transfers or closes the Sheriff's Administration Building, then with respect to such transfer or closure: to the extent to which, such transfer or closure results or contributes to the Customer's failure to meet its minimum purchase requirements, then the Customer's liability for such failure shall be limited to the recovery of fixed costs (i.e., \$5.18 per Mlb in year one, \$5.33 per Mlb. in year two and \$5.47 per

Mlb. in year three) for the reduction in load previously consumed at such Sheriff's Administration Building over the most recent twelve (12) monthly billing cycles prior to such closure or transfer. However, Customer's liability for fixed costs under the preceding sentence shall be reduced by the applicable fixed cost component multiplied by the number of Mlbs of steam purchased by the transferee during the annual period in question. This minimum is equal to 90% of the estimated annual load of 188,000 Mlb.

2.05 Applicable Taxes. All applicable taxes (excluding income taxes) levied by the City, County, State, or Federal governmental agencies on the sale of steam, including but not limited to the City of Detroit utility tax, will be added to the total cost of steam delivered under this Agreement.

2.06 Price Option. If the Company enters into any special contract with a customer other than the County of Wayne and

- A. such contract is approved by the Michigan Public Service Commission after the effective date of this agreement; and
- B. the minimum annual purchase requirement under such other special contract is less than or equal to 169,200 Mlb per year, and
- C. the term of such other special contract is three years or less; and
- D. the steam service rate under such contract is, after application of all adjustments, if any, lower than the rate provided for under this agreement for steam provided during the same time period;

the Customer may elect to adopt all of the material pricing terms of such other contract, including base rate, fixed or variable annual rate adjustments and all other price or cost adjustment mechanisms contained therein, and substitute those pricing terms for those contained in this agreement and such pricing terms shall then apply for the remaining term of this agreement. However, if Customer exercises the option provided for in this Section, Customer must accept the entire pricing provisions of the other contract in their entirety and may not pick and chose among various pricing terms contained in multiple contracts by, for example, selecting the base rate terms from one contract and a price or cost adjustment mechanisms contained in a different contract.

2.07 Basic Steam Pricing Formula. \$/Mlb of Steam Delivered = Applicable Adjusted Base Rate + Applicable Taxes

3. METERING AND BILLING

3.01 The Company will meter each service address identified in this agreement for monthly steam consumption. The Company may elect to provide separate bills for each service address or issue a single monthly bill for all steam consumed at all Customer service addresses.

4. **ASSIGNMENT**

4.01 The Customer may not assign the Agreement to another party without prior written consent of the Company, which consent will not be unreasonably withheld but may be conditioned upon proof of creditworthiness satisfactory to the Company and payment of a security deposit in an amount determined by the Company but not to exceed twenty five percent of the customers total estimated annual charges.

4.02 The Company may assign this Agreement without the Customer's consent to a purchaser or other transferee of all or substantially all of its thermal energy business or a successor operator of its thermal energy business provided that such purchaser, transferee or successor operator assume the Company's obligations under this Agreement. After such an assignment, the Company shall have no liability or obligations to the Customer.

5. **FORCE MAJEURE**

5.01 If Company shall be delayed, hindered in, or prevented from the performance of any of its obligations under this Agreement as a result of Force Majeure (as hereinafter defined), it shall not be liable for loss or damage for the failure or be liable to Customer for a breach of contract. "Force Majeure" shall mean any period of delay which arises from or through Acts of God; strikes, lockouts or labor difficulty; explosion, sabotage, accident, riot or civil commotion; act of war; fire or other casualty; legal requirements; delays caused by the Customer; causes beyond the reasonable control of Company; and delay, interruption or termination of steam, water, gas or other commodities supplied to Company by third parties for reasons other than non-payment or non-performance by the Company of its obligations under any applicable supply contract. Nothing in this Agreement shall prejudice Customer's rights, relative to other customers, to continue to receive service in the event of a partial or full curtailment of supply.

6. **GENERAL PROVISIONS**

6.01 This Agreement is explicitly conditioned upon approval in its original form by the Michigan Public Service Commission, the Wayne County Commission and the Wayne County Executive. Except as provided below, this Agreement may not be amended except in writing signed by both parties. This Agreement is subject to Michigan law, without regards to conflict-of-law principles. Section headings are inserted for convenience only and do not modify the provisions contained in the sections.

6.02 Except to the extent this Agreement provides for different terms and conditions, the sales and delivery of steam under this Agreement is governed by the terms of the Company's General Rules as amended from time to time. A copy of the Company's current General Rules are available upon request and are incorporated herein by reference. The terms of this Agreement shall apply in all cases where a conflict exists with the provisions of the Company's General Rules.

6.03 In the event the Customer defaults in its obligations under the terms of this Agreement, the Customer shall be liable to the Company for any costs incurred by the Company, including, without limitation, all reasonable attorneys' fees and court costs, disbursements and other expenses incurred by the Company arising out of such default or the enforcement of this Agreement.

7. **RECORDS – ACCESS**

7.01 The Company must maintain complete books, ledgers, journals, accounts, or records in which it keeps all entries reflecting its operation pursuant to this Agreement. The Company must keep the records according to generally accepted accounting practices and for a minimum of 3 years after the Agreement's termination and completion.

7.02 The Customer and the Legislator Auditor General have the right to examine and audit all books, records, documents and other supporting data as they deem necessary of the Company, or any subcontractors, or agents rendering services under this Agreement, whether direct or indirect, which will permit adequate evaluation of the services or the cost or pricing data submitted by the Company.

7.03 If, as a result of any audit conducted by or for a Customer, State of Michigan or Federal agency relating to the Company's performance under this Agreement, a discrepancy should arise as to the amount of compensation due the Company, the Customer may retain the amount of compensation in question from any funds allocated to the Company but not yet disbursed under the Agreement. Should a deficiency still exist, the Customer may offset such a deficiency against the compensation to be paid the Company in any successive or future Agreements between the parties.

8. **INSURANCE**

8.01 The Company, at its expense, must maintain during the term of this Agreement the following insurance:

- A. Workers' Compensation Insurance which meets Michigan statutory requirements.
- B. Comprehensive General Liability Insurance with minimum limits of bodily injury of \$500,000 per occurrence and \$1 Million Dollars aggregate and with minimum limits for property damage of \$500,000 each occurrence and \$1 Million Dollars aggregate.
- C. Comprehensive Automobile Liability (including hired and non-owned vehicles) with minimum limits for bodily injury of \$1 Million Dollars per occurrence and with minimum limits for property damage of \$500,000 per occurrence.

8.02 If, during the term of this Agreement, changed conditions or other pertinent factors, should in the reasonable judgment of the Customer, render inadequate the insurance limits, the Company will furnish on demand such additional coverage as may reasonably be required and available under the circumstances. The additional premiums or other costs of such additional insurance required by Customer shall be paid by Customer upon demand by the Company. The insurance must be effected under valid and enforceable policies, issued by recognized, responsible Michigan insurers which are well-rated by national rating organizations.

9. **INDEMNIFICATION**

9.01 The Company agrees to save harmless the Customer against, and from any and all

liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the Customer because of any of the following occurring during the term of this Agreement: Any negligent or tortious act, error, or omission held in a court of competent jurisdiction to be attributable, in whole or in part to the Company, or any of its personnel, employees, consultants, agents, or any entities associated, affiliated, (directly or indirectly) or subsidiary to the Company now existing, or to be created, their agents and employees for whose acts any of them might be liable.

9.02 The Company cannot hold the Customer liable for any personal injury incurred by the employee(s), agents or consultants of the Company while working on this Agreement which is not held in a court of competent jurisdiction to be directly attributable to the gross negligence of the Customer or any employee of the Customer acting within the scope of their employment.

9.03 For purposes of these provisions, the term "Customer" includes the County of Wayne and all other associated, affiliated, or subsidiary departments or divisions now existing or to be created, their agents and employees.

9.04 This indemnity applies without regards to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity survives delivery and acceptance of services.

9.05 This indemnity must not be construed as a waiver of any governmental immunity the Customer, its agencies, or employees, has as provided by statute or modified by court decisions.

10. ETHICS IN CONTRACTING

10.01 The Company must comply with Article 12 of Chapter 120 of the Wayne County Code governing "Ethics in Public Contracting."

10.02 Company's material misrepresentation or delinquency in the disclosures required by section 120-225 of the Wayne County Code constitutes a material breach of this Agreement, sufficient to warrant immediate termination.

10.03 If the Customer determines that the Company has made a material misrepresentation or is willfully delinquent or knowingly evasive in the disclosures required by section 120-225, the Company and any other business which has substantially the same principal beneficiaries (as defined in section 120-238 of the Wayne County Code), may be debarred by the Purchasing Director, pursuant to Article 6 of Chapter 120 of the Wayne County Code, from competing for any further Customer contracts for up to three (3) years.

10.04 If the contract price is in excess of \$20,000, or the terms thereof require the approval of the Wayne County Commission, and the Company knowingly collaborate in or induces a violation of any of the ethical standards that are set forth in sections 120-223, 120-224, 120-225, 120-228, 120-229, 120-231 or 120-233 of the Wayne County Code, the Customer has the right to impose any one or more of the following sanctions:

- A. Immediately terminate the Agreement.
- B. Debar or suspend the Company from consideration for competing for further Customer contracts; or
- C. Recover the value transferred or received in breach of the ethical standards by a Customer employee or other person.

11. **NONDISCRIMINATION PRACTICES**

11.01 The Company must comply with:

- A. Titles VI and VII of the Civil Rights Act (42 U.S.C. §§ 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- B. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- D. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.
- E. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).
- F. The anti-discrimination provisions as required by section 120-194 of the Wayne County Code.

11.02 The Company must not:

- A. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- B. Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- C. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Company indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national

origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.

- D. Except as permitted by rules and regulations promulgated pursuant to section 120-194 of the Wayne County Code, or applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight, of perspective employees. Company also shall not make or keep a record of that information or disclose such information.
- E. Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, height, weight, marital status, handicap, sex, or sexual orientation.

11.03 The Company will make available to its subcontractors the anti-discrimination provisions and ethical standards of the Wayne County Code and will use best efforts to see that all subcontractors comply with such provisions.

11.04 The Company and its subcontractors must not discriminate against minority business enterprises or women business enterprises (as defined in section 120-194 of the Wayne County Code) in selecting and retaining subcontractors to perform work on this Agreement.

11.05 The Company must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Agreement, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight. This Section does not apply if it is determined by the Division of Human Relations that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon the Company.

11.06 Breach of any of the covenants in this Article may be regarded as a material breach of this Agreement.

11.07 Company acknowledges the right of the Director of Human Relations to sue to enforce the provisions in this Article of the Agreement.

11.08 If the Company does not comply with the non-discrimination and affirmative action provisions of this Agreement, the Customer may impose sanctions, as it determines to be appropriate, including but not limited to cancellation, termination or suspension of this Agreement, in whole or in part.

11.09 If the Agreement is funded, in whole or in part, by federal funds:

- A. Company's breach of the affirmative action commitments set forth in this Article constitutes a material breach of the Agreement sufficient to warrant termination.
- B. Company must provide immediate notice to the Customer's Chief Executive Officer, the Director of Human Relations, and the Wayne Customer Commission when a subcontractor who was part of the Company's affirmative action commitment is terminated or substantially displaced by a subcontractor who does not qualify as a disadvantaged business enterprise, as that term is defined in section 120-194 of the Wayne County Code; and

11.10 In the event that this Agreement is or becomes subject to federal or state law which conflicts with the requirements of section 120-194 of the Wayne County Code, the provisions of the federal or state law shall apply and the Agreement shall be interpreted and enforced accordingly.

12. JURISDICTION AND LAW

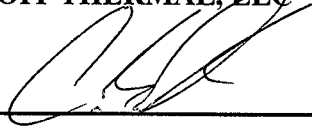
12.01 This Agreement, and all actions arising from it, must be governed by, subject to, and construed according to the laws of the State of Michigan. The Customer and Company each consent to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Agreement except for those actions arising out of disputes that are within the primary jurisdiction of the Michigan Public Service Commission ("MPSC"). Service of process at the address and in the manner specified in this Agreement will be sufficient to put the Company on notice. The Company and Customer will not commence any action against the other because of any matter arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any forum other than the MPSC with respect to disputes that are within the primary jurisdiction of the MPSC, and for any dispute not within the primary jurisdiction of the MPSC, in the courts for the County of Wayne, State of Michigan unless original jurisdiction is in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court or the Michigan Court of Appeals.

13. TERMINATION BY WAYNE COUNTY COMMISSION

13.01 Company acknowledges the right of the Wayne County Commission by a two-thirds vote, to terminate the Agreement for a violation of the ethics and anti-kickback provisions of Article 12 of Chapter 120 of the Wayne County Code and to debar the Company from any further work for or sales to the Customer for up to three (3) years, pursuant to the terms of Article 6 of the Procurement Ordinance.

DETROIT THERMAL, LLC

COUNTY OF WAYNE

By:  _____

By: _____

Name: C.E. French

Name: _____

Title: President and General Manager

Title: _____

Date: _____

Date: _____

Billing Address: Wayne County
Accounts Payable 5th Fl.
600 Randolph
Detroit, MI 48226

Exhibit B

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
Detroit Thermal, LLC for approval)
of a steam purchase agreement)
_____)

Case No. U-14862

AFFIDAVIT OF C. E. FRENCH

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

C. E. FRENCH, being duly sworn, deposes and says:

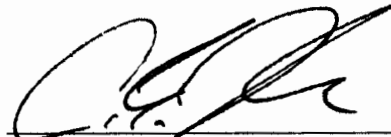
1. I am the president of Detroit Thermal, LLC ("Detroit Thermal").
2. As the president, I am knowledgeable of the economic evaluation of the various business activities being pursued by Detroit Thermal.
3. I have read Detroit Thermal, LLC's Application in the above captioned case and believe that the contract price being offered for steam sales by Detroit Thermal to the County of Wayne ("County") is fair and reasonable for the reasons stated and that:
 - a. The annual gas cost adjustment mechanism will operate to the benefit of Detroit Thermal, the County and Detroit Thermal's other customers, as it will guard against the volatility in the natural gas market by annually aligning the contract rate with future trends in the natural gas market.
 - b. On the anniversary date of the contract the gas cost adjustment will be calculated to determine the difference between the weighted average cost of a strip of natural gas for the twelve-month period May 2007-April 2008 (May

2008-April 2009 for the third year) and Nine Dollars and Eighty-Five cents (\$9.85) multiplied by a factor of 0.857.

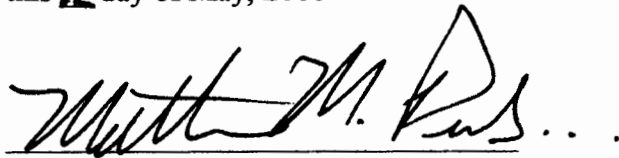
- i. The weighted average cost (per million British thermal units (“MMBtu.”)) of natural gas for the twelve month period is be determined by first calculating the average closing price for each month in the subsequent 12-month period during the last five natural gas trading days for the month preceding the anniversary date of the Agreement.
 - ii. The weighting factors listed in section 2.03 of the Agreement are then applied to the monthly average natural gas futures prices to calculate a weighted average price for natural gas. The weighting factors represent the monthly percentage of the County’s total steam consumption averaged over the past three years.
 - iii. The weighted average price for natural gas is then compared to \$9.85 per MMBtu. The difference between these two figures times the conversion factor of 0.857, which represents the conversion factor necessary to covert from dollars per unit of natural gas to dollars per unit of steam, equals the annual gas cost adjustment.
- c. The calculated annual gas cost adjustment will then be added or subtracted from the Annual Base Rate listed in section 2.01 of the Agreement to determine the rate for service for the subsequent 12 months.

4. For the reasons set forth above and those illustrated in the application, I believe that the contract proposed by Detroit Thermal in this application is reasonable for Detroit Thermal and its customers and should be authorized by the Commission.

Further, Affiant sayeth not.


C. E. French

Subscribed and sworn to before me
this 12 day of May, 2006



Notary Public, State of Michigan,
County of Wayne
My commission expires: March 14, 2008
Acting in the County of Wayne

MATTHEW M. PECK
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Mar 14, 2008