

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>DETROIT THERMAL, LLC</b> , for approval	)	
of a steam sales agreement.	)	Case No. U-20943
_____	)	

At the April 21, 2021 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair  
Hon. Tremaine L. Phillips, Commissioner  
Hon. Katherine L. Peretick, Commissioner

**ORDER**

On December 17, 2020, Detroit Thermal, LLC (Detroit Thermal), filed an application for *ex parte* approval of a special contract with Fisher 2015 Acquisition LLC and 7300 Woodward LLC (Building Owners). Detroit Thermal states that it and the Building Owners explored several proposals for the service of steam and arrived at an equitable Steam Service Agreement (Agreement), which is attached as Exhibit A.

The Agreement has a term of 10 years beginning the day after the date of the Commission's approval of the Agreement. Detroit Thermal's application states that the company and its customers will benefit from the Agreement.

Detroit Thermal is not requesting any ratemaking determinations or any change in the rates or costs of service to other customers. Approval of the Agreement does not increase any other

customer's rate; therefore, the Commission may approve the Agreement without providing notice or an opportunity for a hearing, pursuant to MCL 460.6a(3).

The Commission has reviewed the application and finds that it is reasonable, is in the public interest, and should be approved. In addition, the Commission finds that because the requested relief will not result in an increase in rates or charges to customers, *ex parte* approval is appropriate pursuant to MCL 460.6a(3).

THEREFORE, IT IS ORDERED that the Steam Service Agreement between Detroit Thermal, LLC; Fisher 2015 Acquisition LLC; and 7300 Woodward LLC, attached to this order as Exhibit A, is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Daniel C. Scripps, Chair

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Tremaine L. Phillips, Commissioner

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Katherine L. Peretick, Commissioner

By its action of April 21, 2021.

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Lisa Felice, Executive Secretary

**DETROIT THERMAL, LLC  
STEAM SERVICE AGREEMENT**

This Steam Service Agreement ("Agreement"), made as of December 11, 2020, by and between Detroit Thermal, LLC, an Ohio limited liability company, whose address is 541 Madison Ave., Detroit, MI 48226 (hereinafter referred to as "Detroit Thermal" or "Company") and Fisher 2015 Acquisition LLC, a Delaware limited liability company, and 7300 Woodward LLC, a Michigan limited liability company (hereinafter individually referred to as a "Service Location Owner" or "SLO" and collectively referred to as the "Customer") is for a supply of steam to be delivered by Detroit Thermal to the SLO's service location(s) as identified in Section 3 (hereinafter individually referred to as a "Service Location" and collectively referred to as the "Service Locations"). The address of each SLO is c/o 3011 West Grand Blvd. Suite 2300, Detroit, Michigan 48226.

This Agreement supersedes any and all previous agreements for steam service provided by Detroit Thermal to the Service Locations, which are hereby terminated and of no further force or effect. Steam service shall be delivered by Detroit Thermal and received and paid for by the Customer under the following terms and conditions:

- 1) **SCOPE OF SERVICE.** Except to the extent this Agreement provides for different terms and conditions, the sale and delivery of steam under this Agreement to the Service Locations is governed by the terms of Detroit Thermal's filed tariff, *MPSC No.1 - Steam* ("Tariff"), as revised from time to time. A copy of Detroit Thermal's current Tariff is available upon request and is incorporated herein by reference. The terms of this Agreement shall apply in all cases where a conflict exists with the provisions of Detroit Thermal's Tariff. Customer acknowledges that Detroit Thermal's Tariff is revised from time to time after Michigan Public Service Commission ("MPSC") approval and Customer shall be bound by any such revisions to the Tariff, provided however, that the terms of this Agreement shall control in the event that any revisions to Detroit Thermal's Tariff conflict with this Agreement.
- 2) **CUSTOMER OBLIGATIONS.** Each SLO shall solely be responsible for the payment for service rendered to its service location during the term of this Agreement.
- 3) **SERVICE LOCATIONS.** Steam service shall be provided by Detroit Thermal to each SLO at the following locations in the below table:

SLO	Service Location:
7300 Woodward, LLC	7300 Woodward
Fisher 2015 Acquisition, LLC	3011 West Grand Blvd. ("Fisher Building")

- 4) **REQUIREMENTS.** Upon the Contract Start Date and during the term of this Agreement Customer's Service Locations 7300 Woodward and 3011 West Grand Blvd. shall only be permitted to use steam energy procured from the Company for its heating and domestic hot water needs and shall purchase all of its steam requirements exclusively from the Company. For purposes of clarity, during the term of this Agreement, Customer shall not, directly or indirectly: (i) self-supply, (ii) produce or source or (iii) otherwise procure from a party other than the Company any steam energy.

5) **TERM & TERMINATION.**

- a) **TERM.** The term of this Agreement shall be ten (10) years (the "Initial Term") commencing with the first billing month following the date the MPSC issues an Order approving this Agreement (the "Contract Start Date"). Not less than one (1) year prior to the expiration of the Initial Term, Customer and Detroit Thermal shall engage in good faith negotiations for a renewal, extension or new steam service agreement for Detroit Thermal to provide steam service to the Service Locations following the expiration of the Initial Term. In the event that the parties are unable to reach any such agreement, Customer shall have the option to renew this Agreement for one (1) optional term of five (5) years (the "Renewal Term"). Customer must provide Detroit Thermal written notice of its intent to exercise its right to renew the Agreement for the Renewal Term at least six (6) months before the end of the Initial Term of this Agreement.
- b) **TERMINATION FOR MATERIAL BREACH.** Customer may, by Written notice, and without any fee, charge or other penalty, terminate this Agreement in the event of a material breach by Detroit Thermal; provided that Customer is not also in material breach; and provided further that Detroit Thermal shall have a right to cure any such breach, if curable, within forty-five (45) days of receipt of notice of default from Customer. This Agreement will terminate upon Detroit Thermal's receipt of such notice if any such breach is not curable, and upon the expiration of the forty-five (45) day period if such breach is curable but has not been cured within that time. Any notice pursuant to this section shall specify the breach(es) on which such termination is based.
- c) **EARLY TERMINATION.** In the event that Customer chooses to terminate this Agreement prior to the expiration date of the Initial Term, for reasons other than an uncured material breach by Detroit Thermal or Service Location Removal due to a sale of the SLO, Detroit Thermal shall be entitled to a Termination Charge as set forth in Exhibit A, based upon the effective date of such termination.
- 6) **METERING & BILLING.** The Company will render an individual bill itemized by Service Location service address to the Customer for each SLO identified in this Agreement during a billing month. The monthly invoices will be sent to the SLO. The monthly invoices shall be paid within thirty (30) days following receipt by Customer.

- 7) **PRICE.** The price for steam per 1,000 pounds of steam ("Mlb.") provided by Detroit Thermal each billing month shall be equal to the sum of the applicable Fixed Operating Charge and Fuel Charge.

a) **FIXED OPERATING CHARGE.**

- i) **FIXED OPERATING CHARGE.** During the Initial Term of this Agreement the Fixed Operating Charge for each SLO shall be as follows:

- (1) For Service Location 3011 West Grand Blvd. Fisher Building [REDACTED] per Mlb.  
(2) For Service Location 7300 Woodward [REDACTED] per Mlb.

- ii) **ANNUAL CPI ADJUSTMENT.** During the term of this Agreement, the Fixed Operating Charge (inclusive of each Fixed Operating Charge identified in Section 6(a)(i) above) shall be annually adjusted on the anniversary of the Contract Start Date by the annual percentage change in the U.S. Consumers Price Index Detroit-Warren-Dearborn, Mich. All Urban Consumers (CPI-U): All Items, 1982-84=100 for the most recently completed 12-month period (for clarification purposes, the most recently concluded 12-month period may not correspond with the anniversary of the Contract Start Date as this index is published every other month) but in any event, the annual adjustment shall not exceed Three Percent (3.0%).

- b) **FUEL CHARGE.** The Fuel Charge, during the first two years of the Initial Term for each SLO shall be \$2.50 per Mlb. Starting at the beginning of Year 3 of the Initial Term the Fuel Charge shall be set as the NYMEX natural gas futures settlement price per DTH for that month at the Henry Hub delivery location on the natural gas contract termination trading date (i.e., the closing price on the day that is three (3) business days prior to the end of the month preceding the billing period).

**PRICE EXAMPLE.** Sample pricing for the Fisher Building Service Location utilizing arbitrary natural gas prices and annual CPI are shown below as reference.

Term (Yr.)	Bldgs.	Usage (Mlbs)	Annual CPI	Fixed Op. Charge	Fuel Price	Per Mlb	Total
1	Fisher	35,000		[REDACTED]			
3	Fisher	35,000	2%				
5	Fisher	35,000	2%				

Where Fuel Price in Year 1 is \$2.50 and for Years 3 and 5 is the NYMEX natural gas futures settlement price for the billing period estimated at \$2.50 for year 3 and \$3.00 for year 5.

- 8) **TAXES.** In addition to the payment for all steam delivered to the Service Locations, the Customer shall pay any tax levied by the City, County, State, or Federal governmental agencies on the sale of steam, including but not limited to State Sales Tax and the City of Detroit Utility Users Tax. If Customer is exempt from any such tax, it shall provide Detroit Thermal proof of such exemption.

9) **BILLING DISPUTES.**

- a) **CURRENT INVOICES.** If the Customer, in good faith, disputes the amount of any invoice for service or any part thereof prior to an invoice's due date, the Customer shall pay the amount it conceded to be correct and provide the Company with written notification of the dispute along with any evidence and documentation supporting the disputed amounts. The Customer and Company shall attempt to resolve the billing dispute and shall forebear from pursuing any remedy available to them at law or in equity to enforce their rights for a period of one hundred twenty (120) days from the date the foregoing written notice becomes effective in accordance with Section 18 below. In the event the dispute has not been resolved within that time period: (1) either party may pursue any remedy available at law or in equity to enforce its rights except that Company may not discontinue steam service and (2) Customer shall deposit into escrow with Amrock (formerly Title Source) one half of the disputed amount, the terms of escrow shall provide that it shall be released by mutual agreement of the parties or in the absence of a mutual agreement to Company upon entry of a judgment in favor of Company but only up to the amount of the judgment, costs and interest, with the balance, if any, released to Customer; or in the event Company fails to commence any action in a court of competent jurisdiction within 16 months following the notice of dispute the escrowed funds shall be released to Customer. In the event the Company obtains a judgment that is not satisfied within 60 days following entry of the judgment, Company may elect to discontinue service to Customer. Company shall provide at least five (5) business day's written notice before exercising its right to terminate service.
- b) **PAST PAID INVOICES.** Irrespective of whether Customer has paid an invoice, Customer shall have the right to dispute any charges contained on such invoice for a period of up to six (6) months following the date of the invoice.

- 10) **FINANCIAL RESPONSIBILITY.** Should any invoice sent to the Customer for any undisputed amount remain outstanding for a period of ninety (90) days after written notice to Customer that such amount is overdue, Detroit Thermal may require Customer to provide a security deposit in an amount not to exceed 1.5 times the average of the amounts the Customer was billed for steam usage during the immediately prior November through April period (the immediately prior heating season) before further deliveries of steam are made. In the event there is no steam usage history during this period, the Company shall estimate the amount of the Customer's usage for the applicable period until such time as the Customer's actual steam usage for the period becomes available. The Customer will have fifteen (15) business days from the date of the Company's request to provide the security deposit before delivery of steam is discontinued. In the event Detroit Thermal requires the Customer to provide a security deposit Detroit Thermal, upon eighteen (18) consecutive months of timely payment history or upon termination of this Agreement, will return any security deposit to Customer with interest at the actual rate earned by Detroit Thermal's interest bearing checking account less any amount including, but not limited to, reasonable attorney's fees needed to cure any defaults by the Customer which are then existing.

11) **MAINTENANCE INTERRUPTION.** The Company shall provide the Customer with at least five (5) business days' prior notice of an interruption in steam service to any of the Customer's Service Locations arising out of any regularly scheduled maintenance. Regularly scheduled maintenance shall only occur between May 1st and October 1st. The notice requirement set forth in this section shall not be required for any emergency shut-off or an interruption in service resulting from an event of Force Majeure as defined below.

12) **FORCE MAJEURE.** If Detroit Thermal 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 the Customer for a breach of contract. Except for obligations to make payments under this Agreement, if the Customer 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 the Company for a breach of contract. "Force Majeure" shall mean any period of delay which arises from or through Acts of God; strikes, lockouts; explosion, sabotage, accident, riot or civil commotion; act of war; fire or other casualty; actions or inactions of governmental agencies, including, without limitation, any unreasonable delay in performing any required inspections or issuance of temporary certificates or final certificates (but not based on the failure, within the reasonable control of the Customer or Detroit Thermal) delays caused by the other party; causes beyond the reasonable control of the party claiming Force Majeure; and delay, interruption or termination of steam, water, electricity, gas or other commodities supplied to Detroit Thermal by third parties for reasons other than non-payment or non-performance by Detroit Thermal of its obligations under any applicable supply contract.

13) **ASSIGNMENT.** This Agreement will be binding upon each SLO's successors and permitted assigns and will be for the benefit of Company, its successors and assigns. A SLO may not assign this Agreement; provided however, a SLO is permitted to assign this Agreement, in whole or in part, to one or more other entities controlling, controlled by or under common control with the SLO or. A transfer of greater than fifty percent (50%) of the controlling membership interest of a SLO, to an entity that is not controlling, controlled by or under common control with the SLO shall be deemed to be a Transfer (as defined below) and result in the removal of that service location from this Agreement in accordance with Section 14.

Detroit Thermal may assign this Agreement with the Customer's consent, not to be unreasonably withheld, 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 assumes Detroit Thermal's obligations under this Agreement. After such an assignment, Detroit Thermal shall have no liability or obligations to the Customer arising after such assignment.

14) **SERVICE LOCATION REMOVAL.** In the event that one or more of the Service Locations identified in Section 3 of this Agreement is transferred in a bona fide sale to a third party or ceases to be operated by the SLO or an entity controlling, controlled by or under common control with the SLO (a "Transfer"), that service address shall be removed from this



Agreement and will no longer be identified as a Service Location.

The Transfer of both Service Locations shall terminate this Agreement as of the date of the final Transfer and thereafter steam service provided to the SLO's Service Locations shall be provided at Detroit Thermal's then applicable tariff rate and in accordance with the terms and conditions of Detroit Thermal's then applicable Tariff.

- 15) **SEVERABILITY**. The invalidity of all or any part of any sections, subsections, or paragraphs of this Agreement shall not invalidate the remainder of this Agreement or the remainder of any paragraph or section not invalidated unless the elimination of such subsections, sections, or paragraphs shall substantially defeat the intents and purposes of the parties.
- 16) **WAIVERS**. No part of this Agreement may be waived except by the written agreement of the parties. Forbearance in any form from demanding performance is not a waiver of performance. Until complete performance under this Agreement, the party owed performance may invoke any remedy under this Agreement or under law, despite its past forbearance.
- 17) **NOTICE**. Except as otherwise specifically provided for in this Agreement, all notices, statements, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be hand delivered, certified mail, or delivered by a nationally recognized overnight courier (such as Federal Express) in each case against written receipt or confirmation, to the following addresses:

If to Detroit Thermal:

Detroit Thermal, LLC  
Attention: Chief Financial Officer  
541 Madison Ave.  
Detroit, MI 48226

If to Customer:

Redico Management, Inc.  
Attention: Property Manager  
3011 West Grand Blvd. Suite 215  
Detroit, Michigan 48226

With copy to:

Redico Management, Inc.  
Attn: Director of Operations  
Southfield, MI 48076

or to such other person or address as the addressee may have specified in a notice duly given as provided herein. All notices given in the foregoing mailer shall be effective three (3) business days after mailing or one (1) business day after courier delivery, hand delivery or by tele facsimile.

- 18) **REPRESENTATION**. The parties represent and acknowledge that they have had full

opportunity to seek the legal advice of the attorney of their choice and that they have read the terms of this Agreement and that its terms are fully understood and accepted by them.

19) **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be enforceable, and all of which together shall constitute one agreement. Detroit Thermal and the Customer may exchange PDF copies of executed counterparts to constitute one agreement.

20) **APPROVAL BY THE MPSC.** This Agreement is explicitly conditioned upon approval in its original form by the MPSC. The Company shall apply for approval and the Customer shall cooperate to obtain such approval and, to the extent permitted by the MPSC or provided by applicable law, may participate in any proceedings. If MPSC approval as contemplated in this Agreement is not granted on or before six (6) months from the date of execution, either party may terminate this Agreement upon thirty (30) days written notice without liability to the other.

If the MPSC does not approve this Agreement as presented, or conditions its approval on any changes to this Agreement, then the parties shall accept or attempt to resolve any issues raised by the MPSC within sixty (60) days of the date of the MPSC order. If the parties fail to accept or resolve all issues raised by the MPSC, in writing, within such sixty-day period (each party acting in its sole discretion), this Agreement shall automatically terminate and be of no further force or effect.

21) **CHOICE OF LAW.** This Agreement shall be governed by the laws of the State of Michigan and the exclusive venues for all disputes arising out of this Agreement shall be in a court of competent jurisdiction located in Wayne County, Michigan (the "Agreed-Upon Venues"), and no other venues. The parties stipulate that the Agreement is an arms-length transaction entered into by sophisticated parties, and that the Agreed-Upon Venues are convenient, are not unreasonable, unfair, or unjust, and will not deprive all party of a remedy to which it may be entitled. The parties agree to consent to the dismissal of any action arising out of this Agreement that may be filed in a venue other than one of the Agreed-Upon Venues; the reasonable legal fees and costs of the party seeking dismissal for improper venue will be paid by the party that filed suit in the improper venue.

22) **AUTHORITY TO SIGN.** Each party's representative signing this Agreement has the authority to sign and bind the respective party.

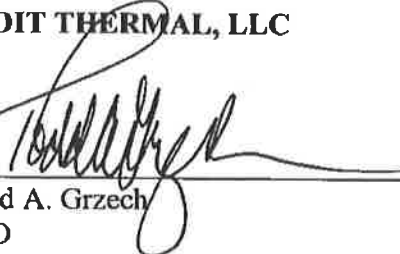
23) **WAIYER OF RIGHT TO JURY TRIAL.** IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND DETROIT THERMAL EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.

24) **MODIFICATION.** This Agreement may not be amended, revoked, changed or modified except by prior written agreement executed by all parties. No waiver of any provision of this

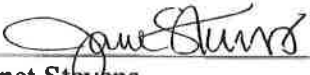
Agreement will be valid unless in writing and signed by the party against whom such waiver is charged. The waiver of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of this Agreement nor shall any waiver authorize the nonobservance of any other occurrence of the same or of any other covenant or condition thereof.

**25) ENTIRE AGREEMENT.** This is the entire Agreement and understanding between the parties and it supersedes all prior understandings and agreements regarding the subject matter addressed herein, whether oral or written.

COMPANY:  
**DETROIT THERMAL, LLC**

By:   
\_\_\_\_\_  
Todd A. Grzech  
CEO

CUSTOMER:  
**REDICO Management, Inc., as agent for Owner**

By:   
\_\_\_\_\_  
Janet Stevens  
Director of Office Property Operations

**Exhibit A**  
**Early Termination Charge**

For purposes of determining the termination date a Contract Year is defined to be a twelve (12) month period beginning on the Contract Start Date or an anniversary of the Contract Start Date as the case may be.

Early Termination Charge shall be the difference between the then Tariff Rate for that class of customer and the Price as stated in Section 7 times the Mlbs utilized the previous year times the amount of years left on the Initial Term.

Example: Termination in Year 6

Mlbs used previous year: 8,000  
Contract Price: \$22.00 / Mlb  
Tariff Price: \$32.00 / Mlb  
Full years left on contract: 2 years

Early Termination Charge Calculation:

$8,000 \text{ Mlbs} \times (\$32.00/\text{Mlb} - \$22.00/\text{Mlb}) \times 2 \text{ yrs} = \$160,000$


# PROOF OF SERVICE

STATE OF MICHIGAN )

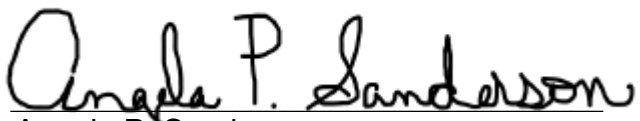
Case No. U-20943

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on April 21, 2021 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 21<sup>st</sup> day of April 2021.



Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case: U-20943**

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Name	Email Address
Arthur J. Levasseur Detroit Thermal LLC	levasseur@fischerfranklin.com tcinzori@detroitthermal.com