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Detroit Historic District Commission Planning and Development Department Coleman A. Young Municipal Center 2 Woodward Avenue - Suite 1`808, Detroit, MI 48226

May 8, 2025

Letter in Opposition to Detroit Thermal's Unpermitted and Abandoned Excavation Work Within Lafayette Park Historic District and Opposition to Proposed Installation of New Steam Infrastructure Within Historic District

Based on Detroit Thermal's May 2, 2025 application to install new steam infrastructure in the Lafayette Park/Mies van der Rohe Historic District, the Detroit Historic Commission should deny a certificate of appropriateness, a notice to proceed, and hold Detroit Thermal accountable for its past violations of the Historic District ordinance on the following bases:

- (1) Detroit Thermal, a private utility providing steam-based heating to downtown businesses, has violated the requirements of the historic district requirements set forth in Section 21 and pursuant to section (g) find that Detroit Thermal performed work on a historic district resource prior to the issuance of a permit issued for work on a resource in violation of Section 21 and is therefore subject to a civil fine under Section 21-1-3 of the Detroit Municipal Code.
- (2) The HDC should determine that Detroit Thermal must pay the costs to restore this resource unlawfully altered and excavated under Section 21-1-3 and pursuant to Sec. 21-2-56(3) we ask that the Historic District Commission request that the Buildings, Safety Engineering, and Environmental Department require Detroit Thermal to correct the damage to the landscape in the Lafayette Park Historic District in conjunction with

the provisions of Section 21-2-59(a). Specifically, we ask that Detroit Thermal remove its "temporary" fencing and restore the damaged landscape and trees.

- (3) The Detroit Historic Commission should reject Detroit Thermal's proposal outright as it does not contain a site survey and is, at best, only a partial application that does not allow this body to fully address concerns about threats to resources within the historic district.
- (4) None of the provisions of Section 21-2-75 apply in this situation, so there is no basis for issuance of a notice to proceed. This project is not a major improvement project of the type anticipated by the local ordinance or state law which exists to allow large-scale developments to proceed and requires applicants to supply the sort of proof needed for large scale urban developments, including proof of "planning and zoning approvals, financing, and environmental clearances." Instead, Detroit Thermal's proposal is a minor extension of a steam network subject to a private contract between two private corporate entities. Nor is this a project that represents a majority community interest, as represented by the widespread outcry from the community opposing this project. As the Michigan SHPO states in its Guide to HDC Best Practices #2 (April 2022), a notice to proceed "should not be looked at as a 'catch all' out for a NTP or used lightly to benefit an individual developer or development company. The fact is that historic preservation in and of itself has been determined to be a public purpose under state and federal law. As such, any effort to demonstrate that retaining a historic resource is not in the interest of the community at large must be well founded and documented. . . The burden of proof lies with the applicant—not the HDC—to explicitly demonstrate why it is not in the interest of the majority of the community to retain the resource and how that majority interest was determined." The provisions of Section 21-2-75 do not apply in any way to Detroit Thermal's proposal for excavation and construction in the Lafayette Park/Mies van der Rohe Historic District.
- (5) Finally, we ask that the Historic District Commision DENY a certificate of appropriateness for Detroit Thermal's hastily-drafted proposal for destructive and dangerous excavations through the Lafayette Park/Mies van der Rohe Historic District and for the construction and addition of inappropriate new steam infrastructure on or near the historic playground in this historic neighborhood. This certificate of appropriateness must be denied pursuant to Sec. 21-2-78(3) on the grounds that it fails to conform to the U.S. Department of Interior Standards for Rehabilitation by (a) significantly altering the features and historic character of the property and spaces that characterize the property; (b) destroying historic materials that characterize the property; and (c) the addition of venting high-pressure steam runs contrary to the Lafayette Park historic residential neighborhood as a physical record of its time, place, and use. In the words of Dena

Stanford, architectural historian for the U.S. Department of the Interior, Detroit Thermal's proposal "require(s) extensive excavation within the designed historic landscape, a contributing resource of the National Historic Landmark. Work could impact mature honey locust trees, irrigation infrastructure, and planted beds with ornamental trees and shrubs. Excavation would also occur in the playground area, and apparently include installation of an eight-foot steam stack, along with installation of vents throughout the landscape. If undertaken as proposed, *this would substantially and adversely affect the integrity of the Lafayette Park National Historic Landmark*." (emphasis added).

Detroit Thermal has been a bad actor since it began its improperly permitted work in the Lafayette Park/Mies van der Rohe Historic District, and its lies and misrepresentations to neighborhood residents, city officials, Detroit Historic Commission staff, and the Detroit Historic Commission itself prove that this private utility **cannot be trusted** to do this work in a way that will conform to the standards of the U.S. Department of Interior.

Detroit Thermal did not want to submit any proposal before the Detroit Historic Commission. They actually threatened to sue the City of Detroit when a work stoppage order was issued (once the city determined that Detroit Thermal intended to improperly proceed using a right-of-way permit from the Department of Public Works). Detroit Thermal believes that you have no authority over them. Residents of Lafayette Park were forced to communicate with HDC staff, state and city officials, legislators, attorneys, and the media before Detroit Thermal finally agreed to come before this Commission. They do not believe they have any responsibility to the historic character of the neighborhood they intend to dig up this summer. In the words of the foreman from Kaltz Excavating (DT's subcontractor) when neighbors first asked what they were doing in Lafayette Park, Detroit Thermal believes "This is our easement. We can do whatever we want on it. We don't have to tell you anything."

Detroit Thermal has no experience working with historic preservation. Detroit Thermal has no experience working in the context of residential landscaping. Detroit Thermal has never had to worry about resource protection, arborists, vibration monitoring, soil compaction, alternative excavation techniques, avoidance and minimization options, or community engagement. Detroit Thermal believes it can just do whatever it wants in this historic district. It is the responsibility of this Commission to ensure that it doesn't, because what Detroit Thermal wants to do is plough its way through this historic resource as cheaply as possible. It is not the job of this Commission to help a private for-profit company owned by a French private equity firm accomplish its goal as cheaply as possible. It is the responsibility of this Commission to ensure that this historic resource is protected for the generations who will follow all of us.

Detroit Thermal must <u>not</u> be granted a Certificate of Appropriateness or Notice to Proceed to install new steam infrastructure through this neighborhood.

I. <u>Background: Detroit Thermal's Unpermitted Excavation, Damage to Historic</u> <u>Landscaping, 8+ Month Abandonment of Excavation Site, Efforts to Circumvent the</u> <u>HDC and all Requirements to Protect Historic Resources</u>

This is a novel situation. Detroit Thermal, for the first time in its 100+ year history, is attempting to exploit a residential easement to install new high-pressure steam infrastructure through a historic residential neighborhood park and directly under two historic playgrounds. Nowhere else in its network does Detroit Thermal currently use anything but a right-of-way (street) for its steam pipes and nowhere else does it pass through private residential property in order to connect to an unrelated customer.

In late-August and early-September, representatives of Detroit Thermal arrived in the Lafayette Park Historic District with excavation equipment claiming legal access to a 75-year-old public utility easement running north/south in an area traditionally known as "the park" to residents of the Mies van der Rohe townhouses (See Map 1, below). This easement was purportedly established on September 18, 1950, as a vacated right-of-way where Russell Street used to pass through the neighborhood. DTE, At&T, Comcast and other utility companies have provided services to the immediate townhouse community in the past using this easement. It is not used as a "pass through" to access customers outside of the easement. Providing access to these utilities has never been a problem because their maintenance has always been small in scale, non-disruptive to the buildings and landscaping, and those companies have always made an effort to communicate and engage with neighborhood residents. No other utility has ever proposed an excavation at this scale. Detroit Thermal has claimed that DTE once ran steam through the easement to 1300 Lafayette, although it has been nearly half a century since that connection was severed, and maps provided by Detroit Thermal show that this easement was "abandoned" on June 6, 1985 (See Image 1, below).



These pre-existing pipes are old and unsuitable for reestablishing the connection, so Detroit Thermal has proposed multiple large-scale surface excavations (rather than boring) in order to feed large, 20-foot sections of pipe into the existing pipe, a process they call "sliplining."

Map 1:



The "park" that Detroit Thermal claims must be the location of these extensive excavations includes hundreds of historic landscape elements and a large sandy playground with historic metal playground equipment (two swing sets, one slide, and a large climbing apparatus that date back to the earliest years of the neighborhood). The playground is covered in sand and surrounded by an open grassy area where the older neighborhood children traditionally play games that involve running or ball throwing. There is a second playground located at the southern edge of the purported easement closer to Lafayette Street.

In September 2024, representatives from Detroit Thermal met with representatives of the four co-ops explaining that their presence on co-op property was to "explore whether it would be possible to connect their existing system on Antietam" to 1300 Lafayette, the high-rise luxury apartment cooperative across Lafayette Street (not a part of the historic district).

Several years ago, 1300 Lafayette's boilers began failing and repairing or replacing them was estimated to cost approximately \$2 million. For the last two winters, 1300 Lafayette has rented external boilers at a cost exceeding \$1 million, and in 2024, 1300 Lafayette began exploring options with Detroit Thermal to connect to their system of steam tunnels. Residents of 1300 Lafayette were told by their co-op board that Detroit Thermal would extend their existing, currently-functional system that runs down the utility easement in the Lafayette Towers Parking Lot and behind the strip mall across Lafayette Boulevard to connect to 1300 Lafayette. Ultimately, and without the knowledge of most residents of 1300, that plan was scrapped in favor of running new pipe through excavations in the townhouses historic district and playground. This was, in Detroit Thermal's view, the cheaper option. When explaining their "cheaper option" to board members of the four Mies van der Rohe co ops, Detroit Thermal minimized the impact of their work on the ground, claiming they would be simply "slip lining" a new pipe into existing infrastructure and made no mention of multiple 12-foot deep, 12-foot wide by 20+-foot long excavations, new construction of above-ground steam vents spewing steam 365 days a year (one of which they would later propose to place ON A PLAYGROUND). The true nature of Detroit Thermal's proposal would come out later, just before subcontractors attempted to begin their second round of improperly permitted excavations.

In this initial September contact, Detroit Thermal indicated that their work would likely be done in two excavations lasting twenty days each. Without a permit approved by the HDC or any proper permit for this project approved by City of Detroit Buildings, Safety Engineering, and Environmental Department (only a general annual "maintenance" permit), in September 2024, Detroit Thermal began major excavations in the historic district. First they tore up several parking places in the parking lot at the eastern end of Joliet Street and did a temporary repair that still hasn't been restored as of May, 2025. Several days later, Detroit Thermal employees and contractors arrived on the sandy playground in "the park" with an excavator and other heavy equipment. They blocked off access to the playground and dug a 12 foot by 12 foot hole just a few feet north of the playground equipment. They left this exposed hole on the playground for nearly a week. Later, Detroit Thermal subcontractors from Kaltz Excavating filled in the holes but left a significant amount of dirt and piled it near a concrete bench on the playground. (See Image 2, below) This unfinished excavation site remained and the landscape grade was significantly altered in the area where the excavation took place.



Importantly, this is an area with a sewer/drainage grate where water flows during heavy rains and Detroit Thermal's excavation significantly changed the contour of the earth and altered the drainage. Following the excavation, Detroit Thermal brought in more heavy equipment and placed concrete pylons around the site of the excavation (Image 3), stretched orange plastic webbing between the pylons, placed signs on the webbing that read "CAUTION HOT DO NOT TOUCH" (Image 4) and then left the historic district. They would not return to the site for more than six months.



This "temporary" fencing was installed in early September 2024. **Representatives or employees of Detroit Thermal did not return to perform a single activity within this abandoned 36 foot by 56 foot unpermitted excavation site until March 12, 2025**. Numerous efforts were made by residents of the historic district to communicate with Detroit Thermal about the status of their abandoned excavation and the abandoned fencing but Detroit Thermal did not return any voicemails or emails. A "forty day" excavation now stretched more than 230 days and the actual excavation has not even begun.

In early March 2025, Detroit Thermal returned to the historic district to perform excavations in a parking lot at the end of Nicolet Place. They began occupying four parking spaces and left a doorknob flyer with residents about the work that included the email address of Detroit Thermal employee Sean Reed. This was the first effort since the initial discussions that Detroit Thermal made to engage directly with residents. Lafayette Park residents then communicated with Sean Reed about the abandoned excavation in "the park," telling him that much of the fencing had fallen apart, that children were playing on the attractive nuisance of the giant pile of dirt, and that workers had destroyed half of a 60-year-old Star Magnolia tree by ripping its branches off with their hands and dumping the torn-off branches on the ground (See Images 5 and 6).



Detroit Thermal responded to resident concerns by sending contractors to the historic district to repair the fence, *increase* the size of the encroachment, and remove children's toys that had been

left within the fencing area. On March 17, 2025, several Detroit Thermal contractors arrived in the historic district and told residents they were preparing to continue with their excavations and would be installing a large chain link fence around an area far exceeding the size of any easement and cutting directly through the sandy part of the playground, restricting access to the playground equipment. Residents were dismayed by this proposal and began discussing their concerns about the project. Contractors from Kaltz Excavating then informed residents that there would be steaming manhole covers and steam venting along the proposed excavation site, including a steam vent feet away from playground equipment. It was at this point that the foreman of the subcontracting crew told a resident, "This is our easement. We can do whatever we want on it. We don't have to tell you anything."

The only neighborhood representatives with whom Detroit Thermal made any effort to communicate directly about this project was the management company employed by the Joliet Cooperative. Detroit Thermal made no effort to communicate with residents of the Nicolet Cooperative, its management company, or its board. Nor did Detroit Thermal make any effort to communicate with the other two co-ops (Lafayette and LaSalle) whose property would also be affected. Detroit Thermal has still provided no copy of the language of any private easement that might allow them to perform this series of excavations and installations, which is far more than just "access" and "maintenance" permitted under general utility easements. Detroit Thermal always refused to share any specific permit that would have allowed this excavation activity to take place. It turns out, that is because they were illegally using their general maintenance permit issued by the Department of Public Works to conduct these new, exploratory excavations. Upon request Detroit Thermal refused to provide proof of any permits required pursuant to Detroit Municipal Code Sec. 43-9-2, which might have indicated a time for allowed work (including a date by which excavation was required to be completed) nor has Detroit Thermal provided proof of deposit with the Director of the Department of Public Works "a sum sufficient to cover the estimated expense of refilling the soil removed and relaying the pavement." pursuant to 43-9-3. Upon request, Detroit Thermal further refused to provide any evidence of a permit from by the Detroit City Recreation Department pursuant to Detroit Tree Ordinance Section 57-2-6 requiring a written permit and bond with the City Recreation Department prior to excavation within ten feet of any tree "growing upon any public highway or place within the city."

Although Detroit Thermal has experience working in historic districts throughout the city, it has never submitted a request for a permit from BSEED that requires a certificate of appropriateness from the HDC. It has never installed new steam infrastructure to this extent within a residential neighborhood easement according to its own maps. Any DTE steam infrastructure that existed in Lafayette Park prior to 1984 was installed before or concurrent with the development of the residential neighborhood. When near residential areas, new Detroit Thermal's infrastructure <u>always</u> runs along rights-of-way (i.e. city streets) rather than through

quiet non-vehicular areas like the "park" in the Lafayette Park Historic District or private front/backyards.

Perhaps because it has **never before attempted the novel concept of installing new high-pressure steam infrastructure a few feet from residents' front doors and on a busy playground in a historic district,** Detroit Thermal did not consider how disruptive this would be. Because it has never installed new infrastructure through a historic-designated landscape, Detroit Thermal did not take the importance of any historic features into consideration when developing their plan for this new construction. Nor did they understand how seriously resident caretakers would view the damage it intended to cause to these historic resources. Because this was a novel effort, it might also explain Detroit Thermal's near-total failure to communicate with residents. Detroit Thermal simply thought it could tear up an old easement in a historic district without any appropriate permits and without any attempt to engage with the residents whose historic property it was preparing to dramatically alter. Again, as a Detroit Thermal representative told concerned residents, "This is our easement. We can do whatever we want on it. We don't have to tell you anything."

When residents of the Nicolet Cooperative finally saw a version of the plans Detroit Thermal had for the cooperative's property, those residents were moved to act and stop the continuing damage to the historic landscape and further prevent the proposed changes (which were significantly different from what representatives from Detroit Thermal anecdotally explained to neighborhood representatives before its exploratory excavation in mid-2024). **Detroit Thermal planned to create several new excavations that would significantly damage** historic landscape features, including the potential loss of numerous 70-year-old honey locust trees that are a major highlight of the historic district and other original landscape features. Further, and most troubling, residents learned for the first time that during these excavations Detroit Thermal planned to install new infrastructure under two neighborhood playgrounds, and the new infrastructure would have included the installation of several manhole covers that would emit steam and a 8-10 foot tall vent that would be constantly emitting steam ON THE PLAYGROUND. See Image 7 and 8, below:

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Additionally, it is relevant to note that the steam from Detroit Thermal infrastructure typically seen in Detroit streets is often not coming from Detroit Thermal vents, but it is groundwater or rain runoff making contact with 212-350 degree underground highly-pressurized pipes. Once water hits the pipes, steam escapes through whatever egress is available to it. This is called "secondary steam." Detroit Thermal must constantly manage failures in its system where steam and excessive heat have negatively affected its infrastructure and the environment. In 2018, Local 4 News reported on steam rising from cracks in an ordinary city sidewalk in Detroit's New Center.¹ On a chaotic, frequently-torn-up city street, that may be one thing. In a bucolic neighborhood full of mature landscaping and playing children, it is entirely another. Detroit Thermal proposed to alter the landscape of the Lafayette Park Historic District so significantly that we, as residents and representatives, decided to petition the Detroit Historic Commission to stop these changes before the character of the neighborhood is changed forever and neighborhood children's health and safety are put at risk by the installation of this dangerous infrastructure on their playground.

On March 17, 2025, we submitted a request to determine whether Detroit Thermal had sought permit approval with the Historic District Commission pursuant to Sec. 21-2-72. We received immediate notification that Detroit Thermal **did not seek approval** for a permit application for work which the Historic District Commission determines to be appropriate and did not receive a certificate of appropriateness prior to its excavations which were abandoned in September 2024. The Historic District Commission staff reached out to representatives of Detroit Thermal to inform them that any work conducted in the Lafayette Park Historic District must go through an application process and further initiated enforcement activity on the property in coordination with the Detroit Building Safety Engineering and Environment Department and the Department of Public Works.

Detroit Thermal had to that date performed four separate unpermitted excavations within the Lafayette Park Historic District: (1) Joliet parking lot, (2) Nicolet/Joliet playground, (3) Nicolet parking lot, (4) Antietam Sidewalk leading to Pavilion parking lot. All four excavations were done without proper permits or approval from the Historic District Commission. They now sit fenced-off and abandoned.

On March 28, 2025, Detroit Thermal sent five employees and an excavator to the abandoned excavation site in the parking lot at the end of Nicolet Place. Three Detroit Thermal employees entered the hole while one supervised from the ground above and another remained in the excavator. A resident approached the Detroit Thermal representatives and asked whether this excavation had a permit approved by the Historic District Commission and the City of Detroit Buildings, Safety Engineering, and Environmental Department. The Detroit Thermal representatives could not provide such a permit and immediately vacated the excavation site. The

¹ https://www.clickondetroit.com/news/2018/11/03/steam-pouring-out-of-sidewalk-at-detroits-new-center/

activity was reported to the Historic District Commission who investigated and determined that the work was not approved.

During April 2025, Detroit Thermal continued to send contractors and surveyors within the historic district in continuation of this unpermitted project. On April 10, 2025, Detroit Thermal workers began working within the historic district in the right of way near Antietam and Rivard St. On April 21, 2025, a large team of more than a dozen Detroit Thermal contractors arrived at the end of Nicolet Place in the historic district, bringing heavy equipment (two excavators and a welding truck), removed a large steel plate covered the newly-excavated manhole, and began welding pipe and inserting it under the historic district. The HDC was informed of this work and staff stated on the "SeeClickFix" App that the work was not approved by the historic commission and BSEED and DPW were informed. This work continued for about a week, and it became apparent that (although they would not share it with the community/residents) Detroit Thermal now had a permit issued by the Department of Public Works for work in a right-of-way.

As this work came closer to completion, Detroit Thermal surveyors, contractors, and other employees began work within the private utility easement. Concerned residents began communicating with officials from the Department of Public Works, BSEED, the Corporate Counsel and Legal Department, the Mayor's Office, the City Council, as well as the news media. Two of the four co-ops retained an attorney. After these extensive conversations, a 36th District Court magistrate ordered BSEED to issue a stop work order so that Detroit Thermal would not continue to work on the historic district on an improper permit without receiving a certificate of appropriateness from the Historic District Commission. At a public meeting with City Council President Mary Sheffield, City Officials stated that Detroit Thermal had threatened to sue the city rather than follow the requirements of Detroit City Ordinance Section 21 and seek a permit from BSEED with a certificate of appropriateness from the Detroit Historic District Commission.

Despite a deadline specified as Monday, April 21, 2025 on the HDC website for permit applications to go before the Historic District Commission's May 14, 2025 meeting, Detroit Thermal applied for a permit on Friday, May 2, 2025 and was added to the May 14, 2025 agenda. It is unclear why the April 21 deadline did not apply to Detroit Thermal's application.

II. Significance of Lafayette Park Landscaping and Playground to the Historic District

The Lafayette Park/Mies van der Rohe Historic District is one of only 43 National Historic Landmarks in the state of Michigan, and was designated as such on August 4, 2015. According to the National Parks Service, its "design is equally successful in terms of its overall site plan, a product of Ludwig Hilberseimer's settlement unit ideals; its architectural design, with International style precedents established by Mies van der Rohe and carried out by subsequent architects; and its landscape design, in which Alfred Caldwell's Prairie style tied together the site plan and architecture to create a naturalistic setting which remains attractive to city dwellers." Dena Stanford, architectural historian with the Department of the Interior has written in opposition to Detroit Thermal's proposal under the National Parks Service's "responsibility to monitor the condition of NHLs per 36 C.F.R.§ 65.7. Her letter is attached.

As Caroline Constant wrote in her essay "Hilberseimer and Caldwell: Merging Ideologies in the Lafayette Park Landscape," "Lafayette Park is best known for its buildings, designed by Mies van der Rohe, yet the project's most prominent feature is its landscape. . . its promise of life in harmony with nature within a close-knit, stable community. Greenery is used to segregate the residential community from Detroit's urban core." The importance of the mature landscape was integral to the neighborhood's application for and acknowledgement of the Lafayette Park/Mies van der Rohe Historic District. The character of the neighborhood is defined by how different it feels from the urban density of the surrounding downtown area, where everything is oriented around the automobile. As stated in that application:

...the complex has no through traffic, nor does it have parking garages. Two public cul-de-sacs (Nicolet Place and Joliet Place), each with a tree-lined median, and three driveways into parking lots provide the only means of automobile access. These roadways, together with all parking areas, are about four feet below grade level. Commenting on this feature in May 1960 Architectural Forum, it was noted that "the camera... cannot convey the deftness with which Detroit's own strident contribution to the world's landscape, the automobile, has for once been digested into a city street scene, instead of being allowed to dominate it." Mirrored in the glass walls of the townhouses, Ca1dwell's naturalistic landscape further reduces the impact of the automobile, and with its free-flowing informality, it also makes an excellent counterpoint to the austerity of the architecture.

One of the most historically significant characteristics of the neighborhood is the absence of automobile traffic, including many of the trappings of the urban street grid. There are no traffic lights, no crosswalks, parking meters, overpasses, billboards, commercial signage of any kind, bus stops, or steam vents. The characteristic urban "Gotham-style" steam vent emitting huge, billowing clouds of steam is antithetical to the very idea of why Lafayette Park was developed and how it has evolved in its historical setting. It does not belong within the park-like setting of the Lafayette Park/Mies van der Rohe historic district and its playground. Detroit Thermal's latest proposal includes the installation of two vertical steam vents within the historic district. These steam vents will emit clouds of steam 365 days a year, no matter the temperature. In addition to the long-term and permanent change of adding new steam venting infrastructure to the resource, Detroit Thermal's plan for the 1300 Lafayette connection project involves major threats to several major mature historical landscape features within the district. According to the proposal, the excavation has the potential to damage or destroy numerous mature 70-year-old honey locust trees that form the distinctive neighborhood canopy. With potential damage to the root systems of additional honey locusts, the damage to the canopy could be even greater in the coming years. Further, the excavations threaten other significant and original ornamental trees and plantings. The precise extent of potential damage is unclear due to Detroit Thermal's continued lack of transparency and unfinalized plans, but if their past behavior is any indication of intent, the damage could be significant. When digging its unpermitted "exploratory" excavation near the playground, Detroit Thermal employees snapped off more than half the branches of a 50-year-old Star Magnolia tree for no apparent reason. See Images 5 and 6, above.

At a minimum, it would appear that Detroit Thermal intends to create a zigzagging series of 20+ foot long, 12-foot deep excavations where the largest opening on the playground will be about 10 - 12 feet wide and 25 feet long. Although Detroit Thermal claims it will not kill any canopy trees as part of its excavations, this may be a matter of semantics. Detroit Thermal may not be bringing chain saws to remove the canopy trees, but it will be bringing excavators well within the dripline of these trees and according to its own proposed plans, Detroit Thermal will be excavating within the root systems of these trees. This commission must ask Detroit Thermal whether it has consulted with its own arborist, landscape architects, or other experts about how it plans to conduct these massive excavations without harming the canopy trees. Detroit Thermal may not purposefully kill these trees during its extensive excavations, but by seriously damaging their roots they will still achieve that result.

Of equal concern to the damage caused by the excavation itself is **the ancillary damage that will be caused during the excavation process by the heavy equipment Detroit Thermal plans to bring on to the site**. According to its plans, Detroit Thermal proposes to install a 6-foot chain link fence enclosing more than 9,000 square feet of private property for the duration of the work planned (several months). This proposed fence will block a sidewalk that is used by residents who require a wheelchair and the fence will stretch to within a few feet of one residence's front door. Within this 9,000 square foot work area are 33 mature trees, including 12 Honey Locust trees (the 70-year-old canopy trees), 41 shrubs, countless flowers and ground covering plants, the main line of the cooperative's sprinkler system, and a large portion of the playground. **Into this worksite, Detroit Thermal and Kaltz Excavating plan to drive the same excavators, backhoes, dump trucks, cement trucks, and other vehicles they use to perform work on city streets**. Detroit Thermal has no experience performing this type of excavation in such a setting, nor does it have any experience with the kind of renovation/restoration, resource protection, or replacement-in-kind landscaping that will be required in this area. This is not a street corner. Even if it were, the following pictures of Detroit sites where Detroit Thermal has conducted recent excavations shows the kind of "care" they provide after their work is done. See Photos 7 and 8 below, showing Detroit Thermal's excavation site at the corner of Antietam and the Chrysler Service Drive outside the border of the historic district:



This is how Detroit Thermal has "maintained" this particular work site for years. It seems to be under perpetual construction and excavation. This photo (Photo 9) was taken at this same location in 2011:

Consider also how just a few blocks away, Detroit Thermal has abandoned a temporary stovepipe in the middle of St. Antoine near the Frank Murphy Hall of Justice for over a year (See Photo 10, below):

A quick trip around Detroit Thermal's system shows how rare it is for Detroit Thermal to follow up and complete the work it does on its system, even in other historic districts like Brush Park. As Photos 11-13 below show, even on a 70 degree day, the entirety of Brush Street from I-75 to Mack is obscured by clouds of steam billowing from the street itself, manholes, permanent vertical vents, and the more common high-vis striped "temporary" vents that remain due to Detroit Thermal's lack of follow-up and have become permanent fixtures on our city streets, usually surrounded by abandoned traffic cones and other detritus from Detroit Thermals constant ongoing maintenance:

Consider also this "temporary" vent at Cass and Canfield that has been there so long all this high-vis orange color has faded from it, as shown in Photo 14 below:

While it may be challenging to see the road in front of you wherever Detroit Thermal installs its infrastructure, one thing that is clear is that once Detroit Thermal becomes a part of your neighborhood, your neighborhood becomes a permanent construction and excavation site where Detroit Thermal is never quite done working on its volatile and vulnerable system.

Detroit Thermal and Kaltz Excavating can make statements that the landscape will be minimally harmed and no mature trees will be killed, but the Detroit Historic Commission should look beyond their words to their past behavior before it grants any certificate of appropriateness for work within this historic district. Look at Images 2-4 above to see how Detroit Thermal has already treated resources within the historic district after its illegal excavations in September 2024. Consider that even after multiple requests from residents, Detroit Thermal did nothing to remedy these damages or remove the illegal fencing. It still hasn't. Consider that Detroit Thermal employees ripped apart a 60-year-old star magnolia with their bare hands and left the branches to rot on the ground (Images 5 and 6 above). This Commission should not trust Detroit Thermal's pretty words from a hired gun public relations consultant. **Detroit Thermal has no credibility with respect to how they plan to restore the resources that their excavators, dump trucks, cement trucks, welding trucks, pipe delivery trucks, and employees will inevitably destroy in the Lafayette Park/Mies van der Rohe Historic District. Trust the proof of their previous bad acts and their undeniable failure to restore other areas where they have worked in this historic district and this city at large**.

Of further concern is what, if any effect, permanently installing new 350 degree pipes filled with pressurized steam underground will have among the root systems of the canopy trees, the 60+ year old hawthorn hedges, decorative trees, and other historic plantings. The significance of these landscape features to The Lafayette Park/ Mies van der Rohe Historic District played no small part in its recognition as a historic district. As stated in the successful application for historic district status:

Various types of native trees and shrubs delineate open and sheltered areas and provide screening. Honey locusts with their fernlike foliage dominate the canopy; the understory includes flowering crabapple, dogwood, lilac, and viburnum. Hawthorn hedges demarcate the small front lawns of the two-story units, and at the rear of these buildings are long swaths of grass. Toward the center of the complex, situated between two buildings, is the "meadow," a fairly open green. **On the east side of the complex, between other sets of facing buildings, are more open areas, two of which contain playgrounds**. Together with the landscaping, the layout of the townhouse buildings defines the exterior spaces but does not enclose them. The overall effect is one of considerable privacy and intimacy, to which the scale of the buildings, the cul-de-sac road system, and the suppressed parking contribute. With a density of almost twelve units per acre, the townhouse complex in 1960 had what Architectural Forum described as an

air of "comfortable repose." As Caldwell's trees and shrubs have matured, that feeling has increased.

Detroit Thermal's plan threatens the preservation and future of this vital resource in this district. The landscape around the Mies van der Rohe townhouses has been scrupulously preserved by the four cooperatives over the last 60 years with great care and at significant annual maintenance expense. Much of the historical Alfred Caldwell landscape remains intact including: the overstory of 60+ year old honey locust trees, the understory including large mature hawthorns, magnolias, and flowering pear and crab trees, and the ground plan of lawn and planted perennial beds. The overstory of honey locust trees unites the experience beneath, creating its own world of dappled light. Any alteration to the overstory by a tree removal, natural or through human intervention, significantly impacts the character of the landscape below. Beneath the canopy of trees. Caldwell used the understory plantings to create a series of "rooms" with varying degrees of openness and privacy. He carefully choreographed the flowering of this understory in spring, the vibrant hues of the leaves in the fall, and the stark openness of the landscape in winter. Each tree and shrub plays a part in this seasonal dance, not only defining the boundaries of the landscaped rooms, but changing with time and the seasons. The Lafayette Park/Mies van der Rohe Historic District has already lost a significant Star Magnolia tree due to the carelessness of the unapproved/unpermitted preliminary work by Detroit Thermal, and we feel that the landscape is deeply threatened by a company that seems far more concerned about "installing infrastructure" than it does the historical landscape or the community in which the infrastructure occupies.

IV. Physical Danger of Installing High-Temperature Steam Vents in Historic Neighborhood and Playground

The value of the playground in the park now threatened with dangerous steam infrastructure is not just a matter of architectural or landscaping significance, but also has value as a cultural resource within the historic district. When the district was established 25 years ago, there were only a handful of children living within the neighborhood. Today there are more than 40 children living in the Mies van der Rohe townhouses alone and dozens more who live in the nearby towers and apartments who utilize the playground facilities in the park. Some of the parents raising children in the district were themselves once children who played on this playground. The playground is a place for parents (and other neighbors) to gather and catch up, socialize, and share parenting responsibilities. Some families who live on the park allow their small children free range to run outside and play on this playground without supervision and have never had any reason not to believe they would be perfectly safe. An average day on the playground provides a tangible, visible representation of the grand vision Mies van der Rohe and Alfred Caldwell attempted to forge with this neighborhood: kids playing in a safe environment,

parents interacting with each other and with other neighbors, people looking out for each other in a beautiful environment. The playground is the epicenter of daily play, birthday parties, dog walks, picnics, Easter Egg hunts, Halloween festivities, ball games, tree climbing, mock battles, epic hide-and-go-seek games, hopscotch and sprawling chalk art installations. All within a landscape of perfectly planned and cultivated nature. It is a magical place to be a kid. It should not be ruined by a destructive and unnecessarily massive excavation followed by billowing clouds of steam that can cause second-degree burns.

To understand why Detroit Thermal must not be allowed to install new infrastructure within the "park" area of the historic district, it is important to understand how the system works. Detroit Thermal delivers steam under pressure to various buildings downtown through pipes buried underground. The temperature of the earth is always colder than the temperature of the steam in the pipes, which is at a minimum of 212 Fahrenheit, and usually far hotter (closer to 350 F-the added temperature comes from the steam being pressurized). When you see steam "venting" through manhole covers, sewer grates, utility access points (or just holes in the ground throughout the downtown area), one source of that steam is groundwater and storm runoff coming into contact with the hot pipes buried below. This so-called "secondary steam." Incidentally, the location where Detroit Thermal intends to place its new pressurized steam pipe infrastructure is through a low drainage point in the historic neighborhood where groundwater and storm runoff travel. This steam can just heat up the ground or it can escape through any vent, manhole cover, drain, etc. that allows the heated air to escape. There are already several manhole covers and a storm drain in the playground area that could create situations where this "secondary" steam escapes and potentially burn children. We cannot simply trust the word of Detroit Thermal employees like Rick Pucak who claim this won't happen when our own eyes see "secondary steam" escaping all over Detroit Thermal's network in the streets. If it does, will Mr. Pucak be there to comfort the screaming child? Will he shrug and say, "Well, we *thought* the pipes were deep enough." What recompense will the children have when their playground starts steaming all year round?

The city streets where Detroit Thermal normally installs its infrastructure have engineered drainage where water quickly runs off. In the grassy park and residential front yards of Lafayette Park, it is unclear what effect constant groundwater seepage will have on 350 degree pipes underground, and what that constant interaction will do to the existing landscaping. Again, before this project, Detroit Thermal's infrastructure was always located below grade within a right-of-way on a city street. Right-of-way installation allows uncomplicated access to its infrastructure when it inevitably fails, as the near-constant presence of Detroit Thermal employees making repairs at various locations throughout the downtown area are living proof. If Detroit Thermal is allowed to proceed with this installation, the historic district resources protected under Sec. 25-2-145 will be subject to constant potential destruction that will threaten it long after the initial excavations. **Will Detroit Thermal be willing to go before the Historic**

District Commission every time they need to perform a major excavation for a minor repair?

Another source of steam will be the deliberate venting of the steam pipes themselves, which Detroit Thermal has acknowledged will take place at the specific manholes it will install at the excavations it intends to perform in the historic district. Because these hot pipes are buried underground, there is always steam condensing inside the pipes themselves. The condensation starts to pool at the lowest elevations in the pipes. Over time, this would flood the pipes full of water and create a potentially explosive situation, so Detroit Thermal installs "traps" that open automatically and release the condensate, which is near the boiling point and still under pressure. When heated, high-pressurized water is dumped to a lower pressure atmosphere, the temperature rises even higher. That vented condensate then flashes to steam and has to be vented up and out. This is particularly necessary where the steam pipes make 90 degree turns in order to avoid the catastrophic damage called by the effect known as a "steam hammer" where pressurized condensate hits and damages metal pipe over time.

In Detroit Thermal's first proposed plans for the Lafayette Park Historic District Project, **they intended to install one of these dangerous vents just a few feet away from playground equipment in the active playground area**. This just shows how little thought and consideration they gave to their proposal. There would have been constant, billowing clouds of steam on this playground for the 20 years of Detroit Thermal's contract to provide 1300 Lafayette with steam heat. After facing a media and political firestorm for proposing this dangerous situation, Detroit Thermal has backed down and claimed they can safely vent the pipe (with two 90 degree turns at the playground) by installing large 8-10 foot venting structures at the end of Joliet and Nicolet. If the vent was necessary on the playground originally to prevent the pipes from exploding, shouldn't Detroit Thermal explain why it no longer needs to vent its pipes there, and how neighborhood parents can feel good about their children playing hopscotch above these high-pressure steam pipes? In order to remediate the risks of explosion, Detroit Thermal has previously said it needs to vent those pipes directly onto the playground. Now it is saying it doesn't. So which is it, really?

It should be noted that Detroit Thermal needs to vent its steam pipes regardless of the season or the temperature outside. Even if the steam is kept at a lower temperature in the summer, it still must be kept above 212 degrees F, making the danger from the steam even higher in warmer months when it is not as visible as it is in colder weather. Many Detroiters have suffered second degree burns from encountering "invisible" steam from Detroit Thermal steam even in warmer months.² Further, in 2020 more than 37 individuals sued Detroit Thermal after suffering 2nd and 3rd degree burns after contact with steam emitting from Detroit Thermal's

² For anecdotal evidence, consider the reddit post and comments to "Burned from Sewer Drain' in r/Detroit (https://www.reddit.com/r/Detroit/comments/15z51dd/burned_from_sewer_steam/)

pipes in downtown Detroit. Many of the plaintiffs were children³. These were encounters with Detroit Thermal steam in city streets and on city sidewalks.

In other cities with steam heating infrastructure (the same as that utilized by Detroit Thermal), failures in the system have created catastrophic damages. In 2007, a failure in a 24-inch underground steam pipe sent a geyser of hot steam with a 40-story-high shower of mud and flying debris raining down on the crowded streets of Midtown Manhattan.⁴ Forty five people were injured and one died. More than twelve similar explosions have occurred in New York since 1987. Explosions have occurred in other cities with systems similar to that operated by Detroit Thermal, including Baltimore (in 2017 and 2023), Philadelphia, and Boston (where a two-year-old boy was severely burned by a steam pipe explosion in 2004.⁵ In these cities, like the rest of Detroit, the steam infrastructure exists underneath streets where the pipes are easily accessed and repaired and where leaks can easily be identified. They are underneath streets, where cars pass by quickly. They are not underneath playgrounds where children play for hours at a time. With this project, Detroit Thermal intends (for the first time) to bury high-pressure steam pipes under a residential neighborhood and directly under an active playground. It is not clear what kind of catastrophic damage a steam pipe explosion under a residential neighborhood would cause, but the Historic District Commission has the power to stop residents of the city of Detroit from having to find out.

Recently, neighborhood residents learned old pipes (that haven't been active since 1984) that Detroit Thermal intends to access and use for sliplining its new infrastructure are wrapped in asbestos. This was confirmed by Detroit Thermal employee Rick Pucak. When Detroit Thermal excavates on the playground and accesses this pipe to insert its new pipe, it will necessarily cut into the old pipe and expose the air and the neighborhood to that asbestos. Has Detroit Thermal included plans in its proposal for this asbestos exposure that conforms to state requirements? When asked, Detroit Thermal representatives (including Mr. Pucak) claimed it did not need to perform any testing or make any assurances about the state of the asbestos around the pipes it was accessing and exposing in the open excavation for several months in this historic district. Again, Detroit Thermal should not simply be taken at its word here.

V. The Proposed Steam Vents are wholly inappropriate for this setting and would significantly alter the features and historic character of the property and spaces that characterize the property

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https://www.detroitnews.com/story/news/local/oakland-county/2019/09/24/lawsuit-20-victims-steam-burns-detroitmanholes/2427120001/

See also: https://buckfirelaw.com/blog/buckfire-law-complaint-37-steam-burn-victims/

⁴ https://www.nytimes.com/2007/07/19/nyregion/19explode.html

⁵ https://www.boston.com/news/globe/city_region/breaking_news/2007/07/after_new_york.html

In addition to the physical danger of underground steam infrastructure in the residential setting to the residents, the Historic District Commission must consider the aesthetic damage of constantly venting steam in the context of this particular historic district. These large structure constantly billowing clouds of steam would be a significant alteration of the features and historic character of the property and spaces that characterize the property and the presence of two (or more) significant sources of billowing steam runs contrary to the Lafayette Park historic residential neighborhood as a physical record of its time, place, and use.

It doesn't take a degree in landscape architecture to appreciate why Lafayette Park is a historically significant resource in Detroit; all the thoughtfulness and planning of the developers, architects, and landscape architects—as well as the stewardship of generations of residents—give a feeling that every visitor can appreciate. It is the pleasure of nature within the city. It is the oasis of trees and flowers and wildlife just steps away from more traditional urban fabric. It is the safety of a place where kids can run and play without physical dangers that cities traditionally present. Billowing clouds of dangerous steam have never been a part of the aesthetics of Lafayette Park, nor should the Historic District Commision allow Detroit Thermal to make such a drastic change to this historic neighborhood. These proposed steam vents are large, unattractive pieces of infrastructure wholly inappropriate for this setting and would significantly alter the features and historic character of the property and spaces that characterize the property.

VI. Detroit Thermal's Access Rights to this Public Utility Easement on Private Residential Property are not Universal and Michigan Courts Have Frequently Recognized a Limit on a Utility's Right to Burden the Subservient Estate

Detroit Thermal's entire proposal is predicated on the assumption that it has the legal right to conduct this level of excavation and the installation of new infrastructure under a 1950 utility easement that makes no mention of steam utilities and was intended to provide townhouse owners along the easement access to necessary utilities. This is far from given. Detroit Thermal has provided no evidence of any private easement agreement that would allow it to "pass through" the four cooperatives in order to provide services to an unrelated customer, nor has it provided any evidence of language in the easement that would allow it to conduct extensive excavations, occupy large swaths of private property for 8-10 months, install hundreds of feet of new equipment, and construct significant new structural elements on the easement. Michigan law on utility easements is fairly clear. **All that Detroit Thermal has provided regarding the easement is a rendering that states unequivocally that it abandoned this easement on June 4, 1985**. Absent clear language in the easement to the contrary, a utility cannot make improvements to the servient estate if such improvements are unnecessary for the effective use of the easement or **they unreasonably burden the servient tenement**." <u>Blackhawk Dev. Corp. v.</u> <u>Village of Dexter</u>, 473 Mich. 33, 41; 700 N.W.2d 364 (2005). Michigan courts have specifically

held that a utility does not have an unfettered right to "do whatever it wants" within a utility easement. Courts have "decline(d) to infringe on the private property rights of a landowner through unsupported implication, particularly when there is a complete absence of any legislative intent in the LDA to give a public utility free reign to build on an easement as it pleases." <u>D'Andrea v. AT&T</u>, 289 Mich. App. 70; 795 N.W.2d 620 (2010). A utility easement, if it applies, is intended to allow a public utility to access and maintain its existing infrastructure. Under Michigan law, a utility easement simply is not intended to allow a private for-profit corporation to destroy private property through excavation and construction on land belonging to one group of residents in order to gain access to the property of a separate, unrelated customer.

VII. Avoidance and Mitigation Options Exist: Three Alternative Routes to Connect to 1300 that do not involve the destruction of historic resources

When considering proposals for projects that would affect National Historic Landmarks under Section 106, the federal government always recommends that agencies and utilities "avoid" and find "mitigating" options that would not involve destruction within the historic district. This Historic Commission should use this principle as guidance in this case.

Within the last few years, Detroit Thermal's steam system has actively offered steam heat to customers at Lafayette Boulevard within a few hundred feet of 1300 Lafayette's property. These alternative routes include (1) a connection at Chrysler Elementary School that was active 2-3 years ago through an easement along the Lafayette Towers parking lot that runs behind the strip mall parking lot all the way to Lafayette Boulevard; (2) a connection at the former Woodward Academy School at the corner of Lafayette and Rivard, which is directly across the Rivard/Lafayette intersection from 1300's parking lot (where presumably residents would not protest the installation of steam pipe infrastructure for their own benefit); (3) the right of way on Rivard Street itself. Detroit Thermal has claimed that these routes are not an option because they are "more expensive" (even though the route behind the strip mall was the original plan offered to residents of 1300 Lafavette when they agreed to contract with Detroit Thermal for steam heat). It does not matter that these routes are "too expensive" in Detroit's Thermal's view. Detroit Thermal is a privately-held corporation whose only interest is increasing its profits. We can't just take its word that these alternative routes that would avoid the historic resources at issue are "too expensive." There should be a heavy standard to prove to this Commission why it should not require Detroit Thermal to avoid one of the handful of National Historic Landmarks in the city of Detroit when better alternative routes exist. It is not the Commission's job to help Detroit Thermal save money. It is the responsibility of this Historic Commission to protect Detroit's historic assets.

VIII. This Commission Must Determine the Appropriateness of Detroit Thermal's Proposed Damages to Resources Within the Historic District; this is not a Choice Between Historic Preservation and Providing Residents of 1300 Lafayette with a Cheap Option for Heating their Building

Several residents of 1300 Lafayette have come forward supporting Detroit Thermal's proposal to damage and change historic resources within the Lafayette Park/Mies van der Rohe Historic District. Many others in 1300 Lafayette have expressed shock and outrage that Detroit Thermal abandoned its original, less-invasive plan to utilize one of the tunnel networks that already reached Lafayette Boulevard and instead decided to destroy their neighbors' historic playground and landscaping on private property. Residents of 1300 Lafayette have a right to be angry with Detroit Thermal and their own elected board of representatives who made poor choices that have brought this proposal before the Historic District Commission. But they cannot now attempt to make this a choice between historic preservation and their own heat.

It is not the Historic District Commission's job to ensure the 1300 Lafayette Cooperative gains access to heat from Detroit Thermal that may be slightly more affordable than repairing their existing boilers. It is the Historic District Commission's responsibility to ensure that a historic resource—one of the true gems of the city—is not irreparably harmed by a bad actor utility that thinks it can do whatever it wants.

If the luxury housing cooperative in 1300 Lafayette wants heat, it can afford it. 1300 Lafayette has claimed that repairs to its existing boilers will cost \$2 million. 1300 Lafayette currently has \$4 million in reserve, and has spent more than \$1 million—half the cost of repair—on temporary portable boilers to heat the building over the last several winters. The leadership of 1300 Lafayette chose not to use a special assessment to pay for boiler repairs, a common tool for necessary and emergency large-scale projects that has been frequently been utilized by neighboring cooperatives in the Lafayette Park/Mies van der Rohe Historic District. 1300 Lafayette residents should be upset with their own leadership, not their neighbors. Destroying historic resources in the district isn't the only way to provide heat for 1300 Lafayette. It's just the way that will save the for-profit utility they've contracted with more money.

IX. Conclusion

Detroit Thermal has demonstrated its bad faith with regard to this project by (1) misrepresenting the nature of the project prior to beginning exploratory excavations; (2) failing to seek the proper permitting and issuance of appropriateness prior to beginning excavations; (3) abandoning and failing to properly restore damage to the resource within a historic district; (4) failing to effectively communicate with residents about the nature of

the project; (5) failing to provide of any proof of a private easement that would allow Detroit Thermal to excavate and install new infrastructure on private property within the historic district; and (6) proposing further landscape-altering changes that would significantly affect the historic nature of the neighborhood and put the health and safety of neighborhood children at risk. Any claims by Detroit Thermal that disruptions to neighborhood resources will be minimal at that high-temperature steam infrastructure will be safe for playing children should be considered in light of Detroit Thermal's ongoing bad faith and misrepresentations regarding this project.

We hereby ask that the Historic District Commission (1) deny any certificate of appropriateness or notice to proceed; and (2) under its enforcement powers granted in Sec. 21-2-59, require Detroit Thermal to remove its "temporary" fencing installed nine months ago for unpermitted work within the district and restore the damage caused by the exploratory excavations as well as impose any other remedies and civil fines as it sees fit. At a minimum, this Commission must reject Detroit Thermal's current proposal and require the utility to formulate its plans in order to eliminate its threats to historic district resources and remove all elements of the proposal that wholly inappropriate for this setting and would significantly alter the features and historic character of the property and spaces that characterize the property.

Ideally, the Historic District Commission should encourage Detroit Thermal to take advantage of one of the extremely close alternative right-of-way routes to 1300 Lafayette that would entirely avoid the resources within the historic district.