

## **SITE ACCESS AGREEMENT**

This Site Access Agreement ("Agreement") is made as of the 8<sup>th</sup> day of April, 2020, by and between Duke Energy Indiana, LLC, an Indiana corporation, (hereinafter referred to as "DEI") and City of Franklin, the property owner at 237 W. Monroe St., and 100 W. South St., Franklin, Indiana in Johnson County (hereinafter referred to as "Owner").

WHEREAS, the former operation of the manufactured gas plant (MGP) may have caused certain chemical compounds and materials to be located on or underneath properties near the MGP Site (the "Condition"); and

WHEREAS, the Condition has been reported to the Indiana Department of Environmental Management ("IDEM"); and

WHEREAS, without admitting any liability or responsibility for the Condition, DEI is voluntarily undertaking an investigation and possible remediation of the Condition in accordance with IDEM's applicable rules and regulations; and

WHEREAS, DEI and Owner wish to enter into this Agreement to assist with DEI's investigation and possible remediation of the Condition; and

WHEREAS, the parties believe that this Agreement is fair, reasonable, and equitable and in their respective best interests, DEI and Owner agree as follows:

### **AGREEMENT TERMS**

1. Owner hereby authorizes DEI, including DEI's employees, agents, consultants, and subcontractors, and IDEM to enter upon the property owned by Owner and located at 237 W. Monroe St., Franklin Indiana (the "Owner's Property") for the purposes of performing site investigations, which may include without limitation, performing soil borings; installing, maintaining, and operating monitoring wells; obtaining groundwater samples; and removing and replacing certain soils (collectively the "Work").
2. DEI will coordinate access with Owner's representative at a proposed date and time for completing the Work.
3. DEI shall be responsible for locating all underground and aboveground utilities which may be affected by the Work and shall have the underground utilities marked before commencing the Work.
4. DEI shall be solely responsible for the health, safety and direction of its employees, agents, consultants, and subcontractors during the Work.
5. Within ten (10) days after submitting a report to IDEM, DEI shall provide the Owner with a true, complete and signed copy of any report submitted to IDEM if the report contains information regarding samples taken on the Owner's Property.
6. Within thirty (30) days of validating data, DEI shall provide the Owner with a true and complete copy of sampling results taken on the Owner's Property.

7. DEI shall be solely responsible for properly characterizing, storing and disposing of all soil cuttings, purge water or other potentially contaminated media generated during the Work. DEI shall manage such media and waste materials in accordance with applicable laws and regulations.
8. DEI shall use its best efforts to minimize disturbance to any business operating on the Owner's Property during performance of the Work and will place vehicles in designated drives and parking spaces.
9. DEI shall be solely liable for and will repair any disturbance to the ground or other property that may occur as a result of the Work performed by DEI. DEI shall restore the Owner's Property to its original condition and remove all debris and equipment within 20 days. DEI may request and Owner shall grant a reasonable extension if more than 20 days is needed.
10. DEI is voluntarily undertaking an investigation and possible remediation of the Condition in accordance with IDEM's applicable rules and regulations. DEI shall indemnify, defend and hold Owner harmless from and against any claims, actions, losses, costs, damages, expenses or liabilities caused by or resulting from the Work performed by DEI, or its employees, consultants, agents, contractors or representatives on or around the Owner's Property, or DEI's breach of this Agreement. These obligations shall survive the termination of this Agreement.
11. DEI shall perform the Work at its sole risk and expense. DEI will be responsible for obtaining any necessary local, state and federal permits that are applicable to the Work performed on the Owner's Property. DEI shall be the sole owners and operators of the items or equipment placed on the Owner's Property by DEI and will secure the items and equipment as necessary.
12. By executing this Agreement, Owner is not waiving or releasing any legal rights it may have against DEI.
13. The validity, construction and all rights under this Agreement shall be governed by Indiana law.
14. This Agreement supersedes any prior agreements on the subject hereof and contains the entire agreement of the parties on the matters covered. No other agreement, statement or promise made by any party or agent of any party that is not in writing and signed by all the parties to this Agreement shall be binding. Any amendments to this Agreement shall be in writing and signed by all parties hereto.
15. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts when taken together shall constitute but one agreement.

16. If any provision of this Agreement or the application thereof to any person or in any circumstance shall be invalid or unenforceable to any extent, the remainder of the Agreement and the application of such provision to other persons or in other circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

17. This Agreement shall be binding upon all successors, heirs, and assigns of DEI and/or Owner, as applicable.

IN WITNESS HEREOF, the parties have executed this Agreement as of the date first written above.

**Duke Energy Indiana, LLC:**

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**For the Owner:**

Signature: \_\_\_\_\_

Printed: Robert Heuchan

Title: President, Franklin Redevelopment Commission