

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, RATIFYING A ROAD ACCESS AGREEMENT WITH UISC, AN ILLINOIS PROFESSIONAL LIMITED LIABILITY COMPANY, TO FACILITATE THE CONSTRUCTION OF FACILITIES FOR US COLD STORAGE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, City staff executed a Road Use Agreement with UISC (the “Agreement”) to grant access to the road leading to the RD Wells Substation for the purpose of constructing facilities for US Cold Storage the road as further set forth on Exhibit A to the Agreement; and

WHEREAS, the Agreement is effective from April 28, 2025, and will remain in effect until the completion of construction, but no longer than 9 months; and

WHEREAS, UISC is responsible for ensuring the gate to the road is kept locked when not in use to maintain the security of City property, and must conduct its operations in a manner that does not interfere with the City's use or operation of the road; and

WHEREAS, UISC is obligated to maintain the road in its current condition and immediately repair any damage caused by its use, with the City performing initial and final inspections to ensure compliance; and

WHEREAS, the City Council finds that the action taken herein is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The City Council hereby ratifies the Agreement executed by City staff on [insert date signed].

SECTION 3. The City Council delegates the authority to the City Manager, or their designee, to take any actions that may be required or permitted to be performed by the City of Denton under such contract and amendment to the City Manager or their designee.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

## Road Use Agreement

This Road Agreement (this “Agreement”) is entered into this day of April 24, 2025 (the “Effective Date”), by and between UISC, PLLC, an Illinois Professional Limited Liability Company, 8750 W. Bryn Mawr Ave, Ste 500, Chicago, IL, 60631. (“User”), and the City of Denton, Texas, a Texas home-rule municipal corporation that wholly owns and operates an electric utility under the trade name of Denton Municipal Electric, with its principal place of business at 215 E. McKinney Street, Denton, Texas 76201 (“City”). User and City are collectively defined as the “Parties” and each individually as a “Party.”

WHEREAS, User has requested access to the road leading to the RD Wells Substation as set forth on Exhibit A attached hereto (the “Road”);

WHEREAS, City is amenable to such use on the terms set forth herein and subject to applicable local, state, and federal law, ordinances, and regulations; and

NOW, THEREFORE, the Parties, for an in consideration of mutual covenants set forth in this Agreement do hereby agree as follows:

**1. Term:** This Agreement is in effect as of April 24, 2025 until such time as the User finalizes construction in the area but in no event shall be longer than 9 months.

**2. Access Rights:** User shall ensure the gate to the Road is kept locked when User is not accessing the Roads and is locked during non-work hours to maintain security of City property.

**3. Non-Interference with Operation of the City:** User expressly agrees that Users will not conduct operations in or on the Road in a manner that, in the reasonable judgment of City, (i) interferes with the reasonable use or operation of the Road or other City operations by the City; (ii) hinders police, fire fighting, or other emergency personnel in the discharge of their duties; (iii) would constitute a hazardous condition at the Road; (iv) would increase the premiums for insurance policies maintained by City; (v) is in contradiction to any rule, regulation, directive, or similar restriction issued by agencies having jurisdiction over the Road; or (vi) would involve any illegal purposes. In the event this covenant is breached, City reserves the right to cause the abatement of such interference at the expense of User. In the event of a breach in security caused by User, resulting in fine or penalty, such fine or penalty will be considered and charged to User.

**4. Road Maintenance:** User agrees to keep the Road in its current condition and immediately repair any damage to the Road during the term of this Agreement attributable to the use of the Road by User at its sole expense as determined by the City in its sole discretion. The City will approve any maintenance performed hereunder in connection with this Section to its satisfaction.

**5. Inspections:** The City will perform an initial inspection of the Road prior to access by the User. The City retains the right to make inspections of the Road and on request of the City from time to time, to require User to provide available records or data to demonstrate its current

compliance with the terms of this Agreement. The City will inspect the Road at the termination of this Agreement and User will be obligated to remedy any defects or differences in conditions from the initial inspection.

**6. Termination:** City may terminate this Agreement upon thirty days notice for any reason or immediately upon violation of any material provision set forth herein. Upon any expiration or termination of this Agreement, User shall demonstrate to City's reasonable satisfaction that User has returned the Road to its initial condition.

**7. Updating information:** User will promptly update City with any changes to contact personnel during the term of this Agreement.

**8. Insurance:**

(A)(1) Commercial general liability on an occurrence form with minimum limits of five million dollars (\$5,000,000.00) per occurrence and ten million dollars (\$10,000,000.00) aggregate. This coverage shall include the following:

- a. Products/completed operations to be maintained for one (1) year.
- b. Personal and advertising injury.
- c. Independent Contractors Liability.
- d. Explosion, collapse, or underground (XCU) hazards.
- e. Contractual liability.

(2) Automobile liability coverage with a minimum policy limits of one million dollars (\$1,000,000) combined single limit. This coverage shall include all owned, hired, and non-owned automobiles.

(3) Workers' compensation and employer's liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000) Coverage B employers' liability is required.

(4) Pollution liability insurance which provides coverage for sudden and accidental environmental contamination with minimum limits of liability of five million dollars (\$5,000,000).

(B) Right-of-way users, other than franchise utilities or utilities, applying for a permit shall obtain, maintain, and provide proof of insurance for the same types of insurance coverages outlined in subsection (a) above; however, the policy limits under the general liability insurance shall be one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. All other coverage provisions outlined in subsection (a) above shall apply.

(C) The method for proof of insurance shall be in accordance with Part F below and, upon request, User can provide a certified copy of the insurance policies. The franchise utility and utility shall obtain and maintain insurance throughout the time it has facilities in the right-of-way. The City reserves the right to review the insurance requirements and to reasonably adjust

insurance coverage and limits when the City Manager determines that changes in law or the claims history of the industry, require adjustment of the coverage and shall provide reasonable notice to User of any such changes in the insurance requirements.

(D) Pursuant to V.T.C.A. Utilities Code § 53.064 and for purposes of this subsection, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the franchise utility or utility in those instances where the state does not issue such letters, which provide the same coverage as required herein. However, certificates of self-insurance must be approved in advance by the City Risk Manager.

(E) The right-of-way user shall furnish, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this section to the City. If the City requests a deletion, revision or modification, the right-of-way user shall exercise reasonable efforts to pay for and accomplish the change.

(F) The right-of-way user shall file and maintain proof of insurance with the City Engineer. An insurance certificate obtained in compliance with this section is subject to City approval, through the City Risk Manager. The City may require the certificate to be changed to reflect changing liability limits. A right-of-way user shall immediately advise the City Attorney of actual or potential litigation that may develop which may affect an existing carrier's obligation to defend and indemnify the City.

(I) Such insurance shall be kept in full force and effect during the period for which a permit. The required insurance policies shall protect the agency or public infrastructure contractor and include the City as an additional insured. The insurance shall be primary coverage for losses covered by the policies.

## **9. LIABILITY**

**TO THE FULLEST EXTENT PERMITTED BY LAW, USER SHALL BE LIABLE TO THE CITY FOR ANY DAMAGE OR LOSS OCCASIONED BY ANY ACT AND/OR OMISSION OCCURRING IN CONNECTION WITH THIS AGREEMENT INCLUDING ANY DAMAGE TO CITY PROPERTY IN THE AREA DUE TO USER'S ACCESS TO THE ROAD, AND USER SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND VOLUNTEERS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LOSSES, COSTS, DEMANDS, CLAIMS, EXPENSES (INCLUDING ATTORNEY'S FEES), DAMAGES, AND LIABILITIES OF EVERY KIND TO WHICH THE CITY, ITS COUNCILMEMBERS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND VOLUNTEERS MAY BE SUBJECTED FOR INJURY OF ANY TYPE, DEATH OR PROPERTY DAMAGE ARISING FROM OR CONNECTED WITH ANY SUCH ACT AND/OR OMISSION.**

## **10. INDEMNIFICATION.**

**(A) TO THE EXTENT AUTHORIZED BY LAW, USER HEREBY INDEMNIFIES, AND HOLDS THE CITY AND ITS OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL CLAIMS, LAWSUITS, JUDGMENTS,**

**COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS OF ANY KIND AND NATURE, INCLUDING PERSONAL OR BODILY INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT IS FOUND BY A COURT OF COMPETENT JURISDICTION TO BE CAUSED SOLELY BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF USER.**

**(B) THE INDEMNITY PROVIDED BY THIS SUBSECTION DOES NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE CITY, ITS OFFICERS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS. IF USER AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER STATE LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER STATE LAW.**

**(C) THIS SECTION IS SOLELY FOR THE BENEFIT OF THE CITY AND USER AND DOES NOT CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON.**

**(D) NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, REPUTATION AND FINANCING. NOTWITHSTANDING THE FOREGOING, THIS WAIVER OF CONSEQUENTIAL DAMAGES SHALL NOT APPLY TO OR ACT TO LIMIT THE INDEMNIFICATION OBLIGATIONS OF EITHER PARTY OR LIABILITY FOR BREACH OF THIS AGREEMENT.**

**11. Subordination:** This Agreement is subordinate to the City's interests in the Road. City reserves the right to use the Road and the airspace above the Road for any public purpose allowed by law and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Road.

**12. Conflicts:** In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this agreement, including, but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (Tex. Civ. Prac. & Rem. Code §37.001, et. seq.), the parties hereto agree to waive any and all rights to attorney's fees to which the prevailing party might otherwise be entitled.

**13. Notice:** Any notice or communication required in the administration of this Agreement shall be sent to the City as follows:

City Manager of the City of Denton

215 E. McKinney  
Denton, Texas 76201

Any notice or communication required in the administration of this Agreement shall be sent to the User as follows:

UISC, PLLC  
ATTN: Mike Conlon  
8750 W. Bryn Mawr Avenue, Suite 500  
Chicago, IL 60631 3546

**14. Police Powers:** User is subject to all police powers of the City of Denton in the placement and maintenance of its gas pipelines, as well as all other ordinances as currently exists and as may be amended in the future of the City of Denton.

**15. Transferrable:** The rights granted by this Agreement inure to the benefit of the City. The rights shall not be assigned or transferred without the written consent of the governing body of the City of Denton, which consent shall not be unreasonably withheld.

**16. Transfer or Partial Assignment:** Except as otherwise provided herein, or except as may be hereafter determined by the parties, no party to this Agreement may sell, assign, partially assign or transfer its interest in this Agreement, or any of its right, duties, or obligations hereunder, without the prior written consent of the other party. Whenever the consent or the approval of a party is required, such party shall not unreasonably withhold, delay, or deny such consent or approval.

**17. Waiver:** No waiver or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed. The parties further agree that the provisions of this Article will not be waived unless as herein set forth.

**18. Unenforceable Provisions.** In the event that any one or more of the provisions hereof contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**19. Entire Agreement:** This Agreement and the exhibits attached thereto, constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation, or alteration of the terms of this Agreement shall be binding on any party hereto unless the same is in writing, dated subsequent to the date hereof, and is duly authorized and executed by the parties hereto.

**20. No Waiver for Failure to Enforce.** The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

**21. Captions:** The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

**22. Laws of Texas:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes arising from the performance of this Agreement shall be in Denton County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 2025.

CITY:  
CITY OF DENTON

DocuSigned by:  
*Sara Hensley*  
By: \_\_\_\_\_  
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Sara Hensley,  
City Manager

ATTEST:  
LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
*Marcella Lunn*  
BY: \_\_\_\_\_  
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THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED  
as to financial and operational obligations and business terms.

DocuSigned by:  
*Antonio Puente, Jr.*  
By: \_\_\_\_\_  
E3760944C2BF4B5...  
Name: Antonio Puente, Jr.  
Title: DME General Manager



USER:

UISC, PLLC

By:   
Name: Mike Conlon  
Title: Vice President  
Date: 4/28/2025