

**SPECIAL PERMISSION  
AGREEMENT**

Document Number

Document Title

**Drafted By:**

Gregg Hagopian, Milwaukee City Attorney's Office.

Recording Area

Name and Return Address

Dave Windsor  
City of Milwaukee  
809 N. Broadway, 9<sup>th</sup> Floor  
Milwaukee, WI 53202

Parcel Identification Number (PIN)

Part of 436-0007-000-3

Part of 436-0006-000-8

**SPECIAL PERMISSION AGREEMENT**

**CAO 165966, GH 2/8/2011**

THIS AGREEMENT is made by and between the City of Milwaukee, a municipal corporation (“City”) and the Urban Ecology Center, Inc (“UEC”), and is dated as of this \_\_\_ day of \_\_\_\_\_, 2011.

**WHEREAS**, the Wisconsin Department of Natural Resources (“DNR”) conveyed to UEC, and UEC now owns, that part of 3700 W. Pierce Street, Milwaukee (part of Lot 21), and that part of 3638 W. Pierce Street, Milwaukee (part of Lot 20), those parts, together, are herein called the “**UEC Parcel**,” which UEC Parcel is more particularly described on **EXHIBIT A** attached, which UEC Parcel is north of and adjacent to the West Pierce Street public right-of-way (“**ROW**”), and

**WHEREAS**, on the UEC Parcel is a retaining wall that the DNR also conveyed to UEC, that the UEC now owns, that is herein called the “**UEC Wall**,”

**WHEREAS**, the Wisconsin Department of Transportation (“DOT”), in a transaction with the DNR, the City, and others, pertaining to the Menomonee Valley Passage portion of the Hank Aaron State Trail (the “**HAST**”), constructed the UEC Wall, along with other retaining walls and improvements for the HAST; and

**WHEREAS**, one of the other retaining walls that the DOT built that remains DNR-owned, abuts the UEC Wall near the eastern edge of the UEC Wall, and is herein called the “**DNR Wall**,” and

**WHEREAS**, under ¶ 3.5.1.e. of that certain Valley Passage Easement, recorded in the Milwaukee County Register of Deeds Office (the “**ROD**”) on March 16, 2010 as Document No. 09854735 (that document, as amended, is herein called the “**VP Easement**”), the City is responsible for maintaining the DNR Wall; and

**WHEREAS**, the VP Easement was recently amended by an “Amendment to Valley Passage Easement” dated \_\_\_\_\_, 2011, which amendment has been or will be recorded in the ROD, and that amendment, among other things, reflects that UEC, as owner of the UEC Wall, is responsible for maintenance, repair and replacement of the UEC Wall; and

**WHEREAS**, on that part of the UEC Parcel that contains part of Lot 21, there currently exists a building, and on that part of the UEC Parcel that contains part of Lot 20, UEC intends on constructing an addition to that building (herein called the “**UEC Addition**”), which UEC Addition will incorporate a portion of the UEC Wall into the new UEC Addition; and

**WHEREAS**, on **EXHIBIT B** attached hereto, there is a depiction of the UEC Wall the DNR Wall, and the UEC-ROW Wall (hereafter defined); and

**WHEREAS**, a part of the UEC Wall (herein called the “**UEC-ROW Wall**”) is within the ROW; and

**WHEREAS**, UEC, as owner of the UEC Parcel and UEC Wall, requests that the City grant it special permission (personal license) to keep and maintain the UEC-ROW Wall in the ROW;

**NOW, THEREFORE**, In consideration of One Dollar, and the mutual covenants and conditions herein, UEC and the City agree to the following:

1. UEC, at no cost to the City, and subject to the terms and conditions herein, may keep and maintain the UEC-ROW Wall in the ROW Area described below (the “**Row Area**”). Any work related to the maintenance or modification of the UEC-ROW Wall must be done in accordance with plans and specifications approved by the Commissioner of the City’s Department of Public Works (the “**Commissioner**”).

The ROW Area is described as follows and is depicted on the map attached hereto as **EXHIBIT B**:

That part of West Pierce Street in the Southwest ¼ of Section 36, Township 7 North, Range 21 East, described as follows: Commencing at the southeast corner of Block 1, Lot 21, thence N 85° 10’E along the north line of West Pierce Street for 70.54’, thence S 4° 50’E for 4.5’, thence S 85° 10’W for 70.54’, thence N 4° 50’W for 4.5’ to the point of commencement.

Said parcel contains 317.43 square feet or 0.007 acres more or less of land.

2. UEC accepts all responsibility to maintain, repair, reconstruct, replace, and remove the UEC-ROW Wall.
3. UEC shall indemnify and hold the City harmless from and against any and all claims, demands, causes of action, loss, liability, expense, or obligations whatsoever that may or shall arise (directly or indirectly) in connection with (a) the maintenance, repair, reconstruction, replacement, removal, existence, or use of the UEC-ROW Wall, (b) any improvements made to or in the ROW by UEC, (c) the UEC-ROW Wall being in the ROW Area, and (d) the UEC-ROW Wall’s effect or the UEC Addition’s effect on the DNR Wall.
4. No structures other than the UEC-ROW Wall will be constructed on or will be allowed to exist within the ROW or ROW Area by UEC. No installations or improvements by UEC shall be allowed to cause a condition of standing water on any property at, in, or abutting the ROW or ROW Area.
5. The City reserves all rights associated with ROW, including rights in the ROW Area, and the right to enter the ROW Area to repair, maintain, construct or reconstruct any City facilities that are or that the City wishes to be in said area.
6. Governmental agencies and entities and utility companies having the right to install and maintain facilities within the ROW and ROW Area shall continue to have and enjoy those rights.
7. UEC agrees, at its expense, to reconstruct the UEC-ROW Wall and UEC Wall as needed following any repair, maintenance, installation, construction or reconstruction of City facilities and/or others enjoying the rights as indicated in Item 5 or 6 above.
8. UEC agrees to remove, without cost to the City, the UEC-ROW Wall whenever the public interest or safety requires, or for any reason, when so ordered in writing by the Commissioner, or for any reason, as required by any resolution of the City’s Common Council. Said removal of the UEC-ROW Wall is to be accomplished within 60 days of the issuance of written notice or adoption of Common Council resolution. UEC shall not be entitled to any damages or compensation for, or as a result of, such removal, order, or

resolution. Written notice requiring removal shall be sent to the UEC at the following address:

Urban Ecology Center Inc.  
1500 East Park Place  
Milwaukee, WI 53211.

- 9. This Agreement does not relieve UEC from its responsibilities and obligations to obtain any City permits and/or approvals necessary to maintain and use the UEC Wall, the UEC Parcel, the building on the UEC Parcel, or the UEC Addition, and it does not relieve UEC from any of its responsibilities and obligations under the VP Easement (as amended).
- 10. UEC shall file with the Commissioner a certificate of insurance indicating that UEC holds a public liability policy in the amount of at least \$25,000 covering bodily injury to any one person, \$50,000 covering bodily injury to more than one person in any one accident, and \$10,000 covering property damage to any one owner on the ROW Area covered by this Agreement, and naming the City as an additional insured. The insurance policy shall provide for at least 10 days written notice to the Commissioner prior to cancellation. UEC shall keep the foregoing insurance in place at its expense for so long as the UEC-ROW Wall exists within the ROW Area.
- 11. This Agreement is binding upon and inures to the benefit of the parties hereto, their personal representative, heirs, successors and assigns. However, UEC may not assign or transfer this Agreement or its rights hereunder to anyone without the Commissioner’s express, prior written consent, and the Commissioner shall have sole discretion as to whether or not to grant any such consent.
- 12. This Agreement does not create any real property interest in the UEC, in the ROW, or in the ROW Area. UEC understands that its interest is a personal license that the City may revoke and/or terminate. Per ¶8 above, the City may order removal of the UEC-ROW Wall.
- 13. This Agreement may be executed in one or more counterparts, which, when taken together, shall constitute one and the same instrument. Original signatures however shall be provided.
- 14. This Agreement shall be recorded in the ROD at UEC’s expense.
- 15. UEC understands that this Agreement is required because the UEC-ROW Wall is within the ROW. UEC further understands that the UEC Wall is subject to the terms and conditions of the VP Easement, as amended.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be entered as of the date first appearing above.

<b>CITY: CITY OF MILWAUKEE:</b>	<b>UEC: URBAN ECOLOGY CENTER, INC:</b>
_____	_____
Thomas Barrett, Mayor	Ken Leinbach, Executive Director

<p>_____ Ronald D. Leonhardt, City Clerk</p> <p>_____ W. Martin Morics, Comptroller</p> <p>Authorized by Common Council Resolution File No.: _____</p>	<p>_____ Jeff Geygan, Board of Directors, President</p>
<p>Approved as to content.</p> <p>Date: _____</p> <p>_____ Jeffrey S. Polenske, P.E., City Engineer</p>	<p><b>UEC SIGNATURE AUTHENTICATION</b></p> <p>Dennis Grzezinski, as a member in good standing of the State Bar of Wisconsin, hereby authenticates, the above signatures of the above-named UEC representatives in accordance with Wis. Stat. § 706.06 so this instrument may be recorded per Wis. Stat. § 706.05 (2)(b).</p> <p>_____ Dennis Grzezinski</p> <p>State Bar No. _____ Date of Authentication: _____</p>
<p><b>CITY SIGNATURE AUTHENTICATION</b></p> <p>Gregg C. Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves, and authenticates, the above signatures of the above-named City representatives in accordance with Wis. Stat. § 706.06 so this instrument may be recorded per Wis. Stat. § 706.05 (2)(b).</p> <p>_____ Gregg C. Hagopian, Assistant City Attorney State Bar No. 1007373 Date of Authentication: _____</p>	

**EXHIBIT A**  
**DESCRIPTION OF UEC PARCEL**

The UEC Parcel is comprised of the following two component parcels:

- **That part of 3700 W. Pierce Street, Milwaukee, WI** (tax key number 436-0007-000-3) (legal description of Lot 21, in Block 1, in Arlington Heights, in the Southwest ¼ of Section 36, Town 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin) bounded and described as follows:

*Here insert part of 3700 that uec will get from dnr*

- **That part of 3638 W. Pierce Street, Milwaukee, WI** (tax key number 436-0006-000-8) (legal description of Lot 20, in Block 1, in Arlington Heights, in the Southwest ¼ of Section 36, Town 7 North, Range 21 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin) bounded and described as follows:

*Here insert part of 3638 that uec will get from dnr*

**EXHIBIT B**  
**DEPICTION OF SUBJECT RETAINING WALL AND UEC WALL**