

## ENCROACHMENT AGREEMENT

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This Encroachment Agreement (the “Agreement”), is entered into between the **City of Madison**, (the “City”) and **Stop-N-Go of Madison, Inc.**, (the “Permittee”) for the privilege of encroaching onto a portion of public lands known as the City of Madison Parks Glenway Golf Course with two (2) flush mount groundwater monitoring wells associated with the Permittee’s property at **3734 Speedway Road** (the “Property”), which is legally described as follows:

Outlots 2 and 3, Assessor’s Plat No. 1, Town of Madison, Township 7 North, Range 9 East, now in the City of Madison, Dane County, Wisconsin.

### WITNESSETH:

WHEREAS, the flush mount groundwater monitoring wells (the “Wells”) are proposed to supplement a larger environmental assessment being conducted on the Property; and

WHEREAS, the proposed Wells will be located across Speedway Road from the Property in the parking lot area of the City of Madison Parks Glenway Golf Course (the “Golf Course”), as identified on attached Exhibit A; and

WHEREAS, the Permittee has made application to City for a privilege in streets pursuant to Section 66.0425, Wisconsin Statutes and Section 10.31, Madison General Ordinances (MGO), consisting of the following:

To install and maintain **two (2) flush mount ground water monitoring wells** in a portion of public lands known as the City of Madison Parks Glenway Golf Course.

NOW, THEREFORE, City hereby grants the aforementioned privilege subject to the following obligations, which are assumed by the Permittee, its heirs, successors and assigns:

1. To comply with all applicable Madison General Ordinances.
2. To remove said encroachment upon ten (10) days written notice by City. Additionally, the Permittee, its successors and assigns shall be entitled to no damages for removal of the encroachment, and if the Permittee does not remove the same upon due notice, it shall be removed at the Permittee’s expense and the cost therefore levied against the Property as a special charge for current service rendered.

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RETURN TO: City of Madison  
Economic Development Division  
Office of Real Estate Services  
P.O. Box 2983  
Madison, WI 53701-2983

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TAX PARCEL NO: 251-0709-213-1907-0

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3. The Permittee shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Permittee and/or its officials, officers, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees.
4. The Permittee shall carry commercial general liability insurance covering as insured the Permittee and naming the City as an additional insured, with no less than the following limits of liability: bodily injury, death and property damage of \$1,000,000 in the aggregate. This policy shall also be endorsed for contractual liability in the same amount. As evidence of this coverage, the Permittee shall furnish the City a certificate of insurance on a form provided by the City.
5. The Permittee agrees to pay City an annual fee of **\$600.00** for each calendar year the privilege and accompanying Agreement is in effect. Said annual fee may be adjusted occasionally by the City. If this Agreement is signed before 2015, the prorated fee for 2014 shall be waived. Annual fee payments shall be due on or before January 1<sup>st</sup> of each year this Agreement is in effect. Check is to be made payable to the City Treasurer and mailed to the:

Office of Real Estate Services  
Economic Development Division  
Madison Municipal Building  
215 Martin Luther King, Jr. Boulevard  
P.O. Box 2983  
Madison, Wisconsin 53701-2983

6. By acceptance of the privilege, the Permittee shall waive the right to contest in any manner the validity of Section 66.0425, Wis. Stats., and Sec. 10.31 MGO.
7. The City agrees that the Permittee may terminate this Agreement at any time upon written notice to City, following removal and proper abandonment of the subject encroachment.
8. This Agreement shall be binding upon the Permittee's, successors and assigns, and shall be recorded in the office of the Dane County Register of Deeds. In the event of the sale of the Property, the City shall be given notice of the change of ownership in accordance with the provisions of Paragraph 19.
9. In the performance of the services under this Agreement, the Permittee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. The Permittee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sex or national origin.

10. The Permittee agrees to maintain adequate structures or signs at the well site, so that the Wells are clearly marked and visible above ground level and mounted flush with the surface so that they are not damaged by mowing or plowing operations, and insure that the Wells do not become overgrown with vegetation.
11. The Permittee agrees that all sampling, testing and maintenance of the well shall not impede traffic or cause any type of obstruction within public lands. The location of the Wells is subject to the location of all existing public and private utilities.
12. The Permittee shall comply with NR141 standards of the Wisconsin Administrative Code in regards to the Wells installation and abandonment. Wells located in public lands are considered temporary structures and the Permittee is responsible for insuring their subsequent abandonment.
13. Drill cuttings and purge water associated with the Wells shall not be stored within public lands.
14. The Permittee agrees to notify the City of Madison Parks Superintendent prior to accessing the Wells for any activity associated with drilling, maintenance and/or monitoring.
15. The Permittee agrees that City shall not be held responsible for any damage to the Wells or other equipment associated with the Permittee's monitoring operation that may be caused by City, its employees, contractors, or others.
16. Prior to any excavation or drilling, the Permittee agrees to contact Diggers Hotline to secure and maintain the services of a competent locating service. That membership in Diggers Hotline and contracting of a locating service shall be continuous and uninterrupted throughout the term of this Agreement.
17. The Permittee shall repair any damage to the lands surrounding the Wells.
18. The Permittee shall share the results of all monitoring well tests with the City in a timely manner after analysis and conclusions are completed.
19. All notices to be given under the terms of this agreement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the City:	Economic Development Division Office of Real Estate Services Madison Municipal Building 215 Martin Luther King, Jr. Boulevard P. O. Box 2983 Madison, WI 53701-2983
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For the Permittee:	Stop-N-Go of Madison, Inc. 2934 Fish Hatchery Road Madison, WI 53713
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Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF MADISON, a Wisconsin municipal corporation**

By: \_\_\_\_\_  
Donald S. Marx, Manager  
Office of Real Estate Services

State of Wisconsin )  
  )ss.  
County of Dane        )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2014, the above named Donald S. Marx, Manager, Office of Real Estate Services of the City of Madison, and acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin

\_\_\_\_\_  
(Print or Type Name)  
My Commission: \_\_\_\_\_

Approved:

Approved as to form:

\_\_\_\_\_  
Finance Director, David Schmiedicke

\_\_\_\_\_  
City Attorney, Michael May

