

File OSU – 7101

To be recorded with Deed – ORC §317.08

**First Amendment of the Environmental Covenant Entered into with the Ohio Environmental Protection Agency and Recorded June 28, 2012**

This document (“First Amendment”) is an amendment of the “Environmental Covenant, Ohio Water Pollution Control Loan Fund, Water Resource Restoration Sponsor Program, Lower Olentangy River Watershed, Columbus 5<sup>th</sup> Avenue Dam Removal and Riparian Restoration Project” recorded June 28, 2012 in the Franklin County Recorder’s Office as Instrument No. 201206280092869 (“Covenant”), and is entered into as of the last date of signature below by and among the STATE OF OHIO, acting by and through the Department of Administrative Services (“Owner”), THE OHIO STATE UNIVERSITY, an instrumentality of the State of Ohio (“OSU”) and a Holder, the CITY OF COLUMBUS, an Ohio municipal corporation (“City”) and a Holder, and the STATE OF OHIO, acting by and through the Ohio Environmental Protection Agency (“Ohio EPA”), a non-holding party, under the following circumstances:

RECITALS

- A. The Covenant is tied to Water Pollution Control Loan Fund #WR390274-0150.
- B. Pursuant to section 9 of the Covenant, specific Activity and Use Limitations were placed upon an approximately 36.578 acre tract of real property and a 1.723 acre tract of real property (collectively the “Property”).
- C. Section 9 of the Covenant also provided “[n]otwithstanding these activity and use limitations, the Parties hereby acknowledge and contemplate that because of the Property’s location and its continued use as a university campus, that it will be necessary to propose exceptions to these activity and use limitations to accommodate the needs and mission of OSU in a manner to protect the Conservation Values that this Covenant seeks to maintain. If needs arise to make exceptions to these activity and use limitations, the Parties will review and approve of such exceptions in accordance with Section 10 of this Covenant.”

- D. Section 10 of the Covenant, entitled "Process to Approve Specific Exceptions", provides that "Holder OSU may propose specific and discrete projects or easements as exceptions to the activity and use limitations set forth in Section 9 of this Covenant, where necessary to support [OSU's] mission as a university campus. . . . Holder OSU shall request approval of its proposed project by submitting to Ohio EPA preliminary or draft construction drawings and specifications of the project."
- E. OSU has two planned installations within the Property that require exceptions to the Activity and Use Limitations of the Covenant and, in accordance with Section 10 of the Covenant, has submitted to Ohio EPA general drawings and specifications for the projects on February 16, 2015.
- F. On February 16, 2015, OSU provided Ohio EPA copies of the United States Army Corps of Engineers permit applications that have been submitted for the two planned installations and will proceed with such installations only after permit approval. On March 19, 2015, Ohio EPA approved OSU's plans for the two installations, and Owner, OSU, City, and Ohio EPA now desire to confirm that the installations shall be permitted exceptions to the activity and use limitations set forth in the Covenant.

NOW THEREFORE, the parties to this First Amendment hereby agree to amend the Covenant as follows:

1. Temporary Stream Gage. The temporary placement of a United States Geological Survey stream gage into the Olentangy River and along its banks at the Property (the "Temporary USGS Stream Gage") for several months during 2015 in accordance with Ohio EPA approved plans is hereby recognized as a permitted exception to the activity and use limitations set forth in the Covenant. The installation of the Temporary USGS Stream Gage is necessary as part of the City's levee/floodwall emergency action plan and the deficiencies currently found with respect to missing Olentangy River data for the National Weather Service's forecasting system. Significantly, this Temporary USGS Stream Gage will also allow the data's use for OSU projects (science, biology, water, etc.) and classes, and its data will be valuable to OSU's ongoing river/wetland monitoring efforts. In addition, OSU's Department of Public Safety desires the data as it will significantly improve OSU's ability to plan for/anticipate major flooding events.

2. Water Quality Station. The relocation of OSU's water quality monitoring station onto one of the piers of the Herrick Road Bridge and associated placement of a collection tube to extend slightly into the Olentangy River (collectively "Water Quality Station") in accordance with Ohio EPA approved plans, is hereby recognized as a permitted exception to the activity and use limitations set forth in the Covenant. The Water Quality Station will be used by OSU's Wilma H. Schiermeier Olentangy River Wetland Research Park and will allow for coordinated water-chemistry and hydrologic data to be collected and recorded by the Temporary USGS Stream Gage and other planned USGS stream gages.

3. Location of Installations. Exhibit B to the Covenant is hereby deleted in its entirety and replaced with Exhibit B Addendum 1 attached to this First Amendment, which now includes the specific locations of the Temporary USGS Stream Gage and the Water Quality Station.

4. Miscellaneous. The recitals portion of this First Amendment is hereby incorporated by reference. No other terms of the Covenant are amended herein. The City shall have no obligations related to the two planned installations including, but not limited to, their installation, maintenance, repair, and removal. In the event restoration of the Property is required under the Covenant as a result of the installation, maintenance, repair or removal of the installations, the City shall have no obligations to restore the Property. OSU shall be, or shall cause those parties who are making the two installations approved hereunder, to be responsible for the Temporary USGS Stream Gage and the Water Quality Station, including, but not limited to, their installation, maintenance, repair, and removal. OSU shall use best efforts to (1) ensure that the placement of the two planned installations is conducted to avoid or minimize adverse impacts to the Conservation Values of the Property, and (2) restore or cause the restoration of the Property, after the placement of each installation, to its former condition as expeditiously and as reasonably practicable under the circumstances, but subject to the installations approved hereunder.

*[The remainder of this page is intentionally blank; signatures, acknowledgements and addendum to follow]*

IN WITNESS WHEREOF, the parties to this First Amendment hereby agree to the foregoing as of the date first above written:

“Owner”

STATE OF OHIO, acting by and through the Ohio Department of Administrative Services

By: \_\_\_\_\_ Date \_\_\_\_\_  
Director of Administrative Services  
or Signatory Designee  
Statutory Agent, O.R.C 123.01 (A)(12)

Print Name: \_\_\_\_\_

ACKNOWLEDGMENT

State of Ohio  
ss:  
Franklin County

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me personally appeared \_\_\_\_\_ of the Department of Administrative Services, who acknowledged that the foregoing document is being executed for and on behalf of the Department of Administrative Services, acting on behalf of the State of Ohio, that the same is his/her own and the Department of Administrative Services’ voluntary act and deed, and that he/she is duly authorized to enter into said document for and on behalf of the Department of Administrative Services.

\_\_\_\_\_  
Notary Public, State of Ohio  
My Commission Expires:

[The remainder of this page intentionally blank]

“OSU”

THE OHIO STATE UNIVERSITY, an instrumentality of the State of Ohio

By: \_\_\_\_\_  
Signature Date

Print Name of Signatory \_\_\_\_\_

ACKNOWLEDGMENT

State of Ohio  
ss:  
Franklin County

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, a duly authorized representative of The Ohio State University who acknowledged to me that he/she did execute the foregoing instrument on behalf of The Ohio State University.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
Notary Public, State of Ohio  
My Commission Expires:

[The remainder of this page intentionally blank]

“City”

CITY OF COLUMBUS, an Ohio municipal corporation

By: \_\_\_\_\_  
Signature Date

Print Name of Signatory \_\_\_\_\_

ACKNOWLEDGMENT

State of Ohio  
ss:  
Franklin County

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, a duly authorized representative of the City of Columbus who acknowledged to me that he/she did execute the foregoing instrument on behalf of The City of Columbus.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
Notary Public, State of Ohio  
My Commission Expires:

[The remainder of this page intentionally blank]

“Ohio EPA”

STATE OF OHIO, acting by and through the Ohio Environmental Protection Agency

By: \_\_\_\_\_ Date \_\_\_\_\_  
Craig W. Butler

ACKNOWLEDGMENT

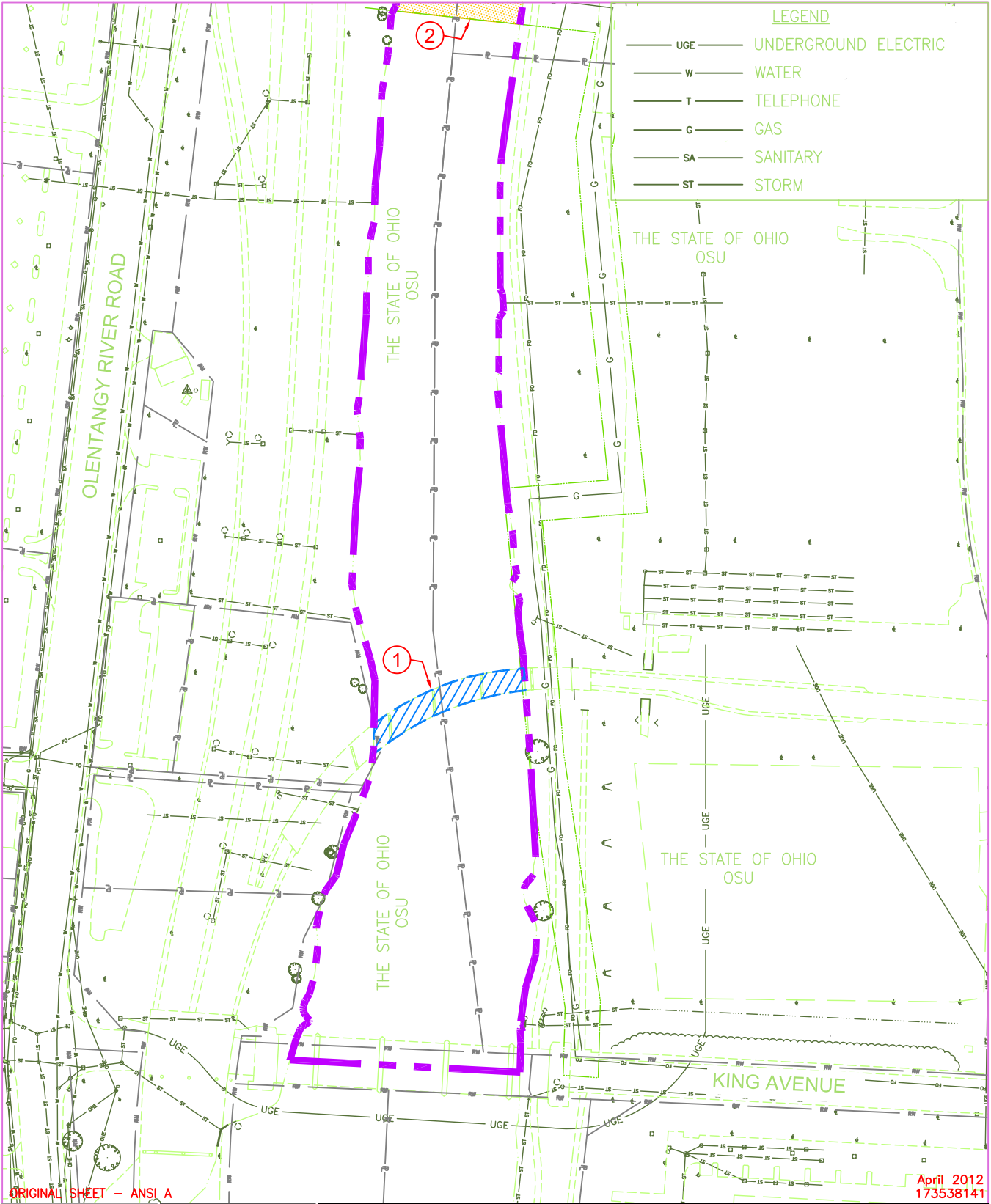
State of Ohio  
ss:  
Franklin County

Before me, a notary public, in and for said county and state, personally appeared, Craig W. Butler, the Director of the Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of the Ohio EPA, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public, State of Ohio  
My Commission Expires:

This Instrument Prepared By:  
Kristin L. Watt  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, Ohio 43215

L:\PARE\_SPACE\_PLANNING\PROJECTS\_STUDIES\ONE OSU FRAMEWORK -- 2009\03\_RIVER CORRIDOR\5TH AVENUE DAM\EASEMENTS\_COVENANTS\REFERENCE DOCS FOR NANCY\8.5.11\_EXHIBITS\_PARE1.DWG  
 5/31/2012 1:52 PM



ORIGINAL SHEET - ANSI A

April 2012  
 173538141

Base Drawings by: **Stantec**



**Stantec**

1500 Lake Shore Dr., Suite 100  
 Columbus, Ohio  
 43204

614.486.4383  
 614.486.4387

PAGE 1

OSU/PARE LEGEND	
	COVENANT AREA
	OSU UTILITIES
	STRUCTURES & ROADS
	OTHER UTILITIES

Client/Project

City of Columbus DOSD  
 CIP 650706 5th Avenue Dam  
 Removal

Figure No.

2.0

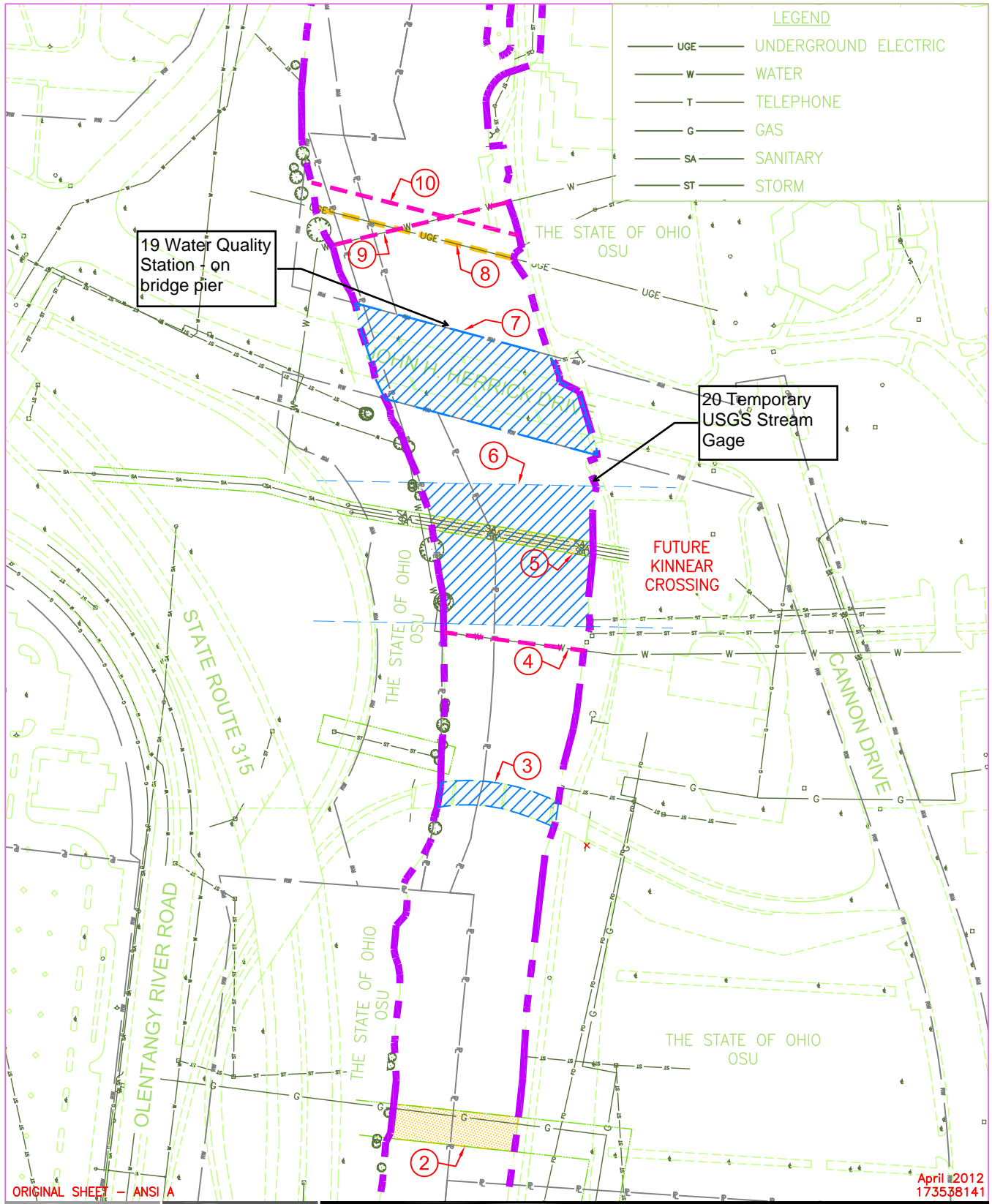
Title

Ex. Parcel & Utility Map

EXHIBIT B Addendum 1



L:\PARE\_SPACE\_PLANNING\PROJECTS\_STUDIES\ONE\_OSU\_FRAMEWORK - 2009\03\_RIVER\_CORRIDOR\5TH AVENUE DAM\EASEMENTS\_COVENANTS\REFERENCE DOCS FOR NANCY\8.5\_11\_EXHIBITS\_PARE1.DWG  
 5/31/2012 1:56 PM



ORIGINAL SHEET - ANSI A

April 2012  
 173538141

Base Drawings by:

**Stantec**  
 1500 Lake Shore Dr., Suite 100  
 Columbus, Ohio  
 43204

614.486.4383  
 614.486.4387



PAGE 2

OSU/PARE LEGEND	
	COVENANT AREA
	OSU UTILITIES
	STRUCTURES & ROADS
	OTHER UTILITIES

Client/Project

City of Columbus DOSD  
 CIP 650706 5th Avenue Dam  
 Removal

Figure No.

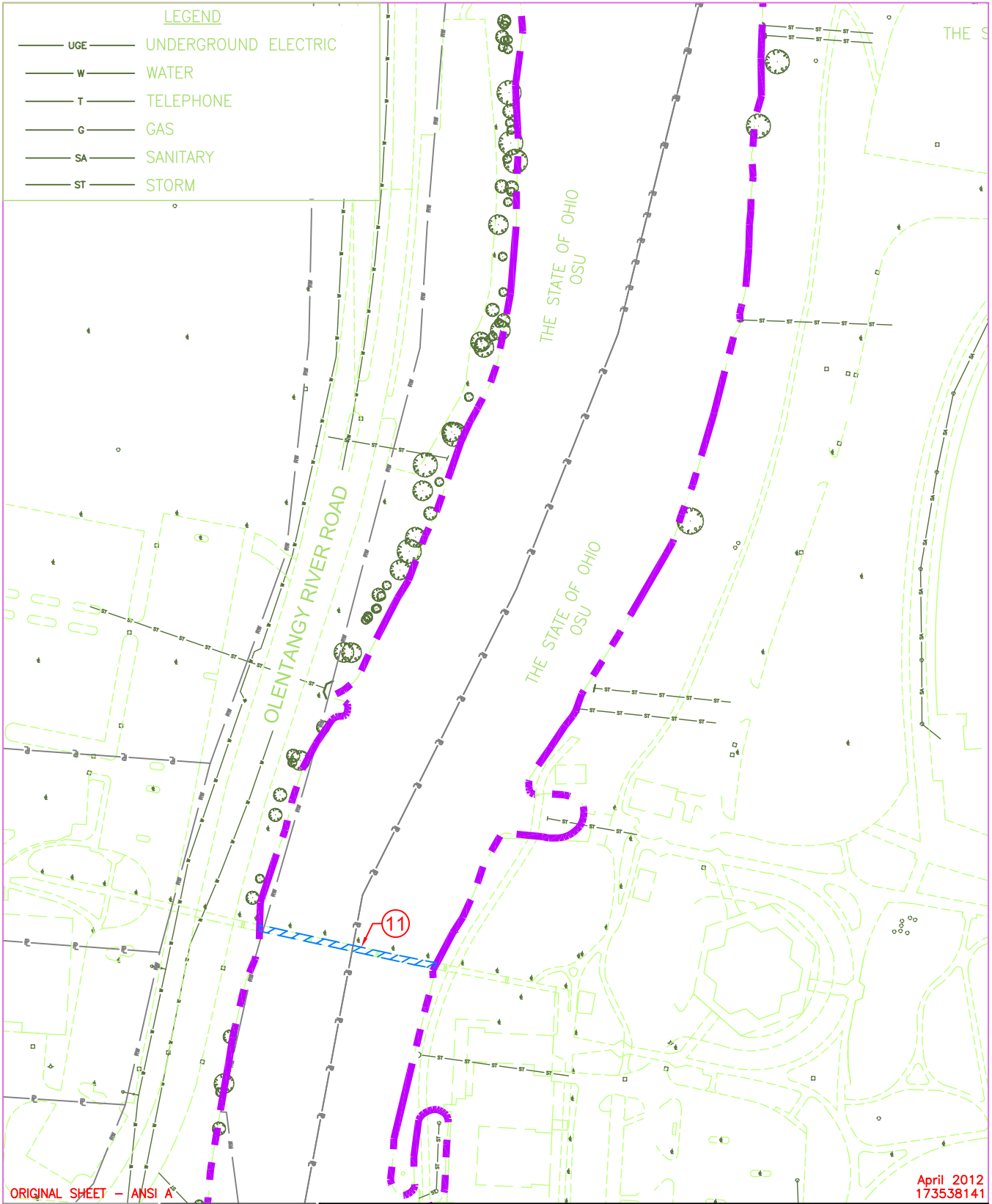
3.0

Title

Ex. Parcel & Utility Map

EXHIBIT B Addendum 1

L:\PARE\SPACE\_PLANNING\PROJECTS\ONE OSU FRAMEWORK - 2009\03\_RIVER CORRIDOR\5TH AVENUE DAM\EASEMENTS\_COVENANTS\REFERENCE DOCS FOR NANCY\8.5\_11\_EXHIBITS\_PARE1.DWG  
 5/31/2012 2:00 PM



ORIGINAL SHEET - ANSI A

April 2012  
 173538141

Base Drawings by: **Stantec**

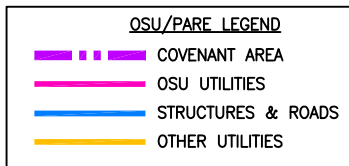
1500 Lake Shore Dr., Suite 100  
 Columbus, Ohio  
 43204

614.486.4383  
 614.486.4387



**Stantec**

PAGE 3



Client/Project

City of Columbus DOSD  
 CIP 650706 5th Avenue Dam  
 Removal

Figure No.

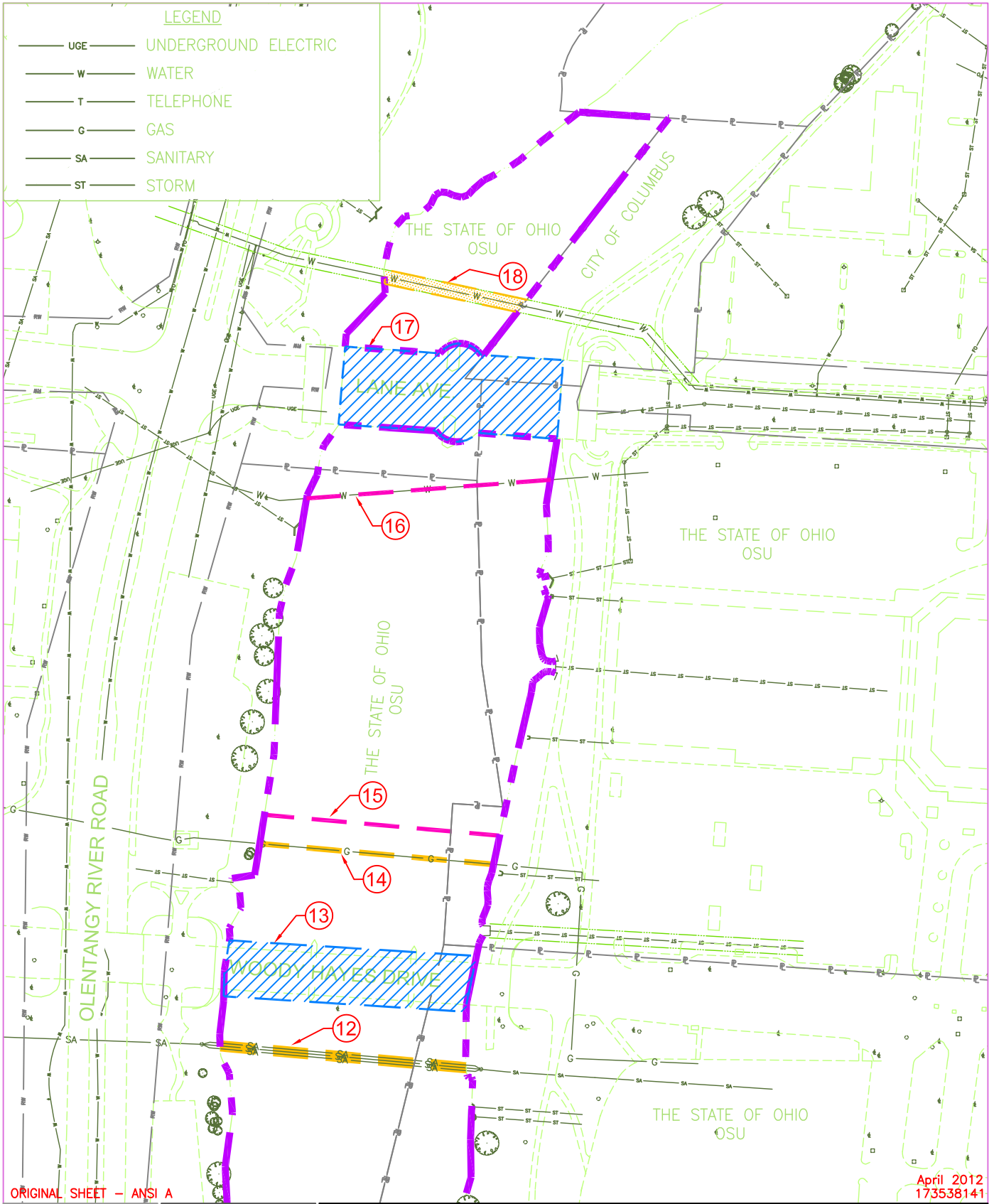
4.0

Title

**Ex. Parcel & Utility Map**

**EXHIBIT B** Addendum 1

L:\PARE\SPACE\_PLANNING\PROJECTS\_STUDIES\ONE\_OSU\_FRAMEWORK - 2009\03\_RIVER\_CORRIDOR\5TH AVENUE DAM\EASEMENTS\_COVENANTS\_REFERENCE\_DOCS FOR NANCY\8.5\_11\_EXHIBITS\_PARE1.DWG  
5/31/2012 1:32 PM



ORIGINAL SHEET - ANSI A

April 2012  
173538141

Base Drawings by:

**Stantec**  
1500 Lake Shore Dr., Suite 100  
Columbus, Ohio  
43204

614.486.4383  
614.486.4387

PAGE 4

Client/Project

City of Columbus DOD  
CIP 650706 5th Avenue Dam  
Removal

Figure No.

5.0

Title

Ex. Parcel & Utility Map

EXHIBIT B Addendum 1



**Stantec**

Key	Description	Holder/Owner	Type	Purpose	Notes
1	315 Off Ramp to Medical Center Drive	ODOT	Easement in perpetuity	Freeway access	No right of entry for OSU
2	50' Utility easement	Columbia Gas	Easement, 25 year	Gas distribution	
3	315 On Ramp from 12th Avenue	ODOT	Easement in perpetuity	Freeway access	No right of entry for OSU
4	Water Line	OSU	Utility Line	Water distribution	OSU owned utility, no easement required
5	Sanitary Sewer Trunk Line	City of Columbus	Easement, 25 year	Sanitary sewer	
6	Future Kinnear Road Bridge (TBD)	TBD	TBD	Improve regional connectivity	future crossing - alignment and width are approximate.
7	John Herrick Drive Bridge	OSU	Existing Bridge	Road crossing	OSU owned bridge, no easement required
8	Electric Line	AEP	Easement, 25 year	Electrical distribution	
9	Water Line	OSU	Utility Line	Water distribution	OSU owned utility, no easement required
10	Future Electric Line (Late Summer 2012)	OSU	Utility Line	Electrical distribution	OSU owned utility, no easement required
11	Drake Union Pedestrian Bridge	OSU	Existing bridge	Pedestrian crossing	OSU owned bridge, no easement required
12	Sanitary Sewer Trunk Line	City of Columbus	Easement, 25 year	Sanitary sewer	
13	Woody Hayes Drive Bridge	OSU	Existing Bridge	Road crossing	OSU owned bridge, no easement required
14	Gas Line	Columbia Gas	Easement, 25 year	Gas distribution	
15	Future Gas Line (End of 2012)	OSU	Utility Line	Gas distribution	OSU owned utility, no easement required
16	Water Line	OSU	Utility Line	Water distribution	OSU owned utility, no easement required
17	Lane Avenue Bridge	Franklin Co.	Perpetual license	River Crossing	
18	Water Line	City of Columbus	Easement, 25 year	Water distribution	
19	Temporary USGS Stream Gage	USGS	License	Water Level Readings	
20	Water Quality Station	OSU	Water Quality Equipment	Water Quality Readings	Attachment to pier of OSU Owned Bridge (Key 7)