



**US Army Corps  
of Engineers** ®  
Fort Worth District

# Public Notice

Section 408 Request ID #: 408-SWF-2015-0001

Date issued: July 2, 2019

Close of comment period: August 5, 2019

USACE Point of Contact: Jason Story

## **REQUEST TO ALTER A U.S. ARMY CORPS OF ENGINEERS FEDERALLY AUTHORIZED CIVIL WORKS PROJECT UNDER 33 USC 408 (SECTION 408)**

**TITLE:** Section 408 Request ID # 408-SWF-2015-0001, BNSF Railroad Bridge.

**SUBJECT:** Request for a Section 408 permission to alter the Fort Worth Floodway, a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project. Written comments are being solicited from anyone having an interest in this proposed alteration. Comments will become part of the USACE administrative record and will be considered in determining whether to approve the proposed alteration. Comments supporting, opposing, or identifying concerns that should be considered by the USACE in its decision process are all welcome. Issuance of this notice does not imply USACE endorsement of the proposed alteration as described.

**REQUESTER:** BNSF Railway Company (BNSF).

**LOCATION:** The proposed project is located north and east of the intersection of East Northside Drive and Samuels Avenue in Fort Worth, Texas 76102. The proposed project is an existing railroad bridge over the West Fork Trinity River.

**NON-FEDERAL SPONSOR:** Tarrant Regional Water District.

**LOCATION MAP(S)/DRAWING(S):** Figure 1.

**DESCRIPTION OF THE PROPOSED ALTERATION:** The proposed project consists of alterations within the Fort Worth Floodway. BNSF proposes to replace the existing railroad bridge, spanning the West Fork of the Trinity River at milepost 348.570, including a section of earthen embankment. The new structures will include capacity for two tracks. The proposed project will include pedestrian canopies over the trail that runs under the bridge. The proposed project will consist of replacing the existing overwater spans of the existing through-truss bridge, the approaches, and associated features spanning the West Fork of the Trinity River. One of the new structures will be constructed on what is the same alignment as the existing bridge, the other approximately 26 feet to the east. Foundation locations and span lengths will be

coordinated to avoid conflicting with the existing bridge, which must remain in service during the construction of the new eastern structure.

**REGULATORY AUTHORITY:** This request will be reviewed pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408). A requestor has the responsibility to acquire other authorizations required by federal, state, and local laws or regulations, including any required permits from the USACE Regulatory Program. An approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

**EVALUATION:** The decision whether to grant the request for the alteration under Section 408 is based on several factors which are outlined in Engineer Circular 1165-2-220. The benefits which reasonably may be expected to accrue from the proposed alteration must be balanced against its reasonably foreseeable detriments. Review of the proposed alteration will be reviewed by a USACE technical review team considering the following factors:

**1. *Impacts to the Usefulness of the USACE Project Determination.*** The review team will determine if the proposed alteration would limit the ability of the federally authorized project to function as authorized, or would compromise or change any authorized project conditions, purposes or outputs.

**2. *Injurious to the Public Interest Determination.*** The review team will determine the probable impacts of the proposed alteration, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation.

**3. *Environmental Compliance.*** A decision on a Section 408 request is a federal action subject to the National Environmental Policy Act (NEPA) and other applicable federal environmental and cultural resources compliance requirements.

**THREATENED AND ENDANGERED SPECIES:** The USACE has reviewed an official list of species protected under the Endangered Species Act, and our initial review indicates the proposed alteration would have no effect to species listed by the United States Fish and Wildlife Service as threatened or endangered within the action area for the Section 408 jurisdiction.

**HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES:** The proposed undertaking of removal of a historic bridge will have an adverse effect on the resource. USACE, in consultation with BNSF Railway, Tarrant Regional Water District, the Texas Historical Commission, the City of Fort Worth, Historic Fort Worth, and the Historic Bridge Foundation have developed a plan for the reuse of the historic bridge that minimizes the adverse effect as stipulated in the attached draft Programmatic

Agreement. USACE seeks comments from the public on the draft agreement and ways to further minimize or mitigate adverse effects. Additionally, excavation during construction has the potential to impact unknown buried historic archeological resources. Archeological monitoring will be conducted in all areas where excavation exceeds previous ground disturbance and appropriate action taken if historic resources are effected.

Attachment 1. Draft Programmatic Agreement under Section 106 of the National Historic Preservation Act.

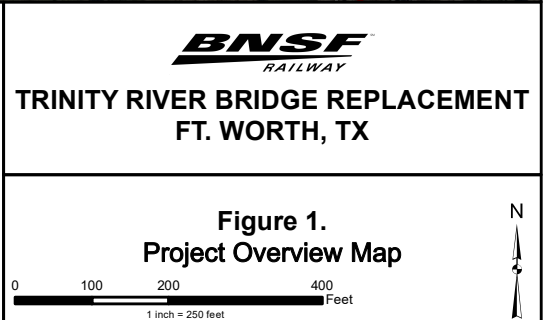
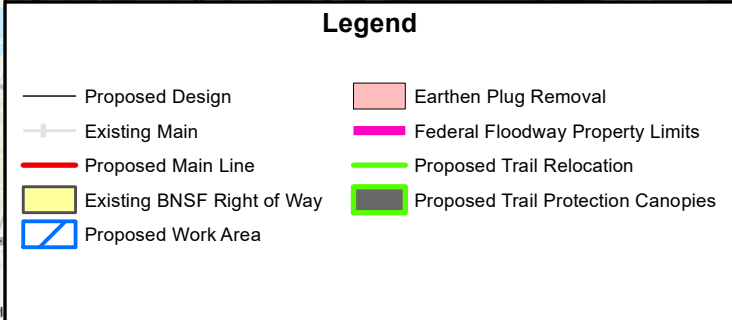
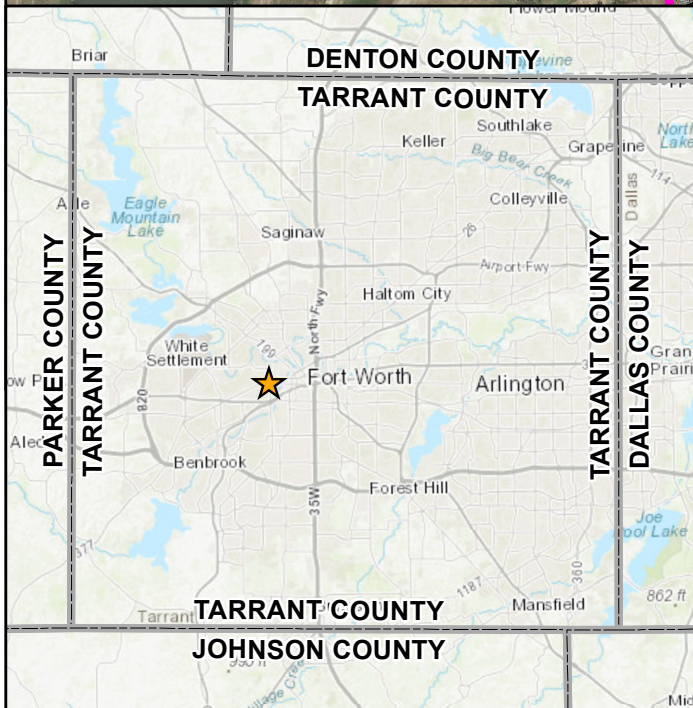
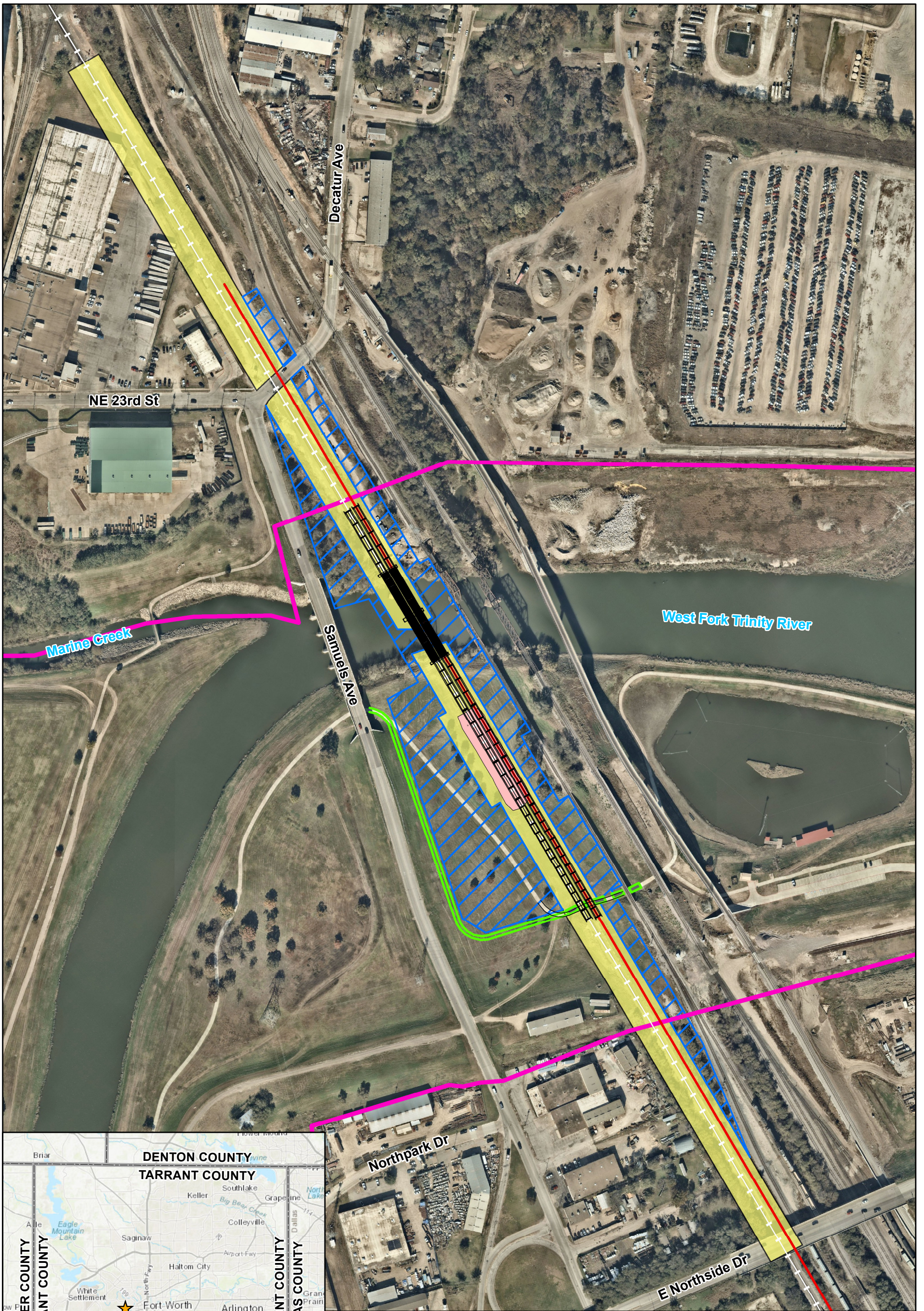
**SOLICITATION OF COMMENTS:** The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed alteration. Comments received will be considered by the USACE to determine whether to issue, modify, condition, or deny a permission for this proposed alteration.

It should be noted that materials submitted as part of the Section 408 request become part of the public record and are available to the public under the Freedom of Information Act (FOIA). Individuals may submit a written request to obtain materials under FOIA or make an appointment to view the project file at the Fort Worth District, Corps of Engineers, Office of Counsel.

It is presumed that all parties receiving this notice will wish to respond to this public notice; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed alteration as described herein.

**CLOSE OF COMMENT PERIOD:** Written comments on the proposed alteration must reach this office on or before the close of the comment period. Comments must reference the Section 408 Request ID # and project name. Comments and requests for additional information should be submitted to CESWF-PEC-CI, ATTN: Mr. Jason Story, P.O. Box 17300 Fort Worth, TX 76102-0300. Email inquiries should be directed to [jason.e.story@usace.army.mil](mailto:jason.e.story@usace.army.mil). Telephone inquiries should be directed to Mr. Jason Story, at (817) 886-1852. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available. For more information on Section 408, visit the Fort Worth District Section 408 webpage at <https://www.swf.usace.army.mil/Missions/Section-408/>.







**PROGRAMMATIC AGREEMENT**

**BETWEEN THE UNITED STATES ARMY CORPS OF ENGINEERS,  
TEXAS STATE HISTORIC PRESERVATION OFFICER,  
TARRANT REGIONAL WATER DISTRICT,  
AND BNSF RAILWAY COMPANY**

**REGARDING**

**PERMISSIONS AND PERMITS TO ALTER THE FORT WORTH FLOODWAY  
FORT WORTH, TARRANT COUNTY, TEXAS**

**SWF-2015-00019 and 408-SWF-2015-0001**

**WHEREAS**, the United States Army Corps of Engineers (USACE) is the federal agency responsible for granting permissions to alter the Fort Worth Floodway pursuant to 33 United States Code (U.S.C.) Section 408, authorized in Section 14 of the Rivers and Harbors Appropriation Act of 1899; and

**WHEREAS**, the USACE also grants permits pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344; and

**WHEREAS**, the issuance of 404 Permits and/or 408 Permissions constitute undertakings under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. Section 306108) and its implementing regulations at Title 36 Code of Federal Regulations (CFR) Part 800; and

**WHEREAS**, the issuance of a 404 Permit and/or a 408 Permission will result in a Bridge Replacement Project by the BNSF Railway Company (BNSF) consisting of replacing existing over-water spans of the through-truss bridge, the approaches, and associated features spanning the West Fork of the Trinity River at milepost (MP) 348.570 (the Bridge), including a section of earthen embankment, near Samuels Avenue in Fort Worth, and replacing it with a new double track bridge crossing that will include pedestrian canopies over the trail that runs under the bridge as shown in Attachment A; and

**WHEREAS**, a future 404 Permit and/or a 408 Permission will result in Tarrant Regional Water District (TRWD) relocating the existing Bridge for use as a pedestrian/vehicular crossing; and

**WHEREAS**, the USACE has defined the Bridge Replacement Project Area of Potential Effects (APE) as one-quarter mile radius around the Bridge; and

**WHEREAS**, the Bridge is the westernmost bridge of three truss bridges over the West Fork of the Trinity River, and each is individually eligible for listing in the National Register of Historic Places (NRHP) under Criteria A and C and all are within the APE; and

**WHEREAS**, the Fort Worth Floodway is eligible for listing in the NRHP and part of it is within the APE; and

**WHEREAS**, the USACE, in consultation with the Texas Historical Commission (THC), has determined that the USACE issuance of permissions/permits resulting in the BNSF Bridge Replacement Project will have a **direct adverse effect** on the Bridge and an indirect **adverse visual effect** on the remaining two adjacent historic bridges within the Bridge Replacement Project APE; and

**WHEREAS**, the USACE, in consultation with the THC, has determined that the USACE issuance of permissions/permits resulting in TRWD's reuse of the Bridge will minimize adverse effects when relocated in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties - Standards for Rehabilitation (Standards) as codified in 36 CFR Part 68; and

**WHEREAS**, because the issuance of multiple permits/permissions constitutes multiple undertakings over a period of time, with one or more undertakings currently undefined, the USACE has determined that the development of a Programmatic Agreement (PA) is warranted in accordance with 36 CFR Part 800.14(b)(1)(v); and

**WHEREAS**, pursuant to 36 CFR Part 800.6(c)(2)(iii), BNSF and TRWD are Signatories to this agreement because of their roles and responsibilities in the undertakings; and

**WHEREAS**, pursuant to 36 CFR Part 800, the USACE has consulted with the City of Fort Worth, Historic Fort Worth, and the Historic Bridge Foundation regarding the undertakings and they are invited to concur in this agreement; and

**WHEREAS**, in accordance with 36 CFR Part 800.6(a)(1)(i)(C), the USACE has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and invited the ACHP to participate, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR Part 800.6(a)(1)(iii);

**NOW, THEREFORE**, the USACE, THC, TRWD, and BNSF agree that the undertakings shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertakings on historic properties:

## **STIPULATIONS**

The USACE shall ensure that the following measures are carried out:

### **I. BNSF BRIDGE REPLACEMENT PROJECT MITIGATION**

- A. Prior to relocation, BNSF shall record the Bridge in its existing location with a minimum of ten large-format photographs. Documentation will establish the existing condition of the Bridge within four years before relocation.

1. Views shall include the bridge and the context of the other two adjacent bridges.
  2. A short narrative on the history and architectural description of the Bridge shall also be included.
  3. All negatives and contact prints shall be archivally processed and labeled.
  4. Copies of the documentation shall be offered to all consulting parties.
  5. Original negatives and one set of contact prints shall be provided to TRWD.
- B. BNSF shall fund up to \$500,000 for the relocation of the Bridge to a temporary location mutually agreed upon by BNSF and TRWD. Should relocation costs exceed \$500,000, TRWD shall pay the additional costs. Should TRWD decide not to pay that additional cost, they shall notify all consulting parties of their decision. Upon receipt of such notification from TRWD, BNSF shall then notify all consulting parties of their intent to remove and dispose of the Bridge and mitigate for its loss.
- C. If the Bridge is removed by BNSF, then BNSF shall be responsible for the following mitigation:
1. Complete National Park Service Historic American Engineering Record Documentation (HAER) Level II of the Bridge using material developed in Stipulation I.A. Documentation shall be submitted to the USACE within 12 months of BNSF's notification to all consulting parties. THC and USACE shall have 30 calendar days to comment on the draft documentation package.
    - i. Drawings: Selected existing drawings shall be photographed with large-format negatives and printed in contact sheets. A maximum of 20 sheets of drawings shall be included. The drawings shall also be provided via electronic media.
    - ii. Photographs: Contact prints and large-format negatives completed in Stipulation I.A.
    - iii. Written data: Narrative history completed in Stipulation I.A.
  2. Develop a detailed historic context on the relationship of the Bridge to its two historic counterparts, the relationship of the three bridges to the Fort Worth Stockyards, and the role of the Stockyards and railroads in the development of Fort Worth, expanded from material developed in Stipulation I.A. The report shall include illustrations and photography of the Bridge and its two historic counterparts. Photographs of the other two bridges not owned by BNSF shall be limited to views available from public access and land owned by TRWD. BNSF shall complete the draft historic context within 24 months of their notice to consulting parties under Stipulation I.B. THC and USACE shall have 30 calendar days to comment on the draft historic context. The final historic context shall be perfect bound and one copy provided to each consulting party. One copy shall also be placed in up to three area libraries, to be specified by the USACE at time of publication.
  3. Completion of Stipulation I.C.1 shall fulfill all terms of this agreement should the Bridge not be relocated.
- D. If the Bridge is relocated, it shall be placed on temporary supports designed to last the duration of this agreement.
- E. When the relocation is complete, BNSF shall take digital photographs of the Bridge and forward to all consulting parties with an e-mail notification that the relocation is

complete.

- F. Completion of Stipulation I. fulfills all BNSF's compliance obligations under this agreement and BNSF relinquishes ownership, rights, and responsibilities in regard to the Bridge in perpetuity.

## **II. TRWD MAINTENANCE AND PERMANENT RELOCATION OF THE BRIDGE**

- A. Once the Bridge is relocated to the temporary location, TRWD shall maintain the Bridge in the state it was received for the duration of this agreement.
- B. TRWD shall develop a proposal for the permanent relocation (the Proposal) of the Bridge within ten years of the signing of this agreement. The Proposal shall define the project APE, identify historic properties within the APE, and meet the Standards to avoid direct adverse effects to the Bridge and indirect adverse visual effects to historic properties within the APE.
  - 1. The Proposal shall be distributed to all parties to this agreement via email.
  - 2. The USACE shall have 30 calendar days to determine if the Proposal meets the Standards, and the THC shall have 30 calendar days to respond to the USACE determination.
    - a) If the USACE and THC concur that the Proposal meets the Standards, the relocation may proceed.
    - b) If the Proposal does not meet the Standards, all parties to this agreement except BNSF shall consult on measures to minimize or mitigate the adverse effect.
- C. If the Bridge is not relocated from its temporary location by TRWD to a permanent location during the term of this agreement, it will constitute an adverse effect to the Bridge. TRWD shall notify all consulting parties of the adverse effect except for BNSF.
  - 1. TRWD shall mitigate the adverse effect by completing a National Park Service HAER Documentation Level II of the Bridge using material developed by BNSF in Stipulation I.A within 12 months of the notification of consulting parties. The documentation shall be revised until it is accepted by the Library of Congress and placed in the HAER collection.
  - 2. Documentation shall be the same as that detailed in Stipulation I.C.1. and I.C.2.

## **III. DURATION**

This PA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the USACE may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation VI.

## **IV. MONITORING AND REPORTING**

Bi-annually following the execution of this PA until it expires or is terminated, TRWD shall provide all parties to this PA a summary report detailing the current condition of the Bridge and work undertaken pursuant to terms of this agreement.



## **V. DISPUTE RESOLUTION**

Should any signatory to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the USACE shall consult with such party to resolve the objection. If the USACE determines that such objection cannot be resolved, the USACE will:

- A. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP for comment. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response. The USACE will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) days, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the PA, and provide them and the ACHP with a copy of such written response.
- C. The USACE's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged. The USACE will notify signatories of its decision in writing prior to implementing that portion of the undertaking subject to dispute under this stipulation. The USACE decision shall be final.

## **VI. AMENDMENTS AND NONCOMPLIANCE**

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by the signatories is filed with the ACHP.

## **VII. TERMINATION**

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the undertaking, the USACE must either (a) execute an PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The USACE shall notify the signatories as to the course of action it will pursue.

**Execution** of this PA by the USACE, THC, TRWD, and BNSF and implementation of its terms is evidence that the USACE has considered the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

JULY 1, 2019 DRAFT



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TARRANT REGIONAL WATER DISTRICT,  
AND BNSF RAILWAY COMPANY**

**REGARDING**

**PERMISSIONS AND PERMITS TO ALTER THE FORT WORTH FLOODWAY  
FORT WORTH, TARRANT COUNTY, TEXAS**

**SIGNATORY:**

**United States Army Corps of Engineers**

\_\_\_\_\_  
Kenneth N. Reed  
Colonel, U.S. Army Corps of Engineers  
Commander and District Engineer

Date: \_\_\_\_\_

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**SIGNATORY:**

**Texas State Historic Preservation Officer**

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Mark Wolfe  
Executive Director  
Texas Historical Commission

Date: \_\_\_\_\_



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**SIGNATORY:**

**BNSF Railway Company**

\_\_\_\_\_

Date: \_\_\_\_\_

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**TEXAS STATE HISTORIC PRESERVATION OFFICER**

**REGARDING**

**PERMISSIONS AND PERMITS TO ALTER THE FORT WORTH FLOODWAY  
FORT WORTH, TARRANT COUNTY, TEXAS**

**SIGNATORY:**

**Tarrant Regional Water District**

\_\_\_\_\_

Date: \_\_\_\_\_

JULY 1, 2019 DRAFT



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**REGARDING**

**PERMISSIONS AND PERMITS TO ALTER THE FORT WORTH FLOODWAY  
FORT WORTH, TARRANT COUNTY, TEXAS**

**CONCURRING PARTY:**

**City of Fort Worth**

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Murray G. Miller  
Historic Preservation Officer  
City of Fort Worth

Date: \_\_\_\_\_

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FORT WORTH, TARRANT COUNTY, TEXAS**

**CONCURRING PARTY:**

**Historic Fort Worth**

\_\_\_\_\_  
Jerre Tracy  
Executive Director  
Historic Fort Worth

Date: \_\_\_\_\_

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**PERMISSIONS AND PERMITS TO ALTER THE FORT WORTH FLOODWAY  
FORT WORTH, TARRANT COUNTY, TEXAS**

**CONCURRING PARTY:**

**Historic Bridge Foundation**

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Kitty Henderson  
Executive Director  
Historic Bridge Foundation

Date: \_\_\_\_\_