

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT,
THE TARRANT REGIONAL WATER DISTRICT,
AND
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE IMPLEMENTATION OF THE CENTRAL CITY PORTION OF THE
TRINITY RIVER VISION MASTER PLAN, FORT WORTH, TEXAS

WHEREAS, this Programmatic Agreement (PA) is entered into by and between the United States Army Corps of Engineers, Fort Worth District (USACE), the Texas Historic Preservation Officer (SHPO), and the Tarrant Regional Water District; and

WHEREAS, the definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this Agreement; and

WHEREAS, the Central City Project for flood control, ecosystem restoration, and recreation was authorized by the River and Harbor Act of 1965, Public Law 89-298; as modified by Section 116 of the Energy and Water Development Appropriations Act of 2005, Division C, Public Law 108-447; and as further modified by Section 1401 (9) and Section 1402(c) of the Water Infrastructure Improvements for the Nation Act (WIIN)/Water Resources Development Act (WRDA) of 2016, Public Law 114-332, authorized the Secretary to undertake the Central City Project as generally described in the Trinity River Master Plan, dated April, 2003, as amended; and

WHEREAS, previous compliance with the National Historic Preservation Act of 1966 (NHPA) as amended for the planned construction of the Undertaking resulted in a PA entitled *Programmatic Agreement Between the US Army Corps of Engineers, The City of Fort Worth, Texas and the Texas Historical Commission (State Historic Preservation Officer), Regarding the Implementation of the Central city Portion of the Trinity River Vision Master Plan, Fort Worth, Texas* (Original Agreement) that was executed on March 30, 2006. The term of the Original Agreement was identified as fifteen (15) years from the date of execution, which was extended until March 31, 2022, by an amendment executed March 29, 2021; and

WHEREAS, the Undertaking consists of a series of construction elements as depicted in Appendix A Figure 1, which include the Bypass Channel, Levee System, Valley storage systems (including the Riverside Oxbow Ecosystem Restoration Project), and cultural and environmental mitigation; and

WHEREAS, several of the Valley Storage sites, including the Samuels Avenue Valley Storage, Riverside Park Valley storage, Ham Branch Valley Storage, Site C, and Site H elements were constructed under the Original Agreement, which implemented Sites I and L for deposition of excavated material; and

WHEREAS, the Bypass Channel and gates, Marine Creek Channel Expansion, Samuels Lock and Dam, Marine Creek Dam, Rockwood Park Valley Storage, Rockwood Park Ecosystem, Site E, Site K, Site B, recreational features, and the Environmental Mitigation at Ham Branch Valley Storage as depicted in Figure 2 of Appendix A are the construction elements of the Central City undertaking that shall be subject to the stipulations below; and

WHEREAS, the continuance of the Undertaking beyond the expiration of the Original Agreement necessitates a new PA for Section 106 compliance. Subsequent project delays

and the reformulation of the project scope necessitate the reexamination of potential effects to historic properties; and

WHEREAS, the USACE and SHPO determined that the Undertaking has the potential to cause adverse effects to historic properties; and

WHEREAS, the USACE pursuant to Section 101 (d)(6)(B) of NHPA invited the Comanche Nation, Oklahoma, Apache Tribe of Oklahoma, Coushatta Tribe of Louisiana, Delaware Nation, Oklahoma, Tonkawa Tribe of Indians of Oklahoma, and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, and Tawakonie), Oklahoma to consult on the undertaking and to participate in this PA as concurring parties via letters submitted in March 2022; and

WHEREAS, the ___ tribes have elected to participate in the PA; and

WHEREAS, public involvement in accordance with 36 CFR § 800. 13 (c) has been provided by National Environmental Policy Act (NEPA) Public Scoping Meetings and published public notices, which are documented in the *Final Supplement No. 1 to the Final Environmental Impact Statement* and Record of Decision dated March 2008. Furthermore, a draft of this PA was available on the district's website for review and comment from March 16, 2022 to April 15, 2022; and

WHEREAS, all parties acknowledge that archaeological surveys previously conducted for this undertaking, including *Cultural Resources Assessment of Riverside Oxbow Environmental Restoration, Fort Worth, Tarrant County, Texas* (2004), *Geoarcheological Coring of the Central City Hydraulic Mitigation Areas, Fort Worth, Tarrant County, Texas* (2005), and *The Big Dig (2016)*, were satisfactory, and that additional surveys shall only be conducted for unconstructed elements should the USACE determine that it shall not conduct the undertaking as originally coordinated; and

WHEREAS, the USACE has determined that a reinvestigation of above-ground resources is necessary to determine the NRHP eligibility of structures that were less than fifty (50) years of age when the *Below the Bluff, Development at the Confluence of the West and Clear Fork of the Trinity River, 1849-1966* architectural resources study was published; and

WHEREAS, the USACE, pursuant to 36 CFR § Part 800 regulations implementing Section 106 of the National Historic Preservation Act has invited the Advisory Council on Historic Preservation (ACHP) to participate in this consultation and the ACHP has accepted/declined to participate in a letter dated _____; and

WHEREAS, the SHPO, the Tarrant Regional Water District and the USACE have been invited to be signatories to this PA; and

WHEREAS, the USACE recognizes the following entities as interested parties and has invited the Tarrant County, City of Fort Worth, The National Trust for Historic Preservation, North Fort Worth Historical Society, and City of Fort Worth Historic and Cultural Landmarks Commission to sign as concurring parties in this PA; and

NOW THEREFORE, the USACE, SHPO, and Tarrant Regional Water District agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

I. Identification, Evaluation, Effect Determination, and Resolution of Effects to Historic Properties

A. The Tarrant Regional Water District, as the Non-federal Sponsor (NFS) for the Undertaking, shall ensure that the following measures are carried out:

1. The NFS shall adhere to the Antiquities Code of Texas as applicable.

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

1. Scope of Undertaking. This PA shall be applicable to all excavation, modification of existing flood risk management infrastructure, construction of temporary access routes and/or staging areas, and any other ground disturbing activities proposed by the project. The USACE, in consultation with all parties to the PA, shall further refine the Area of Potential Effect (APE) depicted in Appendix A Figure 2 to encompass both direct and indirect effects on cultural resources.

2. Definitions. The definitions set forth in 36 CFR § 800.16 are incorporated herein by reference and apply throughout this PA.

3. Qualifications and Standards. The USACE shall ensure that all work conducted in conjunction with this PA is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716-44740; September 23, 1983), as amended, or the Secretary of the Interior's "Standards for the Treatment of Historic Properties" (36 CFR § 68). Survey methodology and reporting shall adhere to the updated standards and guidelines established by the Council of Texas Archeologists (CTA).

C. Identification and Evaluation of Historic Properties. After thirty percent (30%) construction designs are provided to the USACE cultural resources personnel, and prior to the initiation of construction, the USACE shall identify historic properties located within the direct and indirect APE. If cultural resources are identified within the APE, the USACE shall determine the resources' eligibility for the NRHP in accordance with the process described in 36 CFR § 800.4(c) and criteria established in 36 CFR § 60 and National Register Bulletin 15 "How to Apply the National Register Criteria for Evaluation" (NPS 1990). The USACE shall submit adequate documentation of these determinations to SHPO for thirty (30) day review and consultation.

1. Investigative Requirements for Above Ground Resources.

i. The indirect APE and historic context for NRHP eligibility was initially defined in the report *Below the Bluff, Development at the Confluence of the West and Clear Fork of the Trinity River, 1849-1966*. A review of this APE shall be conducted, and an updated APE shall be presented to the SHPO for thirty (30) day review.

ii. Any additional historic-age resources (i.e., those resources that were not yet fifty (50) years of age during the initial survey in 2006) shall be evaluated for NRHP eligibility by an SOI qualified historic architect or Architectural historian and submitted to the SHPO for concurrence. If comments are not received by the USACE within thirty (30) days of

receipt, the reports and associated recommendations shall be considered adequate, and the reports may be finalized. Comments received by the USACE from the SHPO shall be addressed in the final reports, which shall be provided to all consulting parties.

2. Specific Archaeological Investigative Requirements.
 - i. The USACE shall ensure development of research designs for Phase I and Phase II surveys for identifying and evaluating archaeological resources in accordance with the CTA's Guidelines for Cultural Resources Management Reports. SHPO and consulting parties shall have a thirty (30) day review and comment period for each research design. All identified cultural resources shall be evaluated for NRHP eligibility by an SOI qualified archaeologist.
- D. In consultation with the SHPO, the NFS shall seek methods to avoid or minimize any adverse effects of NFS designed, constructed, or sponsored physical infrastructure related to or necessitated by this undertaking. Designs shall be submitted to the SHPO for a 30-day review and comment period.
 1. Should the NFS and SHPO not be able to resolve issues regarding the appropriateness of the design, the dispute resolution clause of this PA shall apply.
- E. Assessment of Adverse Effects. The USACE shall evaluate the effect of the undertaking on each identified historic property in the APE, if present, in accordance with 36 CFR § 800.5(a)(1).
- F. Resolution of Adverse Effect. If the USACE determines that the undertaking shall have an adverse effect on historic properties as measured by criteria in 36 CFR § 800.5(a)(1), the USACE shall notify the SHPO and consulting parties identifying the historic properties affected and the corresponding mitigation measure as stipulated below. SHPO and consulting parties shall have thirty (30) days to comment and propose any alternative mitigation measures. If no response is received, the USACE shall assume concurrence and ensure the following stipulations are met:
 - a) For archaeological historic properties that shall be adversely affected, the USACE shall:
 - (1) Conduct Phase III data recovery for all historic properties that shall be completely destroyed by the undertaking, the extent of which shall be identified in the notification of historic properties affected.
 - (2) For historic properties that are related to themes identified in the research design, data recovery sufficient for the creation of educational materials and complete site descriptions shall be conducted. The USACE may develop educational curricula or displays for use in schools and museums, as appropriate.
 - (3) If USACE is unable to determine the NRHP eligibility of an entire archaeological site that extends outside of the APE, mitigation shall include

monitoring of construction within the vicinity and known boundaries of the site.

- (4) A report containing the results of all data recovery operations, including monitoring, shall be provided within three (3) years of the conclusion of field work.

b) For above-ground historic properties that shall be adversely affected, the USACE shall ensure:

- (1) Direct Adverse Effects (demolition). For properties that must be demolished for construction of the Undertaking, USACE shall document the property to the standards of Level II of the Historic American Building Survey/Historic American Building Survey prior to demolition of the resource. Archival copies shall be given to the SHPO and the Fort Worth Public Library.
- (2) Indirect Adverse Effects.
 - i. Within 24 months of the determination, USACE shall expand the historical context developed for identification to include an expanded architectural and social history of the affected area/community seeking input through further public outreach. Oral histories of residents shall be included (number to be determined in consultation). Hardbound copies shall be made available to all stakeholders and Signatories, property holders and placed in area libraries and university libraries statewide. Electronic copies shall also be made available.
 - ii. USACE and SHPO shall consult to determine select properties to be considered for nomination to the National Register of Historic Places with consent of the property owner. Nomination packages prepared by USACE shall be completed within 24 months of the selection.
- c) If, after consulting to resolve adverse effects, the ACHP, the USACE, SHPO, Signatories and Invited Signatories determine that further consultation shall not be productive, then any party may terminate consultation in accordance with the notification requirements and processes prescribed in 36 CFR § 800.7.

G. The plan to involve the public shall consist of making all identification and evaluation efforts available on the USACE and NFS websites for the duration of the Undertaking. The USACE shall educate the community about the survey initiative and provide methods for community feedback regarding identification of historic resources and the effect of construction on the resources primarily through the USACE project website with notices sent to stakeholders and the public. Documents shall have a 30-day review period with solicitation of feedback and USACE shall take into account all comments prior to making its determinations.

II. Unanticipated Discoveries and Post Review Changes

A. Changes in the Undertaking. If construction on the undertaking has not commenced and the USACE determines that it shall not conduct the undertaking as originally

coordinated, the USACE shall reopen consultation pursuant to Stipulation I. A-G of this PA.

B. Unanticipated Discoveries or Effects. Pursuant to 36 CFR § 800.13(b)(3), if historic properties are discovered or unanticipated effects on historic properties are found after construction on an undertaking has commenced, the USACE shall ensure the following steps are taken:

1. The Contractor shall immediately notify the USACE of an unanticipated discovery.
2. The Contracting Officer Representative shall immediately direct a *Stop Work* order within a thirty (30) meter radius of the discovery to the Contractor's Site Foreman to flag or fence off the archaeological discovery location and direct the Contractor to take measures to ensure site security. The Contractor shall not restart work in the thirty (30) meter radius area of the find until USACE, in consultation and concurrence with the Signatories and Invited Signatories of this PA, has granted clearance.
3. The Contractor shall indicate the location and date of the discovery on the project plans and shall provide the information to the USACE archaeologist.
4. Within twenty-four (24) hours of receipt of notification of the discovery, the USACE archaeologist shall:
 - a) Inspect the work site and determine the extent of the affected archaeological resource and ensure that construction activities have halted;
 - b) Ensure the area of the discovery is marked by means of flagging or fencing within the thirty (30) meter radius to protect the area from looting and vandalism; and
 - c) Notify by phone the SHPO and appropriate Tribes.
5. The USACE archaeologist shall conduct a preliminary assessment of the find to determine if the find is historic or less than fifty (50) years of age and whether the cultural material represents an archaeological site of unknown or potential significance.
 - a) If the find is determined to be less than fifty (50) years of age or is ineligible for the NRHP, the USACE archaeologist shall notify all parties of the PA of the find and its significance within one (1) week. Signatories and Invited Signatories shall have fifteen (15) calendar days from the date of notification to respond. In the event that a Signatory or Invited Signatory fails to respond within the fifteen (15) calendar days, the USACE may assume that party's concurrence with the determination. If all parties concur that the find is ineligible for the NRHP, the USACE shall notify the Contractor's Work Foreman to resume work.
 - b) If the USACE archaeologist determines the find represents an archaeological site of unknown or potential significance, the USACE shall notify all parties to

the PA within twenty-four hours (24) hours. Work shall not resume at this location until USACE has provided authorization. The USACE archaeologist shall begin a more detailed assessment of the find's significance and the potential project effects in a manner consistent with National Register Bulletin 15 "How to Apply the National Register Criteria for Evaluation" (NPS 1990). The USACE archaeologist shall dispatch an archaeological team to the site to determine the nature and extent of the archaeological deposits. USACE shall ensure that the team has full access to the required site area and be accommodated by the Contractor to complete this investigation within fourteen (14) calendar days. The USACE, Signatories and Invited Signatories may extend this fourteen (14) day calendar period one time, with the party requesting extension providing written notice to the other parties prior to the expiration date of the said fourteen (14) day calendar period. All parties must approve the requested extension and its duration in writing.

- (1) The USACE archaeologist shall notify all parties of the PA of the archaeological team's findings and recommendations.
 - (2) If the archaeological deposits are determined to be eligible for listing in the NRHP and is threatened by further project development, the USACE shall develop and execute a mitigation plan in accordance with Stipulation I. F(a) of this PA.
6. Teleconferences may be held with parties of the PA to discuss options and recommendations.
 7. Upon request, parties of the PA and their representatives shall be allowed to visit the site with the USACE archaeologist.
 8. A meeting, site visit, or teleconference may be held with parties of the PA to assess mitigation activities.
 9. If the Signatories and Invited Signatories of the PA cannot reach agreement regarding the NRHP eligibility of a site, the USACE shall seek and take into account the recommendations of the Secretary of the Interior in accordance with 36 CFR § 800.4 (c) (2). If the Signatories and Invited Signatories of the PA cannot reach agreement regarding the resolution of adverse effects, the USACE shall seek the recommendations of the ACHP in accordance with Stipulation IV. B.
- C. Unanticipated Discoveries of Human Remains and/or Funerary Objects. The USACE shall treat any human remains and/or funerary objects encountered during the undertaking in a manner guided by the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* (2007), in conjunction with the Texas Health and Safety Code Chapter 711. In the event that human remains and/or funerary objects are discovered during historic properties investigations or during construction, the USACE shall implement the following steps:
1. The Contractor shall immediately notify the USACE of an unanticipated discovery of potential human remains and/or funerary objects.
 2. The USACE shall immediately direct a *Stop Work* order within a thirty (30) meter radius of the discovery to the Contractor's Site Foreman to flag or fence off the

discovery location and direct the Contractor to take measures to ensure site security. The Contractor shall not restart work within a minimum of the thirty (30) meter radius area of the find until USACE, in consultation and concurrence with the Signatories and Invited Signatories of the PA, has granted clearance.

3. The Contractor shall indicate the location and date of the discovery on the Project plans by a notation of "sensitive avoidance area" and notify the USACE archaeologist.
4. The USACE archaeologist shall immediately notify local law enforcement and the office of the Chief Medical Examiner of the human remains and/or funerary objects. They shall be allowed access to the location of the discovery to conduct their investigation.
5. Within twenty-four (24) hours of receipt of notification of the discovery, the USACE archaeologist shall:
 - a) Inspect the work site and determine the extent of the affected human remains and/or funerary objects and ensure that construction activities have halted;
 - b) Ensure the area of the discovery is marked by means of flagging or fencing within the thirty (30) meter radius to protect the area from looting and vandalism.
 - c) Notify all parties to the PA of the discovery.
6. At all times human remains and/or funerary objects must be treated with the utmost dignity and respect. Human remains and/or associated artifacts shall be left in place and not disturbed until appropriate consultation has taken place and a site-specific plan of action has been developed.
7. If it is declared a criminal matter, the USACE archaeologist shall have no further involvement and the decision to declare it a *Cleared Site* for construction shall be made by the appropriate legal authorities.
8. If it is determined that the human remains and/or funerary objects are not Native American, USACE shall consult with the SHPO, any identified descendants and/or other interested parties regarding appropriate treatment measures, including, but not limited to, avoidance, disinterment and re-interment plans.
9. If the human remains are likely Native American, the USACE archaeologist, in consultation with Signatories and Invited Signatories of the PA, shall comprehensively evaluate the potential to avoid and/or minimize the undertaking's effects to the human remains and/or funerary objects. If no feasible avoidance plan can be developed to allow the human remains and/or funerary objects to remain in place, the USACE shall consult with interested Tribes and SHPO to engage in the development of a site-specific disinterment/re-interment plan.

III. Curation and Disposition of Recovered Materials, Records, and Reports

- A. Curation. The USACE shall ensure that all archeological materials and associated records owned by the State of Texas or NFS, which result from identification, evaluation, and treatment efforts conducted under this PA, are accessioned into a curation facility in accordance with the standards of 36 CFR § 79, the Antiquities Code of Texas (Texas Natural Resource Code, Chapter 191), the Texas Administrative Code 13 TAC §29.5, and the Council of Texas Archeologists Guidelines and Standards for Curation, except as specified in Stipulation II.C. for human remains. Archeological items and materials from privately owned lands shall be returned to the land owners upon completion of analyses required for Section 106 compliance under this PA.
- B. Reports. Archaeological survey reports shall meet CTA standards. Draft survey reports for all cultural resources investigations shall be coordinated with the Signatories of the PA. Within 30 days of receiving the approved final technical reports of investigations, monitoring, and mitigation, the USACE shall provide copies to all signatories of the PA, as well as additional copies for public distribution, with locations of archaeological sites redacted, as appropriate. All consulting parties shall withhold site location information or other data that may be of a confidential or sensitive nature pursuant to 36 CFR § 800.11(c).

IV. PA Amendments, Disputes and Termination

- A. Amendments. Any party to the PA may propose to the other parties that it be amended, whereupon the parties shall consult in accordance with 36 CFR § 800.6(c)(7) to consider such an amendment. The amendment shall be effective on the date a signed copy executed by the Signatories and Invited Signatories is filed with the ACHP.
- B. Disputes. Disputes regarding the completion of the terms of this PA shall be resolved in writing by the Signatories and Invited Signatories. If the Signatories and Invited Signatories cannot agree regarding a dispute, they may request the participation of the ACHP in resolving the dispute in accordance with the procedures outlined in 36 CFR § 800.9. Within fifteen (15) calendar days of such a request, the USACE shall forward to the ACHP, and all Signatories and Invited Signatories all documentation relevant to the dispute, including the USACE's proposed resolution of the dispute. The USACE shall take any recommendations or comments from the ACHP into account in resolving the dispute.
- C. Termination of PA. Signatories and Invited Signatories to this PA may terminate it by providing a sixty (60) calendar day notice to the other parties, provided that the parties shall consult during the period prior to the termination to seek agreement on amendments or other actions that shall avoid termination. In the event of termination of this PA the USACE shall comply with the provisions of 36 CFR § 800, Subpart B.

V. Term and Status of this PA

- A. This Programmatic Agreement shall remain in force for a period of fifteen (15) years from the date of its execution by all Signatories or such time as the USACE completes all excavation and construction activities and all the Central City project objectives are operational, which include maintenance and stabilization actions, unless terminated pursuant to Stipulation IV.C. Sixty (60) calendar days prior to the conclusion of the fifteen (15) year period, the USACE shall notify all parties in writing of the end of the fifteen year period to determine if they have any objections to extending the term of this

PA. If there are no objections received prior to expiration, the PA shall continue to remain in force for a new fifteen (15) year period.

- B. Execution of this PA and implementation of its terms evidences that the USACE has taken into account the effects of the Undertaking and fulfilled Section 106 responsibilities regarding the undertaking.

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Signature Page for the U.S. Army Corps of Engineers

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT,
THE TARRANT REGIONAL WATER DISTRICT,
AND
THE TEXAS STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE IMPLEMENTATION OF THE CENTRAL CITY PORTION OF THE
TRINITY RIVER VISION MASTER PLAN, FORT WORTH, TEXAS

Execution and Implementation of this Agreement of its terms, provides confirmation that the USACE has afforded all parties an opportunity to comment on the Central City Project and its effects on historic properties, and that the USACE has taken into account the effects of the Central City Project on historic properties.

Signatories include the USACE, SHPO, the Tarrant Regional Water District, and the ACHP. Separate signature pages for each agency follow.

Signatory
U.S. Army Corps of Engineers

Date: _____

INSERT
INSERT TITLE

Signature Page for the State Historic Preservation Officer

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT,
THE TARRANT REGIONAL WATER DISTRICT, THE
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Signatories include the USACE, SHPO, the Tarrant Regional Water District, and the ACHP. Separate signature pages for each agency follow.

Signatory
Texas State Historic Preservation Office

Date: _____

INSERT
INSERT TITLE

Signature Page for the Tarrant Regional Water District

PROGRAMMATIC AGREEMENT
AMONG
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Signatories include the USACE, SHPO, the Tarrant Regional Water District, and the ACHP. Separate signature pages for each agency follow.

Signatory
Tarrant Regional Water District

Date: _____

INSERT
INSERT TITLE

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Appendix A: Maps

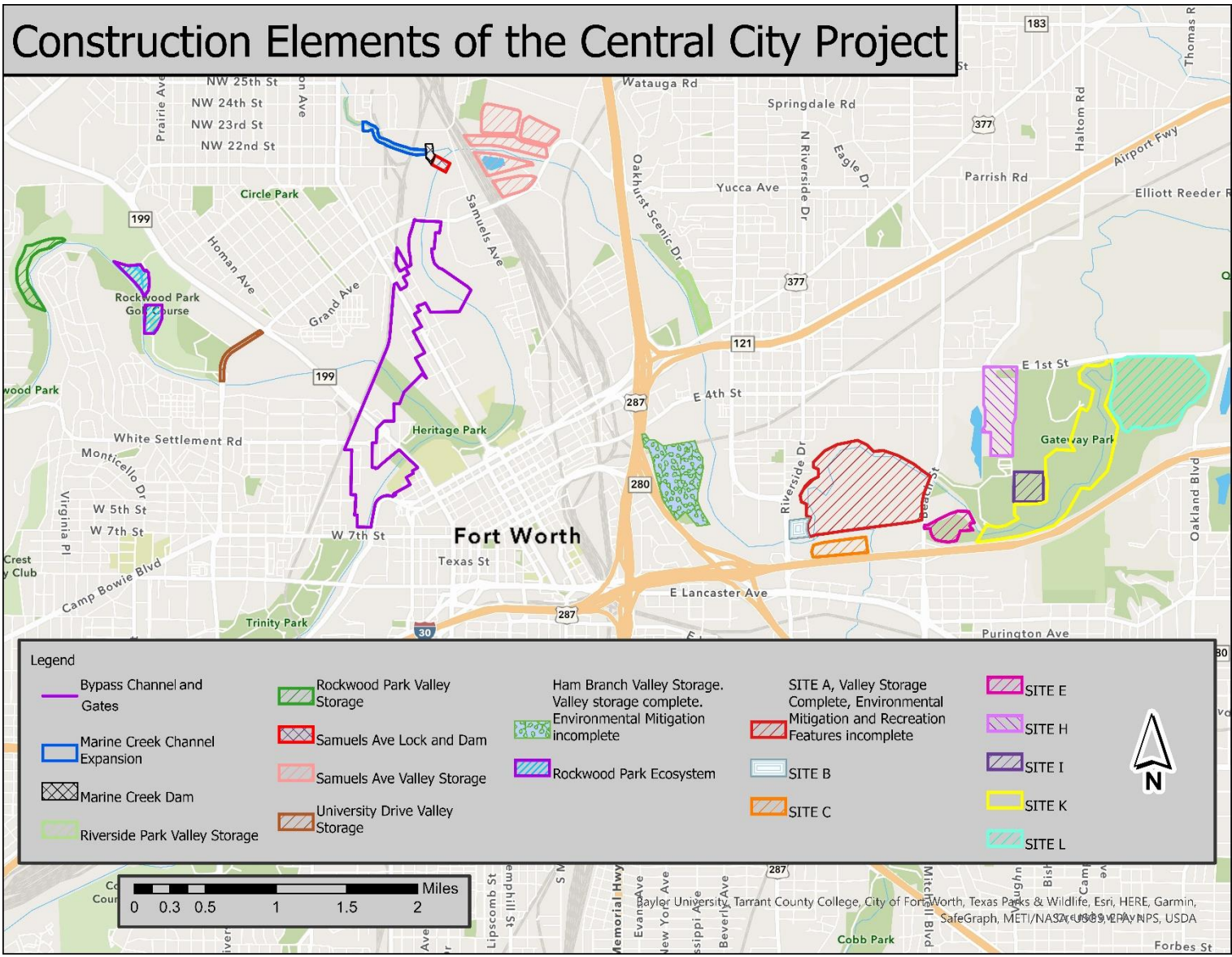


Figure 1

Unconstructed Elements of the Central City Project

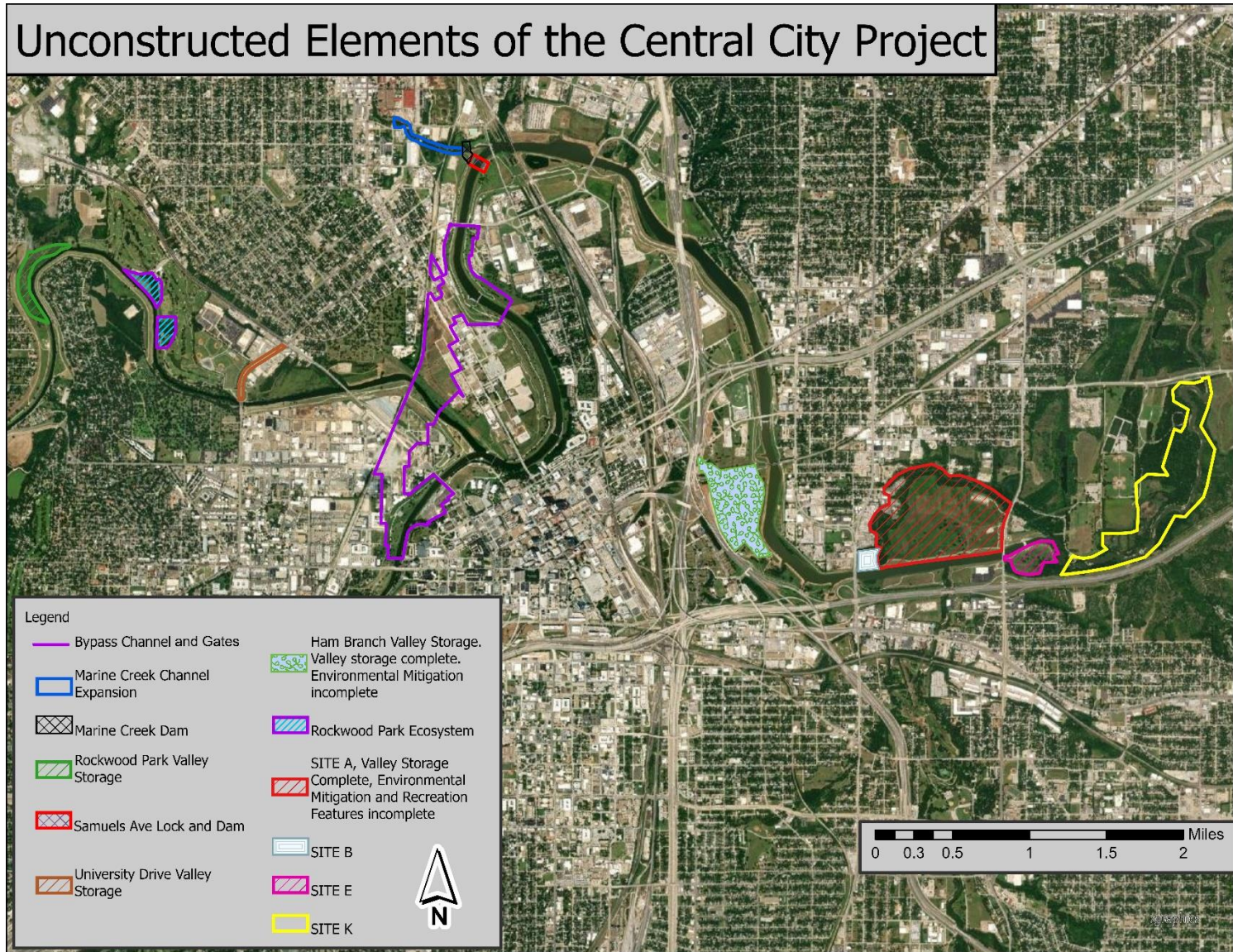


Figure 2