

**To the Mayor and Members of the City Council****February 6, 2018**

Page 1 of 1

**SUBJECT: PROPOSED CONTRACT WITH CITY OF BENBROOK ON
EMERGENCY ACCESS BRIDGE**

The City of Benbrook approached the City of Fort about their desire to construct an emergency access bridge across the Trinity River north of I-20 to connect the I-20 service road to Bellaire Boulevard. Although the bridge would be completely within the city limits of the City of Benbrook, Benbrook officials approached the City of Fort Worth because they were aware of opposition from Fort Worth residents that are concerned about the potential increase in traffic if this bridge is ever made available to the general public. Additionally, in order to build the bridge, Benbrook must gain approval from the Texas Department of Transportation (TxDOT) to use I-20 right-of-way on which the bridge would be located and Benbrook desires support from the City of Fort Worth.

In an effort to ease the fear of residents concerned about the potential for the bridge becoming open to the general public one day, the attached agreement has been created with the following general terms:

- Cities of Benbrook and Fort Worth would jointly meet with TxDOT to request that TxDOT grant an easement (or other instrument) for an emergency access bridge to the City of Fort Worth.
- City of Fort Worth will then grant a license to the City of Benbrook, which includes the right to reject the final bridge design if it does not conform to the terms and condition of the agreement, for Benbrook's use of Fort Worth's easement (or other instrument) to construct and operate a single lane, gated, emergency access bridge and limit City of Benbrook's access to emergency vehicles.
- All construction and ongoing maintenance costs will be at the City of Benbrook's expense and the City of Fort Worth will have the right to revoke the license if use of the bridge is ever changed to more than for emergency access or if the City of Benbrook allows access by non-emergency vehicles to the Bridge and does not remedy within a proscribed period of time.

In December the City of Benbrook City Council voted to initiate engineering design of a single lane, gated, emergency access only bridge over the Clear Fork Trinity River. The engineering design must preclude the emergency access bridge from being open to public conveyance. The design should produce plans that can be used to secure an interlocal agreement with the City of Fort Worth and an access permit or other legal instrument with TxDOT. In order to proceed with the overall design of the bridge, that is required to gain approval of the access permit from TxDOT, staff has negotiated the attached agreement which will be brought forward to the City Council for consideration in early March after stakeholder input has been gained.

Additionally, attached you will find preliminary drafts of the bridge and its location.

If you have any questions, please feel free to contact Jay Chapa, Assistant City Manager at 817-392-5804.

This project is located in COUNCIL DISTRICT 3.

David Cooke
City Manager

Attachments: Benbrook Emergency Access Bridge Interlocal Agreement
Preliminary Bridge Site Plan and Designs

STATE OF TEXAS)
COUNTY OF TARRANT)

WHEREAS, Chapter 791, Government Code authorizes municipalities in the State of Texas to contract with one another for the providing of various governmental functions and services; and

WHEREAS, the current roadway network configuration providing access to Northeast Benbrook combined with increased traffic congestion cause below acceptable response times for emergency calls from Benbrook emergency service providers; and

WHEREAS, in order to improve response times for emergency calls from Benbrook emergency service providers, both Benbrook and Fort Worth believe the construction of a one lane, emergency access bridge in Texas Department of Transportation (TXDOT) Right-Of-Way north of Interstate 20 and connecting to Bellaire Drive South (more accurately shown on exhibit “B”) will improve response times for emergency calls from Benbrook emergency service providers; and

WHEREAS, Benbrook and Fort Worth desire to forever prohibit public access to the one lane, emergency access bridge; and

W:\Benbrook\Emergency Access Bridge\Bridge Interlocal - JD Draft 1.30.18 Redline.docx (JD 1/30/2018)

WHEREAS, Benbrook will obtain from Fort Worth a license to construct, access, and maintain such a one lane, emergency access bridge in order to improve response times for emergency calls from Benbrook emergency service providers; and

WHEREAS, the City Council of Benbrook and the City Council of Fort Worth desire to enter into this agreement establishing the responsibilities for construction, access and maintenance of a one lane, emergency access bridge.

WITNESSETH

Now, therefore, for and in consideration of the mutual benefits to be derived from this undertaking, the parties hereto agree as follows:

1. **Access Permit.** Fort Worth agrees to obtain from TXDOT an access permit that will allow the construction, maintenance, and operation of a one lane, emergency access bridge (the “Bridge”) in TXDOT Right-Of-Way north of Interstate 20 and connecting to Bellaire Drive South (more accurately shown on exhibit “B”). Fort Worth will make all reasonable efforts to obtain the access permit. No other terms within this agreement will be binding upon either party until such an access permit is obtained.
2. **NCTCOG Bridge Application.** Benbrook submitted an application to the North Central Texas Council of Governments (“NCTCOG”) on February 21, 2017 requesting funding for a “Clear Fork Bridge Project”, for the purpose of obtaining funding to construct bicycle and pedestrian facilities for a bridge in a similar location to the Bridge in this Agreement. Benbrook hereby agrees to withdraw its application to the NCTCOG for the “Clear Fork Bridge Project” upon the execution of this Agreement.
3. **Emergency Access Bridge.** The construction, access and maintenance of an emergency access bridge in TXDOT Right-Of-Way north of Interstate 20 and connecting to Bellaire Drive South (more accurately shown on exhibit “B”) will be governed by the following terms:
 - a. **Construction.** Fort Worth hereby authorizes Benbrook to construct the Bridge in TXDOT Right-Of-Way north of Interstate 20 and connecting to Bellaire Drive South (more accurately shown on exhibit “B”). The Bridge will be gated at both entrances, have one approximately 15’ wide vehicular travel lane, will not be designed to accommodate bicycle or pedestrian traffic, and will not be designed to be expanded or altered. Benbrook will be responsible for the design of the Bridge, and Fort Worth reserves the right to reject the Bridge design if the design does not conform to the terms and conditions of this agreement. Benbrook will be responsible for the entire cost of constructing the Bridge. Once the construction of the Bridge is completed, the Bridge shall be signed at each entrance as “Emergency Access Only” and secured with a gate which shall be kept closed and locked as described in subsection c, below.
 - b. **Maintenance.** Benbrook will be responsible for all maintenance activities and costs associated with the Bridge while this Agreement is in effect.

- c. **Access.** Fort Worth hereby grants Benbrook a license to access the Bridge for the sole use by emergency vehicles. At no time shall Benbrook or Fort Worth allow pedestrian, bicycle, or civilian vehicle traffic access to the Bridge. Access will be controlled through a Knox box system or other secured system which will permit only emergency vehicles to utilize the bridge.
 - d. **Fees.** Parties recognize that the Bridge is being constructed wholly within the corporate limits of the City of Benbrook. Fort Worth agrees that at no point in the construction or use of the Bridge shall Fort Worth charge Benbrook any permit or other fees for the construct or use the Bridge, provided however, any fees assessed by TXDOT will be paid by Benbrook.
- 4. **Timetable.** Once the access permit is obtained, Benbrook will coordinate with Fort Worth regarding the construction timetable for the Bridge.
 - 5. **Repair of Damage.** Routine maintenance or structural issues related to the design or construction of the Bridge will be the responsibility of Benbrook. Damage to the Bridge as a result of unauthorized access by pedestrian, bicycle or civilian vehicle traffic will be the responsibility of Benbrook.
 - 6. **Revocation of Access License - Benbrook.** Fort Worth may revoke Benbrook's access license to the Bridge in the event that Benbrook allows repeated pedestrian, bicycle, non-emergency city vehicles or civilian vehicle traffic access to the Bridge, provided Benbrook is allowed a reasonable opportunity to cure said violation. Should Fort Worth become aware of pedestrian, bicycle, or civilian vehicle traffic accessing the Bridge, Fort Worth will notify Benbrook of the unpermitted access and allow Benbrook 10 days to remedy the unpermitted access prior to revoking Benbrook's access license to the Bridge. Upon revocation of access, Fort Worth will maintain full control of the Bridge and may construct permanent barriers to prohibit access to the Bridge.
 - 7. **No joint enterprise.** No provision of this Agreement shall be construed to create any type of joint ownership of any property, nor shall same be deemed to create a partnership, joint venture or other agreement which would be construed as granting partial control, ownership of or equity in the facilities described herein. It is understood and agreed that the Bridge will be owned and operated by Benbrook. Furthermore, the parties hereto acknowledge and agree that the doctrine of respondeat superior shall not apply between them.
 - 8. **Notice.** Any notice, communication or request provided or permitted to be given by either party to the other party must be in writing and addressed as follows:

If to Benbrook:

City of Benbrook

Attention: City Manager
P.O. Box 26569
Benbrook, Texas 76126

If to Fort Worth:

City of Fort Worth
Attention: Assistant City Manager
200 Texas Street
Fort Worth, TX 76102

Copy to:

City Attorney's Office
200 Texas Street
Fort Worth, TX 76102

or to such other addresses as may be provided for in writing from time to time.

9. **No prior agreements.** The parties agree that this Agreement supersedes and replaces any other agreements between the parties relating to the subject matter of this Agreement.
10. **No waiver of immunity or defenses.** This agreement is made pursuant to Chapter 791 of the Texas Government Code. It is expressly understood and agreed that in the execution of this agreement, neither party waives nor shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. This section shall be liberally construed to carry out the intent hereof and the parties do hereby invoke said governmental immunity to the maximum extent possible under the law.
11. **No third party beneficiaries.** It is understood by the parties that this Agreement is entered into for the mutual convenience and purposes of the parties which are parties hereto, and it is the parties' intent that no other parties shall be construed as beneficiaries of this Agreement.
12. **Entire agreement.** This Agreement, including any exhibits attached and made a part hereof, is the entire agreement between the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein.
13. **Venue.** This Agreement shall be construed under the substantive laws of the State of Texas, without reference to its choice of law provisions, and venue for any action arising under state law under this Agreement shall be the District Courts of Tarrant County, Texas. If any action relating to this Agreement is not properly brought in state court, venue shall be the United States District Court for the Northern District of Texas.
14. **Severability.** In the event any section, subsection, paragraph, subparagraph, sentence,

phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In such event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

15. **Authority.** This Agreement was authorized by Resolution of the Fort Worth City Council at its regular meeting on the ____ day of _____, 2018, authorizing _____, the City Manager of Fort Worth to execute this Agreement on behalf of the City of Fort Worth, by Resolution of the Benbrook City Council at its regular meeting on the ____ day of _____, 2018, authorizing _____, the Mayor of Benbrook to execute this Agreement on behalf of the City of Benbrook.
16. **Section or other headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
17. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by the parties to such amendment.
18. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for nor against any party.
19. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.
20. **Force majeure.** If, by reasons of Force Majeure, any party will be rendered wholly or partially unable to carry out its obligations under this Agreement after its effective date, then such party will give written notice of the particulars of such Force Majeure to the other party or parties within a reasonable time after the occurrence of such event. The obligations of the party giving such notice, to the extent affected by such Force Majeure, will be suspended during the continuance of the inability claimed and for no longer period, and any such party will in good faith exercise its best efforts to remove and overcome such inability.
21. **Mutual assistance.** The parties hereto agree to take all reasonable measures which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.
22. **Recitals.** The recitals to this Agreement are incorporated herein, and are intended to aid in the interpretation of this Agreement.
23. **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

EXECUTED this _____ day of _____, 2018.

City of Fort Worth

By:

Assistant City Manager

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

Fort Worth City Attorney

EXECUTED this _____ day of _____, 2018.

City of Benbrook

By:

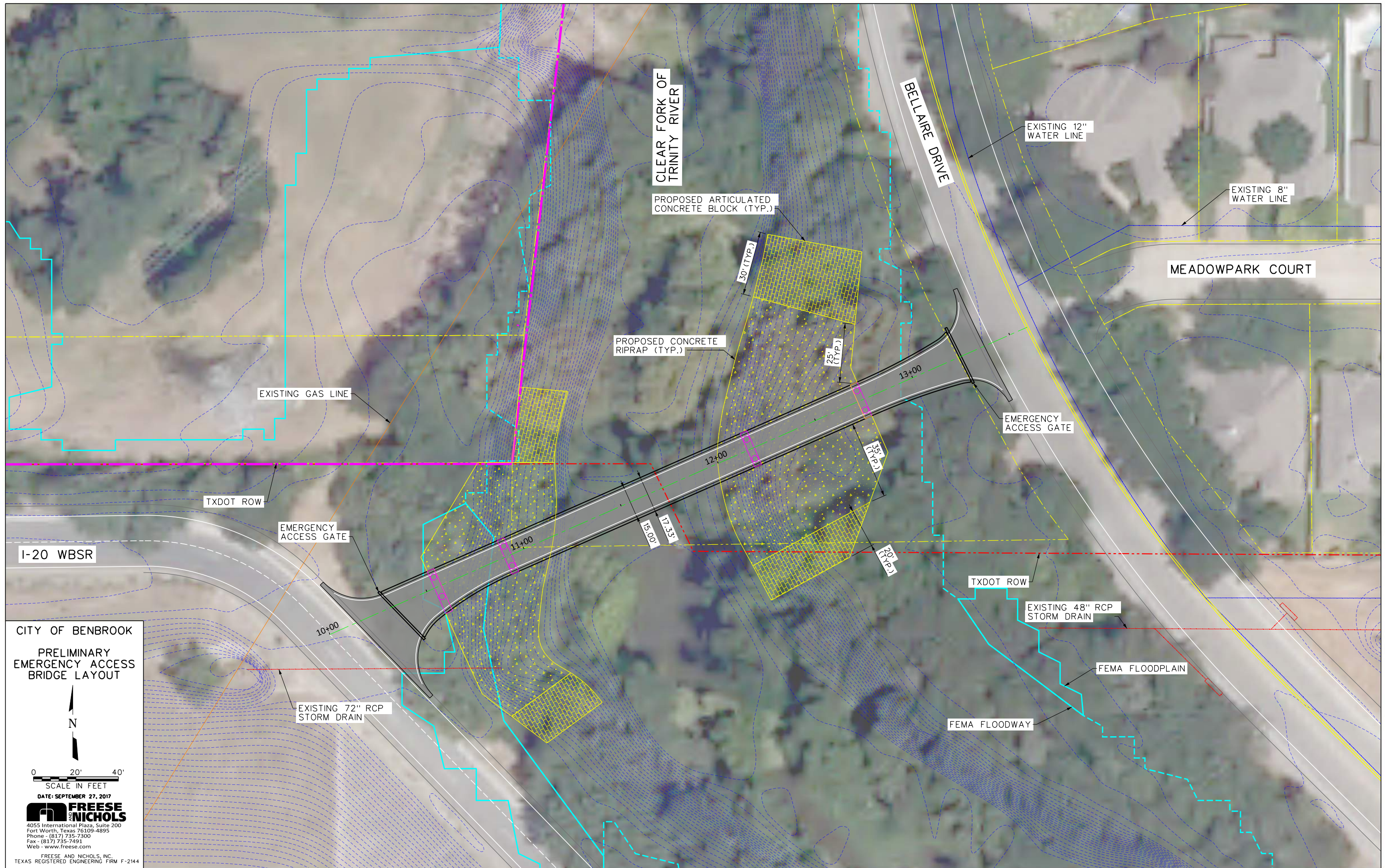
, Mayor

ATTEST:

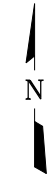
-----, Benbrook City Secretary

APPROVED AS TO FORM AND LEGALITY:

Elizabeth Elam, Benbrook City Attorney



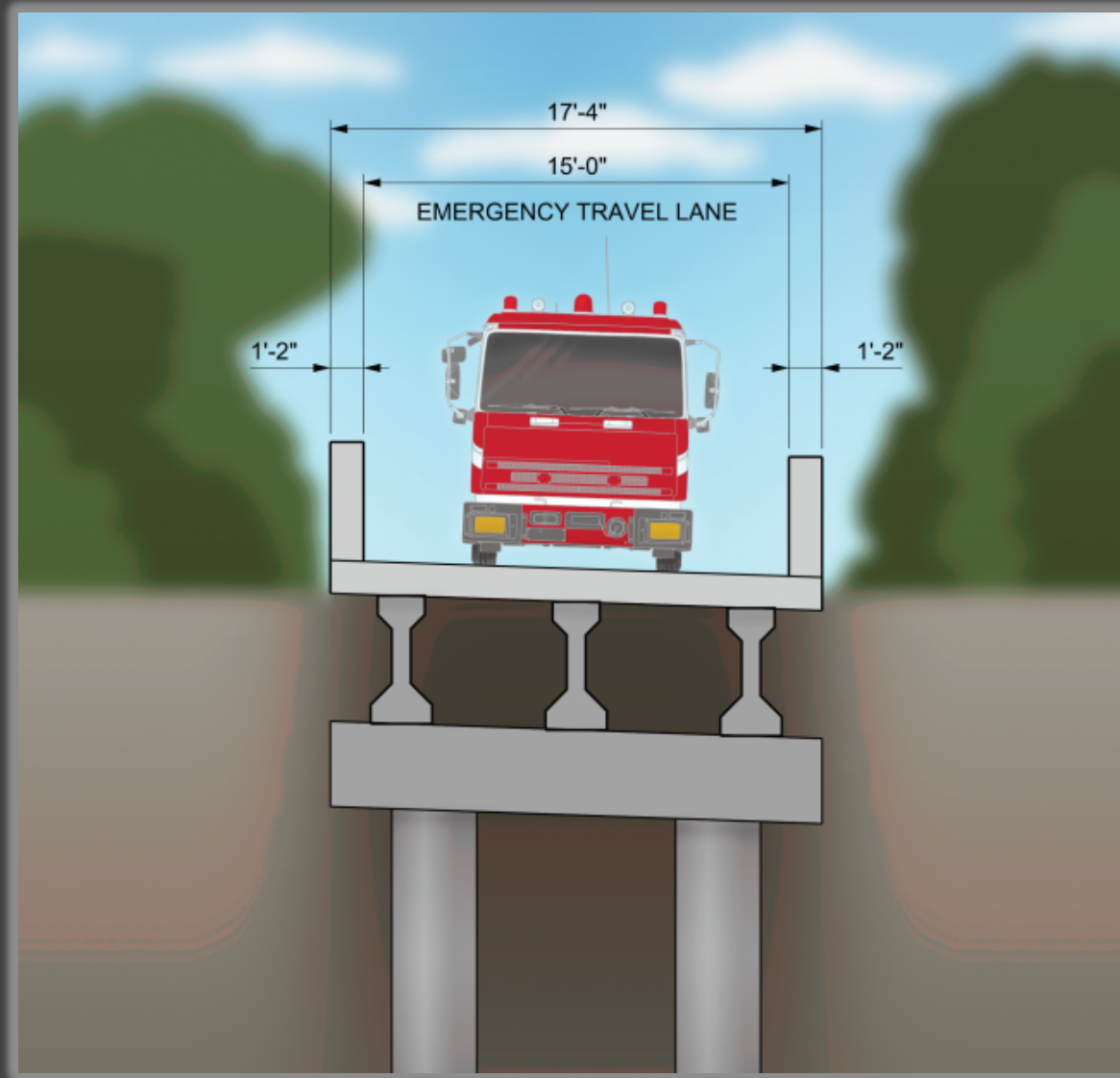
CITY OF BENBROOK
PRELIMINARY
EMERGENCY ACCESS
BRIDGE LAYOUT



0 20' 40'
 SCALE IN FEET

DATE: SEPTEMBER 27, 2017
FREESE AND NICHOLS
 4055 International Plaza, Suite 200
 Fort Worth, Texas 76109-4895
 Phone: (817) 735-7300
 Fax: (817) 735-7491
 Web: www.freese.com

FREESE AND NICHOLS, INC.
 TEXAS REGISTERED ENGINEERING FIRM F-2144



Section – Single Lane - Emergency Access Only

Emergency Access Bridge





East View From IH-20 Frontage Road

Emergency Access Bridge

