



MULTIPLE USE AGREEMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and the City of Pflugerville _____, hereinafter called the "City" _____, party of the second part, is to become effective when fully executed by both parties.

WITNESSETH

WHEREAS, on the 11 day of June, 20 13, the governing body for the _____ City _____, entered into Resolution/Ordinance No. 1365-13-06-11-0142 hereinafter identified by reference, authorizing the _____ City _____'s participation in this agreement with the State; and

WHEREAS, the _____ City _____ has requested the State to permit the construction, maintenance and operation of a public _____ sidewalk _____ on the highway right of way, (ROADWAY FM 685 CONTROL SECTION NO. 757-2). (General description of area) on the northeast corner of the intersection of FM 685 and FM 1825 (E. Pecan St.) shown graphically by the preliminary conceptual site plan in Exhibit "A" and being more specifically described by metes and bounds of Exhibit "B", which are attached and made a part hereof; and

WHEREAS, the State has indicated its willingness to approve the establishment of such facilities and other uses conditioned that the _____ City _____ will enter into agreements with the State for the purpose of determining the respective responsibilities of the _____ City _____ and the State with reference thereto, and conditioned that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

1. DESIGN AND CONSTRUCTION

The City _____ will prepare or provide for the construction plans for the facility, and will provide for the construction work as required by said plans at no cost to the State. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. They shall also delineate and define the construction responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State. Any sidewalks, curb ramps and other pedestrian elements to be constructed, either on site or off site, by the City _____ shall be in accordance with the requirements of Title II of the Americans With Disabilities Act (ADA) and with the Texas Accessibility Standards (TAS). Elements constructed by the City _____ and found not to comply with ADA or TAS shall be corrected at the entire expense of the _____ City _____.

2. INSPECTION

Ingress and egress shall be allowed at all times to such facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

3. PARKING REGULATIONS

Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for 1¹/₂ ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

4. PROHIBITION/SIGNS

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

5. RESPONSIBILITIES

Maintenance and operation of the facility shall be entirely the responsibility of the City _____. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow.

6. FEES

Any fees levied for use of the facilities in the area shall be nominal and no more than are sufficient to defray the cost of construction, maintenance and operations thereof, and shall be subject to State approval.

A. Retention Period. The _____ City _____ shall maintain all books, documents, papers, accounting records and other evidence pertaining to fees collected and costs (hereinafter called the Records). The _____ City _____ shall make the records available during the term of the Agreement and for four years from the date the Agreement is terminated, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

B. Availability. The State or any of its duly authorized representatives, the Federal Highway Administration, the United States Department of Transportation, Office of Inspector General, and the Comptroller General shall have access to the _____ City _____'s records that are directly pertinent to this Agreement for the purpose of making audits and examinations.

7. TERMINATION UPON NOTICE

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said facility shall immediately cease and terminate.

8. MODIFICATION/TERMINATION OF AGREEMENT

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the facility is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated and the use of the area as proposed herein discontinued.

9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

10. RESTORATION OF AREA

The _____ City _____ shall provide written notification to the State that such facility will be discontinued for the purpose defined herein. The _____ City _____ shall, within thirty (30) days from the date of said notification, clear the area of all facilities that were its construction responsibility under this agreement and restore the area to a condition satisfactory to the State.

11. PREVIOUS AGREEMENTS

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

12. INDEMNIFICATION

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

Neither party hereto intends to waive, relinquish, limit or condition its right to avoid any such liability by claiming its governmental immunity.

When notified by the State to do so, the other party hereto shall within thirty (30) days from receipt of the State's written notification pay the State for the full cost of repairing any damages to the highway facility which may result from its construction, maintenance or operation of the facility, and shall promptly reimburse the State for costs of construction and/or repair work made necessary by reason of such damages.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the _____ City _____. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State and the _____ City _____ shall become fully subrogated to the State and shall be entitled to maintain any action over and against the third party which may be liable for having caused the _____ City _____ to pay or disburse any sum of money hereunder.

13. HOLD HARMLESS

The _____ City _____ shall indemnify and save harmless the State and its officers and employees from all claims and liability due to its materials or activities of itself, its agents, or employees, performed under this agreement and that are caused by or result from error, omission, or negligent act of the party or of any person employed by the party. The _____ City _____ shall also indemnify and save harmless the State from any and all expense, including but not limited to attorney fees that may be incurred by the State in litigation or otherwise resisting the claim or liabilities that may be imposed on the State as a result of such activities by the _____ City _____, its agents, or employees authorized under this agreement. The _____ City _____ further agrees to indemnify and save harmless the State from and against all claims, demands, and causes of action of every kind and character brought by any employee of the party against the State due to personal injuries and/or death to such employee resulting from any alleged negligent act by either commission or omission on the part of the _____ City _____. The indemnification of the State shall extend for a period of three (3) years beyond the date of termination of this agreement.

14. INSURANCE

The _____ City _____, shall provide necessary safeguards to protect the public on State maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance and operation of the facility occupying such airspace or thereafter, and to save the State harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so. Prior to beginning work on the State's right of way, the _____ City _____'s construction contractor shall submit to the State a completed insurance form (TxDOT Form No. 1560) and shall maintain the required coverage during the construction of the facility.

15. USE OF RIGHT OF WAY

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

16. ADDITIONAL CONSENT REQUIRED

The State asserts only that it has sufficient title for highway purposes. The _____ City _____ shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

17. FHWA ADDITIONAL REQUIREMENTS

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

18. CIVIL RIGHTS ASSURANCES

The _____ City _____, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the _____ City _____ shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and repossess said land and the facilities thereon, and hold the same as if said agreement had never been made or issued.

19. AMENDMENTS

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

20. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

21. AUDIT

The State may conduct an audit or investigation of any aspect of this agreement. The City _____ must provide the State with access to any information the State considers relevant to the investigation or audit. The audit can include, but is not limited to, any contract for construction or maintenance of any facility or structure authorized by this agreement or any contract to provide a service to the _____ City _____ if that service is authorized by this agreement.

22. AUTHORITY OF STATE AUDITOR

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

23. COMPLIANCE OF THE LAW

The _____ City _____ shall comply with all federal, state, and local law, statutes, ordinances, rules and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement.

24. NOTICES

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

STATE (Mailing Address)	(Name of other party) (Mailing Address)
Texas Department of Transportation Maintenance Division 125 East 11th Street Austin, Texas 78701-2483	_____ City of Pflugerville 100 E. Main St. _____ Pflugerville, TX 78691 _____ _____

25. WARRANTS

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

List of Attached Exhibits:

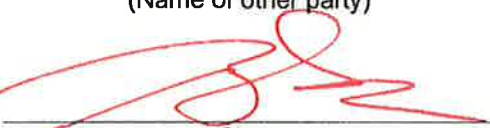
- Exhibit A - General Layout
- Exhibit B - Metes and Bounds Description
- Exhibit C - Approved Construction Plans
- Exhibit D - Certificate of Insurance (TxDOT Form 1560)
- Exhibit E - Attachment A (FHWA Additional Requirements)

IN WITNESS WHEREOF, the parties have hereunto affixed their signature, the

City _____ on the 11th day of June, 2013, and the
State on the 31st day of July, 2013.

STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

City of Pflugerville
(Name of other party)
By: 
Signature

Brandon Wade
Printed Name

City Manager
Title

City of Pflugerville
Agency

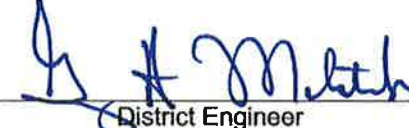
512-990-6300
Contact Office and Telephone No.

By: F. H. Holland P.E.
Director, Maintenance Division

F. Howard Holland, P.E.
Printed Name

7/31/2013
Date

APPROVAL RECOMMENDED:


District Engineer

Greg A. Malatek, P.E.
Printed Name

7/12/13
Date

ATTACHMENT A

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.

1. Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrency by the FHWA.
2. Any change in the authorized use of airspace shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. The airspace shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
4. This agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

EXHIBIT E

**SUPPORTING
RESOLUTION or ORDINANCE**

RESOLUTION NO. 1365-13-06-11-0142

**RESOLUTION OF THE CITY OF PFLUGERVILLE, TEXAS
ADOPTING A MULTIPLE USE AGREEMENT WITH THE
TEXAS DEPARTMENT OF TRANSPORTATION**

WHEREAS, the City of Pflugerville is proposing the construction of new pedestrian facilities at the northeast corner of FM 685 and FM 1825; and

WHEREAS, it is a requirement of the Texas Department of Transportation that any new pedestrian facilities located within TxDOT right of way enter into a Multiple Use Agreement; and

WHEREAS, the City of Pflugerville will maintain all City proposed pedestrian improvements within the Texas Department of Transportation Right of Way at the northeast corner of FM685 and FM 1825.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE:

That the City of Pflugerville hereby adopts effective this date, the Texas Department of Transportation Multiple Use Agreement associated with the pedestrian improvements at the northeast corner of FM 685 and FM 1825.

PASSED AND APPROVED this 11th day of June 2013.



Jeff Coleman, Mayor

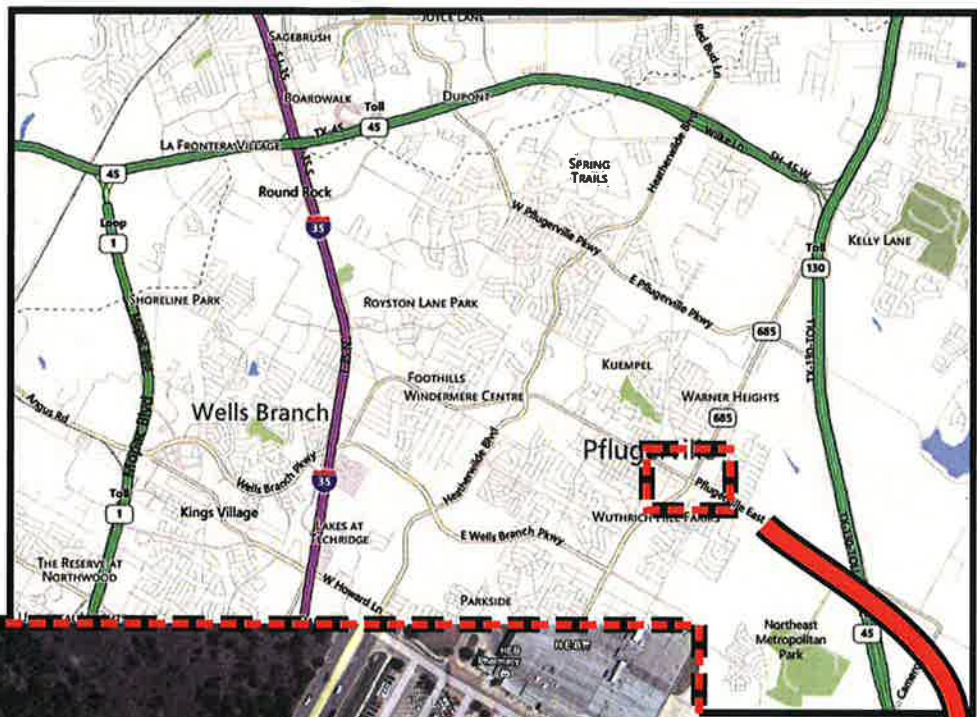
ATTEST:



Karen Thompson, City Secretary

EXHIBIT A

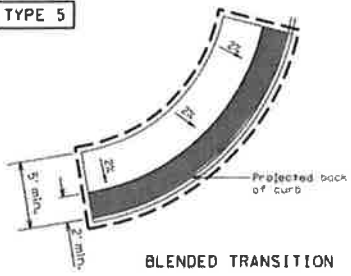
General Layout and Location



Location Map
Exhibit A

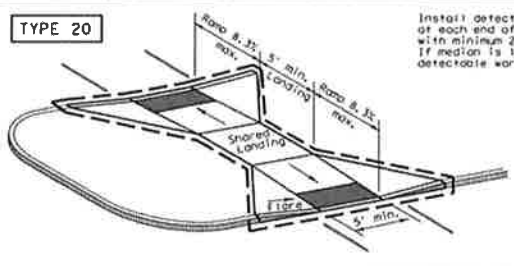
EXHIBIT B
Proposed Construction Plans
(Metes and Bounds Description)

TYPE 5



BLENDED TRANSITION

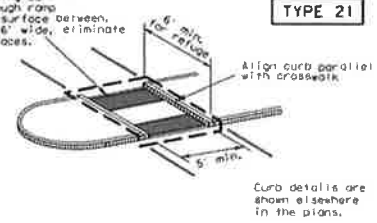
TYPE 20



CURB RAMPS AT MEDIAN ISLANDS

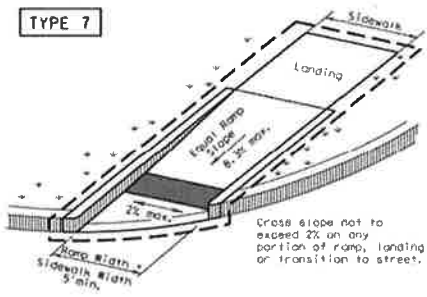
Install detectable warning surface at each end of cut-through ramp with minimum 2' smooth surface between. If median is less than 6' wide, eliminate detectable warning surfaces.

TYPE 21



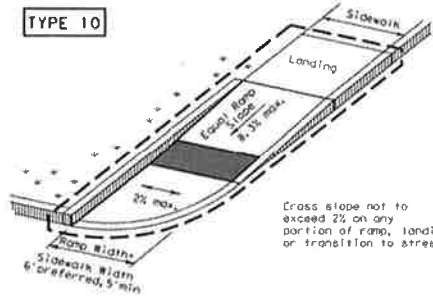
Curb details are shown elsewhere in the plans.

TYPE 7



(Sidewalk set back from curb)

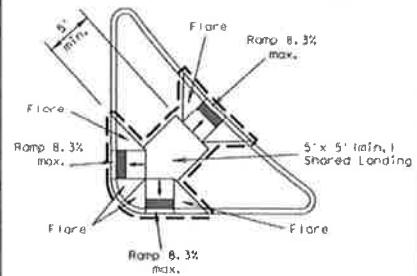
TYPE 10



(Sidewalk adjacent to curb)

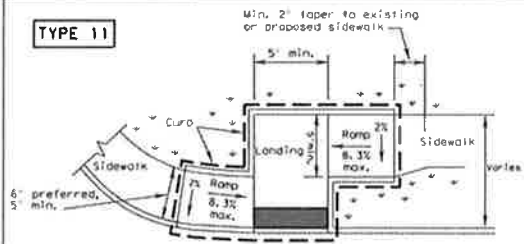
DIRECTIONAL RAMPS WITHIN RADIUS

TYPE 22



COMBINATION ISLAND RAMPS

TYPE 11



OFFSET PARALLEL CURB RAMP



29 MAR 13

SHEET 1 OF 4

Texas Department of Transportation
Design Division Standard

PEDESTRIAN FACILITIES
CURB RAMPS

PED-12A

NOTES / LEGEND:

See General Notes on sheet 2 of 4 for more information.

- Denotes planting or non-walking surface not part of pedestrian circulation path.

- Ramp Limits of Payment
- Detectable Warning Surface

FILE: ped12a.dgn	REV: 1-001	REV: 2-001	REV: 3-001	REV: 4-001
DATE: March 2002	DATE: 03/01/02	DATE: 03/01/02	DATE: 03/01/02	DATE: 03/01/02
BY: JPH	BY: JPH	BY: JPH	BY: JPH	BY: JPH
APP: June 13, 2012	APP: June 13, 2012	APP: June 13, 2012	APP: June 13, 2012	APP: June 13, 2012
SHEET NO.				C-10

Notes

ion at each pedestrian street crossing.
 Lesser slopes that will still drain properly h or grade of approach sidewalks as directed.
 re the sidewalk is adjacent to the back of curb, e a 5' sidewalk cannot be provided due to site uced to 4' for short distances.
 to exceed 200' are required.
 a maximum 2% slope in any direction.
 b ramps shall be a minimum of 4' x 4' wholly lly outside the parallel vehicular travel path.
 alk and curb ramp surfaces is 2%.
 ion circulation path crosses the curb ramp, ximum, measured parallel to the curb. Returned e would not normally walk across the ramp, planted, substantially obstructed, or

ocation, design, light reflective value and iftation of the Texas Accessibility Standards

the median should be a minimum of 6' wide, should be designed to provide accessible

not provide a minimum 5' x 5' landing at the top vel with the surface of the street,

gs and stop bar locations shall be as shown ons where crosswalk markings are not required, it crosswalks unless otherwise directed.

ps. Provide curb ramps wherever on accessible

~~constructed and paid for in accordance with Item 53~~

for ramps, flares and landings, unless

curb ramps connect to the street.

ts of payment are considered part of the curb te curb, gutter, or combined curb and gutter.

may remain in place unless otherwise shown on

arning surface that consists of raised 705 of the TAS. The surface must contrast uding side flares. Furnish and install an ark red detectable warning surface material specified elsewhere in the plans.

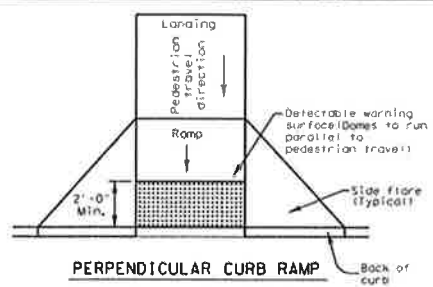
xDOT Departmental Materials Specification roducer List. Install products in accordance

ip resistant and not allow water to accumulate.

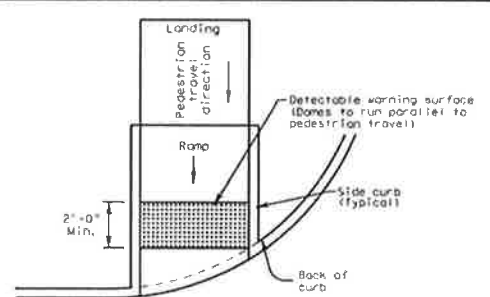
minimum of 24" in depth in the direction of width of the curb ramp or landing where the eet.

located so that the edge nearest the curb line s of domes to be perpendicular to the grade eet. Detectable warning surfaces may be curved

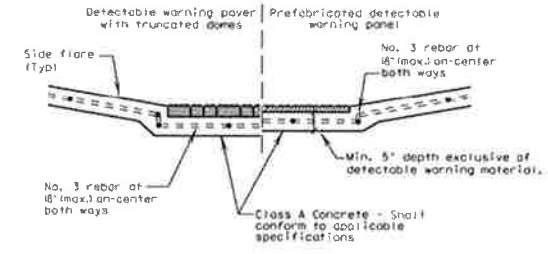
the approximate location for the detectable e.



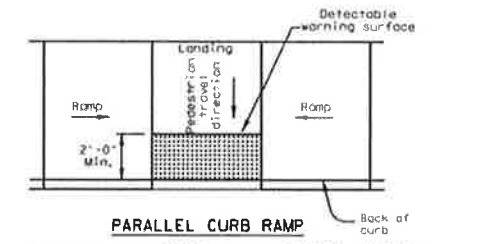
Typical placement of detectable warning surface on sloping ramp run.



Typical placement of detectable warning surface on sloping ramp run.



SECTION: CURB RAMP AT DETECTABLE WARNING



Typical placement of detectable warning surface on landing at street edge.

DETECTABLE WARNINGS

Detectable Warning Pavers

- 24. Furnish detectable warning paver units meeting all requirements of ASTM C-936, C-33. Lay in a two by two unit basket weave pattern or as directed.
- 25. Lay full-size units first followed by closure units consisting of at least 25 percent of a full unit. Cut detectable warning paver units using a power saw.

Sidewalks

- 26. Provide clear ground space at operable parts, including pedestrian push buttons. Operable parts shall be placed within one or more reach ranges specified in TAS 308.
- 27. Place traffic signal or illumination poles, ground boxes, controller boxes, signs, drainage facilities and other items so as not to obstruct the pedestrian access route or clear ground space.
- 28. Street grades and cross slopes shall be as shown elsewhere in the plans.
- 29. Changes in level greater than 1/4 inch are not permitted.
- 30. The least possible grade should be used to maximize accessibility. The running slope of sidewalks and crosswalks within the public right of way may follow the grade of the parallel roadway. Where a continuous grade greater than 5% must be provided, handrails may be desirable to improve accessibility. Handrails may also be needed to protect pedestrians from potentially hazardous conditions. If provided, handrails shall comply with TAS 505.
- 31. Handrail extensions shall not protrude into the usable landing area or into intersecting pedestrian routes.
- 32. ~~Driveways and turnouts shall be constructed and paid for in accordance with Item 53. Intersections, Driveways and Turnouts. Sidewalks shall be constructed and paid for in accordance with Item 53, Sidewalks.~~
- 33. Sidewalk details are shown elsewhere in the plans.



SHEET 2 OF 4

Texas Department of Transportation
 Design Division Standard

PEDESTRIAN FACILITIES
CURB RAMPS

PED-12A

File#	ped12a.dgn	DATE	03/16/12	BY	WJW
DATE	March 2002	REV	1	BY	WJW
VP	June 13, 2012	SIST		COUNTY	
				SHEET NO.	C-11