

RESOLUTION NO. 1393

RESOLUTION ACCEPTING THE RENEWAL OF RIGHT-OF-WAY PERMIT
NO.: RW 6470-15-001 BY THE UNITED STATES DEPARTMENT OF THE
INTERIOR, NATIONAL PARK SERVICE, HERBERT HOOVER NATIONAL
HISTORIC SITE

WHEREAS, the City of West Branch had previously been provided with a right-of-way permit to construct, operate and maintain an underground water line within the boundaries of the Herbert Hoover National Historic Site; and

WHEREAS, this right-of-way permit now approaches its expiration; and

WHEREAS, the National Park Service has prepared appropriate documentation for the renewal of this permit; and

WHEREAS, it is now necessary to accept the renewal of the right-of-way permit.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa, that the aforementioned right-of-way permit renewal is hereby accepted.

* * * * *

Passed and approved this 19th day of October, 2015.


Roger Laughlin, Mayor

ATTEST:


Matt Muckler, City Administrator/Clerk

United States Department of the Interior
National Park Service
Right-of-Way Permit for
City of West Branch, Iowa

WHEREAS, the City of West Branch, Iowa, (hereinafter Permittee) has applied to the United States of America, (hereinafter Permitter) for a right-of-way to construct, operate and maintain an underground water line within the boundaries of Herbert Hoover National Historic Site (hereinafter Park), a unit of the National Park System, United States Department of the Interior; and

WHEREAS, the National Park Service (hereinafter Service) administers the Park that was established as a unit of the National Park System, United States Department of the Interior pursuant to P.L. 89-110 (79 Stat. 510); and

WHEREAS, the Director of the National Park Service (or their delegate) is required pursuant to 16 U.S.C. 1a-1 to authorize only those uses of land within the Park which will not be in derogation of the values and purposes for which the Park was established, except as may have been or shall be directly and specifically provided by Congress; and

WHEREAS, 54 U.S.C 100902 (a) authorizes the use of rights-of-way through the Park for water lines, provided that the Director (or their delegate) finds that the same is not incompatible with the public interest; and

WHEREAS, the Service has promulgated regulations at Title 36 Code of Federal Regulations, Part 14, regarding rights-of-way over, across and upon the lands administered by the National Park Service; and

WHEREAS, the Service has been delegated the authority to allow such rights-of-way over, across and upon land under the jurisdiction of the Service pursuant to 245 Departmental Manual 5.1; and

WHEREAS, the Service has determined that the proposed use of the park lands for the construction, maintenance and operation of the subject water line is neither incompatible with the public interest nor inconsistent with the use of such lands for park purposes; and

THEREFORE, the United States, through the Service, an agency of the Department of the Interior, acting pursuant to the authority of 54 U.S.C 100902 (a) issues this permit to the City of West Branch, IA, P.O. Box 218, West Branch, IA 52358, for a right-of-way across Federal lands within Herbert Hoover National Historic Site for the construction, operation and maintenance of a water line.

The Permittee agrees to comply with and be bound by the Service regulations, 36 CFR Part 14, regarding rights-of-way over, across and upon lands administered by the Service, in addition to the terms and conditions set forth in this permit.

MAP AND LEGAL DESCRIPTION OF RIGHT-OF-WAY

The right-of-way shall be thirty (30) feet wide with fifteen (15) feet on either side of the described centerline for underground lines. Underground descriptions contained herein which are parallel to a roadway shall not exceed eighteen (18) feet with nine (9) feet on either side of the described centerline. For those parts of the permit which describe the City of West Branch appurtenances such as valves, meters, hydrants, and air release manholes, the right-of-way shall be the same as described above. In addition to the above referenced right-of-way, there is an overlain easement between the Service and the West Branch Community School District for a bicycle/pedestrian walkway on that portion of the right-of-way paralleling Highway 1 (West Main Street) which shall remain in effect and is heretofore described as part of the water line right-of-way. The water line is described as:

That part of the SW1/4 and SE1/4 of Section 6 and NE1/4 of Section 7, Township 79 North, Range 4 West of the Fifth Principle Meridian, Cedar County, Iowa described as follows:

Commencing as a point of reference at a standard NPS aluminum monument stamped BDY- 20 on the west boundary line of Herbert Hoover National Historic Site:

Thence North 0° 57' 32" West 5.51 feet to a point on the southerly right-of-way line of State Highway 1; thence along said southerly right-of-way line of State Highway 1 North 87° 08' 43" East 685.31 feet to the Section centerline; thence continuing North 88° 27' 16" East 92.12 feet; thence South 00° 34' 46" West 219.63; thence continuing South 07° 36' 59" East 246.48 feet; thence continuing along the fence line South 00° 55' 21" East 2020.94 feet to a standard Iowa D.O.T. iron rail on the north right-of-way line of Interstate 80; thence North 84° 20' 12" West 30 feet; thence North 00° 55' 21" West 2015.72 feet; thence continuing North 07° 36' 59" West 246.88 feet; thence continuing North 00° 34' 46" East 202.66 feet; thence South 88° 27' 16" West 61.10 feet; thence continuing South 87° 08' 43" West 685.71 feet to a point on the west boundary of Herbert Hoover National Historic Site; thence along said western boundary North 0° 57' 32" West 14.5 feet to the Point of Beginning. An area of 2.02 acres.

This ROW is overlain by an easement between the National Park Service and the West Branch Community School District for a bicycle/pedestrian walkway described as:

That part of the Southwest and Southeast Quarters of Section 6, Township 79 North, Range 4 West of the Fifth Principle Meridian, Cedar County, Iowa described as follows:

Commencing as a point of reference at the Southeast Corner of said Southwest Quarter; thence North 21.6 feet along the East line of said Southwest Quarter, to a point that is 18.0 feet in perpendicular distance Southerly from the Southerly line of a 66 foot wide road as established in County Road Book 2, page 109 in the office of the Cedar County Auditor, said point being the point of beginning (the West line of the Southwest Quarter of Section 7, Township 79 North, Range 4 West of the Fifth Principle Meridian, is assumed to

have a bearing of North for purposes of this description); thence South 88° 16' 20" West 680.0 feet along a line that is parallel with and 18.0 feet in perpendicular distance Southerly of the Southerly line of said established road to a point; thence North 0° 00' 20" West 18.0 feet along a line 680.0 feet Westerly of the Easterly line of said Southwest Quarter to a point on the Southerly line of said established road; thence North 88° 16' 20" East 680.0 feet along the Southerly line of said established road to a point on the East line of said Southerly Quarter; thence North Norther 89° 43' 00" East 500.0 feet along the Southerly line of said established road to a point on the Southwesterly line of the tract described in Book 93, pages 355 and 356 in the Cedar County Recorder's Office; thence South 35° 36' 20" East 31.1 feet along said Southwesterly line to a point that is 18.0 feet in perpendicular distance Southerly from the Southerly line of established road; thence South 89° 43' 00" West 525.5 feet along a line that is parallel with and 18.0 feet in perpendicular distance Southerly from the Southerly line of said established road to the point of beginning.

See Exhibit "A" attached hereto and made a part of. This Exhibit depicts the contractor's drawing and legal description.

AUTHORITY TO ENTER INTO AGREEMENT FOR RIGHT-OF-WAY

The Permittee represents and warrants to the Permitter that:

- (1) It is duly authorized and empowered under applicable laws of the State of Iowa and by its charter and bylaws to enter into and perform this agreement in accordance with the provisions;
- (2) Its Council or duly authorized executive committee, has duly approved, and has duly authorized the execution, delivery, and performance by it of this agreement by the City Administrator.
- (3) All action that may be necessary or incidental to the approval of this permit, and the due execution, delivery, and performance by the Permittee has been taken; and
- (4) All of the foregoing approvals, authorizations, and actions are in full force and effect at the time of the execution and delivery of this permit.

PERMITTED USE OF RIGHT-OF-WAY BY THE PERMITTEE

The right-of-way is for the sole purpose of constructing, operating and maintaining a water line across the above described lands, application for which was made in writing to the superintendent, Herbert Hoover Nation Historic Site (hereinafter superintendent) on October 4, 2015, by the Permittee. That in utilizing the right-of-way the Permittee agrees to comply with and be bound by laws and regulations regarding the use and occupancy of the lands administered by the Service and by the terms of this permit.

DEVIATION FROM APPROVED RIGHT-OF-WAY

The Permittee agrees that it will not deviate from the location of the approved right-of-way in its construction, operation and maintenance of the subject water line. All ingress and egress for construction, maintenance and operation of the water line shall be restricted to the right-of-way. In the event that the Permittee determines that ingress and egress over park lands not included in the right-of-way are necessary for the construction, maintenance and operation of the subject water line, then the Permittee must apply, in writing, to the superintendent for approval of such ingress and egress.

EFFECTIVE DATE OF THE RIGHT-OF-WAY

The effective date of this permit shall be the date of its execution by the Regional Director (or delegate) and the Permittee. The right-of-way permit shall terminate TEN (10) years from the effective date, at noon, Iowa time unless prior thereto it is relinquished, abandoned, or otherwise terminated pursuant to the provisions of this permit or of any applicable Federal law or regulation.

RENEWAL OF RIGHT-OF-WAY

Unless relinquished, abandoned, or otherwise terminated pursuant to the provisions of the permit or of any applicable Federal law or regulations, the Permittee may make application to the superintendent, at least six months prior to its expiration date, for renewal of the right-of-way.

The Permittee shall file a written application, SF 299, in accordance with the existing Service regulations, to renew the right-of-way. The Permittee shall agree to comply with all the laws and regulations existing at such application date governing the occupancy and use of the lands of the Park for the purposes desired. The right-of-way permit may be renewed after full consideration of the application.

DISPOSAL OF PROPERTY ON TERMINATION OF RIGHT-OF-WAY

Upon the termination of the right-of-way permit by expiration or by cancellation for cause, in the absence of any agreement to the contrary, if all monies due the Permitter have been paid, the Permittee shall be allowed six months, or such additional time as may be provided, in which to remove from the right-of-way all property or improvements of any kind placed by them; and if not removed within the time allowed, all such property and improvements shall become the property of the United States.

NONUSE OR ABANDONMENT

It is understood and agreed by the parties that all or any part of the right-of-way may be terminated at the discretion of the Permitter in the event of nonuse or abandonment for a period of two years by the Permittee. In the case of termination, the Permitter will provide the Permittee with written notice including reasons for the termination.

FEES FOR USE AND OCCUPANCY

The Permittor and Permittee understand and agree that the consideration for utilization of the lands, pursuant to the right-of-way, for municipally operated projects is waived according to 36 CFR 14.26(c)(1).

FEES AND REIMBURSEMENT OF COSTS

Pursuant to 36 CFR 14.22(a)(2), for state or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and continue to serve the general public, payment of fees and costs incurred by the Service as a result of this permit are waived.

TERMS AND CONDITIONS

The permit is subject to the following terms and conditions:

(1) This permit shall not be construed as a permanent interest in the land of the right-of-way or as an abandonment of use and occupancy by the United States, but shall be considered a use of the land as described, anything contained to the contrary notwithstanding.

(2) This right-of-way permit may be terminated upon breach of any of the stated conditions or at the discretion of the Regional Director of the Service. Permittee will be given written notice and thirty (30) days to allow an opportunity for corrective actions before termination may occur. The written notice shall describe the specific violations of the permit. If Permittee does not correct the violations to the satisfaction of the Service, or present a reasonable plan acceptable to the Service within the thirty (30) day period, then the NPS shall be entitled to revoke this permit.

(3) The Permittee shall comply with all applicable State and Federal laws and existing regulations promulgated thereunder in the construction, operation and maintenance of the water line.

(4) The superintendent, Herbert Hoover National Historic Site, shall be notified in writing no less than TWO WEEKS prior to the start of initial construction on park lands. An on-site meeting will be conducted no less than one week prior to start of construction between representatives of the park and the Permittee construction/maintenance supervisor to determine and clarify the scope of the project and any requirements of the Service. The Permittee construction/maintenance supervisor will contact the park on the morning of the first day of work and each morning thereafter prior to entering the park, advising the location and extent of work crews and equipment in the park. Except in extraordinary situations and with the agreement of the superintendent, or as determined at or prior to the on-site meeting above, all work on park lands will be conducted on a Monday through Friday, 8:00 am through 5:00 pm basis. All work on park lands shall be completed to the satisfaction of the superintendent or his or her representative.

(5) The Permittee shall have a right of ingress and egress within the right-of-way at all times for the purposes of maintaining and operating the existing water line and appurtenances.

(6) If any portions of the water line are to be installed underground within the road shoulders of public roads, they shall comply with the specifications of the highway department having jurisdiction. Detailed procedures of installation are also subject to approval in advance of construction by the superintendent or his representative.

(7) If required, the Permittee shall file a performance bond with satisfactory surety payable to the Permitter to fully insure compliance with the permit terms and conditions.

(8) The Permittee shall be responsible to pay the Permitter for any damage resulting from this permit which would not reasonably be inherent in the use which the Permittee is authorized to make of the land. The Permitter will give the Permittee written notice of such damage and the Permittee will either take corrective action or pay the indicated amount as agreed upon and approved by the superintendent.

(9) Use by the Permittee of the land is subject to the right of the park to establish trails, roads, and other improvements and betterments over, upon or through said premises, and further to the use by travelers and others of such roads, trails, and other improvements already existing. If it is necessary to exercise such right, every effort will be made by the park to refrain from unduly interfering with or preventing use of the land by the Permittee for the purposes intended under this permit.

(10) The Permittee shall take adequate measures as directed and approved by the superintendent to prevent or minimize damage to park resources. This may include restoration, soil conservation and protection measures, landscaping, and repairing roads, trails, fences, etc. The Permittee shall dispose of brush and other refuse as required by the superintendent. The superintendent or his representative may inspect the right-of-way area as deemed necessary.

(11) The Permittee will halt any activities and notify the superintendent upon discovery of threatened or endangered species or archeological, paleontological, or historical findings. All artifacts unearthed remain the property of the park.

(12) No vegetation may be cut or destroyed without first obtaining approval from the superintendent. Any vegetation that must be removed shall be mitigated as specified by the superintendent.

(13) Use of pesticides and/or herbicides on park lands is prohibited without prior written approval from the superintendent.

(14) In the event any facilities covered by this permit should interfere with future Park construction, the Permittee agrees to terminate the use or relocate them at no cost to the Service within 60 days after written notice.

(15) The Permittee agrees to do everything reasonably within its power, both independently and on request of the superintendent, to prevent and suppress fires resulting from the Permittee's activities on and adjacent to the right-of-way.

(16) The Permittee agrees that the right-of-way shall be subject to the express condition that the use will not unduly interfere with the management and administration by the Service of the lands. Further, the Permittee agrees and consents to the occupancy and use by the park, its

Permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization, for necessary operations incident to such management, administration, or disposal.

(17) Upon expiration, revocation or termination of this permit, the Permittee shall leave the lands subject to the permit in as nearly the original condition as possible, as directed and approved by the superintendent.

(18) The Permittee agrees that in undertaking all activities pursuant to this permit, it will not discriminate against any person because of race, color, religion, sex, or national origin.

(19) No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this permit or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this permit if made with a corporation for its general benefit.

(20) No transfer of the permit will be recognized unless and until it is first approved in writing by the Regional Director of the Service. Such a transfer must be filed in accordance with existing regulations at the time of transfer, and must be supported by the stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way.

(21) This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or property of any kind whatsoever, whether to the person or property of the Permittee, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Permittee in connection herewith, and the Permittee hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

(22) Any alterations to this permit must be in writing and signed by the parties. Renewals will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.

(23) Any underground utilities previously located within this right-of-way which are damaged or disrupted during maintenance shall be repaired or restored by the Permittee within four hours.

(24) The Permittee shall be responsible for the provision and maintenance of proper signs, barricades or other means of warning motorists and pedestrians of danger during all periods of repair and maintenance.

(25) Nothing herein contained shall be construed as binding the Service to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this permit for the fiscal year, or to involve the Service in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

(26) Construction must occur between November and March to avoid migratory bird and crop seasons.

(27) The entire construction limit area must be fenced.

(28) All valves and air release manholes within grass areas will be recessed below grade so that they do not interfere with tractors, mowers, or other equipment that will operate in the area after construction is completed. All valves and air release manholes located on the bicycle/pedestrian trail will be installed so as to not create a hazard to users of the trail.

(29) Top soil will be segregated prior to trench excavation and returned to the surface after the trench is filled and compacted. The area will be returned to original grade.

(30) The Thompson farmhouse may be occupied and any disruption to utilities by the Permittee requires a 24 hour advanced notice to the occupants and any accidental disruption by the Permittee must be immediately repaired by the Permittee.

(31) Access to the Thompson farm buildings must be maintained by the Permittee at all times for vehicles and farm machinery unless prior notification by the Permittee and agreement by the Park is made and an alternative access route is available for emergencies. The driveway will be returned to usable condition by the Permittee immediately after the water line has crossed it. This will include regrading and gravel surfacing by Permittee.

(32) Any field drain tiles damaged will be repaired or replaced at no cost to the owner by Permittee.

(33) The Park/Ag Permittee will be appropriately compensated by the Permittee for any loss of hay production along the "Greenway" grass strip on the west edge of the prairie and for any loss of production of crop land at local competitive rates.

(34) Boundary makers must be identified, maintained and protected during construction. Any disturbance or removal must be arranged and approved prior to disturbance by the Superintendent of Herbert Hoover National Historic Site.

(35) The paved bicycle/pedestrian walkway which is covered by a pre-existing easement must be replaced, properly graded and paved after installation of the water line by Permittee.

COMPLIANCE

Failure of the Permittee to comply with any provision of this right-of-way permit shall constitute grounds for immediate termination of this permit.

WAIVER NOT CONTINUING

The waiver of any breach of any provision of this right-of-way permit, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent, to any subsequent or prior breach of the same or any other provision of this permit.

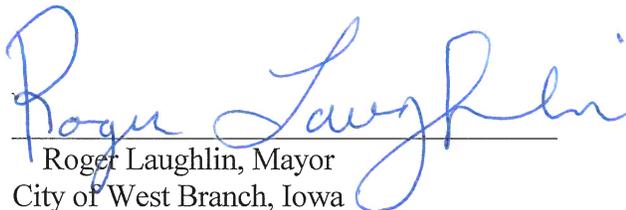
IN WITNESS WHEREOF, the Superintendent of Herbert Hoover National Historic Site, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Department of the Interior, has caused this Permit of Right-of-Way number RW 6470-15-001 (Renewal of RW MWR HEHO-05-01) to be renewed this 23 day of October, 2015.



Peter S. Swisher, Superintendent

Midwest Region, Herbert Hoover National Historic Site
National Park Service
United States Department of the Interior

ACCEPTED THIS 23RD DAY OF October, 2015



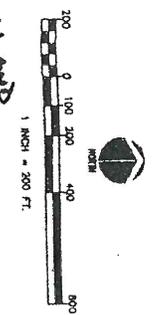
Roger Laughlin, Mayor
City of West Branch, Iowa

Attest

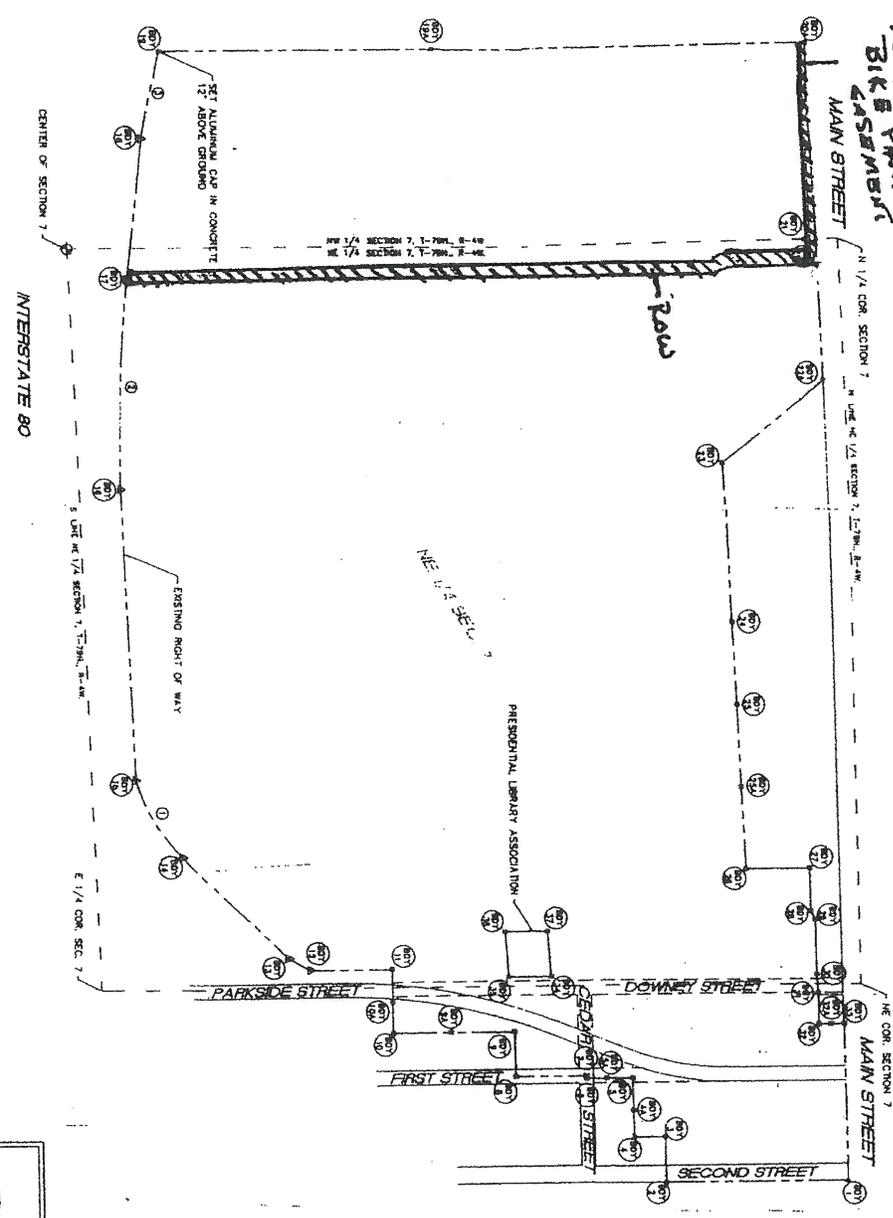


Matt, Muckler, City Administrator
City of West Branch, Iowa

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Roll and Path
Bike Path
CAsEMENT
MAIN STREET



- LEGEND**
- ① BOUNDARY CONSTRUCTION
 - ② BOUNDARY CONSTRUCTION
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CURVE TABLE

STATION	CHORD BEARING	CHORD DISTANCE	CHORD BEARING
1+00.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+100.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+200.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+300.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+400.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+500.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+600.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+700.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+800.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
1+900.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E
2+000.00	S 89° 57' 12" E	194.42	S 89° 57' 12" E

GENERAL NOTES

1. ALL POINTS ON LINE (PALL) MONUMENT LOCATIONS WERE ESTABLISHED BY THE NATIONAL PARK SERVICE.
2. THE PROPERTY OF THE NATIONAL PARK SERVICE IS TO BE PROTECTED AND THE PROPERTY OF THE NATIONAL PARK SERVICE IS TO BE PROTECTED.
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MONUMENT LIST

STATION	BEARING	DISTANCE	MONUMENT	DESCRIPTION
1+00.00	S 89° 57' 12" E	194.42	1+00.00	ROLL AND PATH BIKE PATH CAsEMENT
1+100.00	S 89° 57' 12" E	194.42	1+100.00	ROLL AND PATH BIKE PATH CAsEMENT
1+200.00	S 89° 57' 12" E	194.42	1+200.00	ROLL AND PATH BIKE PATH CAsEMENT
1+300.00	S 89° 57' 12" E	194.42	1+300.00	ROLL AND PATH BIKE PATH CAsEMENT
1+400.00	S 89° 57' 12" E	194.42	1+400.00	ROLL AND PATH BIKE PATH CAsEMENT
1+500.00	S 89° 57' 12" E	194.42	1+500.00	ROLL AND PATH BIKE PATH CAsEMENT
1+600.00	S 89° 57' 12" E	194.42	1+600.00	ROLL AND PATH BIKE PATH CAsEMENT
1+700.00	S 89° 57' 12" E	194.42	1+700.00	ROLL AND PATH BIKE PATH CAsEMENT
1+800.00	S 89° 57' 12" E	194.42	1+800.00	ROLL AND PATH BIKE PATH CAsEMENT
1+900.00	S 89° 57' 12" E	194.42	1+900.00	ROLL AND PATH BIKE PATH CAsEMENT
2+000.00	S 89° 57' 12" E	194.42	2+000.00	ROLL AND PATH BIKE PATH CAsEMENT

HERBERT HOOPER NATIONAL
 NATIONAL PARK SERVICE
 BOUNDARY SURVEY
 DATE: 11/12
 BY: [Signature]