

AGREEMENT BETWEEN THE CITY OF RAPID CITY  
AND CONTRACTOR NAME  
FOR  
LIME CREEK STABILIZATION  
PROJECT NUMBER MIP11-1956 / CIP NUMBER 50885

- 1) This Agreement is entered into this 6th day of June, 2011, by and between the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701, a municipal corporation organized under the laws of the state of South Dakota, hereinafter referred to as the "City," and Quinn Construction, Inc., 4404 Universal Drive, Rapid City, South Dakota 57702, hereinafter referred to as the "Contractor."
- 2) Specifications to be followed under this contract are the City of Rapid City Standard Specifications for Public Works Construction (Current Edition) and any Special Provisions, Special Conditions, and/or Detailed Specifications pertaining to this contract.
- 3) The Contractor agrees to perform the work described in the Detailed Specifications for Project No. MIP11-1956 / CIP No. 50885, Lime Creek Stabilization, in an amount not to exceed \$7,550.00. The Contractor will only be paid for work actually performed. This Agreement along with attached Informal Quotations and Detailed Specifications constitutes the entire agreement between the City and Contractor and supersedes all prior written or oral communications.
- 4) The Contractor agrees to indemnify, defend and hold the City harmless against all liability, loss, damage, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Contractor and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Contractor or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Contractor.
- 5) The Contractor is an independent entity and not an employee, agent, or partner of the City.
- 6) The Contractor shall obtain and maintain at its expense the following minimum limits of occurrence-based insurance coverage for the duration of this Agreement.

<u>Type of Coverage</u>	<u>Minimum Limits of Coverage</u>
A. Workers' Compensation Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
B. Comprehensive General Liability (Including Contractual Liability and Completed Operations) Bodily Injury and Property Damage General Aggregate	\$1,000,000 each occurrence \$2,000,000
C. Commercial Automobile Liability	\$1,000,000 combined single limit

Such insurance policies shall name the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the work and/or services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the City before commencing any work and/or services. Such Certificates shall afford the City thirty (30) days written notice of cancellation or of a material change in coverage. The City's failure to obtain from the Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity section.

7) The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

8) The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**THE CITY OF RAPID CITY, SOUTH DAKOTA**

BY \_\_\_\_\_  
ALAN HANKS, MAYOR  
Party of the First Part

ATTEST \_\_\_\_\_  
PAULINE SUMPTION  
City Finance Officer

\_\_\_\_\_  
NAME OF COMPANY  
Party of the Second Part

BY \_\_\_\_\_  
NAME OF REPRESENTATIVE  
Authorized Representative

\_\_\_\_\_  
TITLE

(SEAL)

DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_

**INFORMAL QUOTATION**  
**LIME CREEK STABILIZATION**  
**PROJECT NO. MIP11-1956 / CIP NO. 50885**  
**LET: MAY 31, 2011**

ITEM NO.	DESCRIPTION OF ITEM	UNIT	QTY	UNIT PRICE IN WORDS	UNIT COST	EXTENDED COST
1	MOBILIZATION	LS	1.00	Five hundred dollars	500. <sup>00</sup>	500. <sup>00</sup>
2	REMOVE RIVER ROCK	LS	1.00	two thousand six hundred	2,600. <sup>00</sup>	2,600. <sup>00</sup>
3	RIVER ROCK, 150-250 POUND ROCKS	TON	30.00	one hundred fifteen dollars	115. <sup>00</sup>	3450. <sup>00</sup>
4	SOD	SY	250.00	Four dollars	4. <sup>00</sup>	1000. <sup>00</sup>
TOTAL (WORDS AND FIGURES)				seven thousand five hundred Fifty dollars no cents		7,550. <sup>00</sup>

Quinn Construction, Inc  
 Name of Company

Derek Suhr  
 Authorized Representative (Please  
 Print)

  
 Authorized Signature

5-20-11  
 Date

PW053111-10



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701

## Public Works Department Engineering Services Division

300 Sixth Street

Telephone: (605) 394-4154 FAX: (605) 355-3083

Web: [www.rcgov.org](http://www.rcgov.org)

May 3, 2011

### LIME CREEK STABILIZATION PROJECT MIP11-1956 / CIP #50885

The City of Rapid City is accepting informal quotes for removing existing river rock / rip rap and installing larger river rock / rip rap in Lime Creek.

**The quotes will be accepted until 2:00 p.m., Friday May 20, 2011 and shall be submitted on the attached form.** Return the quotes to the City Engineering Services office at the address shown on the letterhead.

**This project shall be completed by July 29, 2011.** When work begins on this project it shall proceed without interruption until complete.

If you have any questions please call Keith Johnson at 394-4154.

### DETAILED SPECIFICATIONS

#### STANDARD SPECIFICATIONS

Standard Specifications for this project shall be the City of Rapid City Standard Specifications for Public Works Construction, 2007 Edition, hereinafter referred to as the Standard Specifications.

#### REMOVALS

The Contractor shall remove and dispose of existing river rock that is not reused. The loose fabric in the bottom of the creek shall be cut off and disposed of. All other debris inside the work zone shall be removed and disposed of. Removal and disposal of fabric and debris shall be incidental to the bid item "Remove River Rock".

#### RIVER ROCK

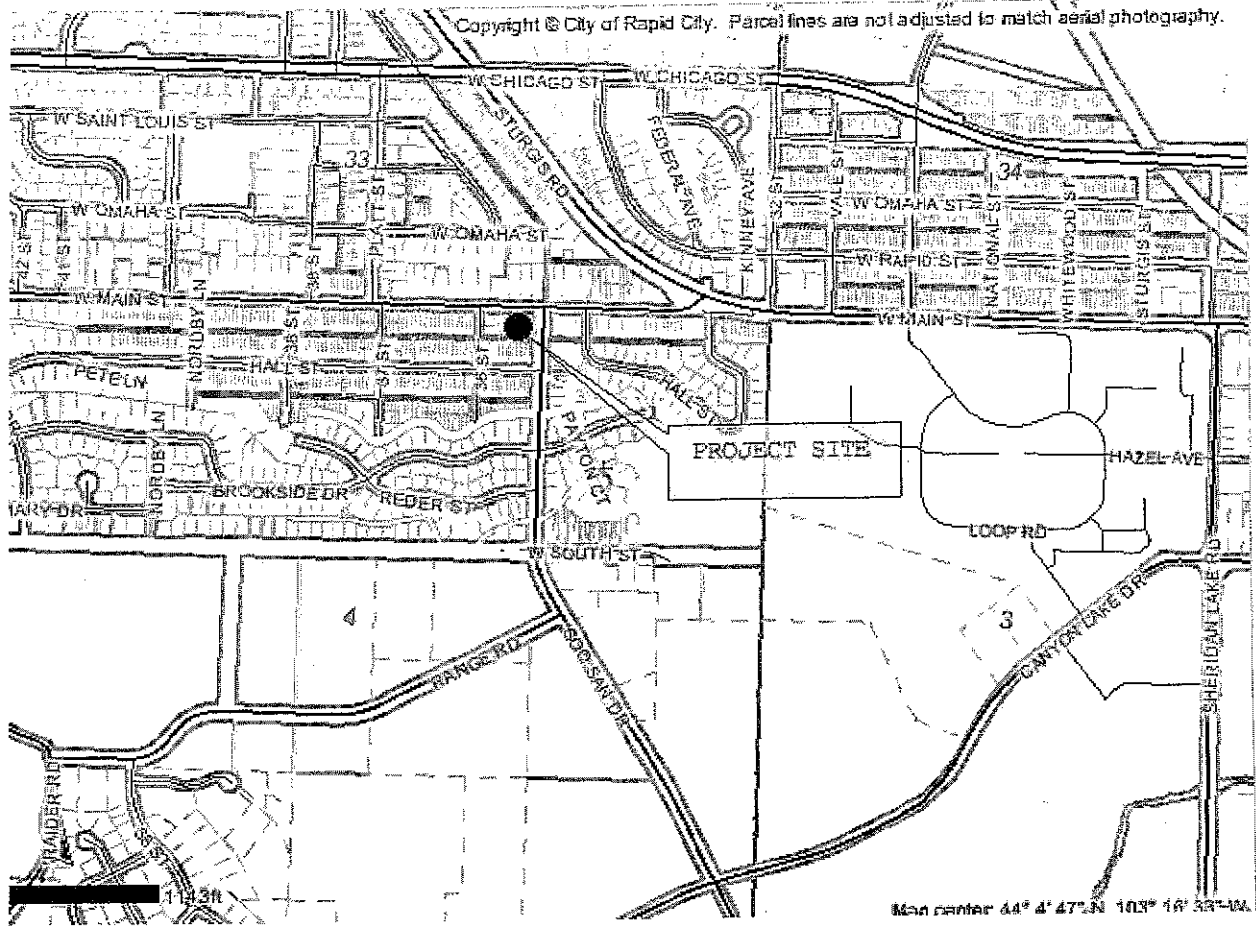
The Contractor shall provide 150 to 250 pound CLEAN river rock (based on 155 pound per cubic foot) to be placed as directed by the Engineer. The rock shall be set firmly into the creek bottom to insure it does not dislodge.

#### SOD

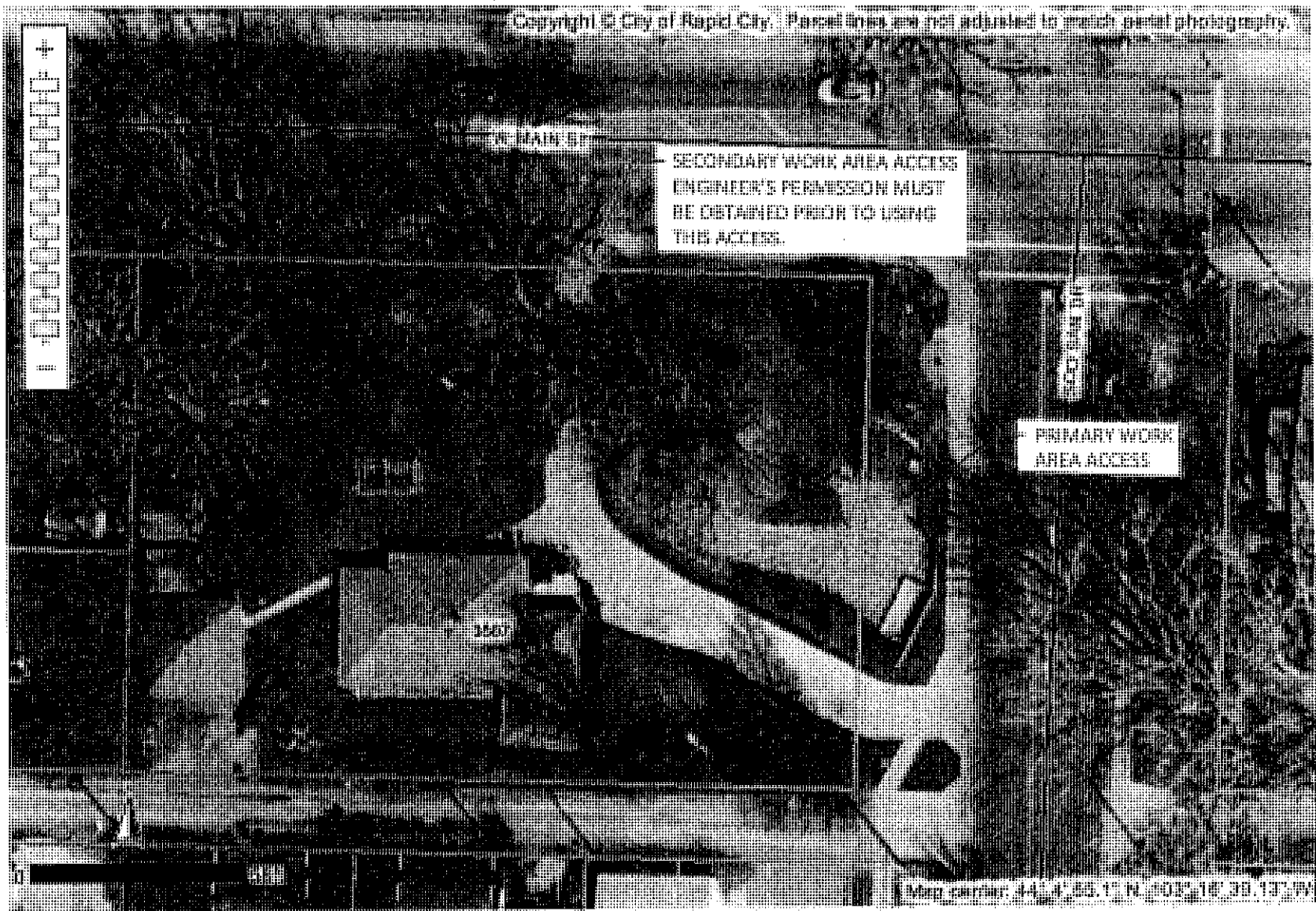
All disturbed grass areas shall be prepared and sodded in accordance with Section 73 of the Standard Specifications.



EQUAL OPPORTUNITY EMPLOYER



**LIME CREEK STABILIZATION**  
**PROJECT MIP11-1956 / CIP #50885**  
**LOCATION MAP**



SOD ALL DISTURBED  
GRASS AREAS.

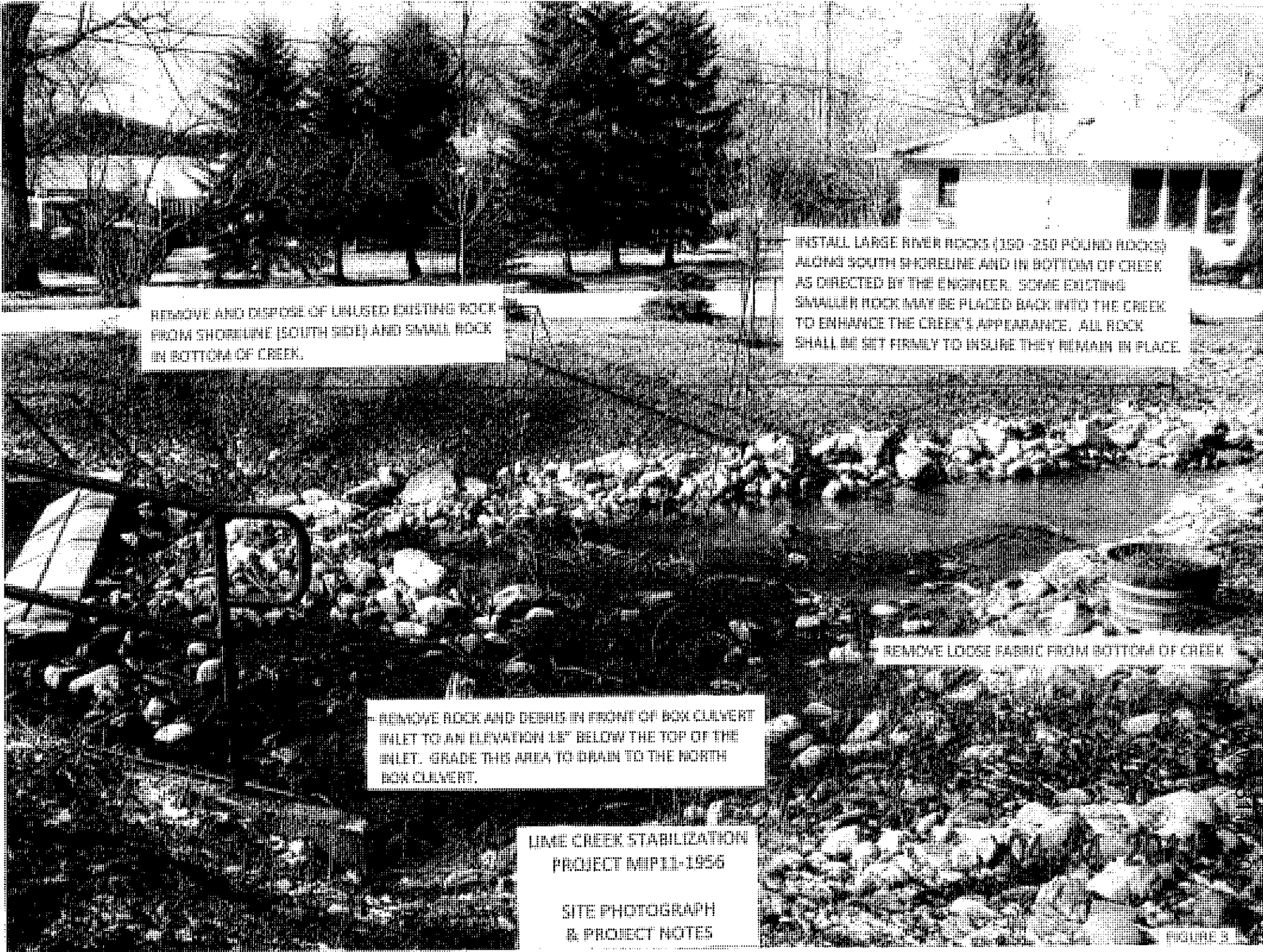
PROTECT SIDEWALKS, CURB & GUTTER  
AND DRIVEWAYS FROM DAMAGE.  
CONTRACTOR SHALL BE RESPONSIBLE  
FOR REPLACING IF DAMAGED.

LIME CREEK STABILIZATION  
PROJECT MIP11-1956

PROJECT ACCESS LOCATIONS

PW053111-10

FIGURE 2



REMOVE AND DISPOSE OF UNUSED EXISTING ROCK FROM SHORELINE (SOUTH SIDE) AND SMALL ROCK IN BOTTOM OF CREEK.

INSTALL LARGE RIVER ROCKS (150-250 POUND ROCKS) ALONG SOUTH SHORELINE AND IN BOTTOM OF CREEK AS DIRECTED BY THE ENGINEER. SOME EXISTING SMALLER ROCK MAY BE PLACED BACK INTO THE CREEK TO ENHANCE THE CREEK'S APPEARANCE. ALL ROCK SHALL BE SET FIRMLY TO INSURE THEY REMAIN IN PLACE.

REMOVE LOOSE FABRIC FROM BOTTOM OF CREEK

REMOVE ROCK AND DEBRIS IN FRONT OF BOX CULVERT INLET TO AN ELEVATION 18" BELOW THE TOP OF THE INLET. GRADE THIS AREA TO DRAIN TO THE NORTH BOX CULVERT.

LIME CREEK STABILIZATION  
PROJECT MIPLI-1954

SITE PHOTOGRAPH  
& PROJECT NOTES

FIGURE 3



LIME CREEK STABILIZATION  
PROJECT MIP 11-1956

SITE PHOTOGRAPH

FIGURE 4





LIME CREEK STABILIZATION  
PROJECT MIPI11-1956

SITE PHOTOGRAPH

04\_04\_2011

FIGURE 5



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, OMAHA DISTRICT  
SOUTH DAKOTA REGULATORY OFFICE  
28563 POWERHOUSE ROAD, ROOM 118  
PIERRE, SOUTH DAKOTA 57501-6174

PW053111-10

April 22, 2011

South Dakota Regulatory Office  
28563 Powerhouse Road, Room 118  
Pierre, South Dakota 57501

City of Rapid City  
Attn: Keith Johnson  
300 Sixth Street  
Rapid City, SD 57701

Dear Mr. Johnson:

We have reviewed your request for Department of the Army authorization for the installation of rip rap channel protection in Lime Creek. The project is located in Section 4, Township 1 North, Range 7 East, Pennington County, South Dakota.

Based on the information you provided, this office has determined that your work is authorized by the Department of the Army Nationwide Permit No. (13), found in the March 12, 2007 Federal Register (72 FR 11092), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General Conditions that must be adhered to for this authorization to remain valid. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

A Preliminary Jurisdictional Determination (JD) has been completed for your project, which is a written indication that wetlands and waterways within your project area are Waters of the United States (Enclosed). If you concur with the findings of the Preliminary JD, please sign it and return it to the letterhead address within two weeks. The preliminary jurisdictional determination is not appealable. If you do not concur with the findings, you may request an approved jurisdictional determination from this office.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit in your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement actions.

In compliance with General Condition 26, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

RECEIVED

MAY 2 2011

ENGINEERING DIVISION

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

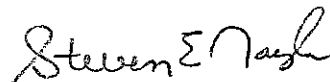
Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

You can obtain additional information about the Regulatory Program from our website: <http://www.nwo.usace.army.mil/html/od-rsd/frame.html>

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at <http://per2.nwp.usace.army.mil/survey.html>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please feel free to contact this office at the above Regulatory Office address, or telephone Nathan Morey at (605) 224-8531 and reference action ID NWO-2011-0689-PIE.

Sincerely,



Steven E. Naylor  
Regulatory Program Manager,  
South Dakota

Enclosures

**PERMIT COMPLETION AND COMPLIANCE CERTIFICATION**

**Permit Number:** NWO-2011-0689-PIE

**Name of Permittee:** City of Rapid City, Keith Johnson

**Date of Issuance:** April 22, 2011

Upon **completion** of the activity(s) authorized by this permit, including any approved mitigation (if required), please sign this certification and return it to the following address:

US Army Corps of Engineers  
South Dakota Regulatory Office  
28563 Powerhouse Road, Room 118  
Pierre, South Dakota 57501

Please note that your permitted activity is subject to a compliance inspection by a US Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and the approved mitigation was completed in accordance with the permit.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**A. Report Completion Date for Preliminary Jurisdictional Determination (JD):**

April 21, 2011

**B. Name and Address of Person Requesting Preliminary JD:**

City of Rapid City  
 Attn: Keith Johnson  
 300 Sixth Street  
 Rapid City, SD 57701

**C. District Office, File Name, and Number:**

Omaha District, Rapid City bank stabilization on Lime Creek in Pennington County,  
 NWO-2011-0689-PIE

**D. PROJECT LOCATION(S), BACKGROUND INFORMATION, AND WATERS:**

State: South Dakota  
 City: Rapid City  
 County: Pennington  
 Name of nearest waterbody: Lime Creek

Identify amount of waters in the review area: See Table 1 below.

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: None  
 Non-Tidal: None

**Table 1 - Waters of the U.S.**

Site #	Latitude	Longitude	Stream Flow	Cowardin Class	Estimated amount of aquatic resources in review area	Estimated amount of aquatic resource impact	Class of aquatic resource
1	44.081972	-103.277536	Ephemeral	Riverine	1000 linear feet	40 linear feet	Non-tidal

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

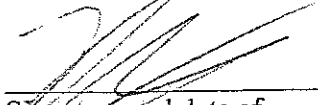
- Office (Desk) Determination. Date: April 21, 2011
- Field Determination. Date(s):

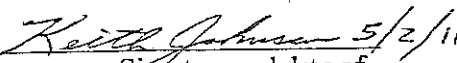
**F. SUPPORTING DATA:** Lime Creek is a ephemeral tributary to Rapid Creek which is a perennial tributary to the Cheyenne River which is a Traditional Navigable Water.

Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite quad name: SD-RAPID CITY WEST.
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name: ORM/GIS
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is:
- Photographs:  Aerial (Name & Date): Google Earth, Oct 2006  
or  Other (Name & Date): Site photos, April 04, 2011.
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

 04/23/11  
 Signature and date of  
 Regulatory Project Manager  
 (REQUIRED)

 5/2/11  
 Signature and date of  
 person requesting preliminary JD  
 (REQUIRED, unless obtaining the  
 signature is impracticable)

## G. EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

**FACT SHEET  
NATIONWIDE PERMIT 13**

**BANK STABILIZATION.** Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless this criterion is waived in writing by the district engineer;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer;
- (e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- (g) The activity is not a stream channelization activity.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (Sections 10 and 404)

**General Conditions:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.



**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

**15. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**16. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**17. Endangered Species.** (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be

non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**19. Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**21. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**22. Coastal Zone Management.** *Not Applicable.*

**23. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**24. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**25. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the

Fens are wetlands that develop where a relatively constant supply of ground water to the plant rooting zone maintains saturated conditions most of the time. The water chemistry of fens reflects the mineralogy of the surrounding and underlying soils and geological materials. The substrate is carbon-accumulating, ranging from muck to peat to carbonates. These wetlands may be acidic to alkaline, have pH ranging from 3.5 to 8.4 and support a range of vegetation types. Fens may occur on slopes, in depressions, or on flats (i.e., in different hydrogeomorphic classes; after: Brinson 1993).

## **2. Waters Adjacent to Natural Springs**

For all nationwide permits permittees must notify the Corps in accordance with General Condition No. 27 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in South Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

## **3. Spawning Areas**

In order to further minimize adverse impacts in certain waters of the United States and to comply with General Condition No. 3, projects authorized under all available Section 404 Nationwide Permits that would occur in South Dakota's cold water streams must comply with the following regional condition:

In all South Dakota streams classified as cold water streams, when water flow is present, the discharge of dredged or fill material shall not take place between October 15 and April 1. The Corps of Engineers, the South Dakota Department of Game, Fish and Parks, or the South Dakota Department of Environment and Natural Resources can be contacted for the location of State classified cold water streams. The cold water fisheries rivers and streams in South Dakota may be found at <http://legis.state.sd.us/rules/DisplayRule.aspx?Rule=74:51:03>.

## **4. Historic Properties**

The permittee and/or the permittee's contractor, or any of the employees, subcontractors or other persons working in the performance of a contract(s) to complete the work authorized herein, shall cease work and report the discovery of any previously unknown historic or archeological remains to the South Dakota Regulatory Office. Notification shall be by telephone or fax within 24 hours of the discovery and in writing within 48 hours. Work shall not resume until the permittee is notified by the South Dakota Regulatory Office.

**Additional Information:** Permittees are reminded of the existing General Condition No. 6 which prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material.

**General Condition 27. Pre-Construction Notification.**

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) Forty Five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation.

that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after

PROJECT NAME: LIME CREEK STABILIZATION

PROJECT NUMBER: PROJECT NO. MIP11-1956 / CIP NO. 50885

LET DATE: MAY 20, 2011

LOW BID AMOUNT: \$7,550.00

FUNDING: 0275 4294 0275

ITEM NO.	STD. BID ITEM NO.	DESCRIPTION OF ITEM	UNIT	QTY (EST)	ENGINEER'S ESTIMATE		QUINN CONSTRUCTION, INC.		MAINLINE CONTRACTING, INC.		WARAX EXCAVATING	
					UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
1		MOBILIZATION	LS	1.00	\$1,000.00	\$1,000.00	\$500.00	\$500.00		\$0.00		\$0.00
2		REMOVE RIVER ROCK	LS	1.00	\$1,000.00	\$1,000.00	\$2,600.00	\$2,600.00		\$0.00		\$0.00
3		RIVER ROCK, 150-250 POUND ROCKS	TON	30.00	\$75.00	\$2,250.00	\$115.00	\$3,450.00		\$0.00		\$0.00
4		SOD	SY	250.00	\$10.00	\$2,500.00	\$4.00	\$1,000.00		\$0.00		\$0.00
<b>TOTAL</b>						\$6,750.00		\$7,550.00		NO QUOTE		NO QUOTE