

RESOLUTION NO. 6

SERIES 2020

A RESOLUTION APPROVING A PRE-DISASTER MITIGATION GRANT CONTRACT FOR THE TOWN'S GOOSE PASTURE TARN DAM PROJECT

WHEREAS, the Town has been awarded a Pre-Disaster Mitigation subgrant in the amount of Ten Million Dollars (\$10,000,000) by the Colorado Division of Homeland Security and Management in connection with the Town's Goose Pasture Tarn Dam Project; and

WHEREAS, the Colorado Division of Homeland Security and Management requires the Town to enter into a Grant Contract, a copy of which is marked **Exhibit "A"**, attached hereto, and incorporated herein by reference ("Grant Contract"); and

WHEREAS, the Town Council has reviewed the proposed Grant Contract, and finds and determines that it would be in the best interest of the Town and its residents for Grant Contract to be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The grant contract between the Town and the Colorado Division of Homeland Security and Management (**Exhibit "A"** hereto) is approved, and the Town Manager is hereby authorized, empowered, and directed to execute such contract on behalf of the Town of Breckenridge.

Section 2. This resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 25th DAY OF FEBRUARY, 2020.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____


Eric S. Mamula, Mayor

ATTEST:



Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

 2/25/20

Town Attorney date



COLORADO

Division of Homeland Security & Emergency Management

Department of Public Safety
9195 E. Mineral Avenue, Suite 200
Centennial, CO 80112

James Phelps
Director Public Works
Town of Breckenridge
PO Box 168
Breckenridge, CO 80424

February 6, 2020

RE.: PDM 2018 - Project # PDMC-PJ-08-CO-2018-006

Dear Mr. Phelps:

We are pleased to inform you that FEMA has approved and awarded the Pre-Disaster Mitigation (PDM) subgrant for your Breckenridge Goose Pasture Tarn Dam project. The grant funding has been obligated to the Colorado Division of Homeland Security and Emergency Management (DHSEM) who is the pass through agency for this federal grant. The FEMA obligation and award date is January 22, 2020.

This grant is in the amount of \$18,884,795.00 (\$10,000,000.00 from FEMA, \$8,884,795.00 Local Match). This letter authorizes you to proceed with the Goose Pasture Tarn Dam Project in accordance with the terms of this Grant Award Letter.

Attached to this letter are the terms and conditions of your Grant. Please review these terms and conditions as they are requirements of this Grant to which you Grantee agree by accepting the Grant Funds.

Please follow the instructions in the grant agreement transmittal email from Kim Garcia for review and execution of the agreement and then return of the signed originals.

If you have questions regarding this Grant, please contact: Deanna Butterbaugh at deanna.butterbaugh@state.co.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Board".

Steven Board
State Hazard Mitigation Officer
Division of Homeland Security and Emergency Management

CC: Matt Arsenault, Mitigation Project Supervisor
Deanna Butterbaugh, Mitigation Project Specialist
Grant File

GRANT AWARD LETTER
SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency Department of Public Safety	Grant Maximum Amount \$10,000,000.00
Grantee Town of Breckenridge	Grant Issuance Date January 22, 2020
Agreement Number Encumbrance #: 18PDM20BRK Subrecipient DUNS#: 016151920 Federal Award Identification # (FAIN): EMD-2019-PC-0003 Total Amount of the Federal Award: \$10,000,000.00 Federal Award Date: January 22, 2020 Name of Federal Awarding Agency: DHS/FEMA CFDA 97.047 Pre-Disaster Mitigation Identification if the Award is for R&D: No	Grant Expiration Date April 1, 2022
	Fund Expenditure End Date April 1, 2022
	Grant Authority Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended (Pub. L. No. 93-288)(42 U.S.C. 5133). Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141).
Grant Purpose Town of Breckenridge construction project to rehabilitate Goose Pasture Tarn Dam in Summit County. This includes replacement of both the existing service spillway and emergency spillway with a single overtopping concrete spillway.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Grant: <ol style="list-style-type: none"> 1. Exhibit A, Statement of Work. 2. Exhibit B, Budget. 3. Exhibit C, Sample Option Letter (Form 1) 4. Exhibit D, Federal Provisions. 5. Exhibit E, FEMA Environmental Closeout. 6. Exhibit F, Record of Environmental Consideration (REC). <p>In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Exhibit D, Federal Provisions. 2. The provisions of the other sections of the main body of this Grant. 3. Exhibit A, Statement of Work. 4. Exhibit B, Budget. 	

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

GRANTEE	2nd Grantee Signature if Needed
<p>TOWN OF BRECKENRIDGE</p> <p>By: <u>Rock C. Holman</u></p> <p>Title: <u>TOWN MANAGER</u></p> <p><u>Rock C. Holman</u> *Signature</p> <p>Date: <u>02/26/2020</u></p>	<p>By: _____</p> <p>Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>

STATE OF COLORADO
 Jared S. Polis, Governor
 Department of Public Safety,
 Division of Homeland Security and Emergency Management
 Kevin R. Klein, Director

Kevin R. Klein
 By: Kevin R. Klein, Director

Date: 16 Apr 2020

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
 Robert Jaros, CPA, MBA, JD

Linda M. Bonesteel
 By: Colorado Department of Public Safety,
 State Controller Delegate, Linda M. Bonesteel

Effective Date: 4/20/20

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1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the “State”) hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the “Grantee”) an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties’ respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

C. Grantee’s Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. “**Budget**” means the budget for the Work described in Exhibit B.

- B. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- C. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302 C.R.S.
- D. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- E. “**Grant Award Letter**” means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- F. “**Grant Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- G. “**Grant Expiration Date**” means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- H. “**Grant Issuance Date**” means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- I. “**Exhibits**” exhibits and attachments included with this Grant as shown on the first page of this Grant.
- J. “**Extension Term**” means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter.
- K. “**Federal Award**” means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Regulations by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- L. “**Federal Awarding Agency**” means a Federal agency providing a Federal Award to a Recipient. The FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) is the Federal Awarding Agency for the Federal Award which is the subject of this Grant.
- M. “**Goods**” means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- N. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- O. “**Initial Term**” means the time period between the Grant Issuance Date and the Grant Expiration Date.
- P. “**Matching Funds**” means the funds provided Grantee as a match required to receive the Grant Funds.
- Q. “**Party**” means the State or Grantee, and “Parties” means both the State and Grantee.

- R. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- S. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S.
- T. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- U. “**Recipient**” means the State Agency shown on the first page of this Grant Award Letter, for the purposes of the Federal Award.
- V. “**Services**” means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
- W. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- X. “**State Fiscal Rules**” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- Y. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- Z. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- AA. “**Sub-Award**” means this grant by the State (a Recipient) to Grantee (a Subrecipient) funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

- BB. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- CC. **“Subrecipient”** means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization entity that receives a Sub-Award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Grant, Grantee is a Subrecipient.
- DD. **“Tax Information”** means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes, but is not limited to all information defined as Federal tax information in Internal Revenue Service Publication 1075.
- EE. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- FF. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- GG. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Amount shown on the first page of this Grant Award Letter. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active

Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

B. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds.

Grantee shall provide the Local Match Amount shown on the first page of this Grant Award Letter and described in Exhibit A (the “Local Match Amount”). Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee’s laws or policies.

D. Reimbursement of Grantee Costs

The State shall reimburse Grantee’s allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget as long as the Grantee provides the requested adjustment to the State for approval with the appropriate federal program agency prior to actual adjustments to line items of the Budget and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the Federal share of properly documented allowable costs related to the Work after the State’s review and approval thereof, subject to the provisions of this Grant. The State shall only reimburse allowable costs if those costs are: (i) reasonable and necessary to accomplish the Work and for the Goods and Services provided; and (ii) equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out.

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee’s final reimbursement request or invoice. The State will withhold 10% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

6. REPORTING - NOTIFICATION

A. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work. If Grantee enters into a subcontract or subgrant with an entity that would also be considered a Subrecipient, then the subcontract or subgrant entered into by Grantee shall contain provisions permitting both Grantee and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department

of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration.

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant or any terms of the Federal Award, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

12. DISPUTE RESOLUTION

Except as herein specifically provided otherwise or as required or permitted by federal regulations related to any Federal Award that provided any of the Grant Funds, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

13. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

15. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall

be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

16. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

G. Severability

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

H. Survival of Certain Grant Award Letter Terms

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Federal Provisions

Grantee shall comply with all applicable requirements of Exhibit D at all times during the term of this Grant.

EXHIBIT A, STATEMENT OF WORK

1. GENERAL DESCRIPTION OF THE PROJECT(S).

1.1 Project Description. This project is to rehabilitate Goose Pasture Tarn Dam in Blue River, Summit County, Colorado which is owned by the Town of Breckenridge. The construction project includes the following: Replacement of both the existing service spillway and emergency spillway with a single overtopping concrete spillway capable of handling flows up to the inflow design flood in accordance with current Colorado Division of Water Resources Dam Safety Branch requirements. Construction of a crest cutoff wall beneath the single spillway, and extension of the wall to an adequate lateral distance to the east and west of the spillway to mitigate seepage underflows beneath the spillway crest. Installation of a spillway and downstream underdrain/filter system to reduce the potential for internal erosion with the dam. Installation of a cured in place pipe liner used to seal the leaking RCP outlet conduit. Installation of a new water treatment plant (WTP) pipe section through the dam embankment encased in concrete to mitigate the potential for internal erosion along the pipeline. Re-armor the downstream stilling basin area and construction of a small retaining wall on the east side of the pool, to provide bottom and channel bank protection within the pool area upstream of the natural river channel.

1.2 Project Expenses. Project expenses include the costs hire a contractor to complete the work as described in §1.1 of this Exhibit A. All eligible expenses are listed in the budget table in Exhibit B.

1.3 Non-Federal Match: This non-federal match section applies to or does not apply to this Grant. If it applies, this Grant requires a non-federal match contribution of 25% of the total Grant budget. Documentation of expenditures for the non-federal match contribution is required with each drawdown request. If applicable the match may or may not include in-kind match.

2. DELIVERABLES:

2.1 Grantee shall submit narrative and financial reports describing project progress and accomplishments, any delays in meeting the objectives and expenditures to date as described in §3 of this Exhibit A.

2.2 List additional grant deliverables: Closeout documentation required for state and FEMA closeout of the grant.

3. REPORTING REQUIREMENTS:

3.1 Quarterly Financial Status and Progress Reports. The project(s) approved in this Grant are to be completed on or before the termination date stated on the Agreement’s Signature and Cover Page of the Grant Agreement. Grantee shall submit quarterly financial status and programmatic progress reports for each project identified in this agreement using the forms provided by the Department of Public Safety throughout the life of the grant. One copy of each required report with original or electronic signatures shall be submitted in accordance with the schedule below: (The order of the reporting period quarters below are irrelevant to the grant. If the grant is open during the “report period” reports for that period are due on the dates listed. If the grant is for more than one year, reports are due for every quarter that the grant remains open.)

Report Period	Due Date
October – December	January 15
January –March	April 15
April – June	July 15
July – September	October 15

3.2 Final Reports: Grantee shall submit final financial status and progress reports that provide final financial reconciliation and final cumulative grant/project accomplishments within 45 days of the end of the project/grant period. The final report may not include unliquidated obligations and must indicate the exact balance of unobligated funds. The final reports may substitute for the quarterly reports for the final quarter of the grant period. If all projects are completed before the end of the grant period, the final report may be submitted at any time before its final due date. Further reports are not due after the Division of Homeland Security and Emergency Management has received, and sent notice of acceptance of the final grant report.

4. TESTING AND ACCEPTANCE CRITERIA:

The Division of Homeland Security and Emergency Management shall evaluate this Project(s) through the review of Grantee submitted financial and progress reports. The Division of Homeland Security and Emergency Management may also conduct on-site monitoring to determine whether the Grantee is meeting/has met the performance goals, administrative standards, financial management and other requirements of this grant. The Division of Homeland Security and Emergency Management will notify Grantee in advance of such on-site monitoring.

5. PAYMENT:

5.1 Payment Schedule: Grantee shall submit requests for reimbursement using the Division of Homeland Security and Emergency Management’s provided form at least quarterly. One original or electronically signed/submitted copy of the reimbursement request is due on the same dates as the required financial reports. All requests shall be for eligible actual expenses incurred by Grantee, as described in detail in the budget table(s) of this Exhibit. Requests shall be accompanied by supporting documentation totaling at least the amount requested for reimbursement and any required non-federal match contribution. If any financial or progress reports are delinquent at the time of a payment request, the Division of Homeland Security and Emergency Management may withhold such reimbursement until the required reports have been submitted.

5.2 Payment Amount: If non-federal match is required, such match shall be documented with every payment request. Excess match documented and submitted with one reimbursement request shall be applied to subsequent requests as necessary to maximize the allowable reimbursement.

5.3 Remittance Address. If mailed, payments shall be sent to the representative identified in §6 of this Exhibit:

Town of Breckenridge
PO Box 168
Breckenridge, CO 80424

6. PRINCIPAL REPRESENTATIVES:

For the State:

Larisa Cannon, Grants and Contracts Manager
Department of Public Safety,
Division of Homeland Security and Emergency
Management
9195 E. Mineral Avenue, Suite 200
Centennial, CO 80112
larisa.cannon@state.co.us

For Grantee:

James Phelps, Director Public Works
Town of Breckenridge

PO Box 168
Breckenridge, CO 80424
jamesp@townofbreckenridge.com

7. ADMINISTRATIVE REQUIREMENTS:

Required Documentation: Grantees shall retain all procurement and payment documentation on site for inspection. This shall include, but not be limited to, purchase orders, receiving documents, invoices, vouchers, equipment/services identification, and time and effort reports.

7.1 Sufficient detail shall be provided with reimbursement requests to demonstrate that expenses are allowable and appropriate as detailed below:

7.1.1 Equipment or tangible goods. When requesting reimbursement for equipment items with a purchase price of or exceeding \$5,000, and a useful life of more than one year, the Grantee shall provide a unique identifying number for the equipment, with a copy of the Grantee's invoice and proof of payment. The unique identifying number can be the manufacturer's serial number or, if the Grantee has its own existing inventory numbering system, that number may be used. The location of the equipment shall also be provided. In addition to ongoing tracking requirements, Grantee shall ensure that equipment items with per unit cost of \$5,000 or more are prominently marked in a manner similar to the following: Purchased with funds provided by the U.S. Department of Homeland Security.

7.1.2 Services. Grantees shall include contract/purchase order number(s) or employee names, the date(s) the services were provided and the nature of the services.

7.2 Procurement: A Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantees should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:

7.2.1 Any sole source transaction in excess of \$100,000 shall be approved in advance by the Division of Homeland Security and Emergency Management.

7.2.2 Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee shall be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection shall be submitted in writing to, and be approved by the authorized Grantee official.

7.2.3 Grantee shall verify that the Contractor is not debarred from participation in state and federal programs. Sub-grantees should review contractor debarment information on <http://www.sam.gov>.

7.2.4 When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subgrantees shall use the phrase -"This project was supported by grant #18PDM20BRK, issued by the Division of Homeland Security and Emergency Management."

7.2.5 Grantee shall verify that all purchases are listed in **§1 or §7** of this Exhibit. Equipment purchases, if any, shall be for items listed in the Approved Equipment List (A.E.L) for the grant period at <https://www.fema.gov/authorized-equipment-list>. Additionally, funds used to support emergency communications activities should comply with the FY 2016 SAFECOM Guidance for Emergency Communication Grants, at <http://www.safecomprogram.gov>

7.2.6 Grantee shall ensure that no rights or duties exercised under this grant, or equipment

purchased with Grant Funds having a purchase value of \$5,000 or more, are assigned without the prior written consent of the Division of Homeland Security and Emergency Management.

- 7.2.7 Grantee shall ensure that all funds are needed to supplement and not to supplant the Grantee's own funds.

7.3 Additional Administrative Requirements:

- 7.3.1 The Grantee must request approval in advance for any change to this Grant Agreement, using the forms and procedures established by the Division of Homeland Security and Emergency Management.
- 7.3.2 All applicant agencies that own resources currently covered by the Colorado Resource Typing Standards must agree to participate in the State's Emergency Resource Inventory Report and update their information on a quarterly basis.
- 7.3.3 All funding related to exercises must be managed and executed in accordance with the Homeland Security Exercise and Evaluation Program (HSEEP) and must be National Incident Management System (NIMS) compliant. Regardless of exercise type or scope, After Action Reports/Improvement Plans are due to the State Training and Exercise Program Manager within 45 days of the exercise.

EXHIBIT B, BUDGET**BUDGET:**

<i>Project Activity/Line Item</i>	<i>Federal Share</i>	<i>Local Share</i>	<i>TOTAL Project</i>
Mobilization and Site Preparation	\$2,032,147.55	\$1,805,521.45	\$3,837,669.00
Demolition and Excavation	\$1,070,838.21	\$951,417.79	\$2,022,256.00
Earthwork	\$699,004.67	\$621,051.33	\$1,320,056.00
Drainage Systems	\$49,974.60	\$44,401.40	\$94,376.00
Spillway	\$4,995,189.52	\$4,438,123.48	\$9,433,313.00
High Level Outlet Works and Plant Intake	\$459,397.10	\$408,164.90	\$867,562.00
Low Level Outlet Works Rehabilitation	\$264,768.56	\$235,241.44	\$500,010.00
Miscellaneous	\$428,679.79	\$380,873.21	\$809,553.00
TOTAL BUDGET	\$10,000,000.00	\$8,884,795.00	\$18,884,795.00
TOTAL AWARD AMOUNT	\$10,000,000.00		

EXHIBIT C, SAMPLE OPTION LETTER (FORM 1)

State Agency Department of Public Safety	Option Letter Number Insert the FORM 1 Number (e.g. "1" for the first option)
Grantee Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	Option Agreement Number Insert CMS Number
Original Agreement CMS Number: Insert CMS Number Encumbrance #: MG4145xxxxxx Subrecipient DUNS#: Insert DUNS Number Executive Order Identification #: EMW-2017-SS-00050-S01 Award Date Insert Full Date Disaster Emergency Fund Identification if the Award is for R&D: No	Option Agreement Maximum Amount \$Insert Amount
	Agreement Performance Beginning Date Month Day, Year
	Current Agreement Expiration Date Month Day, Year

1. OPTIONS:

- A. Option to extend for an Extension Term
- B. Option to modify Budget table under the Agreement

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with §(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Month Day, Year and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
- B. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement’s Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above. The maximum amount payable by the State for performance of this Grant Agreement is increased/decreased to \$ and the maximum amount of local matching funds, if applicable, is \$. The total project amount is \$.

<i>Project Activity/Line Item</i>	<i>State Share</i>
Organization	\$ 0.00
Planning	\$ 0.00
Equipment	\$ 0.00
Training	\$ 0.00
TOTAL AWARD AMOUNT	\$ 0.00

3. OPTION EFFECTIVE DATE:

The effective date of this Option Letter is upon approval of the State Controller.

<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Public Safety, Division of Homeland Security and Emergency Management</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">By: Kevin R. Klein, Director</p> <p style="text-align: center;">Date: _____</p>	<p>In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Public Safety, Linda Bonesteel, Office of Grants Management Director</p> <p>Option Effective Date: _____</p>
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EXHIBIT D, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant Award Letter to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

2.1.1. “Agreement” means the Grant Award Letter to which these Federal Provisions are attached and includes all Award types in §2.1.2.1 of this Exhibit.

2.1.2. “Award” means an award of Federal financial assistance, and the agreement setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

2.1.2.1. Awards may be in the form of:

2.1.2.1.1. Grants;

2.1.2.1.2. Contracts;

2.1.2.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

2.1.2.1.4. Loans;

2.1.2.1.5. Loan Guarantees;

2.1.2.1.6. Subsidies;

2.1.2.1.7. Insurance;

2.1.2.1.8. Food commodities;

2.1.2.1.9. Direct appropriations;

2.1.2.1.10. Assessed and voluntary contributions; and

2.1.2.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

2.1.2.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

2.1.2.2. Award *does not* include:

2.1.2.2.1. Technical assistance, which provides services in lieu of money;

2.1.2.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

2.1.2.2.3. Any award classified for security purposes; or

- 2.1.2.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.3. “Contractor” means the party or parties to an Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;
 - 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 2.1.5.2. A foreign public entity;
 - 2.1.5.3. A domestic or foreign non-profit organization;
 - 2.1.5.4. A domestic or foreign for-profit organization; and
 - 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.12. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.13. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.

- 2.1.14. “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.15. “Federal Provisions” means these Federal Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE.

- 3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

- 4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

5. TOTAL COMPENSATION.

- 5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 5.1.2. In the preceding fiscal year, Contractor received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Agreement price. The reporting requirements in this Exhibit are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Agreement and shall become part of Contractor's obligations under this Agreement.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award

modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.

8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 8.1.1.1. Subrecipient DUNS Number;
- 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 8.1.1.3. Subrecipient Parent DUNS Number;
- 8.1.1.4. Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.1.5. Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 8.1.1.6. Subrecipient’s Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Agreement, the following data elements:

- 8.1.2.1. Subrecipient’s DUNS Number as registered in SAM.
- 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.

9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an

affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.

- 12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375,

“Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

- 12.1.1.1. During the performance of this contract, the contractor agrees as follows:
 - 12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - 12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - 12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - 12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - 12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - 12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - 12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing

such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

- 12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 12.1.3. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

13. CERTIFICATIONS.

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Agreement and the State of Colorado may terminate the Agreement upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Agreement, at law or in equity.

EXHIBIT E, FEMA ENVIRONMENTAL CLOSEOUT

ENVIRONMENTAL CLOSEOUT PROCEDURES

Because the environmental laws fall within FEMA's area of responsibility, verification that the requirements of the environmental documents were met must be provided at the time of grant closeout. The applicant or applicant's agent must certify the conditions stated in the Categorical Exclusion (CATEX) or Finding of No Significant Impact (FONIS) document were met, attach all copies of permits and other required documentation, and submit to FEMA with the closeout packet.

Examples of conditions of environmental documents (not all inclusive):

1. Stormwater permits (EPA's NPDES; Section 401 of the Clean Water Act)
2. Dike permit
3. Army Corps of Engineers Section 10 or 404 permits
4. Floodplain development permit
5. Local permits for debris removal; abandonment of private wells, asbestos, etc.
6. Documentation that agency recommendations such as Best Management Practices (mitigation) were followed
7. Documentation that applicant received coordinated approvals from agencies on final design or plan where requested

This process begins at the time of grant award by the State. The applicant will have already received a copy of the environmental documentation from FEMA staff outlining the conditions to be met. The State should further emphasize the applicant's responsibilities. The quarterly 404 Report must reflect the progress being made on environmental conditions.

The applicant must sign FEMA's Environmental Closeout Declaration and attach a statement or explanation of what action was taken to address each condition or explain why an action was not required. Copies of all permits must be attached.

Funding will be jeopardized if environmental conditions are not followed and required permits are not obtained.

SUB-RECIPIENT INSTRUCTIONS:

1. Please provide a concise narrative of how each condition(s) in the Record of Environmental Compliance (REC) was complied with.
2. Include any permits, letters, or memorandum, photos, documentation or additional requirements.
3. Provide any additional documentation need to satisfy all environmental requirements.
4. Complete and sign the Declaration.
5. Upload all documents in the Large Closeout Module in EMGrants

ENVIRONMENTAL CLOSEOUT DECLARATION:

This form must be signed after project completion and submitted as part of the grant closeout documentation. Also, please provide comments to each of the stipulations explaining how the requirements were met.

I attest that all conditions listed in the approved project's environmental document were followed and the appropriate permits and documentation are attached.

Project Title

Name of Applicant or Applicant's Agent (Print)

Title

Signature of Applicant or Applicant's Agent

Date

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

NEPA DETERMINATION

Non Compliant Flag: No	EA Draft Date:	EA Final Date:
EA Public Notice Date:	EA Fonsi	Level: CATEX
EIS Notice of Intent	EIS ROD Date:	

Comment The Town of Breckenridge is proposing to rehabilitate Goose Pasture Tarn Dam in Blue River, Summit County, Colorado (project area). The existing service spillway, which is an overtopping reinforced concrete chute spillway, is unstable and could fail under normal flow conditions. Colorado Dam Safety imposed a restriction in the reservoir level to prevent normal flows from going over the service spillway until a repair could be implemented. The objectives of the proposed action are to reduce the risk of dam safety issues by implementing the following:

- ¿ Replacement of both the existing service spillway and emergency spillway with a single overtopping concrete spillway capable of handling flows up to the inflow design flood in accordance with current Colorado Division of Water Resources Dam Safety Branch requirements.
- ¿ Construction of a crest cutoff wall beneath the single spillway, and extension of the wall to an adequate lateral distance to the east and west of the spillway to mitigate seepage underflows beneath the spillway crest.
- ¿ Installation of a spillway and downstream underdrain/filter system to reduce the potential for internal erosion within the dam.
- ¿ Installation of a cured in place pipe (CIPP) liner used to seal the leaking RCP outlet conduit.
- ¿ Installation of a new water treatment plant (WTP) pipe section through the dam embankment encased in concrete to mitigate the potential for internal erosion along the pipeline.
- ¿ Re-armor the downstream stilling basin area and construction of a small retaining wall on the east side of the pool, to provide bottom and channel bank protection within the pool area upstream of the natural river channel. - djones58 - 01/03/2020 20:37:07 GMT

CATEX CATEGORIES

Catex Category Code	Description	Selected
*n7	(*n7) Federal Assistance for Structure and Facility Upgrades. Federal assistance for the reconstruction, elevation, retrofitting, upgrading to current codes and standards, and improvements of pre-existing facilities in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use. This category does not include actions within or affecting streams or stream banks or actions seaward of the limit of moderate wave action (or V zone when the limit of moderate wave action has not been identified).	Yes

EXTRAORDINARY

Extraordinary Circumstance Code	Description	Selected ?
	No Extraordinary Circumstances were selected	

ENVIRONMENTAL LAW / EXECUTIVE ORDER

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
Bald and Golden Eagle Protection Act (BGEPA)	Completed	Review concluded	The proposed project has the potential to impact Bald and Golden eagles. The proposed actions are subject to compliance with the Bald or Golden Eagle Protection Act (BGEPA). If active eagle nests are observed in the project area, appropriate USFWS and CPW buffer zones and/or work restrictions may be required. In accordance with USFWS guidelines, the applicant is responsible for obtaining and complying with any necessary permits from USFWS. Additional guidance is available at: https://www.fws.gov/birds/policiesandregulations.php and https://cpw.state.co.us/Documents/WildlifeSpecies/LivingWithWildlife/RaptorBufferGuidelines2008.pdf . See project conditions. - djones58 - 01/03/2020 20:29:25 GMT
Clean Air Act (CAA)	Completed	Project will not result in permanent air emissions - Review concluded	
Coastal Barrier Resources Act (CBRA)	Not Applicable	Project is not on or connected to CBRA Unit or otherwise protected area - Review concluded	
Clean Water Act (CWA)	Completed	Project would affect waters, including wetlands, of the U.S.	The project will affect water of the U.S. under the jurisdiction of the USACE. Therefore, the sub-recipient shall consult with USACE to determine project requirements. The proposed action will result in 0.167 acres of temporary impacts on wetlands, and 2.0 acres of temporary impacts on waters of the U.S. The town of Breckenridge is requesting authorization for the proposed action under the U.S. Army Corps of Engineers' Nationwide Permit system [33 Code of Federal Regulations (CFR) 330.6], specifically Nationwide Permit 3a. See PCN in Appendix A of the CATEX (attached) for more information. See project conditions - djones58 - 01/03/2020 20:07:50 GMT
	Completed	Project may require Section 404/401 or Section 9/10 (Rivers and Harbors Act) permit, including qualification under Nationwide Permits - Review concluded	
Coastal Zone Management Act (CZMA)	Not Applicable	Project is not located in a coastal zone area and does not affect a coastal zone area - Review concluded	
Executive Order 11988 - Floodplains	Completed	No effect on floodplain/flood levels and project outside floodplain - Review concluded	The proposed action does not affect the Blue River floodplain as shown on Flood Insurance Rate Map 08117C0483F (effective 11/16/18) and 08117C0484E (effective 11/16/2011). The project area is

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
			located in Zone X, an area with minimal flood hazard. No change in base flood elevation will occur under the proposed action. No additional analysis, documentation, or coordination is needed. - djones58 - 01/03/2020 20:30:14 GMT
Executive Order 11990 - Wetlands	Completed	Located in wetlands or effects on wetlands	The proposed action will result in 0.167 acres of temporary impacts on wetlands, and 2.0 acres of temporary impacts on waters of the U.S. The 0.167 acre of temporarily impacted wetlands will be returned to pre-project conditions following construction completion. Efforts to avoid further impacts to wetlands and the Blue River will be implemented in accordance with the required USACE Section 404 permit. The stream banks downstream of the dam would not be permanently affected by the proposed action. The proposed action, including the avoidance and mitigation measures will result in a net benefit to the Blue River by reducing dam failure risk and improving flood and water flow control. Additionally, the proposed action will also reduce the risk of dam and spillway failure for the residents and structures located downstream of the dam and spillway. Overall, the benefits for the residents and structures located downstream of the dam and spillway outweigh the requirements of EO 11990 with regards to wetlands [44 CFR 9.9 (e)(3)]. A Public Notice intent to complete an action in wetlands was advertised in the Summit County Journal December 6, 2019. No substantive comments were received during the 15 day comment periods. Affidavit of publication is included in the project file. See Appendix C of the CATEX (attached) for Executive Order 11988, Floodplain Management and Executive Order 11990, Protection of Wetlands Compliance Memorandum for more information. Note project conditions related to wetland impacts. - djones58 - 01/03/2020 20:33:53 GMT
	Completed	Possible adverse effect associated with constructing in or near wetland	
	Completed	8 Step Process Complete - documentation attached - Review concluded	
Executive Order 12898 - Environmental Justice for Low Income and Minority Populations	Completed	No Low income or minority population in, near or affected by the project - Review concluded	

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
Endangered Species Act (ESA)	Completed	Listed species and/or designated critical habitat present in areas affected directly or indirectly by the federal action	The U.S. Fish and Wildlife Service (Service) lists the following threatened, endangered, and candidate species with potential habitat in Summit County or with potential to be affected by projects in Summit County: Canada lynx (<i>Lynx canadensis</i>), North American wolverine (<i>Gulo gulo luscus</i>), greater sage grouse (<i>Centrocercus urophasianus</i>), Mexican spotted owl (<i>Strix occidentalis lucida</i>), yellow-billed cuckoo (<i>Coccyzus americanus</i>), penland alpine fen mustard (<i>Eutrema edwardsii</i> spp. <i>Penlandii</i>), bonytail chub (<i>Gila elegans</i>), Colorado pikeminnow (<i>Ptychocheilus lucius</i>), greenback cutthroat trout (<i>Oncorhynchus clarki stomias</i>), humpback chub (<i>Gila cypha</i>), razorback sucker (<i>Xyrauchen texanus</i>). There is no likelihood for the proposed action to affect the lynx, North American wolverine, greater sage grouse, Mexican spotted owl, yellow-billed cuckoo, or penland alpine fen mustard because of the lack of suitable habitat in the project area. The greenback cutthroat trout is currently only known to occur in a small creek in El Paso and Teller counties. The proposed action is not anticipated to result in depletions on the Blue River, a tributary of the Upper Colorado River Basin; therefore, the Colorado River fish (bonytail chub, Colorado pikeminnow, humpback chub, and razorback sucker) would not be affected by the proposed action. Therefore, the proposed action will not result in direct or indirect impacts to potential habitat for threatened, endangered, and candidate species listed under the Endangered Species Act. Consultation with the Service is not required; however, FEMA notified the Service of our determination on November 22, 2019. See Appendix B of the CATEX (attached) for more information. - djones58 - 01/03/2020 19:53:33 GMT
	Completed	No effect to species or designated critical habitat (See comments for justification) - Review concluded	
Farmland Protection Policy Act (FPPA)	Completed	Project does not affect designated prime or unique farmland - Review concluded	
Fish and Wildlife Coordination Act (FWCA)	Completed	Project does not affect, control, or modify a waterway/body of water - Review concluded	The proposed action will result in modifications to the Goose Pasture Tarn Lake Dam. Section 2(a) of the Fish and Wildlife Coordination Act, requires Service consultation whenever the waters of any stream or other body of water are proposed or authorized to be impounded,

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
Migratory Bird Treaty Act (MBTA)	Completed	Project not located within a flyway zone - Review concluded	diverted, channelized, controlled or modified for any purpose. A threatened and endangered species habitat assessment letter was sent to the Service on November 22, 2019 describing the proposed action, the project area habitat characteristics, and the potential for suitable habitat to be present and affected by the proposed action. In addition, Clint Henke with ERO Resources Corporation spoke with John Ewert with Colorado Parks and Wildlife about the proposed action on November 4, 2019. Neither the Service nor CPW expressed concern with the project or provided recommendations or mitigation measures. See Appendix B for more information regarding Service and CPW coordination. No additional analysis, documentation, or coordination is needed. - djones58 - 01/03/2020 20:23:53 GMT
			See project conditions. - djones58 - 01/03/2020 20:25:33 GMTThe proposed action will result in the removal of vegetation; however, the underlying purpose of the proposed activity will not result in a take as defined in the Migratory Bird Treaty Act. If vegetation is removed during nesting season (typically February through September) it is recommended that the vegetation will be surveyed for active bird nests. No additional analysis, documentation, or coordination is needed. - djones58 - 01/03/2020 20:26:22 GMT
Magnuson-Stevens Fishery Conservation and Management Act (MSA)	Completed	Project not located in or near Essential Fish Habitat - Review concluded	A Class I and Class III cultural resource survey of the project area was conducted in September 2018. The Class I file search results indicated no previously conducted surveys in the project area, and therefore no previously documented cultural resources. The Class III pedestrian survey resulted in identification of two sites ¿ a newly defined segment of State Highway 9 (today known as Wagon Road) (5ST1461.2) and Goose Pasture Tarn Dam (5ST1542). Due to a lack of historic integrity and/or association with significant historic trends, FEMA consultant, ERO, recommended segment 5ST1461.2 as non¿supporting of the eligibility of the entire resource for listing in the NRHP and 5ST1542 as not eligible for listing in the NRHP. Because no historic properties are in the project area, FEMA determined there would be ¿no historic properties affected¿ for the project pursuant to 36 C.F.R. 800.4
National Historic Preservation Act (NHPA)	Completed	Standard Section 106 review	

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
			(d)(1) of the NHPA. The CO SHPO concurred with FEMA's determination on December 10, 2019 (HC #76952). See Appendix D of the CATEX (attached) for more information. Interested parties were contacted and no substantive comments were received. - djones58 - 01/03/2020 19:43:50 GMT
	Completed	Building or structure 50 years or older or listed on the National Register in the project area and activity not exempt from review	
	Completed	Determination of No Historic Properties Affected (FEMA finding/SHPO/THPO concurrence attached) - Review concluded	
	Completed	Project affects undisturbed ground	
	Completed	Project area has no potential for presence of archeological resources	
	Completed	Determination of no historic properties affected (FEMA finding/SHPO/THPO concurrence or consultation attached) - Review concluded	
State Air Quality Laws	Completed	Review concluded	See project conditions. - djones58 - 01/03/2020 20:29:35 GMT
State Hazardous Materials and Solid Waste Laws	Completed	Review concluded	See project conditions. - djones58 - 01/03/2020 20:29:44 GMT
State Water and Soil Laws	Completed	Review concluded	See project conditions. - djones58 - 01/03/2020 20:29:51 GMT
Wild and Scenic Rivers Act (WSR)	Completed	Project is not along and does not affect Wild and Scenic River - Review concluded	

CONDITIONS

Special Conditions required on implementation of Projects:

This finding is conditioned on the following mitigation and stipulations:

1. The Town must obtain all applicable federal, tribal, state and local permits, approvals, etc. and comply with all permit requirements and conditions.

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

2. The Town must coordinate with the local and/or Summit County Floodplain Administrator to obtain a Floodplain Development Permit and complete a CLOMR and a LOMR, if required.
3. The Town shall consult with the U.S. Army Corps of Engineers to determine final project requirements. The Town is responsible for obtaining any needed permits and verifying and complying with all permit requirements, including wetland mitigation, any permit conditions, preconstruction notification requirements, and regional conditions as provided by the U.S. Army Corps of Engineers. The subrecipient is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre₂ Construction Notification (PCN) conditions of applicable nationwide permits.
4. The Town must coordinate with the Colorado Department of Public Health and Environment (CDPHE) and obtain appropriate Clean Water Act Section 401 Water Quality certifications, as applicable.
5. The Town must obtain and comply with a Colorado Department of Public Health and Environment (CDPHE) National Pollutant Discharge Elimination System Construction Stormwater permit, if required.
6. In order to minimize impacts to the adjacent wetlands, appropriate erosion and sediment control measures must be installed to control the discharge of pollutants from the construction site. Impacts to wetlands must be avoided or mitigated in accordance with the terms and conditions of the Section 404 CWA permit.
7. The Town must coordinate with the State of Colorado Division of Water Resources Dam Safety Branch and obtain all required permits.
8. Removal of vegetation in the project area has the potential to impact Bald and Golden eagles. The proposed actions are subject to compliance with the Bald or Golden Eagle Protection Act (BGEPA). In accordance with US Fish and Wildlife (USFWS) guidelines, the applicant is responsible for obtaining and complying with any necessary permits from USFWS. If active nests are observed in the project area, appropriate USFWS buffer zones and/or work restrictions may be required. If no activity is observed, then no restrictions would apply. See https://www.fws.gov/birds/policies_and_regulations.php for guidance.
9. To avoid impacts to migratory birds and raptors, no vegetation should be removed from February to September, which is the nesting/fledging period for most song birds and raptors. If work must occur during the nesting season, it is recommended that a survey for active bird nests be completed.

Source of condition: NEPA Determination

Monitoring Required: No

10. If cultural resources are encountered during project activities, work would be stopped, and FEMA and the Colorado State Historic Preservation Officer (SHPO) must be notified.
11. Fill materials (soil, boulders, and/or riprap, etc.) must be obtained on₂ site or from previously approved sources (Colorado State Licensed Pits, existing commercial sources, existing contractor or County Stockpiles); otherwise additional coordination with FEMA and the Colorado SHPO will be required to obtain necessary approvals.
12. The Town is responsible for complying with all Colorado Air Pollution Control Division (APCD) regulations and permits as applicable. The first step to obtain a permit is to determine whether the project will need an Air Pollution Emissions Notice (APEN). Information on APENs and air permits is found at www.colorado.gov/pacific/APEN. Please contact James DiLeo at Colorado Dept of Public Health and Environments Air Pollution Control Division at 303₂692₂3127 or jim.dileo@state.co.us if you have any questions or need additional information.
13. Contractor and/or Subcontractors will properly handle, package, transport, and dispose of hazardous materials and/or waste in accordance with all local, State, and Federal regulations, laws, and ordinances. If hazardous substances are released to the project area during construction, these Federal, State, and local requirements must be followed in response and cleanup.
14. All waste material associated with the project must be disposed of properly and not placed in identified floodplain or wetland areas.
15. Construction traffic should be closely monitored and controlled as appropriate. All construction activities will be conducted in a safe manner in accordance with OSHA requirements. To alert motorists and pedestrians of project activities, appropriate signage and barriers will be on site prior to and during construction activities. During construction activities, the construction site(s) will be fenced off to discourage trespassers.
16. The Town must implement standard Best Management Practices (BMP) to minimize erosion and sedimentation; reduce emissions, fugitive dust, fuel leaks and spills, and noise; control invasive species and comply with all applicable

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

federal, tribal, state and local requirements.

Source of condition: NEPA Determination

Monitoring Required: No

Standard Conditions:

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.