



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Andrea Harbin Monahan, Watershed Scientist
Watershed & Flood Protection Section

DATE: May 10, 2021

AGENDA ITEM: Consent Agenda Item 4. May 19-20, 2020 Board Meeting - Limited Use License - The Pint Room

Background:

As the non-federal sponsor for the Chatfield Downstream Channel Construction Project, the CWCB owns and operates a federally constructed flood control project from the outlet of Chatfield Reservoir to the confluence of Bear Creek. The CWCB has also developed lands management and access processes. The Board has authority to grant requests for easements and special use permits in the CWCB right-of-way. A 1998 Master Recreation Agreement with South Suburban Parks and Recreation covers most of the activity. However, periodically there are other requests to access the CWCB-owned parcels.

The CWCB also offers the opportunity for Limited Use Licenses to be issued, and in this case it was deemed to be the ideal method of granting The Pint Room use of CWCB property. This license will provide the CWCB a sufficient level of flexibility in determining what terms and conditions are necessary for The Pint Room's continued use of the land over multiple years, while undeniably retaining the CWCB's ability to revoke the license. It is recommended that a license be issued for no longer than three years, due to the uncertain nature of the restaurant industry.

Discussion:

The Pint Room received a one-time Special Use Permit in 2020 for use of the CWCB-owned outdoor space adjacent to the restaurant, and they reached out to staff on February 23, 2021 to request another permit for the 2021 summer months. After speaking with the Attorney General's office, it was determined that a Limited Use License would be more appropriate to grant The Pint Room use of the space. This type of license would grant the CWCB the most flexibility, while also meeting the needs of The Pint Room.

Given that The Pint Room was hoping to have access to the outdoor space on April 1, but that we wouldn't be able to get Board approval until mid-May, staff and the Director made the decision to issue an Interim Limited Use License to cover the period from April 1, 2021 to May 10, 2021, under the condition that it would be brought before the Board at the May Board Meeting, at which time it could be modified or revoked, if necessary. This was deemed important given the struggles of the restaurant industry over the past



year and the importance of access to outdoor space for patrons to feel safe while eating out, which would hopefully lead to the greater success for this local business.

The Limited Use License, which will replace the Interim Limited Use License, will cover the dates of May 20, 2021 through November 30, 2021, and then it will cover the dates from April 1 through November 30 for 2022 and 2023, at which time it will expire, and The Pint Room will need to reapply for a new license.

Staff and the Director have been advised by the AG's office throughout the process and the license has been reviewed by the State Office of Risk Management, an office within the Department of Personnel and Administration (DPA). The Limited Use License is attached, along with a map of the site.

Requested Action:

Staff requests board approval of the Limited Use License for The Pint Room.



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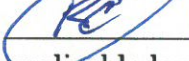
Limited Use License Application

In the 1980s, the United States Army Corps of Engineers ("Corps") constructed the Chatfield Downstream Channel Improvement Project ("Chatfield Improvement Project"). The Chatfield Improvement Project consisted of improvements to the flow of water in the channel of the South Platte River in Arapahoe County, Jefferson County, and Douglas County to provide (1) drainage, (2) flood control, and (3) water flow. As part of its participation in the Chatfield Improvement Project, the Colorado Water Conservation Board ("CWCB") owns and controls approximately 7 miles of the South Platte River channel and floodplain through Littleton, Colorado in Arapahoe County. The CWCB management of this land is subject to the terms of a September 7, 1977 agreement and a January 29, 1980 agreement between the CWCB and the Corps, which obligate the CWCB to operate and maintain the Chatfield Improvement Project improvements. On May 5, 1997, the CWCB entered into a contract for and conveyance of easement with the South Suburban Parks and Recreation District that conveyed an easement to South Suburban for certain recreational facilities. The CWCB works in conjunction with its Chatfield Improvement Project partners, the South Suburban Parks and Recreation District, and the Mile High Flood District, to maintain the Chatfield Improvement Project and associated lands.

The Pint Room ("Applicant") located at 2620 W. Belleview Avenue, Littleton, Colorado has requested use of CWCB's Chatfield Improvement Project property depicted in the diagram attached here as Exhibit A.

Applicant Contact Information


Authorized Representative: Robert M. Collins
Physical/Mailing Address: 2620 W. BELLEVUE AVE LITTLETON, CO 80123
Phone Number: (720) 283-3200 (614) 271-3833 (cell)
Email: robert.collins@pintroom.com


 (initial) Applicant represents that it will comply with and abide by all applicable laws, ordinances, and executive orders at all times.

Applicant requests limited use of this property for outdoor dining and other associated activities for the period of April 1 to November 1 each year during the term of the Limited Use License, renewable pursuant to the provisions below.


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Limited Use License Application Statement of Understanding


 (initial) Applicant understands that this Limited Use License application is subject to CWCB approval, which if granted will be sent to Applicant via electronic mail and First Class mail to the address listed above.

 (initial) Applicant recognizes that any CWCB grant of permission to use this property may be modified or revoked at any time for any reason, and is subject to the following license conditions:

1. Safety fencing must be erected between the place of use by the Pint Room and the Mary Carter Greenway Trail and the South Platte River, so as to prevent access to both by patrons of the Pint Room.
2. Applicant will ensure that patrons of the Pint Room will not access the Mary Carter Greenway Trail or the South Platte River.
3. Applicant will abide by all applicable laws, ordinances, and executive orders.
4. CWCB has the authority to automatically revoke the Limited Use License upon learning of concerns or issues involving the public health or public safety.
5. CWCB has the authority to revoke the Limited Use License, following Applicant's opportunity to appear before the CWCB at a regularly scheduled and noticed public meeting for concerns or issues not involving the public health or public safety.

 (initial) Applicant understands that after the first year it is responsible for renewing this Limited Use License, pursuant to the provisions below, prior to exercising the privileges of this license.

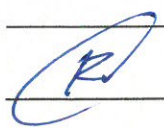
 (initial) If the CWCB contacts Applicant regarding any issues associated with this Limited Use License, Applicant will provide any information the CWCB requests within 7 calendar days (unless otherwise instructed) or take prompt action to correct any issues within 7 calendar days.

 (initial) Applicant certifies that if the CWCB approves this Limited Use License, Applicant will comply with the License Terms and Conditions as stated below, unless modified by the CWCB.

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Please mark one of the following. For more details please see section III of the License Terms and Conditions, below.

 (initial) Applicant elects to make annual license payments of \$100.00.

(initial) Applicant elects to make one lump sum license payment of \$300.00.

Applicant will send the elected payment(s) to the following address:

Colorado Water Conservation Board
Attn: Steve Shull
Ref: The Pint Room, South Platte Program
1313 Sherman Street, Room 718
Denver, CO 80203

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Limited Use License Application License Terms and Conditions

I. LICENSE CONDITIONS

- A. No use of CWCB's Chatfield Improvement Project property shall occur unless the Limited Use License application is approved and the required processing fee is rendered to the CWCB.
- B. CWCB maintains the right and authority to amend or revoke this Limited Use License at any time should the Applicant fail to abide by terms and conditions agree to or if public health, safety, and welfare issues so dictate, or for any other reason.
- C. Approval of the Limited Use License Application does not confer any title or interest in the CWCB's Chatfield Improvement Project property.
- D. The Applicant acknowledges that it has inspected the CWCB's Chatfield Improvement Project property to be used and finds the property suitable for its anticipated use. The Applicant releases the CWCB from all liability for any and all damages or claims arising from any defects in the property or unsuitability of the property for the anticipated use.
- E. The Applicant must obtain and/or maintain commercial general liability insurance covering its use of the CWCB's Chatfield Improvement Project property, with said insurance policy naming the CWCB and the State of Colorado as an additional insured, with limits of not less than \$1,000,000.00 (one million dollars) per occurrence and \$1,000,000.00 (one million dollars) general aggregate. The Applicant must obtain and/or maintain liquor liability coverage. All insurance policies must (1) include indemnification of the CWCB and the State of Colorado; (2) apply to the CWCB and the State of Colorado as primary insurance and must be noncontributory; and (3) include a waiver of subrogation for claims against the CWCB and the State of Colorado. Applicant shall submit a Certificate of Insurance with the Limited Use License Application, and on or before March 1 each year during the term of the license.
- F. It shall be the sole responsibility of the Applicant to obtain all necessary and applicable local, state, and federal approvals, permits, and/or licenses, including but not limited to any all requirements related to the preparation, service, and sale of food in addition to any and all requirements related to the service and sale of alcoholic beverages.
- G. Applicant agrees to comply with all rules, regulations, and policies promulgated pertaining to the use of the CWCB's Chatfield Improvement Project property, including but not limited to local, state, and federal floodplain regulations.
- H. The Applicant will abide by any and all rules, regulations, and laws that apply within the city, county, and state, including but not limited to any and all requirements

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related to the preparation, service, and sale of food in addition to any and all requirements related to the service and sale of alcoholic beverages.

- I. The Applicant releases the CWCB from all liability for any and all damages or claims arising from any defects in the Chatfield Improvement Project property or unsuitability of the property for use by the Applicant.
- J. The Applicant hereby releases, waives, discharges, and covenants not to sue the State of Colorado, the CWCB, or CWCB officers, officials, or representatives on account of injury to person or property caused by negligence of the Applicant, as well as for any claims while the Applicant is utilizing the CWCB's Chatfield Improvement Project property for any purpose. The Applicant assumes full responsibility for any property damage caused by the negligence of the Applicant.
- K. The Applicant shall indemnify, defend, and hold harmless the CWCB and the State of Colorado against any and all rights, actions, claims, demands, liabilities, or damage that may accrue against the Applicant or any of its employees or agents for any injuries or damages to persons or property, as well as costs or expenses sustained or received as a result of or in connection with the use or preparation for use of the CWCB property for the presence of any persons, property, or invitees of the Applicant on or about the CWCB's Chatfield Improvement Project property. The Applicant acknowledges that the CWCB and the State of Colorado specifically disclaim all liability or any loss of personal property of the Applicant, its employees, agents, or invitees.
- L. Notwithstanding any other provision of this Limited Use License application to the contrary, no term or condition of any permit granted by the CWCB shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as now or hereafter amended. The Applicant understands and agrees that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of §§ 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and § 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended.

II. TERMS OF USE

- A. Applicant may use the CWCB's Chatfield Improvement Project property between April 1 and November 1 for outdoor dining and associated activities.
- B. The Applicant will notify South Suburban Parks and Recreation District, the Corps' Tri-Lakes Office, the Mile High Flood District, and the City and County in which the use occurs, of the intent to use the Chatfield Improvement Project property for the anticipated use.
- C. The Applicant may not use the CWCB's Chatfield Improvement Project property for any purpose other than is stated in this Limited Use License Application. If the

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CWCB's Chatfield Improvement Project property is used by the Applicant for any other purpose, the Limited Use License may be revoked in accordance with the following:

- i. Upon discovery of a concern or issue involving the public health or public safety, CWCB has the authority to automatically revoke the Limited Use License. Such revocation shall be effective immediately.
 - ii. Upon discovery of any issue that does not involve the public health or public safety, CWCB may revoke the Limited Use License following Applicant's opportunity to address the CWCB at a regularly scheduled and noticed public meeting.
- D. The Applicant agrees to surrender the CWCB's Chatfield Improvement Project property on November 1 each year in the same condition as at the commencement of use of the property. The Applicant shall be responsible at all times for the immediate repair or replacement of, or reimbursement for, any damage to the CWCB's Chatfield Improvement Project property due to the Applicant's use of the property.
- E. Applicant agrees to erect or maintain safety fencing between the place of use by the Applicant and the Mary Carter Greenway Trail and the South Platte River, so as to prevent access to both by the Applicant's patrons during the months of use in paragraph II.A. of this Limited Use License.
- F. Applicant will ensure that Applicant's patrons will not access the Mary Carter Greenway Trail or the South Platte River.

III. FEES

- A. Applicant may elect to submit a lump sum license fee of \$300.00 at the time of submitting the Limited Use License Application. If Applicant elects to pay the license fee pursuant to this section III paragraph A., Applicant will not be required to make annual payments for the remainder of the Limited Use License's term.
- B. Applicant agrees to pay the required license fee for the 2021 term on or before April 1, 2021.
 - i. Applicant agrees to pay the annual license fee of \$100.00, if so elected, no later than the first of March each year following 2021.
- C. If payment is not timely received pursuant to this section III, the Limited Use License will expire, and all activity and use authorized under this Limited Use License shall cease immediately. In the event the Limited Use License expires due to non-payment, Applicant may request the CWCB to reinstate the Limited Use License. Such request must be in writing and accompanied by the required license fee.

IV. LICENSE RENEWAL

- A. This Limited Use License shall be valid for a period not to exceed 3 years, and may be renewed upon Applicant submitting a request for renewal, Limited Use License

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Application, and payment of fees pursuant to paragraph III above, which will be subject to the CWCB's written approval of the request

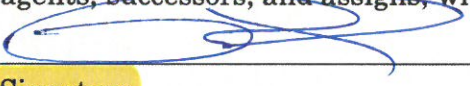
- B. Applicant shall submit a Certificate of Insurance in accordance with paragraph E in section I with the Limited Use License Application, and on or before March 1 each year the Limited Use License is valid. Failure to submit the Certificate of Insurance will result in the immediate termination and revocation of this Limited Use License.
- C. Upon request for renewal of this Limited Use License, the CWCB may add or eliminate any terms or conditions included in the Limited Use License. If the CWCB elects to add or eliminate any terms or conditions, Applicant will have 7 days from receiving the revised terms and conditions to request a refund and withdraw such renewal request.

V. REVOCATION AND/OR TERMINATION OF LICENSE

- A. Applicant is subject to the terms and conditions of this Limited Use License and violation of any of those terms or conditions may result in the automatic and immediate revocation of the license.
- B. Upon the first violation of any of the terms or conditions of this Limited Use License, the CWCB will send a letter to Applicant stating the basis for the violation and providing Applicant an opportunity to respond in writing to the violation within 7 days.
- C. Upon ongoing violation of the Limited Use License or any subsequent violation of any of the terms or conditions of this Limited Use License, the CWCB may immediately revoke the Limited Use License. The CWCB will notify Applicant in writing if the Limited Use License is revoked, and such notification will include the opportunity for Applicant to respond in writing to the alleged violation and revocation within 14 days of receipt of the notification.
- D. In the event of revocation of the Limited Use License, Applicant may request to appear before the CWCB at the next regularly scheduled and noticed board meeting that is at least 30 days after such request and present such information as desired to seek reinstatement of the Limited Use License. Following a hearing on the alleged violation(s) of the Limited Use License, the CWCB may elect to reinstate the license with additional terms and conditions, if necessary.
- E. The CWCB may elect to terminate this Limited Use License at the end of each term by notifying Applicant in writing that renewal will not be accepted.

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As an authorized representative of the Applicant, I have read and understand the terms and conditions listed in the Limited Use License Application and agree to the conditions listed in this application. If the Limited Use License is granted, the Pint Room, its owners, employees, agents, successors, and assigns, will abide by the terms and conditions without exception.



Signature



Date

Title:

GENERAL MANAGER

COLORADO WATER CONSERVATION BOARD

Limited Use License
Approval

A Limited Use License for the Pint Room is hereby issued, subject to the terms and conditions set forth in the Limited Use License Application and this approval. The CWCB grant of permission to use this property is in effect only during the term as reflected in paragraph II.A. and may be modified or revoked at any time for any reason.

Director, Colorado Water Conservation Board

Date