

1 PERMIT FOR THE OPERATION OF A PICNIC SERVICE CONCESSION

2 P - 00053

3 Pursuant to Section 16.16.060 of the Long Beach Municipal Code, and on
4 the terms and conditions and for the consideration contained herein, the PARKS AND
5 RECREATION COMMISSION OF THE CITY OF LONG BEACH, CALIFORNIA, through
6 the Director of the Department of Parks, Recreation and Marine ("Director") of the City of
7 Long Beach ("City"), hereby grants permission to THE TULSA RIB COMPANY, a California
8 corporation, whose address is 220 E. Katella Avenue, in the City of Orange, California
9 92867 to operate a picnic service concession.

10 1. Permission. Permittee is hereby granted the non-exclusive
11 permission to provide and operate, at Permittee's sole cost and expense, a picnic service
12 concession (also referred to as "operation" or "business") at the reserved picnic sites
13 designated by the Director and listed on Exhibit "A" attached hereto and incorporated
14 herein by this reference. Specifically, this Permit entitles Permittee to sell food and
15 beverages, excluding alcohol or alcoholic beverages, to conduct family entertainment
16 services in said designated areas, and to provide such additional services as are usual and
17 customary in the conduct of a commercial picnic service concession. Carnival attractions
18 including but not limited to rides and other mechanized attractions are not permitted.

19 2. Term. The term of this Permit shall commence at midnight on
20 September 1, 2015 and shall terminate at 11:59 p.m. on August 31, 2016, unless revoked
21 prior to said expiration date as provided herein.

22 The Director, in his sole discretion, may renew this Permit if Permittee gives
23 notice of Permittee's desire to renew at least sixty (60) days prior to the expiration date
24 herein and the Director approves the renewal in writing. However, the terms of this Permit
25 may be subject to modification if renewed.

26 3. Reservation of Designated Sites. Designated sites may only be
27 reserved by families, companies, or organizations. Permittee (and Permittee's officers,
28 partners, agents, or employees) shall not reserve a designated site when operating the

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1 picnic service concession at that site.

2 4. Fee for Site. Permittee may not and shall not charge anyone a fee for
3 the use of a designated site. The only fees authorized for use of a designated site are
4 those fees charged by the Long Beach Department of Parks, Recreation and Marine
5 directly to the family, company, or organization reserving a site. If the Director determines
6 that Permittee has charged a fee for the use of a designated site, then Permittee shall pay
7 said fee to the Director as an additional Permit Fee.

8 5. No Alcoholic Beverages. Alcohol, alcoholic beverages, and alcoholic
9 products are not permitted at a designated site or at any location in any park. Permittee
10 shall use Permittee's best efforts to prohibit said items at a designated site or at any
11 location in any park.

12 6. Nuisance. Permittee shall not operate Permittee's concession in any
13 manner that will create a nuisance or unreasonable annoyance to the public and shall not
14 allow any intoxicated person, profane or indecent language, or boisterous ,or loud conduct
15 in or around a designated site and shall call on the aid of peace officers to assist Permittee
16 in maintaining the peace. Permittee shall not allow intruders to attend the function for which
17 Permittee is providing the picnic service concession and shall not allow attendees at the
18 function for which Permittee is providing the picnic service concession to interfere with
19 other picnics.

20 7. Permit Fee.

21 A. Permittee shall pay to the City of Long Beach (at 2760
22 Studebaker Road to the attention of the Accounting Office) a Permit Fee the greater
23 of Two Hundred Fifty Dollars (\$250.00) per concession provided during the month
24 or ten percent (10%) of Permittee's monthly gross receipts, whichever is greater.
25 This Permit Fee is due on the twentieth (20th) day of the month and shall be
26 computed on the number of concessions provided or the gross receipts from the
27 immediately preceding month. Permittee acknowledges that a payment shall be
28 due after the expiration or sooner revocation of this Permit which payment will

1 pertain to the concessions or the gross receipts of the immediately preceding month.
2 Permittee shall pay a late charge of Twenty-five Dollars (\$25.00) when any Permit
3 Fee is not paid when due. If Permittee pays with a check returned for insufficient
4 funds, Permittee shall also pay a service charge of Fifteen Dollars (\$15.00) in
5 addition to applicable late charges.

6 B. Gross receipts shall mean the total of:

7 i. All sales made in, on, through or from a designated site,
8 whether for cash or credit, and whether payment is actually made or not, and
9 whether sales are made by Permittee, Permittee's employees, agents,
10 assignees, licensees, concessionaires, or others;

11 ii. All charges for services rendered or orders placed at a
12 designated site whether by Permittee, Permittee's employees, agents,
13 assignees, licensees, concessionaires, or others;

14 iii. All sums deposited in any coin-operated machine or
15 device provided at a designated site by, through, or for Permittee, Permittee's
16 employees, agents, assignees, licensees, or concessionaires, regardless of
17 the ownership of the machine or device, or whether such sums are removed
18 and counted by Permittee or others, and regardless of what percentage
19 thereof Permittee is entitled to receive from them.

20 In addition, Permittee shall submit with its monthly Permit Fee a certified
21 statement, in a form approved by the Director, showing the picnic service concession
22 activity for the accompanying month.

23 8. Books and Records. Permittee shall keep or cause to be kept
24 complete books of account and other pertinent records reflecting all transactions conducted
25 in connection with Permittee's picnic service concession hereunder. Said books of account
26 and records shall not be consolidated with other activities conducted by Permittee, but shall
27 separately reflect only those transactions conducted pursuant to this Permit.

28 The City Auditor or his designee shall have the right to inspect or audit, at

1 any reasonable time during the term of this Permit and for a period not to exceed one year
2 after the expiration or sooner revocation of this Permit, said books of account and records.
3 Permittee shall give access to said books of account and records and shall cooperate with
4 the City in its inspection of them. City shall determine the scope and procedures necessary
5 for any inspection or audit and shall have the right to photocopy and extract such
6 information as it deems necessary. If the inspection or audit discloses that there has been
7 a deficiency in payment of Permit Fees hereunder, then Permittee shall immediately pay
8 to the City of Long Beach that deficiency together with interest at ten percent (10%) per
9 annum from the date of City's demand for payment. In addition, if the amount of any
10 deficiency exceeds three percent (3%) of the Permit Fees paid by Permittee, then
11 Permittee shall pay the costs of City's audit. If the inspection or audit discloses that
12 Permittee has overpaid its Permit Fees, then City shall refund that overpayment to
13 Permittee without interest.

14 9. Concession Inspection. City shall have the right to inspect and
15 observe Permittee's operation at any reasonable time. Permittee shall not hinder, impede,
16 interfere with or obstruct any such inspection or observation. During these inspections or
17 observations, City shall have the right to utilize photographic devices or other instruments
18 to record conditions of the operation.

19 10. No Solicitation. Permittee shall not solicit business while operating at
20 a designated site. However, Permittee may advertise its business by means of a single
21 sign, not to exceed three (3) feet by three (3) feet, placed at the designated site only during
22 those hours when Permittee is present to provide the picnic service concession, and by no
23 other means. Such sign must be removed after each use at a designated site.

24 11. Compliance with Law. Permittee shall comply with all applicable
25 municipal, state and federal laws and regulations and with the instructions of the Director
26 or his designee relating to this Permit. Permittee shall obtain and display, as required, all
27 other permits or licenses required by law or regulation for the concession permitted herein,
28 including but not limited to permits from the Long Beach Department of Health and Human

1 Services and business licenses.

2 12. Inspection. Permittee acknowledges that Permittee has inspected the
3 designated sites and accepts them in their present condition. City shall have no obligation
4 to improve or alter any site, nor to provide any utilities or services to any site.

5 13. Equipment. Permittee shall provide, at Permittee's own cost and
6 expense, all furnishings, supplies, equipment and the like necessary for its operation
7 hereunder. Permittee shall obtain the approval of the Director or his designee prior to
8 Permittee's use of any furnishings, supplies, equipment or the like. Permittee shall
9 maintain its furnishing, supplies, equipment and the like in a neat, clean and safe condition.

10 14. Indemnity. Permittee shall indemnify and hold harmless the City, its
11 Boards, Commissions, and their officials, employees and agents (collectively in this Section
12 "City") from and against any and all liability, claims, demands, damage, causes of action,
13 proceedings, penalties, loss, costs, and expenses (including attorney's fees, court costs,
14 and expert and witness fees)(collectively "Claims" or individually "Claim"). Claims include
15 allegations and include by way of example but are not limited to: Claims for property
16 damage, personal injury or death arising in whole or in part from any negligent act or
17 omission of Permittee, its officers, employees, agents, or anyone under Permittee's control
18 (collectively "Indemnitor"); Permittee's breach of this Agreement; misrepresentation; willful
19 misconduct; and Claims by any employee of Indemnitor relating in any way to worker's
20 compensation. Independent of the duty to indemnify and as a free-standing duty on the
21 part of Permittee, Permittee shall defend City and shall continue such defense until the
22 Claim is resolved, whether by settlement, judgment or otherwise. Permittee shall notify the
23 City of any claim within ten (10) days. Likewise, City shall notify Permittee of any claim,
24 shall tender the defense of such claim to Permittee, and shall assist Permittee, as may be
25 reasonably requested, in such defense.

26 15. Insurance. As a condition precedent to the effectiveness of the Permit;
27 Permittee shall procure and maintain at Permittee's expense for the duration of the Permit
28 from an insurance company that is admitted to write insurance in California or from

1 authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII
2 by A.M. Best Company:

3 (a) Commercial general liability insurance (equivalent in scope to ISO
4 form CG 00 01 11 85 or CG 00 01 11 88)(including products and at least Fifty Thousand
5 Dollars [\$50,000] fire legal liability) in an amount not less than One Million Dollars
6 (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate.
7 Such coverage shall include but not be limited to broad form contractual liability, cross
8 liability, independent contractors liability, and products and completed operations liability,
9 and at least \$50,000 fire legal liability. The City, its officials, employees and agents shall
10 be named as additional insureds by endorsement (on the City's endorsement form or on
11 an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and
12 this insurance shall contain no special limitations on the scope of protection given to the
13 City, its officials, employees and agents.

14 (b) Workers' compensation insurance as required by the California Labor
15 Code and employer's liability insurance in an amount not less than One Million Dollars
16 (\$1,000,000) per accident.

17 (c) Commercial automobile liability insurance (equivalent in scope to ISO
18 form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not less than Five
19 Hundred Thousand Dollars (\$500,000) combined single limit per accident.

20 Any self-insurance program, self-insured retention, or deductible must be
21 separately approved in writing by City's Risk Manager or designee and shall protect the
22 City, its officials, employees and agents in the same manner and to the same extent as
23 they would have been protected had the policy or policies not contained retention
24 provisions. Each insurance policy shall be endorsed to state that coverage shall not be
25 suspended, voided or canceled by either party except after thirty (30) days prior written
26 notice to City, and shall be primary and not contributing to any other insurance or self-
27 insurance maintained by City, its officials, employees and agents.

28 Permittee shall require that all contractors and subconcessionaires which

1 Permittee uses in the performance of services under the Permit maintain insurance in
2 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or
3 designee.

4 Prior to the start of performance under the Permit, Permittee shall deliver to
5 City certificates of insurance and required endorsements, including any insurance required
6 of Permittee's contractors and subconcessionaires, for approval as to sufficiency and form.
7 The certificates and endorsements shall contain the original signature of a person
8 authorized by that insurer to bind coverage on its behalf. In addition, Permittee shall, at
9 least thirty (30) days prior to expiration of the insurance required hereunder, furnish to the
10 City certificates of insurance and endorsements evidencing renewal of such insurance. City
11 reserves the right to require complete certified copies of all policies of Permittee or
12 Permittee's contractors or subconcessionaires, at any time. Permittee shall make available
13 to the City all books, records and other information relating to the insurance coverage
14 required herein during normal business hours.

15 Any modification or waiver of the insurance requirements herein shall only be
16 made with the written approval of the City's Risk Manager or designee. Not more frequently
17 than once a year, the City's Risk Manager or designee may require that Permittee,
18 Permittee's contractors and subconcessionaires change the amount, scope or types of
19 coverages required herein if, in his or her sole opinion, the amount, scope, or types of
20 coverages herein are not adequate.

21 The procuring or existence of insurance shall not be construed or deemed as
22 a limitation on liability relating to Permittee's performance of services or as full performance
23 of or compliance with the indemnification provisions herein.

24 16. Damage to Site. With the exception of ordinary wear and tear,
25 Permittee shall be liable for any and all loss, injury or damage to a designated site when
26 operating hereunder, by or on account of any act or omission by Permittee, Permittee's
27 officers, partners, employees, agents, invitees, or licensees.

28 17. Standards of Service. Permittee shall conduct the concession in a

1 manner acceptable to the Director and shall maintain a level of quality and safety
2 acceptable to the Director.

3 18. Cleanliness. Permittee shall keep the designated sites clean and
4 sanitary and in a condition satisfactory to the Director. No offensive or refuse matter, no
5 substance constituting a fire hazard and no hazardous material as that term is defined
6 under federal or state law shall be deposited on or remain on a site. All refuse and waste
7 material created by Permittee's operations shall be removed daily in plastic bags ten mils
8 or thicker. Waste food and garbage shall be deposited in large container trash bins
9 provided by City. Permittee must provide additional trash bags for any overflow.

10 19. Other Permits. City reserves the right to issue other permits for
11 different purposes and additional permits for similar concessions at any designated site.
12 Permittee shall cooperate fully with other permittees in the parks.

13 20. Nondiscrimination. Subject to applicable laws and regulations, neither
14 Permittee nor any employee of Permittee shall, in the operation of the concession
15 hereunder, discriminate against person or group on the basis of race, religion, national
16 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
17 disability. Permittee shall not discriminate against any employee or applicant for
18 employment on any of these bases and shall take affirmative action to insure employment
19 without regard to these bases.

20 21. Assignment. Permittee shall not assign Permittee's rights or delegate
21 its duties hereunder, or any interest herein, or any portion hereof, without the prior written
22 approval of the Director. Any attempted assignment or delegation shall be void and confer
23 no rights or privileges on the assignee or delegate.

24 22. Revocation. This Permit may be revoked immediately by the Director
25 at any time 1) that the Director determines that Permittee has violated or failed to comply
26 with any provision of this Permit; 2) that the City has evidence of misrepresentation or fraud
27 involved in the application for this Permit, or evidence of unfair or bad faith in dealing with
28 the public; 3) that Permittee provided a picnic service concession at other than a

1 designated site; or 4) that it is in the City's best interest to do so.

2 23. No Liability. City shall not be liable for and Permittee hereby waives
3 all claims against the City, the Parks and Recreation Commission, their officials and
4 employees for loss or damage to Permittee's personal property, or to Permittee's business,
5 or for injury to or death of persons due to theft, fire, flood, burglary, vandalism, or any other
6 cause whatsoever, at any designated site, except to the extent caused by City's gross
7 negligence or willful misconduct.

8 24. Possessory Interest. This Permit may create a possessory interest
9 subject to taxation and, if so, Permittee shall pay said tax prior to delinquency. Evidence
10 of payment shall be given to City upon demand.

11 25. City Work at Site. City reserves the right to do any work at a
12 designated site for its preservation, maintenance and operation. City shall give Permittee
13 notice when such work is necessary provided, however, that if an emergency exists as
14 determined by the City, City shall not be required to give notice in accordance with Section
15 26 hereof. Permittee shall adjust Permittee's operations so City may proceed expeditiously
16 with City's work.

17 26. Notice. Notice shall be in writing and personally served or deposited
18 in the U. S. Postal Service, first class, postage prepaid to the Director at 2760 Studebaker
19 Road, Long Beach, California 90815 and to Permittee at the address first stated above.
20 Change of address shall be given in the same manner as stated herein for notice. Notice
21 shall be deemed given on the date deposited in the mail or on the date personal service is
22 obtained, whichever first occurs.

23 27. No Waiver. The acceptance of any payment by City shall not operate
24 as a waiver of any provision of this Permit, or of any right to indemnity. The waiver of any
25 violation or noncompliance of this Permit, if given, shall be in writing and shall not constitute
26 a waiver of any other or subsequent violation or noncompliance.

27 28. Alterations. Permittee shall not make any alterations, additions,
28 modifications or improvements to any designated site without the prior written approval of

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1 the Director. Permittee shall pay the cost of any approved alterations, additions,
2 modifications or improvements. If said alterations, additions, modifications or
3 improvements are of a permanent nature, they shall become the property of the City at the
4 expiration or sooner revocation of this Permit.

5 29. Continuation. Termination or expiration of this Permit shall not
6 terminate the rights or liabilities of either party which rights or liabilities accrued or existed
7 during the term of this Permit and prior to its termination or expiration.

8 Permittee consents to and agrees to perform the terms, covenants, and
9 conditions imposed on Permittee under this Permit.

10 THE TULSA RIB COMPANY, a California
11 corporation

12 10-5, 2015

By [Signature]
13 Name STEPHEN J. PARKER
14 Title PRESIDENT

15 10-5, 2015

By [Signature]
16 Name Elizabeth Pauls
17 Title Vice President

18 "Permittee"

19 PARKS AND RECREATION
20 COMMISSION OF THE CITY OF LONG
21 BEACH CALIFORNIA

22 10/15, 2015

By [Signature]
23 Director

24 "City"

25 This Permit is approved as to form on Oct. 12, 2015.

26 CHARLES PARKIN, City Attorney

By [Signature]
27 Deputy

28

EXHIBIT A
PERMIT FOR THE OPERATION OF A PICNIC SERVICE CONCESSION

RESERVED PICNIC SITES

- *El Dorado Park West – 2800 Studebaker Road, Long Beach, CA*

Sites	Maximum Capacity
A	200
B	200
C	200
D	200
Willow Grove	250

- *El Dorado East Regional Park – 7550 E. Spring Street, Long Beach, CA*

Sites	Maximum Capacity
Golden Grove	3,000
Arbor Day Grove	400
North Sycamore Grove	250
Olympic Grove	2,000
Horseshoe Lake	250*
South Sycamore Grove	400

* Primarily a Wedding Site

- *Recreation Park – 801 Federation Drive, Long Beach, CA*

Sites	Maximum Capacity
Band Shell	500