

1 RIGHT OF ENTRY PERMIT

2 P - 00228

3 THIS RIGHT OF ENTRY PERMIT is made and entered, in duplicate, as of
4 October 18, 2019 for reference purposes only, pursuant to authorization by the PARKS
5 AND RECREATION COMMISSION of the City of Long Beach ("Commission") at its
6 meeting on October 17, 2019, by and between PUBLIC CORPORATION FOR THE ARTS
7 OF THE CITY OF LONG BEACH, a California nonprofit corporation, doing business as
8 ARTS COUNCIL FOR LONG BEACH, with a place of business at 350 Elm Avenue, Long
9 Beach, California 90802 ("Permittee" or "Arts Council"), and the CITY OF LONG BEACH,
10 a municipal corporation ("City").

11 1. ACCESS. City grants to Permittee, its contractors, agents, and
12 employees (collectively, the "Permittee Parties"; individually, a "Permittee Party") the non-
13 exclusive right to enter City-owned property, more commonly known as McBride Park
14 located at 1550 Martin Luther King, Jr. Avenue in the City of Long Beach, California,
15 described in Exhibit "A" attached to this Permit and incorporated by reference ("City-owned
16 Property") solely to paint one mural on the exterior wall of the weight room at McBride Park,
17 described in Exhibit "B" attached to this Permit and incorporated by reference.

18 2. TIME OF USE. Permittee Parties shall enter City-owned Property in
19 accordance with this Permit solely during normal business hours and City-approved
20 weekends.

21 3. DURATION OF PERMIT.

22 A. Permission to enter shall begin on December 1, 2019, and
23 continue through November 20, 2020. The term may be extended for two (2)
24 additional two-year periods, for mural maintenance, at the discretion of the Director.

25 B. Either party may terminate this Permit with thirty (30) days
26 written notice.

27 C. Within fifteen (15) days of revocation of this Permit, Permittee
28 shall cease entry and shall cause all Permittee Parties to cease entry on the City-

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

1 owned Property, shall remove all equipment, supplies, and personal property and
2 shall leave the City-owned Property in a clean, neat, and safe condition. Any
3 supplies, equipment, and personal property which are not removed within the fifteen
4 (15) day period shall become the property of the City without payment by or liability
5 of any kind on the part of the City.

6 4. MURAL. Permittee's artist ("Artist") shall paint one mural, located on
7 the exterior wall of the McBride Park Weight Room area. The mural shall depict Snoop
8 Dogg, an American recording artist and actor who was born and grew up in Long Beach.

9 The mural shall not show or display any form or substances that are
10 specifically against local, state or federal law or contain any profanity or nudity. No
11 copyrighted material shall be used as the basis for the artwork unless proof or permission
12 has been granted by the copyright holder. Such proof shall be provided by the Permittee
13 and/or the Artist prior to painting the mural.

14 The Director reserves the right to view and approve proposed mural
15 design/artwork, mural size, medium, and wall preparation and protective coatings prior to
16 the painting of the mural.

17 5. FUNDING. All funding to provide all mural supplies, artists, and
18 maintenance of the mural shall be provided by the Arts Council. The Department shall not
19 provide any funding, supplies or staff support, other than overall Park supervision, unless
20 approved in advance and in writing by the Director. Should Permittee obtain funding
21 through donations and/or sponsorships, the City reserves the right to approve any
22 recognition of funders on the mural in advance and in writing.

23 6. SAFETY. Artist must receive pre-approval for the placement of any
24 personal equipment (e.g., ladders, scaffold, paint sprayer, etc.), at McBride Park, and must
25 place a protective barrier around the area of the mural, and under Artist's equipment and
26 paint to not mar the concrete walkway or impact the adjacent windows with paint overspray.
27 Artist may not provide personal equipment unless it has been inspected by the Department
28 or a City Safety Officer and the equipment meets CAL OSHA safety specifications.

1 7. UTILITIES. The Department shall provide all utilities used by Artist
2 during the painting and during Permittee's maintenance of the mural.

3 8. STORAGE. The Permittee and/or its Artist may store limited art
4 supplies at the Park during the active painting of the mural, on a space available basis, as
5 approved in advance by the Park supervisor.

6 9. PREPARATION/PRESERVATION. Permittee and/or its Artist shall
7 properly prepare the exterior wall for mural painting as required and approved by the
8 Department prior to mural painting. The Artist may be required to provide a special graffiti
9 coating to the finished mural to protect the mural from graffiti, as approved in advance by
10 the Director.

11 10. MURAL COMPLETION. Permittee/Artist shall confirm that the mural
12 shall be completed no later than January 31, 2020, unless extended in writing by the
13 Director.

14 11. ONGOING MAINTENANCE AND RIGHTS. As the sponsoring, hiring
15 and funding entity, Permittee affirms that it will cover or cause to be covered, all ongoing
16 costs for maintenance of the mural. Notification of blight/graffiti, physical or environmental
17 damage by any cause must be repaired or cause to be repaired by Permittee/Artist within
18 72 hours of damage report or Permittee shall provide a written notice to the Department as
19 to when repairs will be fully completed. If mural is not repaired or maintained to the
20 satisfaction of the Director, both Permittee and Permittee's Artist agree that the mural may
21 be removed/painted out by the Department.

22 12. WAIVER OF PERMITTEE AND ARTISTS RIGHTS. The Permittee
23 and Artist shall sign a waiver, attached hereto as Exhibit "C" and incorporated by reference,
24 that they waive any and all claims or rights, under any circumstances against the City of
25 Long Beach. The Permittee and Artist understand and agrees that the mural may be
26 subject to destruction, distortion, mutilation or other modification, or other acts or by reason
27 of their removal at a later date. The Permittee and Artist understand and agree that the
28 City of Long Beach shall have discretion to remove the mural at any time.

1 13. MINORS. Artist shall not work with any minors unless supervised by
2 Department staff and parental/guardian waiver signed, with copies to the Department.

3 14. FILMING/PUBLICITY. The City of Long Beach shall be entitled to
4 photograph and film the Artist painting the mural for use in publications, educational
5 materials, and/or promotion for the use in the form of print media, as well as the internet,
6 film, and all other forms of electronic or other media, including third party works. The Artist
7 will retain rights to the image created by the Artist.

8 15. INSURANCE. As a condition precedent to the effectiveness of this
9 Permit, Permittee shall provide evidence of insurance equal to the following insurance
10 coverage:

11 A. Commercial general liability insurance equivalent in scope to
12 ISO form CG 00 01 10 93 in an amount not less than \$1,000,000 per occurrence or
13 \$2,000,000 general aggregate. The coverage shall include but not be limited to
14 broad form contractual liability, cross liability, independent contractors liability, and
15 products and completed operations liability. The City, its officers, employees and
16 agents shall be named as additional insureds by endorsement on the City's
17 endorsement form or on an endorsement equivalent in scope to ISO form CG 20 26
18 11 85, and this insurance shall contain no special limitations on the scope of
19 protection given to the City, its officers, employees and agents.

20 B. Workers' compensation insurance as required by the California
21 Labor Code and employer's liability insurance in an amount not less than
22 \$1,000,000 per accident.

23 C. Commercial automobile liability insurance (equivalent in scope
24 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not
25 less than \$500,000 combined single limit per accident.

26 D. Any self-insurance program, self-insured retention, or
27 deductible must be separately approved in writing by City's Risk Manager or
28 designee and shall protect the City, its officials, employees and agents in the same

1 manner and to the same extent as they would have been protected had the policy
2 or policies not contained retention or deductible provisions. Each insurance policy
3 shall be endorsed to state that coverage shall not be reduced, non-renewed, or
4 canceled except after thirty (30) days prior written notice to City, and shall be primary
5 and not contributing to any other insurance or self-insurance maintained by the City.
6 Permittee shall notify the City within five (5) days after any insurance required in this
7 Permit has been voided by the insurer or canceled by Permittee.

8 E. Permittee shall require that all Permittee Parties maintain
9 insurance in compliance with this Section unless otherwise agreed in writing by
10 City's Risk Manager or designee.

11 F. Prior to entry on City-owned Property, Permittee shall deliver to
12 City certificates of insurance or self-insurance and required endorsements, including
13 any insurance required by Permittee Parties, for approval as to sufficiency and form.
14 The certificates and endorsements shall contain the original signature of a person
15 authorized by that insurer to bind coverage on its behalf. In addition, Permittee shall
16 at least thirty (30) days prior to expiration of this insurance furnish to the City
17 evidence of renewal of the insurance. City reserves the right to require complete
18 certified copies of all policies of insurance at any time. Permittee and Permittee
19 Parties shall make available to the City, during normal business hours, all books,
20 records and other information relating to the insurance required in this Permit.

21 G. Any modification or waiver of these insurance requirements
22 shall only be made by the City's Risk Manager or designee, in writing. The procuring
23 or existence of insurance shall not be construed or deemed as a limitation on liability
24 or as full performance with the indemnification provisions of this Permit.

25 H. Notwithstanding any other provision of this Permit, if Permittee
26 or a Permittee Party fails to comply with this Section, the City may immediately
27 revoke this Permit and the permission granted by this Permit.

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16. PERMITTEE'S INDEMNIFICATION OF CITY.

A. Permittee shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Permittee's breach or failure to comply with any of its obligations contained in this Permit, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Permittee, its officers, employees, agents, subcontractors, or anyone under Permittee's control, in the performance of work or services under this Permit (collectively "Claims" or individually "Claim").

B. In addition to Permittee's duty to indemnify, Permittee shall have a separate and wholly independent duty to defend Indemnified Parties at Permittee's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Permittee shall be required for the duty to defend to arise. City shall notify Permittee of any Claim, shall tender the defense of the Claim to Permittee, and shall assist Permittee, as may be reasonably requested, in the defense.

17. NON-RESPONSIBILITY OF CITY. City, its officers and employees shall not be responsible or liable for loss or damage by theft, fire, flood, burglary, vandalism or any other cause to the supplies, equipment or other personal property of Permittee Parties in or on the City-owned Property, except to the extent caused by the gross negligence of the City, its officers or employees. By executing this Permit and in consideration for being allowed entry to the City-owned Property, Permittee waives all claims against the City, its officers or employees for such loss or damage.

18. NO TITLE. Permittee and City acknowledge and agree that, by this

1 Permit, Permittee does not acquire any right, title or interest of any kind in the City-owned
2 Property, including but not limited to any leasehold interest. Permittee shall not allow the
3 City-owned Property to be used by anyone other than a Permittee Party or for any other
4 purpose than stated in this Permit. Notwithstanding any language to the contrary in this
5 Permit, if a court of competent jurisdiction deems this Permit to be a lease, then Permittee
6 waives any right of redemption under any existing or future law in the event that the City
7 removes it from the City-owned Property and agrees that, if the manner or method used
8 by the City in ending any right held by Permittee under this Permit gives to Permittee a
9 cause of action similar to or based on damages that would otherwise arise in connection
10 with unlawful detainer, then the total amount of damages to which Permittee would be
11 entitled in such action shall be One Dollar. Permittee agrees that this Section may be filed
12 in such action and that, when so filed, it shall be a stipulation by Permittee fixing the total
13 damages to which Permittee is entitled in such action.

14 19. NO ASSIGNMENT. Permittee shall not assign this Permit or the
15 permission granted by this Permit. Neither this Permit nor any interest in it shall be subject
16 to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or
17 receivership. Any attempted assignment or other transfer that is not approved by the
18 Director shall be void and confer no right of entry on the purported assignee or transferee.

19 20. CONDITIONS OF PERMIT. Permittee shall obtain all necessary
20 certificates, permits and approvals as required by federal, state, and local authority prior to
21 entrance into McBride Park.

22 21. NOTICE. Any notice or approval given under this Permit shall be in
23 writing and personally delivered or deposited in the U.S. Postal Service, registered or
24 certified, return receipt, to the City of Long Beach, Department of Parks, Recreation and
25 Marine at 2760 Studebaker Road, Long Beach, CA 90815, Attn: Contract Management
26 Division, and to the Permittee at 350 Elm Avenue, Long Beach, California 90802. Notice
27 shall be deemed given on the date personal delivery is made or on the date shown on the
28 return receipt, whichever first occurs.

1 22. CONDITION AFTER ENTRY. After the entry of any Permittee Party
2 on the City-owned property, Permittee shall return the City-owned property in as good
3 condition or better condition as the City-owned property was in prior to such entry,
4 reasonable wear and tear excepted.

5 23. IMPROVEMENTS. Permittee shall not install, construct, erect or
6 maintain any structure or improvements on the City-owned property except as described
7 in this Permit and any attachments.

8 24. NO LIMITATIONS ON CITY. The Permit shall not limit the City's right
9 or power to construct, erect, build, demolish, move or otherwise modify any structures,
10 buildings, landscaping or any other type of improvement on, over, in, or under the City-
11 owned Property.

12 25. NO RELEASE. The expiration or revocation of this Permit shall not
13 release either party from any liability or obligation, which accrued prior to such expiration
14 or revocation.

15 26. NONDISCRIMINATION. In exercising its right of entry and use of the
16 City-owned Property, Permittee shall not discriminate on the basis of race, religion, national
17 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
18 disability.

19 27. COMPLIANCE WITH LAWS. Permittee Parties shall comply with all
20 applicable laws, rules, regulations and ordinances with respect to their activities on the
21 City-owned Property.

22 28. MISCELLANEOUS.

23 A. This Permit shall be governed by and construed in accordance
24 with the laws of the State of California.

25 B. If any part of this Permit shall be held by a court of competent
26 jurisdiction to be invalid, void or unenforceable, then the remainder of the Permit
27 shall remain in full force and effect and shall not be affected, impaired or invalidated.

28 C. This Permit may only be amended by a written agreement,

1 signed by the City and Permittee.

2 D. This Permit contains the entire understanding of the City and
3 Permittee and supersedes all other agreements, oral or written, with respect to the
4 subject matter of this Permit.

5 E. On the expiration or revocation of this Permit, Permittee agrees
6 to and shall execute such documents, in recordable form if so requested, as the City
7 deems reasonably necessary to end the Permit and remove the Permit as an
8 encumbrance on the City-owned Property.

9 F. The failure or delay of the City to insist on strict compliance with
10 the provisions of this Permit shall not be deemed a waiver of any right or remedy
11 that City may have and shall not be deemed a waiver of any subsequent or other
12 failure to comply with any provision of this Permit.

13 G. This Permit is not intended or entered for the purpose of
14 creating any benefit or right for any person or entity that is not a signatory or a
15 Permittee Party.

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OFFICE OF THE CITY ATTORNEY
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Long Beach, CA 90802-4511

1 IN WITNESS WHEREOF, the parties have executed this Permit on the
2 respective dates set forth opposite their signatures.

3 PUBLIC CORPORATION FOR THE ARTS
4 OF THE CITY OF LONG BEACH, a
5 California nonprofit corporation, doing
6 business as ARTS COUNCIL FOR LONG
7 BEACH

8 By [Signature]
9 Name Griselda Suarez
10 Title Executive Director

11 By [Signature]
12 Name Brian Trimble
13 Title Board President

14 "Permittee"

15 PARKS AND RECREATION
16 COMMISSION OF THE CITY OF LONG
17 BEACH, CALIFORNIA

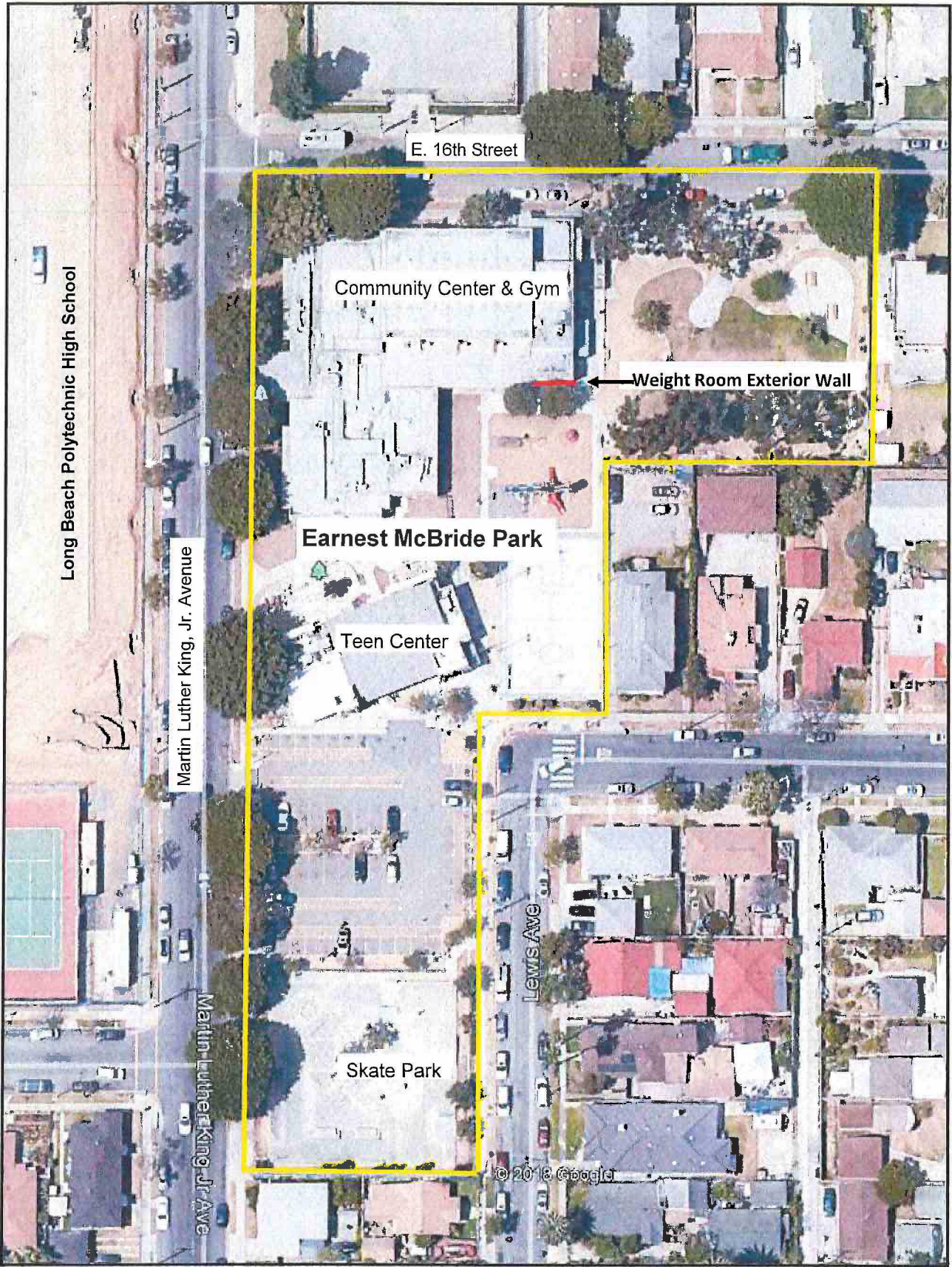
18 By [Signature]
19 Director

20 "City"

21 This Right of Entry Permit is approved as to form on
22 Dec. 4, 2019.

23 CHARLES PARKIN, City Attorney

24 By [Signature]
25 Deputy



EARNEST McBRIDE PARK SITE PLAN

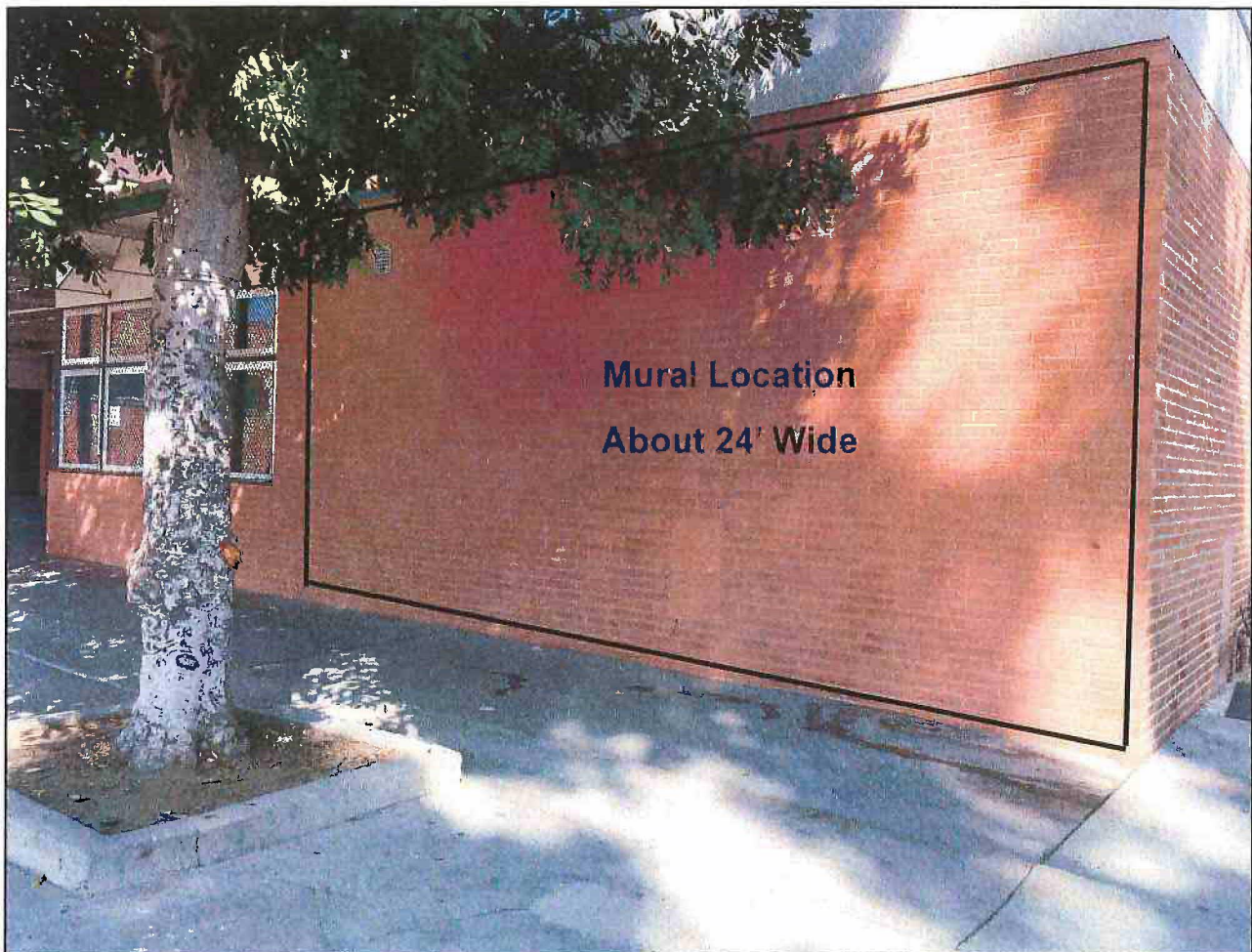
1550 Martin Luther King, Jr. Avenue



Earnest McBride Park Weight Room

Exterior Wall Northside

2 views of proposed wall, which faces the McBride Playground



Artist Waiver Form

The provisions of this document shall apply to modify the undersigned Artist's rights of attribution and integrity as set out in the Visual Artists Rights Act, 17 U.S.C §§ 106A and 113(d) ("VARA"), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 ("CAPA"), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the City of Long Beach ("City"), its boards and commissions, and their officials, employees and agents.

The City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the [describe artwork/project: mural, sculpture, etc. and medium]:

entitled [title of work]:

and located at [identify address and/or site, including interior location if applicable],:

in whole or in part, in City's sole discretion.

Artist's Address for Notice:

Artist bears the sole responsibility for providing the City with any changes to the Artist's Address for Notice. Notice of changes must be mailed to:

City of Long Beach
411 West Ocean Boulevard
Long Beach, California 90802
Attn: City Manager

EXHIBIT C

Artist understands the effect of this waiver and hereby acknowledges that Artist is surrendering the rights described herein with respect to the work.

ARTIST NAME

_____, 20__

By _____
Artist

"Artist"

CITY OF LONG BEACH, a municipal
corporation

_____, 20__

By _____
City Manager

"City"