

JUN 07 2022

*City of South Gate*  
CITY COUNCIL

# AGENDA BILL

For the Regular Meeting of: June 14, 2022  
Originating Department: Parks and Recreation

Department Head: Steve Costley Interim City Manager: Chris Jeffers  
Steve Costley Chris Jeffers

**SUBJECT: AGREEMENT FOR PROFESSIONAL SERVICES WITH DAVID VOLZ DESIGN (DVD) TO PROVIDE LANDSCAPE ARCHITECTURAL SERVICES FOR THE SOUTH GATE PARK FENCE REPLACEMENT PROJECT**

**PURPOSE:** To provide Landscape Architectural Services for the South Gate Park Fence Replacement Project.

**RECOMMENDED ACTIONS:** The City Council will consider:

- a. Approving a Professional Services Agreement with David Volz Design ("DVD") for the updated design of the South Gate Park Fencing Project in the amount of \$50,000; and
- b. Authorizing the Mayor to execute the Agreement in a form acceptable to the City Attorney.

**FISCAL IMPACT:** Funding for this project in the amount of \$327,359.60 was originally appropriated in 2016 as part of the CDBG allocations for that year. Initial spending of \$19,423.20 has already taken place leaving \$307,936.40. This request for \$50,000 will leave \$257,936.40. The purchase order will come out of account 311-790-61-9211.

**ANALYSIS:** DVD completed initial designs for this project in 2016 and revised plans in both 2018 and 2020. In an effort to be in a position to undertake the project should additional CDBG or other grant funds become available, we are seeking to update the design plans to meet current building codes. This professional services agreement will provide those needed updates plus the design of some additional fencing around the municipal golf course that was not part of the original concept in 2016.

**BACKGROUND:** South Gate Park has a large number of active sports areas throughout the 97-acre park and fencing to keep patrons safe is an integral part of each of the different sports represented. From tennis court fences that were originally installed in the 1950's to the swim stadium fence first installed in 1976, many of these fences have been around for an extended period of time and are in need of either full or partial replacement. While not one of those projects that may garner lots of public attention, updating this crucial piece of safety infrastructure will help the City keep South Gate Park a "safe" place for families to play in for years to come.

**ATTACHMENTS:** A. Proposed Professional Services Agreement  
B. Fencing Improvements Picture

**AGREEMENT FOR PROFESSIONAL SERVICES FOR LANDSCAPE  
ARCHITECTURAL SERVICES BETWEEN THE CITY OF SOUTH GATE AND  
DAVID VOLZ DESIGN**

This Agreement for Professional Services for Landscape Architectural Services ("Agreement") is made and entered into June 14, 2022, by and between the City of South Gate, a municipal corporation ("City"), and David Volz Design ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively as "Parties."

**RECITALS**

**WHEREAS**, City desires to retain a qualified Landscape Architect to assist with designs of the South Gate Park Fencing Project; and

**WHEREAS**, Consultant warrants to the City that it has the qualifications, experience, and facilities to perform properly and timely the services under this Agreement; and

**WHEREAS**, based on such representations, City desires to contract with Consultant to perform the services as described in the Scope of Services attached hereto as Exhibit "A" of this Agreement.

**NOW, THEREFORE**, the Parties hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached hereto as Exhibit "A" and made part of this Agreement. The Scope of Work may be amended from time to time by way of a written directive from the City.
2. **TERM OF AGREEMENT.** This Agreement will become effective on June 14, 2022, and will remain in effect for a period of 1 year through June 14, 2023, from said date or until all work specified in the attached scope of work is accepted as complete by the City, whichever comes first, unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.
3. **CITY AGENT.** The Director of Parks & Recreation, or his/her designee (Director), for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the Director of Parks & Recreation, or his/her designee, has the authority to provide that approval or authorization.
4. **COMPENSATION FOR SERVICES.** The City shall pay Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. The cost of services shall be **Fifty Thousand Dollars (\$50,000)**. No additional compensation shall be paid for any other expenses incurred, unless first approved in writing by the Director of Parks & Recreation or his/her designee.

**4.1** The Consultant shall submit to the City, by not later than the 10th day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

**5. CONFLICT OF INTEREST.** The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

**5.1** The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

**5.2** If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

## **6. GENERAL TERMS AND CONDITIONS.**

**6.1 Termination.** Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

**6.1.1** In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

**6.1.2** If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice

to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to offset anticipated damages.

**6.2 Non-Assignability.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement.

**6.4.1** Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

**6.4.2** Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

- a. Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.
- b. Name and list as additional insured the City, its officers and employees.
- c. Specify its acts as primary insurance.
- d. Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."
- e. Cover the operations of the Consultant pursuant to the terms of this

Agreement.

**6.5 Indemnification.** Consultant agrees to and shall indemnify, hold harmless and defend (with counsel selected by the City) the City of South Gate and its officers, councilmembers, elected officials, agents, servants, and employees from any and all claims and losses whatsoever occurring or resulting to or from, arising out of or in any way connected with Consultant's work. Consultant's obligation to indemnify, defend and save harmless the City of South Gate and its respective officers, councilmembers, elected officials, agents, servants and employees, as stated hereinabove, shall include, but not be limited to, paying all legal fees and costs incurred by legal counsel of the City's choice in representing the City of South Gate, and its respective officers, councilmembers, elected officials, agents, servants and employees, in connection with any such claims, losses, lawsuits or actions arising from or relating to the death of any person or any accident, injury, loss, or damage whatsoever to person or property which shall be directly or indirectly caused by any acts, errors or omissions of Consultant or its agents, servants, employees, or contractors. Consultant shall not be responsible for (and this indemnity shall not apply to) such matters to the extent they are solely caused by any negligent acts, errors, or omissions of the City or its respective agents, servants or employees or caused by the willful misconduct of City of South Gate's agents, servants, or employees.

**6.6 Compliance With Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances, and codes of the Federal, State, County and City governments.

**6.7 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture, or association, as between the City and the Consultant.

**6.7.1.** Consultant shall be an independent contractor and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.7.2. Business License Required.** According to Title 2.08.40 of the South Gate Municipal Code, a business license will be required prior to doing business within the City, even if the business is located outside of the City. Verification of a valid South Gate business license will be required prior to start of work and any fees

associated with the acquisition or maintenance of such business license shall be the sole responsibility of the Consultant.

**6.8 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.9 Legal Construction.**

**6.9.1** This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

**6.9.2** This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

**6.9.3** The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**6.9.4** Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.10 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an Agreement which shall be binding upon all parties hereto.

**6.11 Final Payment Acceptance Constitutes Release.** The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished, or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**6.12 Corrections.** In addition to the above indemnification obligations, the Consultant shall

correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

**6.13 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**6.15 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.16 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.17 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

**6.18 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any



changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

**6.19 Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

**TO CITY:** Steve Costley  
Director of Parks & Recreation  
City of South Gate  
4900 Southern Avenue  
South Gate, CA 90280  
TEL (323) 563-5494

**TO CONSULTANT:** David Volz  
President  
David Volz Design - DVD  
151 Kalmus Drive Suite M8  
Costa Mesa, CA 92626  
TEL (714) 641-1300

**COURTESY COPY TO:**

City of South Gate  
Yodit Glaze, City Clerk  
8650 California Avenue  
South Gate, CA 90280  
Email: [yglaze@sogate.org](mailto:yglaze@sogate.org)  
TEL: (323)563-9573

**6.20 Warranty Of Authorized Signatories.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

**6.21 Consultation With Attorney.** CONSULTANT warrants and represents that it has consulted with an attorney or knowingly and voluntarily decided to forgo such a consultation.

**6.22 Interpretation Against Drafting Party.** CITY and CONSULTANT agree that they have cooperated in the review and drafting of this agreement. Accordingly, in the event of any ambiguity, neither side may claim that the interpretation of the agreement shall be construed against either party solely because that party drafted all or a portion of the agreement, or the clause at issue.

[Remainder of page left blank intentionally.]



**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement is executed and attested by their respective officers thereunto duly authorized.

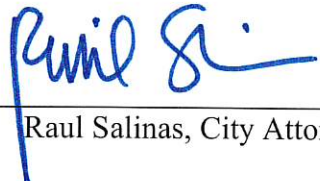
**CITY OF SOUTH GATE:**

By: \_\_\_\_\_  
Al Rios, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Yodit Glaze, City Clerk  
(SEAL)

**APPROVED AS TO FORM:**

By:  \_\_\_\_\_  
Raul Salinas, City Attorney

**DAVID VOLZ DESIGN:**

By: \_\_\_\_\_  
David Volz, President



May 10, 2022

Steve Costley  
City of South Gate  
4900 Southern Avenue  
South Gate, CA 90280

RE: PROPOSAL TO PROVIDE LANDSCAPE ARCHITECTURAL DESIGN SERVICES FOR SOUTH GATE PARK FENCE REFURBISHMENT AND REPLACEMENT PROJECT 2022

Dear Mr. Costley,

It is great that funding has been secured for a robust fencing refurbishment and replacement project at South Gate Park. The new fences and backstops around diamonds 1 through 4 will renew this area of the park and take care of several issues with the current fence installations. The plans we prepared a few years ago for these ballfields will be updated together with the other areas of the park including softball fields, tennis, and the horseshoe venue.

The following scope of work is proposed for the new projects' nine hundred thousand dollar construction budget:

- A. Update the previously prepared construction documents for:
  - 1. Pool building fence turn styles will be replaced with new "door" gates.
  - 2. Ball fields 5, 6, 7, and 8 will have chain link fabric replacement on all interior fences and new yellow fence topper on all outfield fences.
  - 3. Tube steel fencing along south edge of golf course.
  - 4. New fencing along boundaries of ballfields 9 and 10.
  - 5. New chain link fabric at tennis courts.
  - 6. New chain link fabric at horseshoe area.
- B. New plans and details with structural calculations will be prepared for:
  - 1. Ballfield 5, 6, 7, and 8 fabric for each backstop and mid-rails will be added at tall interior fencing installations.
  - 2. Diamonds 1 and 2 backstops will be rebuilt 30 foot high with plastic wood backer boards. Fencing over 10 feet, maybe netting fabric.
  - 3. Diamonds 3 and 4 backstops will be rebuilt as 40 foot high backstops including plastic wood backer boards.
  - 4. Diamonds 1, 2, 3, and 4 players bench dugouts will be rebuilt and repaired with new seating, fencing, roof, and entries.
  - 5. The golf course fence will be reconstructed to include new small mesh chain link fabric up to 10 foot in height with fabric netting above this fence to full height of the existing poles.

The updating of the old plans and the preparation of plans for the new construction will be prepared as an updated construction document set. Fencing over 6 feet high will be detailed by a structural engineer. New and updated technical specifications will be prepared for the whole package. And, a new budget estimate for construction will be included in the final submittal.

An initial plan set 30% plans will be submitted for city review, this will be accomplished in approximately 6 weeks. After city review a plan check set at 90% plans, will be submitted. This plan check submittal will require approximately 8 weeks to prepare. Final plans will include updates required for the city plan check, four weeks are anticipated for the final plans to be turned over to the city.

Professional fees for the design, detailing and preparation for the plan set, structural engineering, specifications and engineers estimates are proposed:

30% plans Construction Documents	\$17,000
Plan Check Submittal w/ Structural Engineer Stamp & Preliminary Construction Budget	\$28,000
Final Plan Preparation and Submittal	\$ 3,000
Reimbursables	\$ 2,000
<b>TOTAL FEE</b>	<b>\$50,000</b>

Reprographics if needed will be billed in addition to this fee.

Should you have any questions about this proposal, please do not hesitate to call my direct line 714-251-1128.

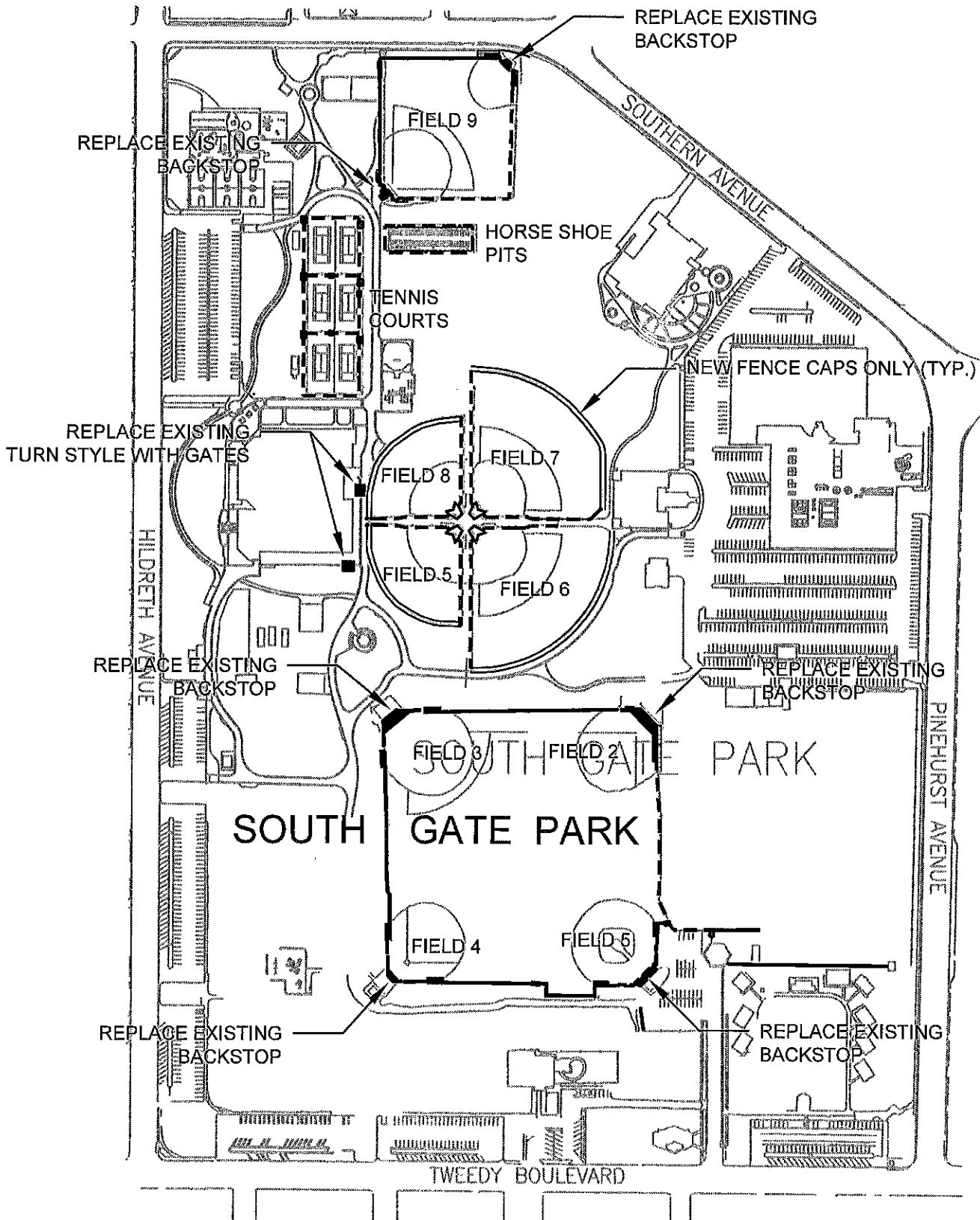
Very truly yours,

**DAVID VOLZ DESIGN**



David J. Volz, R.L.A. # 2375

LEED Accredited Professional, QSD/QSP



## EXHIBIT

PROJECT:  
CITY OF SOUTH GATE, CA  
SOUTH GATE PARK - FENCING IMPROVEMENTS

## FENCING IMPROVEMENTS

PREPARED BY:  
DAVID VOLZ DESIGN LANDSCAPE ARCHITECTS PH (714) 641-1300

BY	DATE
LP	05.23.22