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January 26, 2023

VIA EMAIL c/o (Amanda Lopez alopez@santaclaraca.gov)
Luis Haro, Esq.
Deputy City Attorney
City of Santa Clara
1500 Warburton Ave.
Santa Clara, CA 95050

Re: S&H Construction Inc.
Central Park Magical Bridge All-Inclusive Playground Project
Project No. CE 19-20-06

Dear Mr. Haro:

The undersigned is legal counsel to S&H Construction, Inc. ("S&H"). Mr. Anand has provided me your January 24, 2023 letter responding to his letter on S&H's behalf requesting that S&H withdraw its bid for the Central Park Magical Bridge All-Inclusive Playground Project ("Project") put out to bid by City of Santa Clara ("City"). As detailed below in the Affidavit from Harmeet Anand, there were two significant mistakes that warrant the City permitting S&H to withdraw its bid.

Under Public Contract Code section 5103, S&H is entitled to withdraw its bid based on demonstration of satisfaction of the following elements:

(a) A mistake was made.

(b) S&H gave the public entity written notice within five working days … after the opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred.

(c) The mistake made the bid materially different than he or she intended it to be.

(d) The mistake was made in filling out the bid and not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

The attached affidavit of Mr. Anand demonstrates that S&H made two significant errors that justify withdrawal of the bid and mandate that the bid be declared non-responsive.

As to the timing, the bids were opened on January 19 and S&H submitted its request to withdraw the bid on January 20. You requested a further response by 3:00 pm on January 26, 2023, and this is submitted timely according to that request. S&H has been timely and diligent in seeking the withdrawal.

As to the mistake, and its significance, the error was significant and should have been obvious. In evaluating this mistake, the context of the bid must be considered. The bid form for the Project contract contains a whopping 175 separate line items for pricing, with each required to be filled out and tabulated to reach a bid total for the base bid amount. In this lengthy process, one of the 175 lines was the line item for the "Playhouse", which corresponds to the bid line item #15 for "Playhouse." The "Playhouse" is detailed on plan sheets 13.1-13.9 as an extensive two story structure with theater stage of over 600 square feet. Associated components were separately listed items in lines 56-61. In short, S&H wrote the wrong price for the large Playhouse. It wrote $30,000 for an item that was intended to have been more than 25 times higher.

The mistake was material and obvious. S&H's bid was a total of $5,737,315, which compared with the other two bids of almost $7.6 million and over $7.7 million indicates that S&H made an obvious error in tabulating the playhouse.

The second mistake relates to S&H's safety rating information. S&H completed this portion of the bid form listing its "Interstate Experience Modification Rate" for the prior three years. It listed its rates as 1.28, 1.33, and 1.04. According to the instruction on the bid form, any rating above 1.25 for a single year disqualifies a bid as non-responsive. Under *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, any aspect of a bid that fails to conform to the bid documents renders the bid non-conforming.

Based on the foregoing errors, S&H respectfully requests that its bid be withdrawn. Kindly confirm this withdrawal at your earliest convenience.

Very truly yours,

VARELA, LEE, METZ
& GUARINO, LLP

Andrew Van Ornum

Enclosure

cc: Harmeet Anand (via email)

AFFIDAVIT IN SUPPORT OF REQUEST TO WITHDRAW BID

Re: Central Park Magical Bridge All-Inclusive Playground Project
City of Santa Clara
S&H Construction Inc.'s Withdrawal of Mistaken Bid

I, Harmeet Anand, declare under penalty of perjury under the laws of the State of California as follows:

1. I am President and sole shareholder of S&H Construction, Inc. ("S&H"). I make this declaration from personal knowledge and if called to testify before any court of competent jurisdiction, I would and could competently testify to the facts of this affidavit.

2. I supervised the bidding process, including the completion of the bid forms for the instant Project. During the completion of the bid form for the Playhouse component, I made an error in directing my staff to insert the value of $30,000 for that item. I intended to bid $730,000 for that item and misdirected by staff to enter the incorrect number, which resulted in S&H's total bid being too low.

3. I also must clarify that the Rates my staff wrote in for the "Interstate Experience Modification Rate" in the safety portion of the bid form are accurate rates assigned to S&H for the last three years.

Signed this 26th day of January, 2023, at Fremont, California.

Harmeet Anand