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ATTACHMENT 2

February 6, 2004

VIA HAND DELIVERY and CERTIFIED MAIL
W. Calvin Horton
Town Manager
Town of Chapel Hill
306 North Columbia Street
Chapel Hill, North Carolina 27516

Re: LETTER OF PROTEST OF HAIRSTON ENTERPRISE OF CONSTRUCTION BID AWARD FOR THE COMPREHENSIVE REHABILITATION OF AIRPORT GARDENS APARTMENTS PROJECT (2004-01-26/R-5)

Dear Sir:

Our office has been retained by Hairston Enterprise("Hairston") to file this official Protest of the award of the contract for the "Comprehensive Rehabilitation of the Airport Gardens Apartments Project" to Carl Garris & Sons, Inc.. Based on the information furnished us by our client, our review of the Project Specifications(L D A 10803.00), and numerous conversations we have had with state and federal officials, it appears clear that the action taken by the Town Council of Chapel Hill in awarding the contract violated several applicable state and federal laws and regulations regarding bidding and contracting procedures by a governmental body utilizing state and federal funding. The action of the Town Council in awarding the contract not only violated state and federal laws regarding competitive bidding on such projects, but also violated numerous HUD requirements regarding utilization of minority and disadvantaged general contractors for work on HUD projects. We are listing some of the apparent improprieties in the award process for you information. (Copies of the Resolution awarding the contract and the explanatory Memorandum of the Town Manager are attached for your review. Apparently Hairston made numerous efforts to inquire about various aspects of the possible award after its bid and before the Council meeting, but received little response from local Housing officials. Also, our understanding is that the regular, noticed Council Meeting was originally scheduled for January 26, 2004, but was cancelled due to inclement weather. Our information is that the Resolution was adopted on January 28, 2004, at a rescheduled meeting. Hairston, dispite being the lowest bidder on the base bid and entire bid, received no notice of the original or rescheduled meeting.)

From our review, it appears that when the bids for the project were initially opened, **our client, Hairston, was the low bidder on the base bid.** The project was bid with four alternates in addition to the base bid, and **Hairston's bid was also the lowest total bid**

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+ Resolution

including all alternates. The fact that Hairston was the low bidder was published in several publications which list such data , including the publication of the AGC. Instead of awarding the contract to Hairston based on its total bid for the eproject, which was more than $55,000.00 less than the bid of the contractor awarded the contract, the Town Council, after bids were opened and the bidders were known, chose to award the contract based on the base bid and an arbitrarily chosen alternate bid, and then authorized the Town Manager to negotiate the remaining items listed in the contract specifications from the bid of the chosen contractor. To magnify the total abandonment and abrogation of the competitive bidding process, the Town Council , based on it's anticipation of getting additional federal funding, pre-authorized the negotiation and possibly the execution of change orders by the Town Manager which when completed would cover the entire scope of the project. In summary, the actions of the Town Council violated the law and spirit of the competitive bidding process. The result is that a contractor who was not the low bidder on the project was chosen on the alleged basis of lack of funds for the total project, and then the Town authorized the completion of the total contract through a negotiation and change order procedure in a stated anticipation of receiving additional funding. Not only did this procedure violate the rights of the low bidder, but it will inevitably cost the Town of Chapel Hill more money since negotiations were authorized to begin at the bid price of a bidder other than the low bidder.

In addition to the above, the procedures followed by the Town Council in awarding the contract give rise to the appearance of several other possible improprieties including, but not limited to: a) the selection of a favored contractor in violation of competitive bidding laws by manipulating the bid process, including arbitrary and improper designation and selection of alternates, to make the favored bidder low; b) disregard of HUD regulations specifying use of local, disadvantaged businesses where possible, and, c) possible outright discrimination by the Town Council and/or employees of the Town against our client, a certified minority general contractor.

While the facts do give rise to the appearance of the above cited and other improprieties, we, at this stage, would rather believe that the Town Council took its action not being fully aware of its significance and consequence. We feel that the actions of the Town Council not only put this project in jeopardy but may have the additional adverse consequence of affecting the receipt of federal funding in the future for Town projects. Our client is local, and is fully qualified and prepared to perform the work called for in the contract. Further, our client, after seeing how the total contract may eventually be performed through negotiation and change order strongly feels that as the low bidder on the entire contract, it should have been awarded the contract. It appears to us that the mistakes of law committed in awarding the contract can be remedied by reconvening the Town Council, canceling it's previous award done in error, and awarding the contract to the lowest bidder, Hairston, as it is required by law to do. The contractor receiving the award in error should be amenable to this process as it should be clear to them that the Council has in essence awarded them work and made arrangements for future work for them for which they were not the low bidder.

Hairston has informed our office that it is prepared to litigate its concerns in a court with proper jurisdiction, which makes time of the essence in rectifying the mistakes in this contract award and avoiding Hairston being forced to resort to seeking injunctive relief against the award of the contract in court. For that reason we are asking that you take

appropriate action to remedy this situation immediately. This action could begin with the cessation of all steps being taken by the Town and Architect towards the consummation of the contract until the Town Council has had an opportunity to rectify its apparent mistakes in the award of the contract. Since the record is clear that the Town of Chapel desires to complete the entire project and is earmarking present and future funding for that purpose, it is equally as clear that the low bidder for all aspects of the contract should have been awarded the contract.(Note that the Specifications in the base bid Contract called for renovation of 15 apartments AND site work. Also note that Hairston was required to furnish a bond for the entire project at the time of its bid, clearly demonstrating that site work, for which Hairston's bid is almost $90,000.00 less than that of the contractor awarded the bid, was an integral part of the contract, in spite of it being relegated to an alternative bid status.)

We look forward to your prompt reply to this Protest, specifically with regard to steps you are taking to cease consummation of the previously contract award made in error. We would also appreciate the opportunity to meet with you and express other concerns about the contract award.

Sincerely yours,

Walter E. Ricks, III
Attorney for Hairston Enterprise

cc. Ralph D. KARPINOS
Toni Pendergraph, Esq., Town Counsel and Executive Assistant

Members, Chapel Hill Town Council

Director, Housing and Urban Development, Chapel Hill, NC

Office of the Secretary, U.S. Dept. of Housing and Urban Development

Regional Director, Housing and Urban Development, Atlanta, Ga.

Speros J. Fleggas, PE
Director, State Construction Office
Raleigh, North Carolina

LDA Architecture
Architects
Raleigh, NC

Mr. Vincent Brown, CEO
Hairston Enterprise