



STATE OF COLORADO

John W. Hickenlooper, Governor

Department of Local Affairs
Reeves Brown, Executive Director

July 3, 2011

Ms. Jane Feldman, Executive Director
Colorado Independent Ethics Commission
101 West Colfax, Suite 500
Denver, Co 80202

Dear Ms. Feldman:

The Colorado Department of Local Affairs is in the process of filling a vacant position for a General Professional III, Housing Development Specialist in the Division of Housing. The position is located in Pueblo, CO.

The Division exists to work with public and private entities, nonprofit organizations, and public housing authorities to create and rehabilitate housing for low and moderate income persons; to deliver safe, efficient energy conservation services to low income persons; to provide shelter and supportive services to the homeless; to provide safe, sanitary, decent housing for low and moderate income persons and families throughout the state through application of funds from federal and state grant programs; and delivery of technical assistance and training to applicants and grantees

The position exists to carry out the housing development mission described above by analyzing, negotiating, monitoring, and developing applications for financial assistance from private housing developers, local housing authorities, and/or local development organizations. For the term of affordability, the Division is financially obligated to HUD for the amount of federal funds invested in affordable housing. This position gives the Division a basis for determining the feasibility of its affordable housing investments in the Southeast geographic region of Colorado.

32 Colorado residents applied for the position. Based on qualifications, 12 of those 32 applicants were selected to proceed through the exam process. The 3 finalists' names were sent to the supervisor who conducted final interviews. Mr. William Simpson was chosen to fill the position. However, no offer formal or informal job offer has been made to Mr. Simpson.

Mr. Simpson and his wife each have 50% ownership in Sleeping Indian LLC, a single asset corporation. They have developed projects using funds granted to their corporation from the Department of Local Affairs, Division of Housing. They currently have a project approaching closeout and a project going to contract. They also have tenants who participate in the Section 8 voucher program. Mr. Simpson would not be employed in a position that has any oversight of these contracts. The Division maintains a separate and independent compliance section with different staff and supervision.

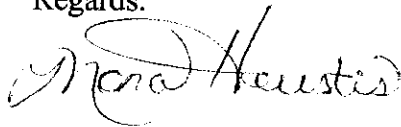
Mr. Simpson has completed a "Colorado Department of Local Affairs Employee Certification Regarding Outside Employment Activities and Potential Conflicts of Interest" form (see attachment "A") and a "Supplement" to such form (see attachment "B"), in the event the Department would make him an offer.

The department is concerned that hiring Mr. Simpson may constitute a violation of State Personnel Board Rule 1-13 which was promulgated after the passing of Amendment 41 (see attachment "C"); 24-18-201 (1), Colorado Revised Statutes (see attachment "D"); 24-50-117, Colorado Revised Statutes (see attachment "E"); and Sections 1. and 6. of Article XXIX of the Constitution of Colorado (see attachment "F"). I have also attached a copy of DOLA's Code of Ethics which includes language from the State Personnel Board Rules and Colorado Revised Statutes regarding Amendment 41 (see attachment "G") and Contract Award letters to Mr. Simpson, Section 20. "Conflict of Interest" and the signature page of the contract Mr. Simpson has with the Division of Housing. (see attachment "H").

The Department is requesting an Advisory Opinion from the Colorado Independent Ethics Commission regarding whether the Commission feels there is a potential conflict of interest or an appearance of impropriety pursuant to the State Personnel Rules, Colorado Revised Statutes, and the Constitution of Colorado as listed above.

Please feel free to contact me if you have any questions or need additional information.

Regards:

A handwritten signature in cursive script, appearing to read "Mona Heustis".

Mona Heustis, Human Resources Director
Department of Local Affairs

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COLORADO DEPARTMENT OF LOCAL AFFAIRS
Employee Certification Regarding Outside Employment Activities
and Potential Conflicts of Interest

I, William L Simpson, have read and understand the Department Policy concerning conflict of interest and outside employment as printed on the attached form.

In accordance with the Department's directive concerning outside employment and conflict of interest, I hereby certify that: (check one)

_____ I am not engaged in outside employment activities, consulting, private business or any other potential conflict of interest situations at the current time.

X I am engaged in outside employment activities, consulting, private business or other related employment as follows:

Type of Outside Activity Member of Sleeping Indian LLC a single asset corporation that consists of my wife and I. We have developed projects using funds from the Division of Housing and currently have on project approaching closeout and on going to contract. The project that is near closeout is complete and we are in the process of closeout. The project just going to contract is owner by a Limited Partnership that Sleeping Indian owns a 1/110th percent ownership . We also have tenants who participate in the Section 8 Voucher program.

(including paid or volunteer)


Hours per week or period 10 hours for supervision. I have always been involved with these activities while having full time employment and never had difficulty performing my duties.

Employer or Associates My wife and I owner Sleeping Indian LLC which is a single asset corporation in which we both have a 50% ownership position.

This activity will not interfere with my duties and will not give rise to an actual or apparent conflict of interest because: I have been engaged in these development and property management activities since 1991. I have a development team and on site managers that take care of the day to day activities of the business. The development activities involving the Division of Housing consist of one development that is complete and in the process of closeout and one that is just going to contract and all activities and performance standards are identified in the contract. I have no intention of pursuing additional development activities other than completion of the above referenced projects once employed by the State.

If my situation regarding outside employment changes, I understand that prior to entering outside employment or potential conflict of interest situations, I am to secure approval in advance by means of this form.

APPROVAL SIGNATURES

 6-15-11
 EMPLOYEE DATE

 SUPERVISOR DATE

 DIVISION /SECTION OFFICE DATE

 EXECUTIVE DIRECTOR DATE

This form should be completed for all outside positions, both paid and volunteer. This request must be acted upon by the approving officials within 10 working days after receipt. If request is rejected, the appointing authority has three (3) additional working days to submit reasons, in writing, to the employee. The employee may grieve the rejection of this request. The fully executed request will be filed in the official employee file in the Department=s Personnel Office.

revised 2/99



STATE OF COLORADO

John W. Hickenlooper, Governor

Department of Local Affairs
Reeves Brown, Executive Director

Division of Housing
Pat Coyle, Director

RE: SUPPLEMENT TO EMPLOYEE CERTIFICATION REGARDING OUTSIDE EMPLOYMENT ACTIVITIES – BILL SIMPSON

June 16, 2011

From May to June 2011, the Department of Local Affairs' Division of Housing pursued hiring a new Development Specialist for the Southeast region of Colorado. At every stage of the process, Bill Simpson was ranked as the number one candidate for the position. The Division of Housing is seeking to hire Bill Simpson based on his wealth of knowledge and experience in affordable housing development, particularly rural development and Southeast Colorado.

To ensure objective decision making by Bill and other Division of Housing staff regarding DOH contracts and related work, the Division of Housing and Bill will do the following to separate Bill from contracts in which he is involved:

Sleeping Indian LLC: Bill will not partner with staff managing and/or monitoring contracts he has had an interest in. Bill will have no interaction with any staff regarding projects involving Sleeping Indian LLC. Any questions regarding projects involving Sleeping Indian LLC will be directed to the day-to-day management staff of Sleeping Indian LLC.

Section 8: Bill will not have contact with DOH staff regarding Section 8 participants residing at his properties. All communications pertaining to voucher participants and/or voucher payments will be handled through management staff, not Bill.

Any breach of the "Employee Certification Regarding Outside Employment Activities and Potential Conflicts of Interest" and the "Supplement to Employee Certification Regarding Outside Employment Activities" may be grounds for corrective and or disciplinary action, up to and including termination.

Employee

Director

Supervisor

Executive Director

functions, including the approval of further delegation beyond the initial designee. In the area of corrective, disciplinary, or other actions that have an adverse effect on base pay, status, or tenure, each department must establish a written document specifying the appointing authority for each individual employee and this information must be made available to the employee.

- 1-9. Appointing authority powers include, but are not limited to: hiring and evaluating performance; determining the amount and type of any non-base incentive within policies issued by the Director and the department's written plan; defining a job; administering corrective/disciplinary action; determining work hours including meal periods and breaks, and safe conditions and tools of employment; identifying positions to be created or abolished; assigning employees to positions; determining work location; and accountability for any other responsibilities in rule. (7/1/07)
- 1-10. Appointing authorities have a duty to ensure employees are oriented to the work place, including communicating requirements and rights.
- 1-11. All appointing authorities, managers, and supervisors are accountable for compliance with these rules and state and federal law, and for reasonable business decisions, including implementation of other policy directives and executive orders.

Employee Activities

Board Rule 1-12. Employees are required to know and adhere to personnel rules, laws, and executive orders governing their employment. Departments are required to make those rules, laws, and executive orders available to employees.

Board Rule 1-13. No employee is allowed to engage in any outside employment or other activity that is directly incompatible with the duties and responsibilities of the employee's state position, including any business transaction, private business relationship, or ownership. The employee is not allowed to accept outside compensation for performance of state duties. This includes acceptance of any fee, compensation, gift, reward, gratuity, expenses, or other thing of monetary value that could result in preferential treatment, impediment of governmental efficiency or economy, loss of complete independence and impartiality, decision making outside official channels, and disclosure or use of confidential information acquired through state employment. Incompatibility includes reasonable inference that the above has occurred, may occur, or has any other adverse effect on the public's confidence in the integrity of state government.

- A. If the employee receives any such form of compensation that cannot be returned, it is to be immediately turned over to the appropriate state official as state property except for the following. The employee may accept awards from non-profit organizations for meritorious public contributions. Honoraria or expenses for papers, demonstrations, and appearances made with approval of the appointing authority may also be kept if the activity occurs during a holiday, leave, a scheduled day off, or outside normal work hours.
- B. An employee shall give advance notice to the appointing authority and take necessary steps to avoid any direct conflict between the employee's state position and outside employment or other activity.

Board Rule 1-14. Employees may engage in outside employment with advance written approval from the appointing authority. The appointing authority shall base approval on whether the outside employment interferes with the performance of the state job or is inconsistent with the interests of the state, including raising criticism or appearance of a conflict.

- A. An employee may be retained by a different department through a personal services contract to perform a different function consistent with the requirements of Chapter 10.
- B. A personal services contract involving an employee shall not be used to evade overtime.

STATE OF COLORADO

EXECUTIVE DIRECTOR'S OFFICE

Department of Local Affairs
1313 Sherman Street, Suite 500
Denver, Colorado 80203
Phone: (303) 866-4904
FAX: (303) 866-4317
TDD: (303) 866-5300



Bill Owens
Governor
Michael L. Beasley
Executive Director

April 18, 2006

Mr. Bill Simpson
Sleeping Indian, LLC
328 Riverview Court
Canon City, Colorado 81212

RE: Project #: 06-056 – Villa Andrea Apartments Acquisition and Rehabilitation

Dear Mr. Simpson:

The State Housing Board reviewed your application for the Villa Andrea Apartments Acquisition and Rehabilitation Project at their recent meeting and has recommended partial funding for the project. I concur with the State Housing Board's recommendation and am offering to enter into a HOME contract for a loan in the amount of \$280,000 at 4.43% interest for 30 years for the following activities: Construction.

These funds may not be obligated before a grant contract is fully executed. Expenditures made prior to the full execution of the contract cannot be reimbursed by the state. Additionally, federal regulations prohibit obligating or expending CDBG and/or HOME funds until an environmental review has been completed and funds formally released by the state.

Again, congratulations on the receipt of this award, and best wishes to you on the successful completion of your project.

Please contact Shannon Picaso at (303) 866-5306 for information on how to proceed.

Sincerely,

Barbara Kirkmeyer,
Acting Executive Director

cc: Representative Michael Cerbo
Senator Ken Kester
Debra Downs, DOLA
Rick Hanger, DOLA
Shannon Picaso, DOLA

STATE OF COLORADO

EXECUTIVE CHAMBERS

136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471



Bill Owens
Governor

April 20, 2006

Mr. William Simpson
Managing Member
Sleeping Indian LLC
328 Riverview Court
Canon City, CO 81212

Dear Mr. Simpson:

It gives me great pleasure to announce the award of affordable housing funds for your proposed project. You will receive a letter from Barbara Kirkmeyer, executive director of the Department of Local Affairs, concerning the amount and details of the award.

The demands on local communities to meet affordable housing needs are more challenging today than ever before. It is gratifying to know the state is able to assist you in responding to the needs of our citizens.

Again, congratulations on the receipt of this award and best wishes to you on the successful completion of your project.

Sincerely,

Bill Owens
Governor

19. **Integration.** This Contract, as written, with attachments and references, is intended as the complete integration of all understandings between the parties at this time and no prior or contemporaneous addition, deletion or amendment hereto shall have any force or effect whatsoever, unless embodied in a written authorization or contract amendment incorporating such changes, executed and approved pursuant to applicable law.

20. **Conflict of Interest.**

- a) **In the Case of Procurement.** In the procurement of supplies, equipment, construction and services by the Contractor and its subcontractors, no employee, officer or agent of the Contractor or its subcontractors shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of the Contractor and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.
- b) **In all Cases Other Than Procurement.** In all cases other than procurement (including the provision of housing rehabilitation assistance to individuals, the provision of assistance to businesses, and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to HOME activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their employment tenure or for one year thereafter.
- i) **Persons Covered.** The conflict of interest provisions of paragraph 20.b) this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Contractor or of any designated public agencies or subcontractors receiving HOME funds.
- ii) **Threshold Requirements for Exceptions.** Upon the written request of the Contractor, the State will forward to HUD a request for an exception to the provisions of the subparagraph 20.b) when it determines that such an exception will serve to further the purposes of the HOME program and the effective and efficient administration of the Contractor's Project. An exception may be considered only after the Contractor has provided in writing the following:
- a. a disclosure of the nature of the conflict, accompanied by an assurance that (1) there has been or will be a public disclosure of the conflict and a description of how the public disclosure was or will be made; and (2) the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific HOME-assisted activity in question; and,
 - b. an opinion of the Contractor's attorney that the interest for which the exception is sought would not violate State or local law; and
 - c. a written statement signed by the chief elected official or executive director of the Contractor holding the State harmless from all liability in connection with any exception which may be granted by the State to the provisions of this subparagraph 20.b);
- iii) **Factors to be Considered for Exceptions.** In determining whether to grant a requested exception after the Contractor has satisfactorily met the requirements of subparagraph ii) above, the State shall consider the cumulative effect of the following factors, where applicable:
- a. whether the exception would provide a significant cost benefit or an essential degree of expertise to the Project which would otherwise not be available;
 - b. whether an opportunity was provided for open competitive bidding or negotiation;
 - c. whether the person affected is a member of a group or class of low or moderate income persons intended to be beneficiaries of the HOME assisted activity, and the exception will permit such person to receive generally the same benefits as are being made available or provided to the group or class;
 - d. whether the affected person there has withdrawn or from his or her functions or responsibilities, or the decision making process with respect to the specific HOME-assisted activity in question;

- e. whether the interest or benefit was present before the affected person was in a position as described in this subparagraph 20.b);
- f. whether undue hardship will result either to the Contractor or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- g. any other relevant considerations.

c) **Owners and Developers.**

- (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an owner-occupant of single-family housing or to an employee or agent of the owner or developer of a rental housing project who occupies a HOME assisted unit as the project manager or maintenance worker.
- (2) **Exceptions.** Upon written request of a housing owner or developer, the Contractor may request in writing from the State an exception to the provisions of paragraph c)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the State shall consider the following factors:
 - (i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 - (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;
 - (iii) Whether the tenant protection requirements of §92.253 are being observed;
 - (iv) Whether the affirmative marketing requirements of §92.351 are being observed and followed; and
 - (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

21. **Compliance with Applicable Laws.** At all times during the performance of this Contract, the Contractor and any subcontractors shall strictly adhere to all applicable federal and State laws, orders, and all applicable standards, regulations, interpretations or guidelines issued pursuant thereto. The applicable federal laws and regulations include:

- a) **National Environmental Policy Act of 1969** (42 USC 4321 et seq.), as amended, and the implementing regulations of HUD (24 CFR Part 58) and of the Council on Environmental Quality (40 CFR Parts 1500 - 1508) providing for establishment of national policy, goals, and procedures for protecting, restoring and enhancing environmental quality.
- b) **National Historic Preservation Act of 1966** (16 USC 470 et seq.), as amended, requiring consideration of the effect of a project on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places.
- c) **Executive Order 11593, Protection and Enhancement of the Cultural Environment**, May 13, 1971 (36 FR 8921 et seq.) requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance.
- d) **The Archaeological and Historical Data Preservation Act of 1974**, amending the Reservoir Salvage Act of 1960 (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities.
- e) **Executive Order 11988, Floodplain Management**, May 24, 1977 (42 FR 26951 et seq.) prohibits undertaking certain activities in flood plains unless it has been determined that there is no practical alternative, in which case notice of the action must be provided and the action must be designed or modified to minimize potential damage.


SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR: Villa Andrea, L.P.

STATE OF COLORADO:
BILL OWENS, GOVERNOR

Villa Andrea LP
Legal Name of Contracting Entity

By 
Barbara Kirdmeyer, Acting Executive Director
Brak Vogt

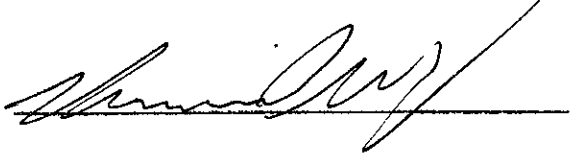
20-4373067
Social Security Number or FEIN

Department of Local Affairs


Signature of Authorized Officer

PRE-APPROVED FORM CONTRACT REVIEWER:

William Simpson, Managing G
Print Name & Title of Authorized Officer



CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By 
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

(Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
Leslie M. Shenefelt

By 
Rose Marie Auten, Controller
Department of Local Affairs

Date 09/12/06

Effective Date: August 1, 2005

STATE OF COLORADO


DIVISION OF HOUSING

Patrick Coyle, Director



Bill Ritter, Jr.
Governor
Susan E. Kirkpatrick
Executive Director

TO: Jane Feldman, Executive Director, Colorado Independent Ethics Commission

FROM: Patrick Coyle, Director Division of Housing, Department of Local Affairs 

SUBJECT: Follow up to the July 22 Ethics Commission Meeting

DATE: August 14, 2011

Thank you for considering our request for an Advisory Opinion regarding filling a vacant Housing Development Specialists position in Pueblo. The hearing on this issue concluded with several requests of the Division of Housing. The following additional information is intended to address any remaining questions.

Organizational Structure

I was asked to provide an Organizational Chart which demonstrated the separation of supervision and responsibilities. Attached is an Organizational Chart identifying the position of Housing Development Specialist. The position is highlighted on the Chart, which depicts the five-person Development Team, the separate supervisory line and the separation of responsibilities. The responsibilities for the Housing Development Specialists position are delineated in the attached Job Description. These responsibilities are uniquely distinct from the responsibilities of its counterpart position the Housing Asset Manager, which is responsible for Contract Management and Compliance.

Decision Making Authority

The Position Description for the position of Housing Development Specialist is attached. The Decision Making responsibilities for this position are on Page 3. The following are the Decision Making factors for this position:

- Determine project feasibility and funding level needed.
- Determine project compliance with federal regulations and /or state laws.
- Assess the technical assistance needs for local housing organizations and decide whether this assistance can be offered by the Division of Housing from other public or private resources.
- Assess the grantee's performance on existing projects and decide whether or not they have the capacity to complete proposed projects.

It is important to note, the Position Description is very specific about how this position only recommends funding levels or sources of funding. The position has no final decision making authority. These internal recommendations are made to the immediate supervisor, the development team, and then the Community Housing Assistance Team. The public review of each funding application is held the second Tuesday of every month before the Housing Advisory Board. This seven member Board is appointed by the Governor and represents one member from each Congressional District. The decision by the Board is advisory. The final decision is made by the Department's Executive Director.

Decision Firewalls

The position of Housing Development Specialist offers communities technical assistance regarding the housing development process, financing, and state and federal housing policies. This position works with local governments and local housing organizations to meet their housing priorities and determine the feasibility of various housing investments, but in no way has any final decision making authority regarding funding or state and federal regulations. Final funding recommendations and final regulatory decisions are made by the Division Director or the Director of Housing Programs.

In addition to a three tiered funding review process our decisions and regulatory determination are reported monthly to the U.S. Department of Housing and Urban Development (HUD). HUD uses these reports to annually monitor the Division's federal housing. Once a funding decision is finalized by the Department's Executive Director the contracting and compliance responsibilities are transferred to the Division's Asset Management staff and the Department's Controller. The supervision of the Asset Management staff is separate from the Development staff and the Controller is organized under the office of the Department's Executive Director.

Thank you for the assistance you have provided and the time by the Commission members to provide the Department with an Advisory Opinion. If I can answer any questions, please do not hesitate to contact me.