

Cleveland County Board of Commissioners
June 2, 2023

The Cleveland County Board of Commissioners met on this date for a Special Called meeting at the hour of 10:00 a.m. at the LeGrand Center, located at 1800 E. Marion Street, Shelby.

PRESENT: Kevin Gordon, Chairman
Ronnie Whetstine, Vice-Chair
Johnny Hutchins, Commissioner
Doug Bridges, Commissioner
Deb Hardin Commissioner
Tim Moore, County Attorney
Todd Carpenter, Interim County Manager
Phyllis Nowlen, Clerk to the Board
Martha Thompson, Deputy County Attorney
Kerri Melton, Assistant County Manager
Other names on file in the Clerk's Office

CALL TO ORDER

Chairman Gordon called the meeting to order, and Commissioner Bridges led the audience in the Pledge of Allegiance and provided the invocation.

AGENDA ADOPTION

ACTION: Commissioner Hardin made the motion, seconded by Commissioner Bridges and unanimously adopted by the Board, to *approve the agenda as presented.*

CLOSED SESSION

ACTION: Commissioner Hutchins made the motion, seconded by Commissioner Whetstine and unanimously adopted by the Board, *to go into closed session per North Carolina General Statute § 143-318.11(a)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment or conditions of initial employment of an individual public officer or employee or prospective public officer or employee. (Copy of closed session Minutes is sealed and found in the Closed Session Minute Book).*

RECONVENE IN REGULAR SESSION

ACTION: Commissioner Whetstine made the motion, seconded by Commissioner Bridges, and unanimously adopted by the Board to, *reconvene in open session.*

ACTION: Commissioner Hutchins made the motion, seconded by Commissioner Hardin and unanimously adopted by the Board to, *approve the Board Chair to execute the contract for the County Manager and appoint David Cotton as the next Cleveland County Manager whose start date is effective Monday, July 31, 2023.*

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made this 2nd day of June, 2023, by and between CLEVELAND COUNTY, a political subdivision of the State of North Carolina (hereinafter the "County"), as employer and DAVID B. COTTON, (hereinafter "Employee").

WITNESSETH

THAT WHEREAS, County has adopted the County Manager plan of government, pursuant to North Carolina General Statutes § 153A-81(1); and

WHEREAS, the County of Cleveland by and through its Board of Commissioners (hereinafter the "County"), together with Employee, enter into an Employment Agreement dated the 2nd day of June, 2023, under the terms of which Employee agrees to serve as County Manager for the County at the pleasure of the Board and with the County having made this decision based solely on the executive and administrative qualifications of Employee, as required by North Carolina General Statute § 153-81(1); and

WHEREAS, it is the desire of the Board to: (1) secure and retain the services of Employee and to provide inducement from him to continue to remain in such employment; (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee; and (4) to provide a just means for terminating Employee's services when the Board may otherwise desire to terminate his employ as provided in this Agreement; and

WHEREAS, Employee desires to be employed as the County Manager of Cleveland County;

NOW THEREFORE BE IT RESOLVED, in consideration of the mutual covenants, promises and agreements contained herein, together with other good and valuable consideration; receipt of which is hereby acknowledged, County and Employee do now agree as follows:

Section 1. Duties and Authority

County agrees and hereby employs Employee as County Manager of Cleveland County government, to perform the functions and duties of County Manager as prescribed by the Board, the North Carolina General Statutes, and applicable state and federal law, rules and regulations. Employee hereby agrees to serve as County Manager as a full-time employee of the County and to exercise those powers and perform those duties set forth in North Carolina General Statutes § 153A-82.

Section 4. Hours of Work

- A. As an exempt employee under the Fair Labor Standards Act, Employee shall not receive overtime or compensatory pay for hours worked during the term of this Agreement. It is recognized however that Employee must devote a great deal of time outside normal business hours to business of the County, and to that end, Employee shall be allowed to take compensatory time off as he shall deem appropriate during said normal office hours; provided that such compensatory time does not interfere with his duties as County Manager. Compensatory time off in excess of five hours in a single day shall be coordinated with the Chair of the Board of Commissioners.
- B. The Employee agrees that he will devote all of his full working time to the performance of his duties required hereunder, and Employee therefore agrees not to engage in any other employment. This provision shall not include occasional teaching, writing or consulting on Employee's time off to the extent that such does not conflict or interfere with Employee's duties hereunder.

Section 5. Automobile Allowance

The Board recognizes that Employee's duties require that he shall have and operate a vehicle performing the duties required pursuant to this Agreement. The County agrees to pay Employee a vehicle allowance of \$750.00 per month for use of his personal vehicle on county business within the County. Business conducted by Employee on behalf of the County outside of Cleveland County shall be reimbursed in accordance with county travel policies.

Section 6. Professional and Civic Development

- A. The County agrees to budget and pay for the professional dues and subscriptions of Employee necessary for his continuation and full participation in appropriate national, regional, state and local associations and organizations that are necessary and desirable for his continued professional participation, growth and advancement and for the good of the County. At a minimum, this includes; International City/County Management Association (ICMA), North Carolina City/County Management Association (NCCMA) and Appalachian State University Local Government Alumni Association (ASULGAA).
- B. The County agrees to budget and pay for reasonable travel and subsistence expenses of Employee for courses, institutes and seminars that are necessary for his professional development and for the good of the County. Employee shall maintain and submit appropriate documentation for all such expenses in accordance with the provisions of the Cleveland County Personnel Policy.

Section 2. Term

- A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the County, at its will and without cause, to terminate the services of Employee at any time, subject only to those provisions contained in Section 9 herein.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with Employee's right to resign at any time from his position as County Manager, subject only to the provisions hereinafter set out in Section 9.
- C. This Agreement shall commence on or about the 31st day of July, 2023, be continuing in nature and shall remain in full force and effect until terminated as hereinafter provided.

Section 3. Compensation

- A. The County agrees to pay Employee for his services rendered pursuant hereto an annual base salary of \$225,000 as stated herein payable in installments at the same time as other county employees. Except as otherwise provided herein, Employee shall receive all other fringe benefits to the same extent as other county employees.

Annual Salary

- (1) July 1st, 2024, and thereafter; Employee shall automatically receive the same annual cost of living allowance (COLA) approved by the Board of County Commissioners for all other county employees; such COLA to be paid automatically on July 1st of each year without further action of the Board. On or before the 30th of June of each year, the Board will decide the amount of the Employee's merit/performance increase as part of its annual review of the Employee's performance evaluation.
- B. The salary increases identified in Section 3.A.(1) above shall be automatically awarded if the Employee does not receive a performance evaluation from the Board on or before the 30th of June of each applicable year. For all subsequent years, the Employee shall receive the maximum merit pay available to employees as determined by the Board if the Employee does not receive a performance evaluation from the Board on or before the 30th of June of each year.

Section 7. Vacation, Leave and Supplemental Retirement

- A. Employee shall upon execution of this Agreement and beginning on the date identified in Section 2.C. above, be considered a regular full-time employee with an initial vacation balance of eighty (80) hours. Employee shall, like other county employees, have credited to his personal account, vacation, flex time and sick leave. For purposes of vacation accrual only, Employee shall be considered a regular full-time employee with twenty-five (25) years of service as of the date identified in Section 2.C. above. From that point, vacation accrual rate shall be in accordance with the Cleveland County Personnel Policy. On December 31, if Employee has more than two hundred forty (240) hours of accumulated vacation leave, the excess accumulation shall be automatically transferred into his sick leave account so that only two hundred forty (240) hours are carried forward to January 1 of the next calendar year. Flex time and sick leave benefits are granted to the Employee in accordance with the duly adopted flex time and sick leave policies within the Cleveland County Personnel Policy.
- B. The parties acknowledge that Employee is vested in the North Carolina State Retirement System. Employee may transfer sick leave to the county or the county's local government retirement system up to the allowable amount and retain remaining credits in the state system, subject to the state system rules. Upon separation from employment for any reason, the County will maintain Employee's accumulated sick leave balance for a period of three (3) years from date of separation for purposes of transfer to another unit of government and shall honor such transfer of the full balance of sick leave from Cleveland County to the Employee's new employer or to the Employee's retirement system if applicable.
- C. The County will contribute six percent (6%) of the Employee's annual base salary to his NC 401(K) retirement account. The disbursement of contributions shall be made in accordance with the County's pay period cycle.

Section 8. Insurance

- A. County agrees to enroll and maintain Employee and Employee's family in the County's health/hospitalization insurance program and dental coverage, and to pay Employee's and Employee's family premiums for such programs, upon eligibility.
- B. In addition to that required under State and local law, County shall provide for the defense of Employee against tort, professional liability claim or demand of other legal action, whether groundless or otherwise, pursuant to the County Resolution 16-2021.

The County shall insure Employee under its General and Professional Liability policies.

- C. The County shall bear the full cost of any fidelity or other bonds required by Employee under any law or ordinance.

Section 9. Termination of Employment

- A. In the event Employee is not terminated for cause as defined herein, Employee shall, if terminated by the County without cause, receive payment of twelve month's salary ("severance pay") and all accumulated vacation leave. No other benefits shall be paid. Such payment shall be made in equal consecutive monthly installments commencing thirty days after employment termination. County will also pay Employee's and his dependent's medical premiums under the County's health care or other policy at benefit levels substantially equal to health coverage at time of separation, for a period of twelve months from the date of termination. No other benefits shall be paid.
- B. In the event Employee is terminated for cause, then, in that event, County shall have no obligation to pay Employee severance pay or provide other benefits as identified in Section 9.A. Termination for cause shall include: (1) conviction of any illegal act involving personal integrity or gain to him or involving moral turpitude; (2) illegal use of a controlled substance as set forth in the General Statutes of North Carolina; (3) finding by a state or federal governmental entity that he engaged in unlawful discrimination or harassment. Termination for cause shall also include physical or mental incapacity of Employee that causes Employee to be unable to perform his duties as County Manager for a period of four weeks beyond any accrued vacation and sick leave, in which case Employee shall receive three month's severance pay. No other benefits shall be paid.
- C. If Employee resigns following a motion approved by a majority vote of the Board that Employee consider resigning his position as County Manager in lieu of termination, then and in that event Employee may at his option determine his employment to be terminated without cause and Employee shall, on the date of such action, be entitled to severance pay and benefits as set forth in Section 9.A.
- D. In the event Employee shall voluntarily resign his position with the County (which shall not include Section 9.C.), then Employee shall give the County a minimum 30 days prior notice thereof. Such notice shall be in writing and shall be delivered by hand to the Board Chair or County Attorney. If Employee gives County such 30 days advance notice, Employee shall be entitled to all accumulated vacation leave, but shall not be

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D. This Agreement shall be binding upon and inure to the benefit of the heirs, beneficiaries, devisees and or estate and executors of Employee.

E. The text herein shall constitute the entire agreement between the parties. The parties agree that the terms and conditions of any prior agreement, whether written or oral, have either been incorporated into this Agreement or, if not so incorporated, are void.


F. If any provision of this Agreement is found unconstitutional, invalid, unlawful or unenforceable, it shall not be held to invalidate or impair the validity, force or effect of any other provisions or parts of the Agreement.

IN WITNESS WHEREOF, the County of Cleveland has caused this Agreement to be signed and executed in its behalf by its Chair of the Board of Commissioners and duly attested by its Clerk, and Employee has signed and executed this Agreement, both in duplicate, the day and year first written above.

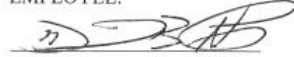
COUNTY OF CLEVELAND

By: 
Kevin Gordon, Chair
Board of Commissioners

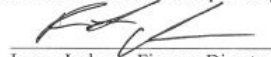
ATTEST:


Phyllis Nowlen, NCCCC
Clerk to the Board

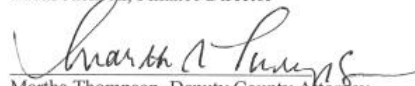
EMPLOYEE:


David B. Cotton

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.


Lucas Jackson, Finance Director

Approved as to form:


Martha Thompson, Deputy County Attorney

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Each Commissioner gave thanks and appreciation to Interim County Manager Todd Carpenter for his hard work and leadership and welcoming comments to David Cotton.

ADJOURN

There being no further business to come before the Board at this time, Commissioner Hardin made a motion, seconded by Commissioner Whetstine and unanimously adopted by the Board, ***to adjourn***. The next meeting of the Commission is scheduled for ***Tuesday, June 6, 2023 at 6:00 pm*** in the Commissioners' Chambers.

entitled to severance pay or any other benefits as set forth in Section 9.A. County may reduce the amount of time Employee remains employed with the County following such notice without such reduction being considered a termination without cause. In the event Employee does not give the County 30 days advance written notice of resignation, then Employee shall not be entitled to accumulated vacation leave nor any other benefits as set forth in Section 9.A.

Section 10. Performance Evaluation

The Board shall review and evaluate the performance of Employee in June of each year. The evaluation shall be conducted in a manner that enhances the working relationship of the parties and improves the delivery of services of county government. The evaluation shall define goals and objectives for Employee and the County for the following calendar year.

Section 11. Residency and Relocation Expenses

- A. Employee shall establish residence within the corporate boundaries of Cleveland County within six months of employment, and thereafter to maintain residence within the corporate boundaries of Cleveland County.
- B. County will reimburse Employee for the expenses of moving Employee, his family and personal property from Onslow County, North Carolina to Cleveland County, North Carolina. Said moving expenses include packing, moving, storage costs, unpacking and insurance charges. The Employee shall provide evidence of actual moving expenses by securing quotations from three companies. The Employee shall submit these quotes to the County, which, in consultation with the Employee, shall select the moving company.

Section 12. Miscellaneous Provisions

- A. No amendment or modification of this Agreement shall be deemed effective unless and until the same shall be evidenced by a written instrument executed by the parties hereto with the same formality attending execution of this Agreement.
- B. No term or condition of this Agreement shall be deemed to have been waived nor shall there by any estoppel to enforce any provisions of this Agreement except by written instrument of the party charged with such waiver or estoppel executed with the same formality attending execution of this Agreement.
- C. This Agreement shall be interpreted in accordance with North Carolina law. Venue shall be in Cleveland County, North Carolina.

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*Kevin Gordon, Chairman
Cleveland County Board of Commissioners*

*Phyllis Nowlen, Clerk to the Board
Cleveland County Board of Commissioners*