

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: June 16, 2009

**Action Agenda
Item No.** 4-11

SUBJECT: Employment Agreement for Frank Clifton-Interim Orange County Manager

DEPARTMENT: Commissioners/Manager

PUBLIC HEARING: (Y/N)

ATTACHMENT(S): (Under Separate Cover)

INFORMATION CONTACT:

Terms of Employment Agreement of Frank Clifton as Interim Orange County Manager

Valerie Foushee, Chair, 245-2130
John Roberts, 245-2318

PURPOSE: To confirm the terms of an employment agreement with Frank Clifton as Orange County Interim Manager.

BACKGROUND: The Board of Commissioners approved the appointment of Frank Clifton as Interim Orange County Manager at their June 11, 2009 meeting, effective June 15, 2009. The other elements of compensation and aspects of Mr. Clifton's appointment are resolved in the attached "Terms" Board action.

FINANCIAL IMPACT: Funding for the pay and benefits for the Interim County Manager for the 2009-10 fiscal year are included in the BOCC 2009-10 budget.

RECOMMENDATION(S): Approve the terms of the employment agreement for Frank Clifton as Interim Orange County Manager.

ORANGE COUNTY

EMPLOYMENT AGREEMENT

NORTH CAROLINA

THIS EMPLOYMENT AGREEMENT, made and entered into this the 16th day of June, 2009, by and between the County of Orange, a body politic and corporate of the State of North Carolina, hereinafter called "County", party of the first part, and Frank Clifton, hereinafter called "Contractor", party of the second part:

WITNESSETH

WHEREAS, County desires to employ the services of Contractor as Interim County Manager of the County of Orange as provided by NCGS 153A-81; and

WHEREAS, it is the desire of the Orange County Board of Commissioners, hereinafter called the "Board", to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Contractor; and

WHEREAS, Contractor desires to accept employment as Interim County Manager of said Orange County.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1: DUTIES

County hereby agrees to employ Contractor as Interim County Manager of Orange County to perform the functions and duties specified in NCGS 153A-82 and to perform other legally permissible and proper duties and functions as the Board shall from time to time assign.

SECTION 2: TERM

Contractor's initial date of full-time employment will be no later than June 15, 2009 and last for a minimum of four (4) months. Contractor's employment may be extended on a month to month basis beyond this time frame upon mutual agreement of the parties. Such mutual agreement must be in writing in the form of an Amendment to this Employment Agreement and signed by both parties.

SECTION 3: SUSPENSION

County may suspend the Contractor without pay and benefits at any time during the term of this Employment Agreement, but only if a majority of the Board votes to suspend Contractor for cause, provided, however, that Contractor shall have been given written notice setting forth any charges at least ten (10) days prior thereto by the Board members bringing such charges.

For purposes of this Employment Agreement cause shall include unacceptable personal conduct as defined in G.S. 96-14(2) whether such conduct occurs on or off the job, any felonious act committed by Contractor, or an act punishable under the "reasons of personal conduct" clause as defined by the Orange County Personnel Ordinance.

SECTION 4: TERMINATION/SEVERANCE

This Employment Agreement may be terminated for acts by Contractor constituting cause as cause is defined in Section 3 and subject to the same process as set out in Section 3. In the event this Employment Agreement is terminated for reasons set out in this section, prior to its designated term, the Contractor shall not be entitled to, nor shall County have further obligation to pay, Contractor's salary as described in Section 7 and shall not assume any remaining lease obligation as provided for in Section 14. This Employment Agreement does not provide for Severance pay of any kind.

SECTION 5: RESIGNATION

In the event Contractor voluntarily resigns his position with County before the expiration of the aforesaid term of his employment, then Contractor shall give County ten (10) days notice in advance of such resignation. In the event of such resignation, County shall have no further obligation to pay Contractor's salary as described in Section 7 and shall not assume any remaining lease obligation as provided for in Section 14.

SECTION 6: DISABILITY

If Contractor is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of two (2) successive weeks, County shall have the option to terminate this Employment Agreement. In such event, County shall have no further obligation to pay Contractor's salary as described in Section 7.

SECTION 7: SALARY

Contractor will be paid \$2660 per week, payable on the same schedule as for County employees. The week referenced above will begin at 12:00:01 am on Monday and end at midnight on Sunday. There will be no provision for overtime or other direct financial compensation.

SECTION 8: HOURS OF WORK

As Interim County Manager, Contractor is expected to maintain office hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. Additionally, Contractor shall attend all meetings of the Board. It is further agreed and understood that the position of Interim County Manager is exempt from the overtime provisions of the Fair Labor Standards Act under the Executive Exemption.

SECTION 9: VACATION, HOLIDAYS, and SICK LEAVE

Contractor will have the same holiday schedule as for County employees; Contractor will accrue no vacation or sick leave.

SECTION 10: OTHER BENEFITS

Contractor shall not have access to and enrollment in the dental, health, and life insurance provided to general full time employees of County. Contractor will have the use of a county vehicle for county business only. A County-owned laptop computer and cellular telephone will be available to Contractor for his use for County business at the expense of the County.

SECTION 11: RETIREMENT

Contractor will participate in the North Carolina Local Governmental Employees Retirement System, with the County contributing five (5) percent of base salary.

SECTION 12: INDEMNIFICATION

In addition to that required under state and local law, County shall defend, save harmless, and indemnify Contractor against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Contractor's duties as Interim County manager. County reserves the right to, in its discretion, compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

This Section shall not apply to any acts or omissions by Contractor that are deemed to be gross negligence on the part of the Contractor, nor shall this Section apply to any intentional acts of misconduct by the Contractor.

SECTION 13: BONDING

County shall bear the full cost of any fidelity or other bonds required of the Contractor under any law or ordinance.

SECTION 14: OTHER TERMS AND CONDITIONS

The Board, in consultation with the Contractor, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Contractor, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Employment Agreement or any applicable law.

The employment provided for by this Employment Agreement shall be the Contractor's sole employment.

Contractor will reside within the county during his engagement. The County will assume any portion of his rental lease that exists beyond his discontinued service with Orange County, up to three (3) months beyond the date of the discontinuation of service, as long as his residency is at the "The Point" or a comparably priced residence.

SECTION 15: GENERAL PROVISIONS

The text herein shall constitute the entire agreement between the parties.

This Employment Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Contractor.

This Employment Agreement shall become effective commencing the 15th day of June, 2009.

During the term of his appointment Contractor shall serve "at will" as Interim County Manager.

If any provision, or any portion thereof, contained in this Employment Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Employment Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, County has caused this Employment Agreement to be signed and executed in its behalf by its Board Chair, and duly attested by its Clerk and sealed with its corporate seal, and the Contractor has signed and executed this Employment Agreement in duplicate Originals.

COUNTY

CONTRACTOR

BY: _____
Valerie P. Foushee
Chair, Board of Commissioners

Frank Clifton

ATTEST:
CLERK: _____
Donna Baker

[SEAL]

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

Finance Director