



## *Agenda Commentary*

**Item Title/ Subject:** City Hall Roof/Window Project

**Staff Source:** Debra Blanchard, City Treasurer

**History/Background Information:** City Hall Roof/Window Project was awarded to Joe D. Hall Construction, LLC per bid opening on January 18, 2011 in the amount of \$580,205. ARC Architect Fees are also involved in the amount of \$42,000. The project was to be funded with current city Capital Improvement funds and lease purchase financing. First Bank and Trust was the low interest bidder for the financing of \$450,000 of the project at 4.14% for 5 years.

**Item/Subject Summary:** The Lease purchase agreement now needs to be executed and funds deposited to cover the pay requests as they come to the City. The agreement has been reviewed by Ryan Meacham and corrections made per his request.

**Price/Cost:** \$450,000 at 4.14% for 5 years, semi-annual payments

**Recommendation:** Execution of the document

## EQUIPMENT LEASE AGREEMENT WITH OPTION TO PURCHASE

Date : May 17, 2011

Lessee: City of Clinton

Lessor: First Bank and Trust Company

Lessor agrees to lease to lessee and lessee agrees to lease from lessor, the Equipment described in Schedule A now hereafter attached "Equipment" in accordance with the following terms and conditions of this Lease Purchase Agreement "Lease".

1. **TERMS.** This Lease will become effective upon the execution hereof by Lessor, the terms of this lease will commence on the date the Equipment is accepted pursuant to Section 2 hereunder and unless earlier terminated as expressly provided for in this Lease and will continue until the expiration date set forth in Schedule A attached hereto (Lease Term).
2. **LEASE PAYMENT.** Lessee agrees to pay to Lessor or its assignees the Lease Payments, including the interest portion, equal to the amounts specified in Schedule A. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment date as set forth in Schedule A and thereafter on the subsequent dates set forth in Schedule A. Any payments received later than 20 days from the due date, except as specifically provided in Section 5 hereof. The Lease Payments will be absolute and unconditional in all events and will not be subject to any offset defense, counterclaim, or recoupment for any reason whatsoever including, without limitation, any failure of the Equipment to be delivered, any defects, malfunctions, breakdown or infirmities with the Equipment or any accident, condemnation or unforeseen circumstances. Lessee reasonably believes that funds can be obtained sufficient to make all lease payments during the lease term and hereby covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Lease Payments may be made, including provision for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is Lessee's intent to make lease payments for the full Lease term if funds are legally available therefore and in that regard Lessee represents that the use of the Equipment is essential to its proper, efficient and economic operation. Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the lessee nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of lessee.
3. **DELIVERY AND ACCEPTANCE.** Lessee or if Lessee so request, Lessor will cause the Equipment to be delivered to Lessee at the location specified in Schedule A. Lessee will pay all and any costs that may be incurred in delivery. Lessee will evidence acceptance of the Equipment by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form provided by the Lessor.

4. **DISCLAIMER OF WARRANTIES.** Lessee acknowledges and agrees that the Equipment is of size, design and capacity selected by Lessee, that Lessor is neither a manufacturer nor vendor of such Equipment and that LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED WITH RESPECT THERETO, AND LESSOR OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF. Lessor hereby assigns to Lessee during the Lease Term, so long as no Event of Default has occurred hereunder and is continuing, all manufacturer's warranties at Lessee's expense. Lessee's sole remedy for the breach of any such Manufacturer's Warranty shall be against the Manufacturer of the Equipment have any effect whatsoever on the right's and obligations of Lessor with respect to the Lease, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor make and has made no representation or warranties whatsoever as to the existence or the availability of such warranties of the manufacturer of the Equipment.
5. **NON-APPROPRIATION OF FUNDS; NON-SUBSTITUTION.** Notwithstanding anything contained in this Lease to the contrary, in the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable by any means whatsoever in any fiscal period for Lease Payments due under this lease, Lessee will immediately notify the Lessor or its assignee of such occurrence and this lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever except as to the portion of Lease Payments herein agreed upon for which funds shall have been appropriated and budgeted for are otherwise available in the event of such termination. Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its assignee on the date of such termination, packed for shipment in accordance with manufacturer's specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment. Notwithstanding the foregoing, Lessee agrees (i) that it will not cancel this lease under the provisions of this Section if any funds are appropriated to it, or by it, for the acquisition, retention or operation of the Equipment or other Equipment performing functions similar to the Equipment for the fiscal period in which such termination occurs or the next succeeding fiscal period thereafter, and (ii) that it will not during the Lease Term give priority in the application of funds to any other functionally similar Equipment. This paragraph will not be construed so as to permit Lessee to terminate this Lease in order to acquire or lease any other Equipment or to allocate funds directly or indirectly to perform essentially the same application for which the Equipment is intended.
6. **AUTHORIZATION AND CERTIFICATION.** Lessee represents, covenants and warrants that if it is a state, or a political subdivision thereof, or that Lessee's obligation under this Lease constitutes an obligation issued on behalf of a state or political subdivision thereof such that any interest derived under this lease will qualify for exemption from Federal income taxes under Section 103 of the Internal Revenue Code.

Lessee further warrants that this lease represents a valid deferred payment obligation for the amount herein set forth of a Lessee having legal capacity to enter into the same and is not in contravention of any Town/City, District, or state statute, rule, regulation, or other governmental provision. In the event that a question arises as to Lessee's qualifications as a political subdivision, Lessee agrees to execute a power of attorney authorizing Lessor to make application to the Internal Revenue Service for a letter ruling with respect to the issue. Lessee agrees that (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all bidding requirements where necessary and by due notification presented this Lease for approval and adoption as a valid obligation on its part, and (iii) it has sufficient appropriations of other funds available to pay all amounts due hereunder for the current fiscal period.

7. SECURITY INTEREST. Upon acceptance of the Equipment by Lessee hereunder, ownership to the Equipment will vest in lessor until option to purchase Equipment by Lessee is exercised.
8. USE; REPAIRS; TAXES AND FEES. Lessee will use the equipment in a careful manner for the use contemplated by the manufacturer for the Equipment and shall comply with all laws, ordinances, insurance policies and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee at its expense will keep the Equipment in good working order and repair and furnish all parts, mechanisms and devices required therefore. Lessee will be required to pay all official fees, registration, certificate of title, license fees and taxes. If any of these fees are paid by the Lessor, the Lessee will refund the Lessor upon request.
9. ALTERATIONS. Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.
10. LOCATION; INSPECTION. The Equipment's permanent base will not be changed from the Equipment location without Lessor's prior written consent.
11. LIEN AND TAXES. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, leasing rental, sale, purchase, possession or use of the Equipment, excluding however all taxes on or measured by Lessor's income. If Lessee fails to pay said charges, and taxes when due, Lessor shall have the right but shall not be obligated to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefore.
12. RISK OF LOSS; DAMAGE; DESTRUCTION. Lessee assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to the make the Lease Payment or to perform any other obligation under this Lease. In the event of damages to any part of the Equipment, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee, at the option of the Lessor will either (a) replace the same with like parts in good repair, or (b) on the next Lease

Payment date, pay Lessor: (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease payment due on such date, and (ii) an amount equal to the applicable concluding payment set forth in Schedule A. In the event that Lessee is obligated to make such payment with respect to less than all the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and Concluding Payment to be made by the Lessee with respect to the Equipment which has suffered the loss.

13. **INSURANCE.** Lessee, will at its expense, maintain at all times during the Lease Term, full coverage insurance showing the Lessor as additional insured. Lessee will deliver to Lessor a certificate evidencing such insurance.
14. **INDEMNIFICATION.** To the extent allowed by law, Lessee will indemnify Lessor against and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities; including attorney's fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this lease or the termination of the lease term for any reason.
15. **ASSIGNMENT.** Without the other parties prior written consent, neither party will assign, transfer, pledge, grant any security interest in or otherwise dispose of this lease of the Equipment.
16. **EVENT OF DEFAULT.** The term "Event of Default", as used herein, means that the occurrence of any one more of the following events: (i) Lessee fails to make any Lease Payment as it becomes due in accordance with the terms of the lease and any such failure continues for ten (10) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured with twenty (20) days after written notice thereof by Lessor, (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing ever delivered by Lessee pursuant hereto or in connection herewith is false, misleading, or erroneous in any material respect; (iv) proceedings under any bankruptcy, insolvency, reorganization, or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of it's property, and such proceedings or appointments shall not be vacated or fully stayed within twenty (20) days after institution or occurrence thereof, or (v) an attachment, levy, or execution is threatened or levied upon or against the Equipment.
17. **REMEDIES.** Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may at its option, exercise any one or more of the following remedies: (i) by written notice to the Lessee, declare an amount equal to all amounts then due under the lease, and all remaining Lease Payments due during the Fiscal Year in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable, (ii) by written notice to the Lessee, request Lessee to, at Lessee's expense, promptly return the Equipment to Lessor in the manner set forth in Section 5 hereof, or Lessor, at it's option may enter upon the premises where the Equipment is located and take immediate possession of and remove the same, (iii) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other payment due to the

effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid the purchaser, Lessee or Sub lessee pursuant to such sale, Lease or Sublease and the amounts payable by Lessee hereunder, and (iv) exercise any other right, remedy, or privilege which may be available to it under applicable laws of the State of Oklahoma or any other applicable law or proceed by appropriate court action to enforce the terms of the lease or to recover damages for the breach of this lease or to rescind this lease as to the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this lease and for all legal fees and other costs and expenses including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

18. PURCHASE OPTION. Upon thirty (30) days prior written notice from Lessee to Lessor, and provided that there is no event of Default, or in event which with notice to lapse of time, or both, could become an Event of Default, then existing, Lessee will have the right to purchase the Equipment on the Lease Payment dates as set forth in Schedule A, paying to Lessor, on such date, the Lease Payment then due together with Concluding Payment amount set forth opposite such date. Upon satisfaction by Lessor of such purchase conditions, Lessor will transfer any and all of its rights, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that the Equipment is free and clear of any liens created by Lessor.
19. NOTICES. All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to mailing.
20. GOVERNING LAW. This Lease shall be construed in accordance with and governed by the laws of the State of Oklahoma.
21. ENTIRE AGREEMENT: WAIVER. This Lease, together with the Delivery and Acceptance Certificate and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitute the entire agreement between the parties with respect to the Lease of the Equipment, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of this lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease. The waiver by the Lessor of any breach by the Lessee of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on May 17, 2011

Lessee: City of Clinton

Attest: (Seal)

By: \_\_\_\_\_  
Mayor, Allen Bryson

\_\_\_\_\_  
Secretary

Lessor: First Bank and Trust Company

Attest: (Seal)

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

SCHEDULE A  
EQUIPMENT LEASE AND PURCHASE AGREEMENT

This lease is dated as of May 17, 2011, and is being executed by the First Bank and Trust Company and City of Clinton, as a supplement to and is hereby attached to and made a part of that certain Equipment Lease and Purchase Agreement dated as of May 17, 2011, "Lease", between Lessor and Lessee.

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following Equipment.

City Hall roof and windows

Lease in the Amount of \$450,000.00 payable in equal installments over five (5) years with semi-annual payments being due on May 10th and November 10th of each year until paid in full @4.14% APR. as follows:

First payment of \$50,290.31 including interest due November 17, 2011 and every six months thereafter until paid in full on May 17, 2016.

Lessee: City of Clinton

Attest: (Seal)

By: \_\_\_\_\_  
Mayor, Allen Bryson

\_\_\_\_\_  
Secretary

Lessor: First Bank and Trust Company

Attest: (Seal)

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

SCHEDULE C

CERTIFICATE OF ACCEPTANCE

I, the undersigned, hereby certify that I am the duly qualified and acting on behalf of the City of Clinton (Lessee) with respect to the Lease with Option to Purchase Agreement dated May 17, 2011 (the "Lease"), by and between First Bank and Trust Company (Lessor) and City of Clinton, (Lessee).

1. The Equipment described in the Lease (the "Equipment") has been delivered in accordance with the specifications (as that term is defined in the "Lease") and has been irrevocably accepted by Lessee.
2. The Lease Payments provided for in the Lease (the "Lease Payments") shall commence and be due and payable on November 17, 2011 and every 6 months thereafter until paid in full.
3. Lessee has appropriated and/or taken all other lawful actions necessary to provide monies sufficient to pay all Lease Payments required to be paid under the Lease during the fiscal year of Lessee for which monies have been appropriated and such monies will be applied in payment of all Lease Payments due and payable during such current fiscal year.
4. Lessee is exempt from all personal property taxes, and is exempt from sales and/or use taxes with respect to the Equipment.
5. During the Lease term (as defined in the Lease) the Equipment will be used by Lessee only to perform essential municipality functions.

For the City of Clinton

Dated: May 17, 2011

By: \_\_\_\_\_  
Mayor, City of Clinton