

RESOLUTION NO. 012516-2

A RESOLUTION APPROVING A LEASE PURCHASE AGREEMENT WITH FIRST BANK KANSAS CONCERNING THE LEASE PURCHASE OF AIR PACKS FOR THE FIRE DEPARTMENT

WHEREAS, the City Commission desires to enter into an Lease Purchase Agreement ("Agreement") with First Bank Kansas for the purposes of financing the acquisition of air packs for the Abilene Fire Department.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Agreement. That a Lease Purchase Agreement is hereby adopted as attached hereto as Exhibit A.

SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of January, 2016.



ATTEST

Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS

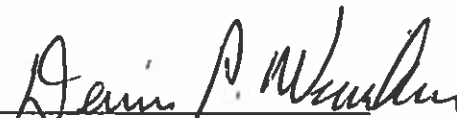
By: 
Dennis P. Weishaar, Mayor

EXHIBIT A

Lease Purchase Agreement

Air Packs for Fire Department

January 25, 2016

Memo

To: City Manager
 From: Marcus Rothchild, Finance Director
 Date: January 22, 2016
 Re: Fire Fighter Air-Pak Financing

In the 2016 Budget a purchase of 26 new Firefighter Air-Paks was approved with the understanding that the City of Abilene would secure a four year lease purchase option. We requested bids from five local area banks as well as a leasing partner that was recommended by the vendor. The 2016 budgeted amount was \$43,134. The lease purchase option will have the 2016 budget number of \$43,134 as a down payment followed by three additional payments starting in 2017 with the final payment made in 2019.

The City received three bids in response to our request:

- | | Interest Rate |
|--------------------------------|---------------|
| 1. Community Leasing Partners: | 3.12% |
| 2. Astra Bank | 3.25-3.5% |
| 3. First Bank Kansas | 2.75% |

After reviewing all proposals First Bank Kansas provided the most competitive bid with the following amortization schedule:

3/1/2016		Advanced	\$117,980.23	Interest Rate	2.75%	
Pmt No	Payment Date	Beginning Balance	Scheduled Payment	Principal	Interest	Ending Balance
1	1/15/2017	\$ 117,980.23	\$ 40,380.32	\$ 37,496.35	\$ 2,883.97	\$ 80,483.88
2	1/15/2018	\$ 80,483.88	\$ 40,380.32	\$ 40,189.73	\$ 190.59	\$ 40,294.15
3	1/15/2019	\$ 40,294.15	\$ 40,380.33	\$ 40,294.15	\$ 86.18	\$ -

I suggest that we move forward with the lease-purchase agreement from First Bank Kansas to finance the purchase of 26 Firefighter Air-Paks from Municipal Emergency Services, Inc.

**CLARK, MIZE & LINVILLE
CHARTERED**

PETER L. PETERSON
JOHN W. MIZE
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PAULA J. WRIGHT
ERIC N. ANDERSON
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C.L. CLARK (1908 - 2004)
JAMES P. MIZE (1910 - 1988)

AUBREY G. LINVILLE
L.O. BENGTON
MICKEY W. MOSIER
RETIRED

January 25, 2016

Mr. Ryan Peschka
Chief Financial Officer
First Bank Kansas
P.O. Box 1337
Salina, Kansas 67402-1337

Re: Lease Purchase Agreement by and between First Bank Kansas ("Lessor") and City of Abilene, Kansas ("Lessee")

Dear Mr. Peschka:

I have acted as counsel to Lessee with respect to the Lease Purchase Agreement described above and various related matters, and in this capacity have reviewed a duplicate original or certified copy thereof, the Exhibits attached and executed pursuant thereto (together, the "Lease") with an effective date of March 1, 2016 between Lessor and Lessee. Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. Lessee is a political subdivision of the State of Kansas ("State"), duly organized, existing, and operating under the Constitution and laws of the State.
2. Lessee is authorized and has power under applicable law to enter into the Lease, and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Lease has been duly authorized, approved, executed, and delivered by and on behalf of Lessee, and is the legal, valid, and binding contract of Lessee enforceable in accordance with its terms, except to the extent limited by State and Federal laws affecting remedies against Lessee as the State or as a political subdivision on the State and by bankruptcy, reorganization, or other laws of general application relating to or affecting the enforcement of creditors' rights.
4. The authorization, approval, and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of the State.

Mr. Ryan Peschka

January 25, 2016

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5. The execution, delivery and performance of the Lease do not and will not result in the violation of any constitutional, statutory, or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

6. To the best of the undersigned's knowledge, there is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator, or governmental body that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease; the proper authorization, approval and/or execution of the Lease, and other documents contemplated thereby; the appropriation of moneys to make Lease Payments under the Lease for the current fiscal year of Lessee; or the ability of Lessee otherwise to perform its obligations under the Lease, and the transactions contemplated thereby and, to the best of my knowledge, no such litigation or actions are threatened.

7. The equipment financed by the Lease is personal property, and when used by the Lessee will not be or become fixtures under the laws of the State.

8. Resolution No. _____ of the governing body of Lessee was duly and validly adopted by such governing body on January 25, 2016, and such resolution has not been amended, modified, supplemented, or repealed and remains in full force and effect.

Very truly yours,

CLARK, MIZE & LINVILLE, CHARTERED

Aaron O. Martin
aomartin@cml-law.com

cc: Marcus Rothchild, Finance Director

LEASE-PURCHASE AGREEMENT

THIS LEASE-PURCHASE AGREEMENT is made and entered into by and between the Lessor and Lessee, with the Effective Date set forth below.

1. **Definitions.** For purposes of this Lease-Purchase Agreement, the following terms shall have the respective meanings set forth below:

LEASE: This Lease-Purchase Agreement dated as of the Effective Date, by and between the Lessor and Lessee.

EFFECTIVE DATE: 3/1/16.

TERMINATION DATE: 1/15/19.

LESSOR: First Bank Kansas, a Kansas state-chartered bank.

LESSEE: City of Abilene, KS.

PROPERTY: The property that is the subject of this Lease and that is described on Exhibit "A" which is attached hereto and by reference made a part hereof.

LEASE TERM: The period beginning on the Effective Date and ending on the Termination Date, unless earlier terminated pursuant to the terms of the Lease.

RENTAL PAYMENTS: The payments due in the amounts and upon the dates set forth on Exhibit "B" which is attached hereto and by reference made a part hereof.

OPTION PRICE: One Dollar (\$1.00), which is payable upon the Lessee exercising its Purchase Option pursuant to the terms of the Lease.

PURCHASE PRICE: The sum of the Option Price plus all remaining Rental Payments due to be paid on the date that Lessee exercises its option to purchase the Property.

INTEREST RATE: 2.75 % per annum, which shall be the interest rate component of the Rental Payments and the interest rate assessed on any unpaid Rental Payments or other or additional advances made by Lessor and owed by Lessee.

PROPERTY INSURANCE DEDUCTIBLE: \$5,000.

PUBLIC LIABILITY COVERAGE: \$1,000,000.

PUBLIC LIABILITY DEDUCTIBLE: \$1,000.

2. **Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Property for the Lease Term in exchange for the Rental Payments.

3. **Rental Payments.** A portion of each Rental Payment is paid as and represents payment of interest, and the balance of each Rental Payment is paid as and represents payment of principal, as set forth on Exhibit "B". Each Rental Payment and any additional amounts for which Lessee becomes obligated hereunder, which are not paid when due, shall bear interest at the Interest Rate from the date on which the Rental Payment or additional other payment becomes due until the same is paid. Lessee may prepay the Rental Payments or any portion thereof at any time, and any such prepayment shall be credited against the next Rental Payment.

4. **Rent as Current Expense.** Lessee's obligation to pay the Rental Payments in the amounts and on the due dates set forth on Exhibit "B" shall constitute a current expense of Lessee and shall not be construed to be a debt of Lessee in violation of any constitutional or statutory limitations concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

5. **Purchase Option.** Lessee shall have the option to purchase the Property, but only if Lessee is not in default under the Lease. Lessee may exercise its option to purchase the Property on any Rental Payment due date by paying the Purchase Price, provided that Lessee shall give Lessor not less than thirty (30) days advance written notice of its intention to exercise its option to purchase.

6. **Transfer of Title.** During the Lease Term, title to the Property shall be vested in Lessor. Upon Lessee's exercise of the option to purchase and the payment of the Purchase Price, title to the Property shall be conveyed to and vested directly in Lessee, and Lessor shall execute and deliver to Lessee a Bill of Sale for the Property and such other and further instruments and assurances as may be reasonably necessary to transfer the Property to Lessee.

7. **Maintenance and Operation:** During the Lease Term, Lessee shall, at its own expense, maintain or cause to be maintained the Property in good order, condition and repair, and Lessor shall have no obligation to incur any of said expenses; provided, however, that if Lessee fails to keep the Property in good repair and operating condition, Lessor may, but shall be under no obligation to, make such repairs as are necessary and to provide for the payment thereof, and all such amounts so advanced by Lessor shall be repaid by Lessee as an additional amount for which Lessee becomes obligated hereunder, and Lessee hereby agrees to pay any such additional amount, plus interest at the Interest Rate, for which it may become obligated hereunder. Lessor, at its option, may request that Lessee enter into a maintenance contract for the Property with the vendor of the Property or otherwise.

8. **Use of the Property.** The parties mutually agree that Lessee, by performing the covenants and agreements herein contained, shall during the Lease Term, peaceably and quietly have, hold and enjoy the Property. Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law, or in any manner contrary to that

contemplated by this Lease and the nature of the property. The Property will be used only for governmental or proprietary purposes of Lessee; therefore, the parties contemplate that the Property will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Property is found to be subject to taxation in any form, Lessee will pay during the Lease Term all taxes and governmental charges whatsoever that may be lawfully assessed or levied against or with respect to the Property. Lessee shall keep the Property free and clear of all liens, charges and encumbrances, except as may be approved in advance in writing by Lessor; provided, however, that nothing in this Lease shall preclude Lessee from pledging its full faith and credit to the repayment of any legally authorized general obligation bond issue of Lessee.

9. **Insurance.** During the Lease Term, Lessee shall maintain or cause to be maintained, at its own expense, the following policies of insurance:

(a) Insurance against loss or damage to the Property resulting from fire, lightning, vandalism, malicious mischief and such perils ordinarily defined as "extended coverage" and other perils as Lessor and Lessee may agree. Such insurance shall during the Lease Term be in an amount not less than: (1) the full insurable value (i.e., the actual replacement cost "new") of the Property, or (2) the then current Purchase Price, whichever is more, subject to the Property Insurance Deductible, and shall contain an inflation guard endorsement.

(b) Public liability insurance against claims for bodily injury, death, or damage to property occurring upon, in, or about the Property, such insurance to provide coverage in an amount not less than the Public Liability Coverage, subject to the Public Liability Deductible.

All insurance policies shall be issued by insurers of recognized responsibility, licensed or admitted to do business in the state of Kansas. All policies or certificates of insurance shall name Lessee and Lessor as named insureds. Such policies and certificates shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Lessor, and shall carry loss payable endorsements in favor of Lessor where applicable. Evidence of coverage satisfactory to Lessor shall be deposited with Lessor by Lessee. All premiums and charges shall be paid by Lessee, and evidence of payment of the premiums shall be delivered by Lessee to Lessor. In the event Lessee fails to maintain the insurance required, Lessor shall have the right to procure and maintain such insurance and shall charge Lessee for the cost thereof as an additional amount for which Lessee becomes obligated hereunder. Lessee may provide such insurance as part of "blanket" coverage maintained on all assets of Lessee, and with the written consent of Lessor may be a self-insurer of such risks. If the insurance proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement, Lessee shall complete the work and pay any cost in excess of the insurance proceeds.

10. **Indemnification.** To the extent permitted by applicable law, Lessee shall indemnify, protect, and hold harmless Lessor from and against any and all liabilities, obligations,

losses, claims, and damages whatsoever, including without limitation, attorney fees and expenses, arising out of or as the result of Lessee's default under this Lease, the ownership of the Property, or any accident in connection with the operation, use, condition, possession, storage or return of the Property.

11. **Right of Inspection.** Lessor and its designated representative shall have the right during regular business hours to enter into and upon the premises of Lessee to inspect the Property or for any purpose connected with Lessor's rights under this Lease.

12. **Triple Net Lease.** This Lease shall be deemed and construed to be a "triple net lease" in that Lessee hereby agrees that the Rental Payments provided for herein shall be an absolute net return to Lessor, and that Lessor shall not be responsible for any expenses, charges or set-offs whatsoever related to the operation, maintenance and repair of the Property.

13. **Termination of Lease Term.** The Lease Term will terminate upon the earliest occurrence of any of the following events:

- (a) The expiration of the Lease Term;
- (b) The exercise by Lessee of the option to purchase granted under Paragraph 5;
- (c) A default by Lessee and Lessor's election to terminate this Lease;
- (d) The payment by Lessee of all Rental Payments and all additional amounts for which Lessee may become obligated under this Lease;
- (e) Upon notice of election to terminate the Lease due to an event of taxability pursuant to Paragraph 15 hereof, and the failure of Lessee to exercise its option to purchase at the next regular Rental Payment due date.

14. **Non-appropriation.** Lessee shall use its best efforts to include the Rental Payments for each fiscal year and any other financial obligations hereunder in its budget for such fiscal year. In the event sufficient funds are not budgeted and appropriated by Lessee for any fiscal year to provide for the Rental Payments or any other obligation of Lessee required hereunder, then Lessee shall terminate this Lease by providing thirty (30) days written notice to Lessor of Lessee's intent to terminate. In such event, the Lessee shall not be obligated to make the Rental Payments beyond the end of the period for which Lessee has budgeted. Lessee shall surrender the Property to Lessor on the last day for which Rental Payments have been made. Upon such early cancellation, Lessee may not thereafter acquire functionally similar property for the full original Lease Term. If funds are made available to Lessee after such early cancellation for property which will perform services and function in full or in part the same as the Property, Lessee agrees to purchase, lease or otherwise acquire such property from Lessor. The non-payment of any Rental Payment pursuant to this paragraph shall not constitute a default under this Lease.

15. **Occurrence of an Event of Taxability.** Lessor and Lessee contemplate that the interest component of the Rental Payments paid by Lessee will not be included in Lessor's gross income for purposes of federal income taxation. In the event that Lessee or Lessor are advised that the interest component of the Rental Payments is or has become includable in gross income for purposes of federal income taxation, Lessor (or its assigns) may elect in writing to terminate this Lease at the next regular Rental Payment due date, subject only to Lessee's option to purchase as granted in Paragraph 5 of this Lease.

16. **Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROPERTY. In no event shall Lessor be liable for incidental, indirect, special or consequential damages in connection with or arising out of this Lease or the existence, furnishing, functioning of Lessee's use of any item or products or services provided for in this Lease. Lessor hereby irrevocably appoints Lessee as its agent and attorney-in-fact during the Lease Term, and so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Property, which Lessor may have against the vendor of the Property. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the vendor of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Lease and its right to receive full and timely Rental Payments hereunder. Lessee expressly acknowledges that Lessor makes and has made no representation or warranties whatsoever as to the existence or availability of such warranties by the vendor of the Property.

17. **Assignment.** Neither this Lease nor any interest of Lessee herein shall be mortgaged, pledged, assigned or transferred by Lessee, without the prior written consent of Lessor. Lessee shall at all times remain liable for the performance of the Lease, notwithstanding any assigning, transferring or subletting which may be made. In no event shall Lessee sublease or permit the use of all or any part of the Property so as to cause the interest component of the Rental Payments to become includable in Lessor's gross income for computation of federal income taxation. Lessor shall have the right to assign its interest in this Lease and the Rental Payments to another party, and Lessee agrees to execute any and all documents necessary and proper in connection therewith.

18. **Default by Lessee.** If: (i) Lessee fails to pay any Rental Payment or other payment within fifteen (15) days from the date it is due and payable; (ii) Lessee fails to observe and perform any other term, covenant or condition contained herein for a period of thirty (30) days after written notice thereof from Lessor to Lessee; (iii) Lessee abandons the Property; or (iv) Lessee's interest in this Lease or any part thereof is assigned or transferred without the written consent of the Lessor, then Lessee shall be deemed to be in default hereunder. If Lessee is in default, Lessor shall have the right, at its option, and without any further demand or notice:

- (i) to terminate this Lease and to take possession of the Property, using all necessary force to do so, and sell the Property;

(ii) to take possession of the Property and without terminating this Lease re-let the Property upon such terms and conditions as Lessor may deem advisable, in which event the rents received on such re-letting shall be applied first to the expense of re-letting and collection, including any necessary renovation and alteration of the Property, reasonable attorney's fees and costs of suit in equity or action at law to enforce the terms and conditions of this Lease, and thereafter toward payment of all sums due or to become due Lessor hereunder. If a sufficient sum shall not be thus realized to pay such sums and other charges, Lessee shall remain liable for and will pay Lessor any cumulative net deficiency.

The foregoing remedies of Lessor are in addition to and not exclusive of any other remedy of Lessor. Any repossession of the Property shall be allowed by Lessee without hindrance.

19. **Miscellaneous.** This Agreement may be amended, modified or supplemented only by the written agreement of all parties hereto. The waiver or failure to insist upon strict compliance with any obligation, representation, warranty, agreement or condition hereunder shall not operate as a waiver of any subsequent non-compliance. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. This Agreement embodies the entire agreement and understanding of the parties. This Agreement supersedes all prior discussions, negotiations, agreements and understandings between the parties. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one original.

20. **Statutory Disclosures.** Pursuant to K.S.A. 10-1116c, the parties acknowledge and agree as follows:

(a) The capital cost to purchase the Equipment, if paid for by cash, is \$117,980.23_____.

(b) The annual average effective interest cost under the Payment Schedule is 2.75%.

(c) The amount included in payments for service, maintenance, insurance or other charges, exclusive of capital cost and interest cost, is as follows:

(i)	Service:	<u>\$0.00</u>
(ii)	Maintenance:	<u>\$0.00</u>

(iii) Insurance: \$0.00
(iv) Other Charges: \$0.00

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

"LESSEE"

City of Abilene, KS

BY: Dennis P. Weishaar
Dennis Weishaar, Mayor



(Seal)

ATTEST:

BY: Penny Sankup, CMC
Name: Penny Sankup
Title: City Clerk

"LESSOR"

FIRST BANK KANSAS,
A Kansas state-chartered bank

BY: David Walters
Name: David Walters
Title: Vice President

STATE OF KANSAS)

) ss:

COUNTY OF SALINE)

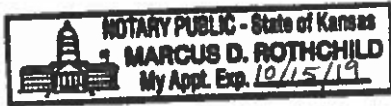
The foregoing instrument was acknowledged before me on January 26, 2016, by David Walters, VP, on behalf of Lessor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Marcus D Rothchild

Notary Public

My Appointment Expires:



STATE OF KANSAS)

) ss:

COUNTY OF DICKINSON)

The foregoing instrument was acknowledged before me on January 25, 2016, by Dennis Weishaar, Mayor of the City of Abilene, Kansas, on behalf of Lessee.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Penny L. Soukup

Notary Public

My Appointment Expires:

