



**PURCHASING -  
PARKING  
DEPARTMENT**

# Memo

**Date: Tuesday, June 28, 2005**

TO: Mayor and City Council

SUBJECT: Lease/Purchase of Fire Department  
Truck 2 and Engine 210

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Several years ago the volunteers at Station #2 purchased two pieces of equipment on a Lease/Purchase. That equipment is Truck 2 (a 1999 aerial truck) and Engine 210, a 2003 American LaFrance Eagle pumper. The volunteers now wish to turn this equipment over to the City; however, their leasing company (Damlier Chrysler) will not "transfer" the lease to the City. The City has to have its own lease purchase arrangement.

The Fire Department presented this information to the Salisbury City Council in its capital outlay budget presentations and the funds for paying off the Damlier Chrysler lease and executing the City's own lease/purchase were approved in the FY06 budget. \$45,000 was approved for Truck 2 and \$50,000 was approved for Engine 210.

The City is in the process of executing a lease agreement with Tatonka Capital Corporation, Denver, Colorado to provide this funding. Terms of the City's lease are 4.82% for 6 years with total, annual in advance payments of \$79,783.72. Tatonka Capital requires a Resolution from the governing body of the City of Salisbury specifically authorizing this Lease/Purchase, even though it was approved as part of the FY06 budget, account number 24035-558600.

Attached to the Resolution is a copy of the pertinent parts of the Lease/Purchase agreement for Council's information.

  
Carol M. Turner, CPPB, C.P.M.  
Director of Procurement & Parking

**RESOLUTION NO. 1268**  
**LEASE-PURCHASE NO. MD051822**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALISBURY AUTHORIZING THE NEGOTIATION, EXECUTION, AND DELIVERY OF LEASE-PURCHASE AGREEMENT NO. MD51822 ( the "Lease"), IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$430,000.00 BETWEEN THE CITY OF SALISBURY, WICOMICO COUNTY, MARYLAND, AND TATONKA CAPITAL CORPORATIN, DENVER, COLORADO; PROVIDING FOR PAYMENTS SET FORTH IN EXHIBIT C OF THE LEASE EACH FROM LEGALLY AVAILABLE FUNDS; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

**WHEREAS**, City of Salisbury, (the "Lessee") is a municipality duly organized and existing pursuant to the Constitution and laws of the State of Maryland, and

**WHEREAS**, Lessee is duly authorized by applicable law to acquire such items of personal property as are needed to carry out its governmental functions and to acquire such personal property by entering into lease-purchase agreements, and

**WHEREAS**, Lessee hereby finds and determines that the execution of a lease for the purpose of leasing with the option to purchase the property designated and set forth in Exhibit A to the Lease is appropriate and necessary to the function and operations of the Lessee; and

**WHEREAS**, Tatonka Capital Corporation, Denver, Colorado (the "Lessor"), duly organized, existing, and in good standing under the laws of the State of Colorado, shall act as Lessor under said Lease; and

**WHEREAS**, the Lease shall not constitute a general obligation indebtedness of the Lessee within the meaning of the Constitution and laws of the State;

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Salisbury, (the "Lessee"),

Section 1. The Director of Procurement or the Finance Director acting on behalf of Lessee, are hereby authorized to negotiate, enter into, execute, and deliver the Lease and related documents in substantially the form as presently before the Salisbury City Council, which Lease is available for public inspection at the offices of Lessee.

Section 2. The Lease shall be in the principal amount not to exceed \$430,000.00 bearing interest as set forth in Exhibit C of the Lease; said Lease to contain an option to purchase by the Lessee as therein set forth.

Section 3. The Lessee's obligations under the Lease shall be expressly subject to annual appropriation by the Salisbury City Council; and such obligations under the Lease shall not constitute a general obligation of Lessee or indebtedness of Lessee within the meaning of the Constitution and laws of the State of Maryland.

Section 4. All other related contracts and agreements necessary and incidental to the Lease are hereby authorized.

**THE ABOVE RESOLUTION** was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, and is to become effective immediately upon adoption.

ATTEST:

\_\_\_\_\_  
Brenda J. Colegrove  
CITY CLERK

\_\_\_\_\_  
Michael P. Dunn  
CITY COUNCIL PRESIDENT

APPROVED by me this \_\_\_\_\_  
day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Barrie P. Tilghman  
MAYOR, City of Salisbury

## LEASE-PURCHASE AGREEMENT NO. MD051822

This LEASE-PURCHASE AGREEMENT ("Lease") is made and entered into as of this 1<sup>st</sup> day of July, 2005, by and between Tatonka Capital Corporation, 1441 Eighteenth Street, Suite 400, Denver, Colorado 80202 (herein called "Lessor") and City of Salisbury with its office at 125 N. Division Street, Salisbury, MD 21801, (herein called "Lessee"), wherein it is agreed as follows:

1. **LEASE OF PROPERTY.** Subject to the terms and conditions hereof, Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor all the property described on Exhibit A hereto. The items of property described in Exhibit A, together with all replacement parts, repairs, additions and accessories incorporated therein or affixed thereto shall herein collectively be called the "Property."
2. **ACCEPTANCE; TERM.** Lessee shall execute and deliver to Lessor a receipt certificate ("Receipt Certificate") in the form attached hereto as Exhibit B, which shall indicate that the Property has been accepted for use by Lessee and is satisfactory to Lessee for all purposes. This Lease will become effective upon the execution hereof by Lessee and Lessor, and shall terminate upon payment by Lessee of the last Rental Payment required to be made by it in accordance with Exhibit C thereto (the "Lease Term"), unless terminated earlier pursuant to Sections 5, 15 or 21 hereof.
3. **RENT.** Lessee agrees to pay to Lessor or its assignee the rental payments ("Rental Payments") in the amounts and at the times as set forth in Exhibit C. A portion of each Rental Payment is paid as and represents the payment of interest as set forth in Exhibit C. The Rental Payments will be payable for the Lease Term in dollars (U.S.), without notice or demand at the office of Lessor (or such other place as Lessor or its assignee may designate from time to time in writing). In the event any payment by Lessee hereunder is received by Lessor or its assignee later than ten (10) days from the due date, Lessee shall pay Lessor on demand as a late charge, computed at the rate of ten per cent (10%) per annum of such overdue amount, limited, however, to the maximum amount allowed by law. **EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 5 HEREOF, THE RENTAL PAYMENTS WILL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND WILL NOT BE SUBJECT TO ANY SETOFF, DEFENSE, COUNTERCLAIM, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER.** Lessor may terminate this Lease at any time prior to receipt of Lessee's Receipt Certificate hereunder if Lessor determines in its sole discretion that (i) any written representation made to it by Lessee proves to have been false or misleading in any material respect when made, (ii) subsequent to the making of any such representation there has occurred a material change such that any such representation as made is not true and correct, (iii) any event which would constitute a default under the Lease has occurred, or (iv) there has been a substantial and material change in Lessee's financial condition or operations which has a material adverse effect on Lessee's creditworthiness.
4. **DELIVERY; PAYMENT OF PROPERTY COST.** The Property will be delivered to Lessee by the supplier thereof (the "Vendor") at Lessee's address above or such other location specified in Exhibit A (the "Property Location"). Lessee will search and cause Vendor to pay all transportation and other costs, if any, incurred in connection with the delivery and installation of the Property. Upon Lessor's receipt of the Receipt Certificate for the Property and any other documentation required by Lessor, Lessor will pay or cause to be paid the costs of such Property to the Vendor therefor.
5. **TERMINATION FOR GOVERNMENTAL NON-APPROPRIATIONS.** This Lease shall not constitute an indebtedness of Lessee within the meaning of any constitutional or statutory limitation on the manner, form, or amount of indebtedness that may be incurred by Lessee. Lessee is a political subdivision or agency of the State of Maryland with Lessee's fiscal year ending on June 30<sup>th</sup> of each calendar year. If Lessee does not appropriate sufficient funds to continue making the Rental Payments required under this Lease for any of Lessee's fiscal years subsequent to the one in which the Lease is executed, then this Lease shall be terminated effective upon expiration of the last fiscal year in which sufficient funds to pay Lessee's obligations under this Lease were appropriated by Lessee and Lessee shall not, in this sole event, be obligated to make any further payments due beyond said fiscal year. Lessee warrants that the necessary funds shall have been appropriated for all of the Rental Payments for Lessee's current fiscal year. Lessee reasonably believes that funds can be obtained sufficient to make all Rental Payments during the Lease Term. The officer of Lessee responsible for budget preparation will do all things lawfully within his/her power to obtain, maintain and properly request and pursue funds from which the Rental Payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using his/her bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is

not approved. Lessee shall give Lessor immediate notice of Lessee's intent to terminate this Lease under this Section 5, which notice shall contain the termination date (which shall be the end of the last of Lessee's fiscal years for which appropriations for the Rental Payments were made) (the "Termination Date") and Lessee shall comply with the provisions of Section 22 of this Lease. In the event of an early termination of this Lease under this Section, all obligations of Lessee to make Rental Payments which would otherwise be due hereunder after the Termination Date shall cease.

6. **LIMITATION ON WARRANTIES.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR THE USE OF ANY OF THE PROPERTY OR AS TO ITS TITLE THERETO OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. Lessor hereby assigns to Lessee for and during the Lease Term its interest, if any, in any manufacturer's or Vendor's warranties or guaranties, express or implied, issued on or applicable to the Property and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties or guaranties at Lessee's expense. Lessee acknowledges that the Property has been purchased in accordance with Lessee's specifications from Vendors selected by Lessee; that Lessor is not a manufacturer or dealer of such Property and takes no part in or responsibility for the installation of the Property, and that Lessor has made no representation or warranty and assumes no obligation with respect to the merchantability, condition, quality or fitness of the Property or the enforcement of the manufacturer's warranties or guaranties.

7. **TITLE; SECURITY INTEREST.** During the Lease Term title to the Property shall vest in Lessee, subject to Lessor's rights under Sections 5 and 22 of this Lease. To secure the payment of the Rental Payments and any and all liabilities, direct, indirect, absolute, contingent, due or to become due or existing or hereafter arising of Lessee to Lessor, Lessee grants to Lessor as the secured party a security interest in and to all Property described in Exhibit A, together with all additions, attachments, accessions, substitutions and proceeds with respect thereto and Lessor shall retain its security interest in the Property until the Lease Term shall expire. Lessee agrees that Lessor may file such financing statements or other instruments necessary to perfect such security interest under State law.

8. **PERSONAL PROPERTY.** The Property is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at its expense, furnish a landlord or mortgagee waiver with respect to the Property.

9. **USE; REPAIRS.** Lessee will use the Property in a careful manner for the use contemplated by the manufacturer of the Property and shall comply with all laws, ordinances, insurance policies and regulations relating thereto, 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 Property in good repair and will furnish all parts, mechanisms and devices required therefor. If the Property is such as is customarily covered by a maintenance agreement, Lessee will furnish Lessor with a maintenance agreement with a party satisfactory to Lessor.

10. **ALTERATIONS.** Lessee will not make any alterations, additions or improvements to the Property without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Property or the alterations, additions or improvements are considered customary personal property.

11. **LOCATION; INSPECTION.** The Property will not be removed from, or if the Property consists of rolling stock its permanent base will not be changed from, the Property Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the Property Location or elsewhere during reasonable business hours to inspect the Property or observe its use and operation.

12. **LIENS AND TAXES.** Lessee shall keep the Property 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 Property, 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 for which Lessee is responsible or liable under this Lease, Lessee shall, upon demand, reimburse Lessor as additional rent the amount of any such charges or taxes plus interest thereon at the rate of ten percent per annum or the highest rate allowed by law, whichever is less, to the date of said reimbursement.

13. **RISK OF LOSS; DAMAGES; DESTRUCTION.** Lessee assumes all risk of loss of or damage to the Property from any cause whatsoever, and no such loss of or damage to the Property shall relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Lease. In the event of damage to any item of Property, 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 item of the Property is lost, stolen, destroyed or damaged beyond repair Lessee, at its option, will either: (a) replace the same with like Property in good repair, or (b) on the next Rental Payment date pay Lessor; (i) all amounts owed by Lessee under this Lease, including the Rental Payment due on such date; and (ii) an amount equal to the applicable Purchase Option Price set forth in Exhibit C. In the event that less than all the Property has been lost or destroyed, Lessor and Lessee shall substitute revised Exhibits A and C into this Lease by appropriate endorsement.

14. **INSURANCE.** Lessee will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Property in such amounts, covering such risks, and with such insurance companies as shall be satisfactory to Lessor. In no event will the insurance limits be less than the amount of the then applicable Purchase Option Price as provided in Section 15 below. Each insurance policy will name Lessee as an insured and Lessor or its assigns as an additional insured and loss payee, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or its assigns as their interests may appear.

Upon acceptance of the Property and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event of any loss, damage, injury or accident involving the Property, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

With the written consent of Lessor, Lessee may provide self-insurance with respect to Lessee's obligations under this Section 14, provided that Lessee shall also submit a written certificate to Lessor specifying the terms and amounts of such self-insurance.

If Lessee shall fail to perform any of its obligations under this Lease, including, without limitation, its obligations under this Section 14, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 10% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

15. **PURCHASE OPTION.** On each Rental Payment due date, Lessee shall have an option to purchase the Property for an amount equal to the Purchase Options Price set forth in each Exhibit C. Lessee's right hereunder shall be conditioned upon Lessee's having performed all terms and conditions hereof in a timely fashion and no Event of Default shall have occurred either during the term of the Lease nor at the time this option to purchase is sought to be exercised. Further, Lessee shall, as a condition precedent, give notice of its intention to exercise its option at least thirty (30) days prior to the date upon which it seeks to exercise said right. At such time as Lessee shall have fully paid the total Rental Payments for the entire Lease Term and Lessee shall have fully paid and performed all other obligations hereunder and provided no Event of Default has occurred and is continuing, Lessee may at its option pay to Lessor the sum of **ONE DOLLAR (\$1.00)**, whereupon title to the Property shall remain vested in Lessee and Lessor shall transfer any and all of its right, title and interest in the Property to Lessee as is, where is, without warranty, express or implied, except Lessor will warrant to Lessee that the Property is free and clear of any liens created by Lessor. This option shall be exercised by written notice to Lessor given within the thirty (30) day period prior to the last day of the Lease Term.

16. **LESSEE CERTIFICATION.** Lessee warrants that it is a state, or a political subdivision thereof, within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code") and the related treasury regulations and rulings thereunder, or the District of Columbia, and that this lease has been duly authorized, approved, executed and delivered and is a valid and binding contract of Lessee, enforceable against Lessee in accordance with its terms, such that those amounts designated as interest in Exhibit C, will qualify for exclusion from gross income of Federal income taxes by Lessor, its assignees, and any participants with such, under Section 103 of the Code. Lessee further warrants that during the Lease Term, the Property will be used by Lessee only for the purpose of performing governmental

or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee.

In the event that Lessee is not a state or political subdivision thereof within the meaning of Section 103 of the Code, or if for any reason the usage of the Property would cause any interest payment hereunder to lose its exemption from Federal taxation, or if Lessee fails to comply with the information reporting requirements of Section 149(e) of the Code or if Lessee fails to keep a record of all assignments of the Lease pursuant to Section 149(a) of the Code, then Lessee agrees to pay Lessor, its assignees, and any participants with such, an additional amount which, together with the amount of interest to be paid by Lessee under this Lease, puts Lessor, its assignees, and any participants with such, in the same after-tax position they would have been had such payments been exempt from taxation under Section 103 of the Code.

17. **LESSEE LIABILITY.** To the extent permitted by State law, Lessee agrees to be solely responsible for and to indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages, liabilities or losses, including reasonable attorney's fees and court costs arising in connection with this Lease or the Property, including, but not limited to, its selection, purchase, delivery, possession, use, operation or return and the recovery of claims under insurance policies thereon. This covenant of indemnity shall continue in full force and effect notwithstanding the payment of all Rental Payments and the vesting of title to the Property in Lessee, as provided in this Lease, or the termination of this Lease in any manner whatsoever.

18. **ESSENTIAL USE.** It is Lessee's intent to make Payments for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that: (a) the use of the Property is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) Lessee has an immediate need for and expects to make immediate use of substantially all the Property, which need is not temporary or expected to diminish in the foreseeable future, and (c) the Property will be used by Lessee only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority.

19. **ASSIGNMENT.** Without Lessor's prior written consent, Lessee will not assign, transfer, pledge, hypothecate or grant any security interest in or otherwise dispose of this Lease or the Property or any interest in this Lease or the Property.

Lessor, without the consent of Lessee, may assign its right, title and interest in and to this Lease, the Property and any other documents executed with respect to this Lease, and/or grant or assign a security interest in this Lease and the Property, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. Any assignment or reassignment of any of Lessor's right, title or interest in this Lease or the Property shall be effective upon receipt by Lessee of a duplicate original of the counterpart document by which the assignment or reassignment is made, disclosing the name and address of each such assignee and, where applicable, to whom further payments hereunder should be made. With the written consent of Lessee, which consent will not be unreasonably withheld, Lessor may assign any interest in this Lease upon terms which provide that the assignor or assignee will act as a collection and paying agent for holders of certificates of participation in this Lease. Lessee agrees to acknowledge in writing any assignments if so requested. Lessee shall keep a written record of all assignments.

LESSEE AGREES THAT UPON NOTICE OF SUCH ASSIGNMENT IT SHALL PAY DIRECTLY TO LESSOR'S ASSIGNEE WITHOUT ABATEMENT, DEDUCTION OR SETOFF ALL AMOUNTS WHICH BECOME DUE HEREUNDER AND FURTHER AGREES THAT IT WILL NOT ASSERT AGAINST LESSOR'S ASSIGNEE ANY DEFENSE, CLAIM, COUNTERCLAIM OR SETOFF ON ACCOUNT OF ANY REASON WHATSOEVER WITH RESPECT TO ANY RENTAL PAYMENTS OR OTHER AMOUNTS DUE HEREUNDER.

20. **EVENTS OF DEFAULT.** The term "Event of Default", as used in this Lease, means the occurrence of any one or more of the following events:

(a) Lessee fails to make any Rental Payment (or any other payment) as it becomes due in accordance with the terms of this Lease, and any such failure continues for ten (10) days after the due date thereof;

(b) 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 within twenty (20) days after receipt of written notice thereof from Lessor;

(c) Any statement, representation, or warranty made by Lessee in this Lease or in any writing delivered by Lessee pursuant hereto or in connection herewith is false, misleading, or erroneous in any material respect;

(d) Lessee becomes insolvent, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee of all or a substantial part of its assets, or a petition for relief is filed by Lessee under Federal bankruptcy, insolvency or similar laws; or a petition in a proceeding under any bankruptcy, insolvency or similar laws is filed against Lessee and is not dismissed within thirty (30) days thereafter.

21. **REMEDIES.** Upon the occurrence of an Event of Default, Lessor may, at its option, exercise any one or more of the following remedies:

(a) By written notice to Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly return the Property to Lessor in the manner set forth in Section 22 hereof, or Lessor, at its option, may enter upon the premises where the Property is located and take immediate possession of and remove the same;

(b) Sell or lease the Property or sublease it for the account of Lessee, holding Lessee liable for all Rental Payments and other payments due to the end of the fiscal year then in effect; the proceeds of such sale or lease shall be applied to the following items in the following order: first, to the payment of all costs and expenses of Lessor arising from the Event of Default; second, to the payment of the applicable Purchase Option Price; and third, to the payment of any Rental Payments then due and owing thereunder and

(c) Exercise any other right, remedy or privilege which may be available to it under applicable law including the right to (i) proceed by appropriate court action to enforce the terms of this Lease; (ii) recover damages for the breach of this Lease; and (iii) rescind this Lease as to any or all of the Property in accordance with applicable laws and procedures.

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.

22. **TERMINATION PROCEDURE.** In the event Lessor is entitled under the provisions of this Lease, including any termination hereof pursuant to Sections 5 and 21 hereof, to obtain possession of the Property, title to the Property shall immediately vest in Lessor and Lessee shall make the Property available to Lessor free of all liens and encumbrances in at least as good condition and repair as when delivered to Lessee, ordinary wear and tear resulting from proper use alone excepted. Lessee agrees, at its expense, to advise Lessor of the location or locations where the Property may be found, permit Lessor access to the Property, voluntarily relinquish possession of the Property to Lessor, deliver the Property to a reasonable location specified by Lessor, and fully cooperate with Lessor in all respects in the removal of and redelivery of the Property to Lessor. Lessee agrees to execute and deliver to Lessor all documents reasonably necessary to transfer legal and beneficial title to the Property to Lessor and to evidence the termination of Lessee's interest in the Property.

23. **LAW GOVERNING.** This Lease shall be governed by the laws of the State of Maryland.

24. **NOTICES.** All notices to be given under this Lease shall be made in writing and faxed, so long as there is an imprint of the date and time sent and mailed by certified mail 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 notices shall be deemed to have been received five (5) days subsequent to mailing.

25. **SECTION HEADINGS.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

26. **DELIVERY OF RELATED DOCUMENTS.** Lessee will execute or provide, as requested by Lessor, annual budget and financial information and such other documents and information, including an opinion of Lessee's counsel as to the validity and enforceability of this Lease, as are reasonably necessary with respect to the transaction contemplated by this Lease.



27. **ENTIRE AGREEMENT; WAIVER.** This Lease, together with the exhibits attached hereto constitutes the entire agreement between the parties with respect to the lease of the Property. 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 this Lease. The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof.

28. **APPOINTMENT.** In compliance with Section 149(a) of the Internal Revenue Code of 1986, as amended, Lessee hereby designates Lessor to be its agent for the purposes of maintaining a book entry system identifying the ownership or interest in and to this Lease and Lessor hereby accept its duties as agent hereunder.

**LESSEE: CITY OF SALISBURY**

By: \_\_\_\_\_  
Carol M. Turner, CPPB, C.P.M.  
Title: Director of Procurement

Date: July 1, 2005

**LESSOR: TATONKA CAPITAL CORPORATION**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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JOHN W. T. WEBB  
(1918-1990)

June 22, 2005

[wlbri@comcast.net](mailto:wlbri@comcast.net)

OPINION OF COUNSEL

Lessee: City of Salisbury  
125 North Division Street  
Salisbury, Maryland 21801

Lessor: Tatonka Capital Corporation  
1441 Eighteenth Street, Suit 400  
Denver, Colorado 80202

Re: Lease-Purchase Agreement No. MD051822, dated July 1, 2005, by and between  
Tatonka Capital Corporation

Ladies and Gentlemen:

I have acted as counsel to Lessee with respect to the Lease-Purchase Agreement described above (the "Lease") and various related matters, and in this capacity have reviewed a duplicate original or certified copy of the Lease and exhibit thereto. Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. Lessee is a public corporation and political subdivision of the State of Maryland (the "State") duly organized, existing and operating under the Constitution and laws of the State. The full, true and correct legal name of Lessee is as stated above.
2. Lessee is authorized and has power under State law to enter into the Lease, and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Lease and the other documents described above have been duly authorized, approved, executed and delivered by and on behalf of Lessee, and the Lease is a valid and binding contract of Lessee enforceable in accordance with its terms, except to the extent limited by State and Federal laws affecting remedies 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 open meeting laws, public bidding laws and all other applicable State and Federal laws.

Opinion of Counsel  
June 22, 2005  
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5. 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 the organization or existence of Lessee; the authority of its officers; the proper authorization, approval and execution of the Lease and the other documents described above; the appropriation of monies to make Rental Payments under the Lease for the current fiscal year, or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.

This opinion of counsel may be relied upon by Tatonka Capital Corporation and its successors and assigns.

Very truly yours,

A handwritten signature in cursive script that reads "Paul D. Wilber". The signature is written in dark ink and is positioned above the printed name.

Paul D. Wilber, Attorney

PDW/mam

**EXHIBIT A  
TO LEASE-PURCHASE AGREEMENT NO. MD051822,  
DATED AS OF July 1, 2005**

PROPERTY DESCRIPTION

Description of Property:

2001 American LaFrance Metropolitan 75Ft. Aerial/Quint  
2003 American LaFrance Eagle Pumper

Serial numbers (if any)

Vin# 4Z36MLEB61RH13564  
Vin# 4Z3AAACG03RK33817

Property Location:

Description of Financed Amount:

Cost of above Property	\$426,931.01
Cost of related charges	
Transportation	
Physical Modifications (specify)	\$
Other (specify)	\$
Add: Sales or other tax, if applicable	\$
Less: Down payment, if applicable	\$
Net Financed Amount	\$ 426,931.0

**LESSEE: CITY OF SALISBURY**

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

Carol M. Turner, CPPB, C.P.M.

Title: Director of Procurement

Date: July 1, 2005

**EXHIBIT C**  
**TO LEASE-PURCHASE AGREEMENT NO. MD051822**  
**DATED AS OF July 1, 2005**

<u>Payment Number</u>	<u>Due Date</u>	<u>Rental Payment</u>	<u>Interest Portion</u>	<u>Principal Portion</u>	<u>Purchase Option</u>
1	Contract Execution	79,783.72	0.00	79,783.72	359,297.45
2	11-Jul-2006	79,783.72	16,732.50	63,051.22	292,618.95
3	11-Jul-2007	79,783.72	13,693.43	66,090.29	224,545.95
4	11-Jul-2008	79,783.72	10,507.88	69,275.84	153,191.84
5	11-Jul-2009	79,783.72	7,168.78	72,614.94	78,398.45
6	11-Jul-2010	79,783.72	3,668.72	76,115.00	1.00
<b>Grand Totals</b>		<b>478,702.32</b>	<b>51,771.31</b>	<b>426,931.01</b>	

**LESSEE: CITY OF SALISBURY**

By: \_\_\_\_\_  
Carol M. Turner, CPPB, C.P.M.  
Title: Director of Procurement

Date: July 1, 2005

05/25/2005  
13:02:58

CITY OF SALISBURY, MD  
NEXT YEAR BUDGET DETAIL REPORT

PROJECTION: 20061 SALISBURY FY2006 BUDGET

ACCOUNTS FOR:  
General Fund

	VENDOR	QUANTITY	UNIT COST	2006	ADOPTED
24035	0010-200-240-35-00-558600 New Lease Payments				
	First of five annual payments for SCBA replacement project	.00	40,000.00		95,000.00
	→ First of five annual payments for Truck 2	1.00	45,000.00		.00
	→ First of five annual payments for Engine 210	1.00	50,000.00		45,000.00
					50,000.00
24035	0010-200-240-35-00-558700 Existing Lease Payments				
					103,000.00
24035	0010-200-240-35-00-577025 Vehicles				
					25,000.00
24035	0010-200-240-35-00-577030 Equipment Transfer from EMS				
		1.00	24,400.00		24,400.00
					24,400.00
24035	0010-200-240-35-00-577035 Computer Hardware Transfer from EMS				
		1.00	77,319.00		77,319.00
					77,319.00
24035	0010-200-240-35-00-577036 Computer Software Transfer from EMS				
		1.00	58,160.00		58,160.00
					58,160.00
TOTAL Fire Fighting					5,314,087.00

The undersigned certifies that the above New Lease Payments have not been repealed or amended, were approved by the Salisbury City Council on May 23, 2005, as part of the FY06 budget, Ordinance No. 1937, and remain in full force and effect. These funds are available for expenditure on July 1, 2005 for the items as listed.

CITY OF SALISBURY  
LESSEE

BY: \_\_\_\_\_

NAME: Carol M. Turner, CPPB, C.P.M.

TITLE: Director of Procurement

Attested BY: \_\_\_\_\_

NAME: Brenda J. Colegrove

TITLE: City Clerk