

Muskogee County, OKLAHOMA

LEASE PURCHASE AGREEMENT

This agreement is made this **September 16, 2024** by and between the Board of County Commissioners of **Muskogee County**, Oklahoma, designated throughout this agreement as the Lessee, and **L3 Harris**, designated throughout this agreement as the Lessor.

I. Equipment

Subject to the terms and conditions as set forth in this agreement, the Lessor leases to the Lessee the following described Equipment, all of which shall be designated throughout this instrument as the "Equipment;"

<u>Make</u>	<u>Model</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Lease Purchase Price</u>
Portable	200XLP	Harris radio see attached exhibit for serial numbers	9	\$57,650.26	\$36,325.08

II. Payment Of Lease Purchase Installments

In consideration of the agreement by the Lessor to lease purchase the equipment, the Lessee promises to pay the Lessor, for the equipment, the sum of **\$1,009.03** per **month**, (see enclosed payment schedule) during the term of this agreement or any renewal of the agreement

III. Lease Term

This lease shall commence on the date the Equipment is accepted by the Lessee and shall automatically terminate, unless renewed in accordance with the terms set forth below, at the end of the fiscal year of the State of Oklahoma during which the lease is commenced.

IV. Option To Renew

The Lessee is hereby granted **2** successive options to renew this lease for additional terms not to exceed one fiscal year each, plus one final option to renew this lease for a period of **3** months, all upon the same terms and conditions, provided that such options may be exercised, as a matter of right, solely and exclusively by the Lessee, the exercise of any such option shall be accomplished by the issuance of a purchase order upon or within thirty (30) days after the expiration of the terms of this lease or any renewal then in effect.

V. Title To Equipment

The Equipment is and shall at all times during the term of this lease and any renewal term remain the sole property of the Lessor and the Lessee shall have or acquire no right, or title to Equipment until the final payment is made.

VI. Option To Purchase

In the event the Lessee shall have exercised all of its options for renewal of this lease as provided in paragraph IV, above, upon tender of the last lease payment due under the last renewal term, the Lessee shall acquire title to and ownership of the equipment. In the alternative, the lessee, at it's sole and exclusive option, may purchase the equipment at any time during the term of this lease or during any renewal term as provided by paragraph IV, above, giving written notice to the Lessor of Lessee's intent to purchase accompanied by a single final payment of see schedule. (If the purchase price is to be reduced by a percentage of the lease payments made prior to the exercise of the purchase option, describe fully, the manner in which such reduction shall be computed. Attach a written schedule of purchase option prices which shall be incorporated in the terms of this agreement by references). In the event the Lessee shall exercise any option to purchase the Equipment, the Lessor assigns to the Lessee all rights and claims which the Lessor may have or acquire arising under the antitrust laws of the United States or any State regarding the Equipment purchased under the terms of this agreement.

VII. Delivery And Return Of Equipment

The Lessor shall bear all costs of shipping and delivering the Equipment to the Lessee. Installation costs, if any, shall be borne by the Lessor. The Equipment shall be delivered to or installed at the location designated by the Lessee..

VIII. Repairs And Maintenance

The Lessee shall maintain the Equipment in good working order and shall make all necessary routine adjustments and repairs, as a result of fair wear and tear, all at the expense of the Lessee. The Lessor and the Lessee may provide for the maintenance and repair of the Equipment by separate written agreement, and in the event they make such agreement, its terms shall supersede and replace the provisions of this paragraph of this lease.

IX. Taxes

The Lessor shall forthwith pay all taxes which may be imposed upon it with respect to the Equipment.

X. Insurance

The Lessee shall obtain and maintain fire and extended coverage casualty insurance covering the Equipment from the time the Equipment is delivered until this lease is terminated. This insurance shall be in a form acceptable to the Lessor and shall insure the full value of the Equipment against the risk of loss or damage. The Lessee shall provide the Lessor with written notice at least ten days prior to any change in the insurance required under the terms of this paragraph.

XI. Patents

the event any suit is instituted against the Lessee which is based upon any claim that any of the Equipment is implicated in an infringement of any provision of the united States Patent Law, the Lessor shall, at its own expense, defend such suit against the Lessee; provided, Lessee provides the Lessor with prompt notice of the institution of such suit and permits the Lessor to fully participate in the defense. The Lessee shall also retain the right to participate in such defense and shall, in any event, provide the Lessor with all available information, assistance and authority to enable the Lessor to conduct the defense. No compromise or settlement of such suit resulting in a judgment against the Lessee shall obligate or bind the Lessor unless the Lessor shall have accepted such compromise or settlement, the Lessor shall have the right to enter into negotiations for and effect a compromise or settlement of such patent action, but no such compromise or settlement shall be binding upon Lessee unless approved by the Lessee. Subject only to the terms of this paragraph, the Lessor shall hold the Lessee harmless from any liability arising from any patent suit such as is described above. In the event of any of the Equipment shall be held, in any suit, to constitute an infringement of patent law, and its use shall be enjoined, then the Lessor shall, at its sole option and at the Lessor's expense:

1. Obtain for the Lessee the right to continue to use the Equipment;
2. Replace or modify the Equipment in a manner acceptable to the Lessee so that the Equipment no longer infringes any provision of patent Law.

XII. Funding

Notwithstanding any other provision of this agreement, the parties acknowledge and agree that the funds to be paid by the Lessee under the terms of this lease will be available only as appropriated on a fiscal year to fiscal year basis by properly constituted legal authority. In the event that the Lessee determines that sufficient funds have not been appropriated to make the payments required under the terms of this agreement, the obligations of the Lessee under this agreement shall terminate. In such event, the Lessee shall give prompt written notice of termination to the Lessor.

XIII. Assignment

The Lessor may, with the prior written approval of the Lessee, assign its right to receive payment of lease due under the terms of this agreement. However, any such assignment shall not relieve the Lessor of its responsibilities to perform the duties and obligations imposed upon it by this agreement.

XIV. Road Machinery and Equipment

If the terms of this agreement are in regards to road machinery or Equipment, the Lessee assumes all risk and liability for and shall hold the Lessor harmless from all damages to property and injuries and death to persons arising out of the use, possession or transportation of said road machinery or Equipment.

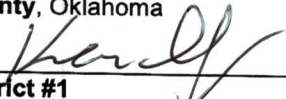
XV. Entire Agreement Of The Parties And Severability

Except as otherwise provided in the above terms and conditions, this lease, together with applicable purchase orders and the invitation to bid, constitute the entire agreement of the parties. This agreement may not be modified or terminated except as provided in the above terms and conditions or by written agreement of the Lessor and Lessee. If any provision of the agreement shall be determined to be invalid, it shall be considered as deleted from this agreement and no remaining provision of the agreement shall be deemed invalid.

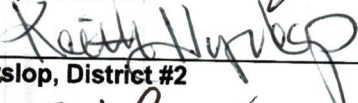
XVI. Choice Of Law

This lease shall be governed in all respects by the laws of the State of Oklahoma. In the event that any litigation shall occur concerning the terms and conditions of this lease or the rights and duties of the parties, the parties agree that any such suit shall be maintained in the District Court in and for **Muskogee County**, State of Oklahoma.

Approved by the Board of County Commissioners At
Muskogee County, Oklahoma



Ken Doke, District #1




Keith Hyslop, District #2



Kenny Payne, District #3

FOR THE LESSOR: L3Harris

ATTEST: 
Polly Irving, County Clerk



SCHEDULE OF RENTAL PAYMENTS

Lease No. 128538

This Schedule is executed by **L3Harris** ("Lessor") and **Muskogee County** ("Lessee"), as a supplement to, and is hereby attached to and made a part of that certain Lease Purchase Agreement For Equipment dated as of **September 16, 2024** ("Lease"), between Lessor and Lessee.

EQUIPMENT LOCATION: Haskell Fire Department

PAYMENT SCHEDULE:

RATE: 5.22

Equipment Cost \$57,650.26 LESS DOWN \$16,611.57 LESS TRADE IN \$7,784.73 + Doc Fee \$300.00 = \$33,553.96

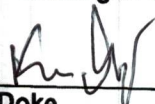
	Date	Payment	Interest	Principal	Balance
Loan	09/16/2024				33,553.96
1	10/16/2024	1,009.03	144.21	864.82	32,689.14
2	11/16/2024	1,009.03	145.17	863.86	31,825.28
3	12/16/2024	1,009.03	136.78	872.25	30,953.03
4	01/16/2025	1,009.03	137.46	871.57	30,081.46
5	02/16/2025	1,009.03	133.59	875.44	29,206.02
6	03/16/2025	1,009.03	117.15	891.88	28,314.14
7	04/16/2025	1,009.03	125.75	883.28	27,430.86
8	05/16/2025	1,009.03	117.89	891.14	26,539.72
9	06/16/2025	1,009.03	117.86	891.17	25,648.55
10	07/16/2025	1,009.03	110.23	898.80	24,749.75
11	08/16/2025	1,009.03	109.92	899.11	23,850.64
12	09/16/2025	1,009.03	105.92	903.11	22,947.53
13	10/16/2025	1,009.03	98.62	910.41	22,037.12
14	11/16/2025	1,009.03	97.87	911.16	21,125.96
15	12/16/2025	1,009.03	90.80	918.23	20,207.73
16	01/16/2026	1,009.03	89.74	919.29	19,288.44
17	02/16/2026	1,009.03	85.66	923.37	18,365.07
18	03/16/2026	1,009.03	73.67	935.36	17,429.71
19	04/16/2026	1,009.03	77.41	931.62	16,498.09
20	05/16/2026	1,009.03	70.91	938.12	15,559.97
21	06/16/2026	1,009.03	69.10	939.93	14,620.04
22	07/16/2026	1,009.03	62.83	946.20	13,673.84
23	08/16/2026	1,009.03	60.73	948.30	12,725.54
24	09/16/2026	1,009.03	56.52	952.51	11,773.03
25	10/16/2026	1,009.03	50.60	958.43	10,814.60
26	11/16/2026	1,009.03	48.03	961.00	9,853.60
27	12/16/2026	1,009.03	42.35	966.68	8,886.92
28	01/16/2027	1,009.03	39.47	969.56	7,917.36
29	02/16/2027	1,009.03	35.16	973.87	6,943.49
30	03/16/2027	1,009.03	27.85	981.18	5,962.31
31	04/16/2027	1,009.03	26.48	982.55	4,979.76
32	05/16/2027	1,009.03	21.40	987.63	3,992.13
33	06/16/2027	1,009.03	17.73	991.30	3,000.83
34	07/16/2027	1,009.03	12.90	996.13	2,004.70
35	08/16/2027	1,009.03	8.90	1,000.13	1,004.57
36	09/16/2027	1,009.03	4.46	1,004.57	0.00
Grand Totals		36,325.08	2,771.12	33,553.96	

Lessee is obligated to only pay such rental payments under this agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current budget year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay rental payments following the then current original term or renewal

Lease # 128538

term, this agreement shall be deemed terminated at the end of the then current original term or renewal term. Final payment may vary due to the actual date payments were received.

LESSEE: Muskogee County

BY: 

Ken Doke

TITLE: **Commissioner Chairman**

CERTIFICATE OF ACCEPTANCE

I, the undersigned, hereby certify that I am the duly qualified and acting Chairman for the Board of County Commissioners for **Muskogee County**, State of Oklahoma ("Lessee") with respect to the Lease Purchase Agreement For Equipment dated **September 16, 2024**, (the "Lease"), by and between the **L3Harris**, ("Lessor") and Lessee, and that:

1. The equipment described in the Lease (the "Equipment") has been delivered and installed in accordance with the Specifications (as that term is defined in the Lease) and has been irrevocably accepted by Lessee.

2. The rental payments provided for in the Lease (the "Rental Payments") shall commence and be due and payable on **October 16, 2024**, and the **16th** of each **month** thereafter in accordance with the Lease.

3. Lessee has appropriated and/or taken all other lawful actions necessary to provide monies sufficient to pay all Rental 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 Rental 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 and the Rental Payments.

5. Equipment Description: **9 portable 200XLP Harris radio see attached exhibit for serial numbers**

DATED: **September 16, 2024**

By: _____

Ken Doke

Title: **Commissioner Chairman**

(To be executed and delivered at the time of delivery of the Equipment)

INSURANCE COVERAGE REQUIREMENTS

In accordance with Section 10 of the Equipment Lease Purchase Agreement dated as **September 16, 2024** ("Lease") by **L3Harris** ("Lessor") and **Muskogee County** ("Lessee"). "Lessor" has assigned the Equipment Lease Purchase Agreement and all rights to the **Welch State Bank, P.O. Box 129 Welch, Ok 74369, 918-788-3373**. Lessee has instructed their insurance agent named below (please fill in name, address and telephone number)

Company: Oklahoma Municipal Assurance Group

Address: 3650 S Blvd, Edmond, OK 73013

Telephone: 800-234-9461

To issue:

All Risk Physical Damage Insurance on the Equipment (as defined in the Agreement) evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming the Lessor and/or its Assignee, as loss payee.
Coverage Required-Full Replacement Value

Public Liability Insurance evidenced by a Certificate of Insurance, naming the Lessor and/or its Assignee as Additional Insured, with the following minimum coverage:

- \$500,000.00 per person
- \$500,000.00 aggregate bodily injury liability
- \$300,000.00 property damage liability

or

Pursuant to Section 10 of the Agreement, Lessee is self insured for all risk, physical damage and public liability and will provide proof of such self insurance in letter form together with a copy of the statute authorizing this form of insurance.

Cost: **\$57,650.26**

Equipment Description: **9 portable 200XLP Harris radio see attached exhibit for serial numbers**

Equipment Location: **Haskell Fire Department**

Lessee: **Muskogee County**

By: 
Ken Doke

Title: Commissioner Chairman

OPINION OF COUNSEL

With respect to that certain Lease-Purchase Agreement for Equipment ("Lease") dated **September 16, 2024** by and between Lessor and Lessee. I am of the opinion that:

(i) Lessee is a tax exempt entity under section 103 of the Internal Revenue Code of 1986, as amended; (ii) the execution, delivery and performance by Lessee of the Lease have been duly authorized by all necessary action on the part of Lessee; (iii) the Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms and all statements contained in the Lease and all related instruments are true; (iv) there are no suits, proceedings or investigations pending or, to my knowledge, threatened against or affecting Lessee, at law or in equity, or before or by any governmental or administrative agency or instrumentality which, if adversely determined, would have a material adverse effect on the transaction contemplated in the Lease or the ability of Lessee to perform its obligations under the Lease and Lessee is not in default under any material obligation for the payment of borrowed money, for the deferred purchase price of property or for the payment of any rent under any lease agreement which either individually or in the aggregate would have the same such effect; and (v) all required public bidding procedures regarding the award of the Lease have been followed by Lessee and no governmental orders, permissions, consents, approvals or authorizations are required to be obtained and no registrations or declarations are required to be filed in connection with the execution and delivery of the Lease.

Counsel for Lessee: _____
By: John Hammar _____
Title: General Counsel _____
Date: 9-16-24 _____

**CERTIFICATE WITH RESPECT TO
QUALIFIED TAX-EXEMPT OBLIGATION**

1. This certificate with respect to qualified tax-exempt obligations (the "Certificate") is executed for the purpose of establishing that the Lease has been designated by Lessee as a qualified tax exempt obligation of Lessee for purposes of Section 265(b)(3)(B) of the Tax Reform Act of 1986.
2. Lessee is a political subdivision of the State of **Oklahoma** and the Lease is being issued by Lessee in calendar year 2024-2025.
3. No portion of the gross proceeds of the Lease will be used to make or finance loans to persons other than governmental units or be used in any trade or business carried on by any person other than a governmental unit.
4. The Lease is issued to provide financing as a qualified project bond within the meaning of the Act.
5. Including the Lease herein so designated, Lessee has not designated more than \$10,000,000.00 of obligations issued during calendar year 2024-2025 as qualified tax-exempt obligations. Lessee reasonably anticipates that the total amount of qualified tax-exempt obligations to be issued by Lessee during the current calendar year will not exceed \$10,000,000.00.
6. Lessee reasonably anticipates that the total amount of qualified tax-exempt obligations to be issued by Lessee during the calendar year 2024-2025 will not exceed \$10,000,000.00.
7. This Certificate is based on facts and circumstances in existence on this date.

IN WITNESS WHEREOF, I have set my hand this **September 16, 2024**.

Lessee: **Muskogee County**

By: 
Ken Doke

Title: **Commissioner Chairman**

Attest: 
Polly Irving, County Clerk



September 16, 2024

Muskogee County
400 W. Broadway/ P.O. Box 2307
Muskogee, OK 74402

Re: Lease Purchase Agreement For Equipment dated **September 16, 2024**, between **L3Harris**, Lessor, and **Muskogee County**, Lessee.

Dear Board of County Commissioners:

Please be advised that **L3Harris** has assigned and transferred to Welch State Bank, all of its right, title and interest in and to the above-described Lease Purchase Agreement For Equipment, including title to the property leased thereunder and the right to receive lease payments. A copy of the assignment is enclosed for your file. Please note the fact of this assignment in your records (as required by Section 149(a) of the Internal Revenue Code of 1986) and make all further payments to:

Welch State Bank
P.O. Box 129
Welch, OK 74369

Please acknowledge your receipt of this notice by returning a copy, signed by a duly authorized officer in the space provided below.

Sincerely,

WELCH STATE BANK


ACKNOWLEDGED:



By: **Ken Doke**

Title: **Commissioner Chairman**

By: **Sherri Mount, Senior Vice President**



Lease # 128538

ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE entered into this September 16, 2024 by and between **L3Harris** (herein "Assignor") and **Welch State Bank** (herein "Assignee").

IN CONSIDERATION of the mutual agreements and understandings herein contained, in consideration of One Dollar (\$1.00) and other good valuable consideration, the parties hereto agree as follows:

1. Assignor hereby assigns to Assignee its entire right, title and interest in and to that certain Lease Purchase Agreement dated September 16, 2024 and entered into by and between Assignor and the Board of County Commissioners of Muskogee County (herein "Lease"), together with Assignor's right to receive all rent and other monies thereunder, and all of Assignor's right title and interest in and to any guaranties or other rights and interest granted to Assignor to secure the payment due under the terms of the Lease.

2. Assignor represents, warrants and covenants to Assignee as follows:

(A) The Lease has been duly and validly executed by all parties thereto.

(B) No act of default in the Lease has occurred to date since the execution of this Assignment.

3. The rights and privileges of Assignee under this agreement shall inure to the benefits of its successors and assigns. All covenants, representations, warranties, and agreements of Assignor contained in this agreement shall bind Assignor's successors and assigns.

4. If any provision of this Agreement shall for any reasons be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, and this Assignment shall be construed as if such invalid or unenforceable provision had never been contained herein.

5. It is the intention of the parties that this Agreement be governed by the laws of the state of Oklahoma.

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

ASSIGNOR: **L3Harris**

ASSIGNEE: **Welch State Bank**

By: _____

By: _____
Sherri Mount, Senior Vice President

WELCH STATE BANK



Member F D I C

INVOICE

396 S. Commercial
PO Box 129
Welch, OK 74369
Ph. 918-788-3373
Fax 918-788-3364

September 16, 2024

To: Muskogee County
Haskell Fire Department
400 W. Broadway/ P.O. Box 2307
Muskogee, OK 74402

Reference: Lease/Purchase #128538

QUANTITY	DESCRIPTION	TOTAL
1	Lease # 128538 - Payment #1 per Payment Schedule 9 portable 200XLP Harris radio see attached exhibit for serial numbers	\$1,009.03

Total Due \$1,009.03
Date Due: October 16, 2024

THANK YOU FOR YOUR BUSINESS!

Please remit payment to: **Welch State Bank**
PO Box 129
Welch, OK 74369

CUT ON LINE AND RETURN BOTTOM PORTION WITH PAYMENT

Payment #	Account #	Due Date	Amount Due
1	128538	October 16, 2024	\$1,009.03

Welch State Bank
PO Box 129
Welch, OK 74369

Muskogee County
Haskell Fire Department

9 portable 200XLP Harris radio see attached
exhibit for serial numbers

Lease # 128538

**Information Return for Small Tax-Exempt
 Governmental Bond Issues, Leases, and Installment Sales**

► Under Internal Revenue Code section 149(e)
Caution: If the issue price of the issue is \$100,000 or more, use Form 8038-G.
 ► Go to www.irs.gov/Form8038GC for instructions and the latest information.

OMB No. 1545-0047

Part I Reporting Authority Check box if Amended Return

1 Issuer's name
 Muskogee County Board of County Commissioners

2 Issuer's employer identification number (EIN)
 73-6006395

3 Number and street (or P.O. box if mail isn't delivered to street address)
 P.O. Box 2307 Room/suite

4 City, town, or post office, state, and ZIP code
 Muskogee, OK 74402

5 Report number (For IRS Use Only)

6 Name and title of officer or other employee of issuer or designated contact person whom the IRS may call for more information
 Polly Irving, County Clerk

7 Telephone number of officer or legal representative
 918-682-7781

Part II Description of Obligations Check one box: Single issue Consolidated return

8a Issue price of obligation(s) (see instructions) **8a** 33,553.96

b Issue date (single issue) or calendar date (consolidated). Enter date in MM/DD/YYYY format (for example, 01/01/2009) (see instructions) ► 09/16/2024

9 Amount of the reported obligation(s) on line 8a that is:

a For leases for vehicles	9a	
b For leases for office equipment	9b	
c For leases for real property	9c	
d For leases for other (see instructions)	9d	33,553.96
e For bank loans for vehicles	9e	
f For bank loans for office equipment	9f	
g For bank loans for real property	9g	
h For bank loans for other (see instructions)	9h	
i Used to refund prior issue(s)	9i	
j Representing a loan from the proceeds of another tax-exempt obligation (for example, bond bank)	9j	
k Other	9k	

10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box

11 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box (see instructions)

12 Vendor's or bank's name: Welch State Bank

13 Vendor's or bank's employer identification number: 73-0504830

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.

Signature of issuer's authorized representative: [Signature] Date: _____

Ken Doke, Commissioner
 Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name: _____ Preparer's signature: _____ Date: _____ Check if self-employed PTIN: _____

Firm's name ► _____ Firm's EIN ► _____

Firm's address ► _____ Phone no. _____

Future Developments

For the latest information about developments related to Form 8038-GC and its instructions, such as legislation enacted after they were published, go to www.irs.gov/Form8038GC.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

Who Must File

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Bonds.

Filing a separate return for a single issue. Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to

pay a penalty in lieu of arbitrage rebate. See the instructions for line 11, later.

Filing a consolidated return for multiple issues. For all tax-exempt governmental obligations with issue prices of less than \$100,000 that aren't reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, if the issue is a construction issue, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.