

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: May 24, 2011

**SUBJECT: APPROVING A FIVE-YEAR CAPITAL LEASE AGREEMENT WITH NETAPP FINANCIAL SOLUTIONS IN THE QUARTERLY AMOUNT OF \$23,472.25 FOR NETWORK ATTACHED STORAGE EQUIPMENT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT (FUNDED BY THE GENERAL FUND)**

**Report in Brief**

The operations of the Police Department are increasingly dependent upon the functioning of its computerized information systems and the accessibility of online data. The disk space needed to store data for critical systems such as Computer Automated Dispatch (CAD), voice and video recording, staff scheduling and other administrative and records functions continues to grow. The number of records and the size of the average record have increased. Records contain increasing numbers of high resolution photos and video.

To ensure availability of data throughout the course of a disaster or catastrophic system failure, it is necessary to design into the storage system and its configuration critical features such as hardware redundancy and the real-time replication of data to a geographically separate data center. This allows critical systems to operate at either physical location with only a momentary hesitation while the transition occurs.

The proposed plan will increase storage capacity and provide a centralized, fault tolerant network-based storage system that allows the dynamic allocation of space where it is needed. The system will integrate seamlessly with the City's existing storage technology and allow the City's offsite data center to function as a real-time disaster recovery site for the critical PD applications. Further, it will allow the server room located in the Police facility to function as a real-time disaster recovery site for Civilian mission critical applications.

Staff recommends Council approve the proposed five-year NetApp Lease Agreement for the addition of network-attached storage (NAS) equipment in the quarterly amount of \$23,472.25; and authorize the City Manager to execute the agreement.

**Background**

The Computer Aided Dispatch (CAD) system provides key functions supporting the Dispatch center at Police Headquarters. This is the central dispatch point for all emergency and 911 calls for the Concord area. The system assists Dispatchers in tracking current incidents and resources assigned and available. It documents incidents and responses through time and provides key interfaces to County, State and National databases.

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The findings from a formalized Business Impact Analysis (BIA) were used to prioritize initiatives to ensure the continued operation of key business functions that may be disrupted as the result of accident, disaster or infrastructure failure. This analysis examined the threats and risks to critical business operations and the underlying infrastructure. It utilized the costs associated with an outage as well as the costs and time necessary to repair systems and resume normal operations to set priorities. This analysis included critical business operations of all City Departments including Police. The goals from this analysis focus on two primary areas: prevention and disaster recovery. This plan seeks to address goals identified in both of these objectives. Those specific to prevention include:

- Replacement of obsolete equipment,
- Upgrading firmware and critical system software,
- Building redundancy into the design.

Disaster Recovery (DR) focuses on the processes necessary to restore normal operations after a natural, man-made disaster or system breakdown. The Disaster Recovery process also includes restoring the availability of data to its normal state after systems are brought back online. Key goals specific to this proposal include:

- Simplification of the systems and infrastructure and the restoration process,
- Standardization of equipment, configuration and the restoration process,
- Real-time replication of data to an alternate site.

## **Discussion**

This proposal primarily addresses the immediate need for additional disk storage to accommodate the growing needs of all Departments, and the Police Department in particular. Secondly, it does this in a way to leverage the investment so that the Data Center in the Police Department can have its own network-based storage system that is compatible and integrated with the system already in use at the off-site Data Center that currently supports Civilian and Law Enforcement systems. The separation of Law Enforcement and Civilian systems required by State DOJ remains in place and fully enforced.

The proposed equipment also replaces disk storage equipment in the off-site Data Center to support the new replication and management software. Finally, because it is the same equipment, it provides the capability to replicate data between the sites in real-time so that applications can continue to operate even with the loss of one or the other facility. This meets the continuity of operations requirements as stated in the Business Impact Analysis developed with each Department.

Currently Law Enforcement applications require using many servers, each with its own internal disk storage. This approach is more costly, less flexible, and more complex with many points of failure. It also is wasteful by requiring each system to have 40% to 60% unused storage capacity.

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The Police Department has begun leveraging newer technologies such as digital audio recording, high resolution digital photography, electronic license plate readers, and other systems. These technologies require significant increases in storage capability. As the Police Department increases its use of these technologies the number of files, the size of the files, and the need to ensure that the systems are continuously available increases.

The software provided by NetApp allows data for the most critical systems to be replicated between the two storage systems. The systems proposed for replication include:

- Computer Automated Dispatch (CAD)
- Crime Management System (CMS)
- Radio and Telephone Voice Logger
- Building Inspection, Permitting, and Code Enforcement system
- Human Resources and Financial System

The proposed reseller is Berkeley Communications, the City's current service provider for the current network storage equipment providing the City the best value for integrating and maintaining this equipment. The City Attorney's office has reviewed the agreement and concurs with the sole source to Berkeley Communications.

Not proceeding will constrain the Police Department's ability to implement systems supporting Predictive Policing strategies and constrain the City's ability to meet the continuity of operation needs.

**Fiscal Impact**

The quarterly cost of the lease is \$23,472.25 for the five year term beginning in FY 2012 and is included in the Information Technology 10-Year Budget. Future years' funding remains at the discretion of the Council.

**Public Contact**

Posting of the Council Agenda

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**Recommendation for Action**

Approve a five year capital lease with NetApp Financial Solutions for network attached storage equipment in the quarterly amount \$23,472.25, and authorize the City Manager to execute the lease agreement.

Prepared by: Doug Elloway  
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Daniel E. Keen  
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Attachment 1 - NetApp Financial Solutions Lease Agreement

Attachment 2 - Master Tax-Exempt Lease/Purchase Agreement



April 19, 2011

RE: City of Concord  
Equipment Finance Options  
Term Sheet #123788-4

Ron Puccinelli  
City of Concord  
1950 Parkside Drive  
Concord, California 94519  
US

NetApp Financial Solutions is pleased to provide the following financing options for City of Concord. The financing options listed below are for discussion purposes only. Any commitment would be subject to credit approval, terms and conditions of the documentation and NetApp Finance Investment Committee approval.

Equipment Description: FAS3140 - Quote #20110419-CC

Net Equipment Cost: \$421,289.19 (plus applicable tax)

<b>Option #1 - Tax Exempt Lease Purchase</b>	<b><u>20 Quarterly Payments in Arrears</u></b>
Equipment Cost Financed:	\$421,289.19
End of Term Purchase Option:	Tax Exempt Lease Purchase
Quarterly Payments (Net of Taxes):	\$23,472.25

1. Standard TELP documents apply.
2. Rate expires in 30 Days.
3. The Lessee agrees to provide NetApp with information establishing the essential use of the equipment, software, and/or services (collectively, the "Product"). NetApp's obligation to provide leasing is conditioned upon (i) receipt and review of such information and the reasonable satisfaction of the essential use of the Product, and (ii) NetApp's review of Lessee's financial statements.
4. NetApp will accept Termination for Non-appropriation.
5. First payment due July 2011.

Sincerely,

John Lekic  
Financial Solutions Manager

Terms outlined above agreed to:

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

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

*Please indicate your selected financing option, sign and FAX to 410-244-6070*



## NetApp Financial Solutions

### Financing Application for Government and Education Customers

Lessee	City of Concord		
Full Legal Name			
Federal Tax ID #			
Address	Ron Puccinelli City of Concord 1950 Parkside Drive Concord, California 94519 US		
Fiscal Year Begins			
Customer Contact		Invoices to be sent to:	
Title		Contact	
Phone and Fax No.		Department	
e-mail address		Street Address	
		City, State, and Zip	
Customer Contact		Phone and Fax No.	
Title		e-mail address	
Phone and Fax No.		Special Instructions	
e-mail address			

**1. Please describe the equipment being financed:**

FAS3140 - Quote #20110419-CC

**2. Please fully explain the use of the equipment, including any specific department that may be its primary user:**

**3. Is the new equipment a replacement, an upgrade or additional to the department?**

**4. If replacement or upgrade, what is the age of the existing equipment?**

**5. If you're upgrading existing equipment, is the existing equipment paid off?**

**6. From which fund will the financing payments be made?**

**7. Will any loan or grant monies be directly used to make the payments?**

**8. Have funds been appropriated for the payments due on the proposed financing during the current budgetary period?**

**9. Have you issued, or do you intend to issue, more than 30 million dollars in tax-exempt debt in your current fiscal year?**

**10. Are you self-insured?**

Submitted by (Name):			Title
Signature			Date



So that we may begin our credit review process, please fax this **application**, along with your **equipment quote**, (bill of materials) and the signed **financing proposals**, to (303) 323-4291.

**Please mail the 2 most recent copies of your Audited Annual Financial Statements, plus a copy of this year's budget, to:**

John Lekic  
NetApp Financial Solutions  
1800 Broadway, Suite 100  
Boulder, CO 80302

**Please note that we do require the copies of your audited annual financial statements in order to process your request.**



# Lease/ Purchase Agreement (State and Municipal)

FAX TO <LessorFax> • Page 1 of 2

Contract Number: <ContractNo> Dated: <ContractDate>

The words **YOU** and **YOUR** refer to the Lessee. The words **WE, US** and **OUR** refer to the Lessor, <LESSOR>

## Customer & Billing Contact Information

Lessee Full Legal Name <LESSEE>						
Billing Contact Person <BillingContact>		Billing Contact Phone No. <BillingPhone>		Federal Tax ID # <FEIN>	Organization ID # (if any)	State of Organization <Stofinc>
Billing Address <BillingAddress>		City <BillingCity>	County <BillingCounty>		State <BillingSt>	Zip <BillingZip>

## Lease/Purchase Agreement

The terms of this Lease/Purchase Agreement ("Agreement") are terms which will be incorporated into, and constitute a part of, one or more Lease Schedules (each a "Schedule") between us and you. Each Schedule will constitute a separate, assignable Lease. When the term "Lease" is used in this Agreement, it will mean each Schedule individually, together with the terms of this Agreement. Each Lease is a complete and exclusive statement of our agreement concerning such Lease. In connection with each Schedule you shall deliver to us (i) a legal opinion from counsel acceptable to us in substantially the form of Exhibit B to the sample Schedule attached to this Agreement; (ii) an authorizing resolution in substantially the form of Exhibit C to the sample Schedule attached to this Agreement; (iii) a copy of the executed Internal Revenue Service ("IRS") form 8038-G or 8038-GC, as appropriate, as filed, or to be filed, with the IRS; and (iv) any other documentation that may be required by us with respect to the Lease, including but not limited to lien perfection filings, proof of insurance, satisfactory evidence of the actions of your governing body in compliance with all applicable laws (including, without limitation, public notice and bidding laws), and the due authorization and incumbency of officials acting on your behalf.

## Terms/Conditions

**IMPORTANT: YOU ACKNOWLEDGE THAT WE ARE PAYING THE SUPPLIER ON YOUR BEHALF OR REIMBURSING YOU FOR PAYMENT TO THE SUPPLIER. NEITHER THE SUPPLIER NOR ANY SALESPERSON IS OUR AGENT. THEY HAVE NO AUTHORITY TO SPEAK ON OUR BEHALF OR MAKE ANY CHANGES TO THIS AGREEMENT. THEIR STATEMENTS WILL NOT AFFECT YOUR RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT.**

**1. LEASE AGREEMENT; PAYMENTS:** We agree to lease to you and you agree to lease from us the equipment identified in a Schedule, together with all replacements, parts, attachments, accessories and substitutions therefor ("Equipment") for the Lease term set forth in the Schedule. Subject to Section 15 hereof, you promise to pay us the Lease payments according to the terms of the Payment Schedule shown on or attached to each Schedule hereto, plus all other charges required under this Agreement.

**2. GENERAL TERMS; PAYMENT ADJUSTMENTS; EFFECTIVENESS:** You agree to all the terms and conditions on page 1 and 2 of this Agreement and on each Schedule. This Agreement and each Schedule is a complete and exclusive statement of our agreement. If the cost of the Equipment varies from the estimate you or your supplier have provided to us, you agree that we may adjust the Lease payment accordingly upward or downward up to 10%. You acknowledge receipt of a copy of this Agreement and each Schedule and acknowledge that you have selected the Equipment and reviewed the supply contract under which you will obtain the Equipment. **NO LEASE IS BINDING ON US AND NO LEASE WILL COMMENCE UNTIL WE ACCEPT IT IN OUR OFFICES.** You authorize us to insert or correct missing information on this Agreement and on each Schedule, including contract number, your legal name, serial numbers, Equipment location, and any information describing the Equipment. You agree that any purchase order issued to us covering the Equipment, is issued for purposes of authorization and your internal use only, and none of its terms and conditions shall modify the terms of any Lease. You agree to provide us your financial statements annually, when available, within 10 days after such financial statements become available. Nothing in this Agreement nor any Schedule shall be construed to mean that you must pay any sum which exceeds that which may lawfully be charged, and if there is such excess sum, it shall be applied to reduce the lawful amounts payable by you, and any excess shall be returned to you.

**3. LATE CHARGES; OTHER CHARGES:** The due date for your payments will be identified on the Payment Schedule. To the extent permitted by applicable law, whenever any portion of a Lease payment or other amount due hereunder is received by us later than the date when due, you shall pay additional interest on such unpaid amount accruing from its due date at the rate of 10% per annum or the maximum amount permitted by law, whichever is less, from such date. You also agree to pay \$25 for each returned check.

**4. EQUIPMENT OWNERSHIP:** Title to the Equipment under a Lease is deemed to be yours so long as no default pursuant to Section 12 below has occurred and/or the Lease has not been terminated pursuant to the provisions of Section 15 below. At the instant a Lease is terminated in accordance with Section 15 below, or upon the occurrence of a default by you pursuant to Section 12 below, title to the Equipment subject to such Lease shall revert to us free of any right, title or interest of yours unless we elect otherwise. The Equipment shall

always remain personal property even though the Equipment may become attached or affixed to real property. To secure your obligations under each Lease, to the extent permitted by law, you hereby grant us a security interest in the Equipment. We are authorized to file UCC financing statements evidencing this security interest. Provided that no event of default has occurred and is then continuing, you may, upon thirty (30) days prior written notice to us, prepay your remaining obligations under a Lease by paying us all, but not less than all, of the remaining Lease payments discounted to present value at the lower of 1% or the Interest Rate set forth in the Payment Schedule. Whereupon title to the Equipment subject to the Lease shall become vested in you without the conditions set forth above.

**5. NO WARRANTIES:** WE ARE LEASING THE EQUIPMENT TO YOU "AS IS," WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, CONDITION, OR THE QUALITY OF THE MATERIAL OR WORKMANSHIP. WE ARE NOT RESPONSIBLE FOR ANY REPAIRS OR SERVICE TO THE EQUIPMENT OR ANY DEFECTS OR FAILURES IN OPERATION. We assign to you for the term of the applicable Lease any transferable manufacturer or supplier warranties. We are not liable to you for any breach of those warranties. You agree that upon your acceptance of the Equipment, you will have no set-offs or counter-claims against us.

**6. MAINTENANCE; USE; INSTALLATION:** You are responsible for installation and maintenance of, and for any damage to, the Equipment. You must service, repair and maintain the Equipment at your expense in the same condition as when received, ordinary wear and tear excepted, in compliance with all applicable laws and regulations, and in compliance with all insurance policies and all manuals, orders, recommendations and instructions issued by the manufacturer or vendor. You shall permit the Equipment to be used by qualified personnel solely for the purpose for which it was designed. You will make no alterations or modifications to the Equipment without our prior written consent. If the Equipment malfunctions, is damaged, lost or stolen, you agree to continue to make all payments due under the Lease.

**7. EQUIPMENT LOCATION:** You will keep the Equipment only at the address shown on the applicable Schedule and you will not move it from that address unless you get our prior written consent.

**8. INSURANCE; CASUALTY:** Until each Schedule is paid in full or the Equipment has been returned to us, you will: (a) keep the Equipment on such Schedule insured under all risk property insurance policies naming us and our assigns as loss payees for the greater of the Purchase Price (defined below) or its full replacement value against all types of loss, including theft; and, (b) provide and maintain comprehensive general public liability insurance naming us and our assigns as additional insureds. All policies and insurers shall be acceptable to us and the insurer(s) must agree to provide us at least 30 days prior written notice of any material change, cancellation or non-renewal of coverage. If you do not provide us with acceptable evidence of insurance, we may, but will have no obligation to, obtain insurance and add a charge to your monthly payment which will include the insurance premium charged by our insurance provider, our then prevailing insurance administration fee, if any, together with interest on such amounts at the overdue rate provided in Section 12. If any Equipment is damaged, you shall immediately repair the damage at your expense. If any Equipment is lost, stolen or damaged beyond repair, you shall, at our option, (a) replace the same with like equipment in a condition acceptable to us and convey, to the extent permitted by law, a security interest in such equipment to us (such equipment will become Equipment subject to the Lease), or (b) pay us the Purchase Price. For purposes of this Agreement, "Purchase Price" means, the sum of (i) all amounts which are currently due to us under the Lease, but are unpaid, plus (ii) the present value of the sum of all amounts to become due during the Lease term, discounted at a discount rate equal to the 1-year Treasury Constant Maturity rate as published in the Selected Interest Rates table of the Federal Reserve statistical release H.15(519) for the week ending immediately prior to your acceptance of such Schedule (or if no longer published, a rate reasonably determined by us). Upon our receipt of the Purchase Price following the loss or destruction of any Equipment, you shall be entitled to whatever interest we have in such Equipment, in its then condition and location, without warranties of any kind.

**9. LIABILITY:** WE ARE NOT RESPONSIBLE FOR ANY LOSSES OR INJURIES TO YOU OR ANY THIRD PARTIES CAUSED BY THE EQUIPMENT OR ITS USE. You assume the risk of liability for, and agree, to the extent permitted by law, to indemnify, defend and hold us, our employees and agents, harmless, to the extent permitted by law, from and against: (a) any and all liabilities, losses, damages, claims and expenses (including attorneys' fees and legal costs) arising out of the manufacture, purchase, shipment and delivery of the Equipment to you, acceptance or rejection, ownership, licensing, titling, registration, leasing, possession, operation, use, return or other disposition of the Equipment, including, but not limited to, any liabilities that may arise from patent or latent defects in the Equipment, and any claims based on strict tort liability, (b) any and all loss or damage of or to the Equipment, and (c) any liability to the manufacturer or supplier arising under any purchase orders issued by or assigned to us.

**10. LIENS AND TAXES:** You shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease or any Schedule. It is expected that the Equipment will be exempt from taxation, nevertheless, you shall pay, when due, all assessments, charges and taxes (federal, state and local) that may now or hereafter be

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imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by our net income ("Charges"). If you fail to pay any Charges when due, we shall have the right, but shall not be obligated, to pay the Charges. If we pay any Charges for which you are responsible or liable under a Schedule, you shall, upon demand, reimburse us therefor.

**11. ASSIGNMENT:** YOU MAY NOT SELL, PLEDGE, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT, THIS AGREEMENT OR ANY SCHEDULE. We may sell, assign or transfer all or any part of this Agreement, any Schedule, and/or our interest in the Equipment. The new owner will have the same rights that we have, but you agree you will not assert against the new owner any claims, defenses or set-offs that you may have against us or any supplier. You hereby appoint us, or our designee, as your agent to maintain a book registry of the owner of payments due under each Lease, and to keep, or cause to be kept, a complete and accurate record of all assignments in form necessary to comply with Section 149(a) of the Code and the regulations from time to time promulgated thereunder. You agree to acknowledge, in writing, any assignments if so requested, and to make payments directly to the new owner if and when directed.

**12. DEFAULT; DAMAGES:** If you, or any guarantor of your obligations: (a) fail to make any Lease payment within 10 days of when due, or (b) become insolvent or commence bankruptcy or receivership proceedings or have such proceedings commenced against you, or (c) terminate your existence by merger, consolidation, sale of substantially all your assets, or (d) default under any other agreement you have with us or our affiliates, or (e) otherwise breach any warranty, covenant or provision of this Agreement or any Schedule, you will be in default. If you are in default we may, but shall not be obligated to, do any or all of the following: (i) declare immediately due and payable such portion of the Purchase Price and all unpaid amounts due under all Leases under this Agreement which are scheduled to be paid during the fiscal period of yours for which funds have been appropriated by you, (ii) require you to immediately return all Equipment to us at your expense, (iii) with or without notice, demand or legal process, re-take possession of the Equipment (and you authorize us to enter upon the premises wherever the Equipment may be found), (iv) sell, hold, use, lease or otherwise dispose of the Equipment, (v) immediately terminate this Agreement and all Schedules, (vi) apply any security deposit to reduce amounts due to us hereunder, and/or (vii) exercise any other remedies available to us under applicable law. You agree to pay our actual attorneys' fees, plus all actual costs of collection and any Equipment repossession. If we dispose of the Equipment, we will apply the net proceeds of such disposition to reduce the Purchase Price and other amounts due under the Lease. You shall remain responsible for the payment of any deficiency, subject to the limitation set forth in (i) above. If the net proceeds we recover related to such Schedule following a default is more than the Purchase Price and other outstanding amounts due under the Lease, we will give you the excess. You waive any notice of our repossession or disposition of the Equipment. By repossessing any Equipment, we do not waive our right to collect any amounts due under any Lease. We will not be responsible to you for any consequential or incidental damages. Our delay or failure to enforce our rights with respect to any Lease will not prevent us from doing so at a later time.

**13. CHOICE OF LAW; JURISDICTION; NON-JURY TRIAL:** This Agreement and each Schedule hereunder will be governed by the laws of the state in which you are located. YOU EXPRESSLY AND IRREVOCABLY AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY.

**14. UNCONDITIONAL OBLIGATION; AMENDMENTS:** SUBJECT TO SECTION 15, YOUR OBLIGATION TO PAY ALL AMOUNTS UNDER EACH LEASE IS ABSOLUTE AND UNCONDITIONAL. NO LEASE MAY BE AMENDED EXCEPT BY A WRITING WHICH WE HAVE SIGNED.

**15. TERMINATION; EQUIPMENT RETURN:** In the event no funds or insufficient funds are appropriated and budgeted to pay any amounts due under a Lease, then the Lease shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to you of any kind, except as to (i) any payments herein agreed upon for which funds shall have been appropriated and budgeted, (ii) your other obligations and liabilities under the Lease relating to, accruing or arising prior to termination, and (iii) your obligations to return the Equipment as provided in this Section. In the event of a Lease termination in accordance with this Section 15, you will immediately crate, insure and ship all, but not less than all, of the Equipment subject to such Lease, in good working condition, to us at a location and by means we designate, with all expenses to be prepaid by you. You must give us 60 days prior written notice of your intent to return the Equipment under this Section. You must disassemble and pack the Equipment for shipment in a manner authorized by the manufacturer or its representative and provide for its reassembly at the return location in the condition required the Lease, at your expense. If you fail to return all of the Equipment under any Lease to us as agreed, you shall pay to us the regular Lease payments each month until all of the Equipment is returned. If the Equipment is damaged when received by us or otherwise not in the condition required upon return to us, you agree to pay for all costs of repair or restoration. You will also be responsible for any damage to the Equipment which

occurs during shipping. You agree to notify us in writing of any failure to appropriate sufficient funds for a Lease not less than sixty (60) days prior to the end of the then current fiscal period, but failure to give such notice shall not extend the term of any Lease.



**16. REPRESENTATIONS; WARRANTIES; COVENANTS:** You represent and warrant that all customer information, including your legal name, provided in this Agreement and in each Schedule is true, accurate and complete. The Equipment will not be used for personal, family or household purposes. The Equipment shall not be used in a "trade or business" of any other person or entity, and no part of the proceeds of any Lease or the Equipment will be used in any "private business use" within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended (the "Code"). You represent, warrant and covenant, and shall be deemed to have separately certified as of the commencement date of each Lease, that: (i) you are a state, or a political subdivision thereof, within the meaning of Section 103 of the Code and the related regulations and rulings thereunder, and have a substantial amount of at least one of the following powers: (a) taxing power, (b) police power, or (c) power of eminent domain; (ii) you have the authority to enter into the Lease and are not in contravention of any state, county, district, city or town statute, charter, ordinance, resolution, rule, regulation or other governmental provision; (iii) you shall, with respect to each Lease, complete and file on a timely basis Internal Revenue Service form 8038G or 8038GC, as appropriate, in the manner set forth in Section 149(e) of the Code; and (iv) your payments under the Lease are not directly or indirectly guaranteed (in whole or in part) by the United States or any agency or instrumentality thereof. You agree that you will take no action that would cause the interest portion of the Lease payments to be included in our gross income for federal income tax purposes under the Code, and you will take all actions that are permitted by law to ensure that the interest portion of the Lease payments is not included in our gross income, including, without limitation, the calculation and payment of any rebate required under Section 148(f) of the Code. Upon a determination that the interest component of any Lease payment is includible for federal income tax purposes in our gross income due to any action or failure to take any action on your part, or any misrepresentation or breach of any warranty or covenant by you in connection with the Lease, you agree to pay promptly after any such determination of taxability and on each Lease payment date thereafter to us an additional amount determined by us to compensate us for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error).

**17. CONTINUATION OF LEASE TERM:** You shall not enter into any Lease unless you, at the time, reasonably believe that, after taking into account the terms thereof, funds shall be obtainable through your governmental budgetary and appropriations processes in an amount sufficient to make all Lease payments during the Lease term. You hereby agree to direct your finance or budget officer to make provisions to the extent necessary for the Lease payments due under each Lease in each budget submitted for the purpose of obtaining funding. It is your current intent to make the Lease payments for the full Lease term if funds are legally available therefor and in that regard you represent that (a) each Lease is being entered into for the purpose of providing the Equipment to you, and the use of the Equipment is essential to your proper, efficient and economic functioning or to the services you provide to your citizens; (b) you have an immediate need for and expect to make immediate use of substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future; and (c) the Equipment shall be used by you only for the purpose of performing one or more of your governmental or proprietary functions consistent with the permissible scope of your authority.

**18. FAX:** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. You agree that the fax document will be admissible in any legal action. To the extent this Agreement or any Schedule constitutes chattel paper under the UCC, a security interest in this Agreement or any Schedule may be perfected through the transfer and possession only of a copy of this Agreement or such Schedule manually executed by us and you and bearing the legend "Original." We have no duty to verify or inquire as to the validity, execution, signer's authority or any other matter concerning the propriety of any fax.

**19. MISCELLANEOUS:** If any provision of any Lease is unenforceable, invalid or illegal, the remaining provisions will continue to be effective. You must bring any action against us relating to any Lease within one year after the basis for the claim first arises, and in any event not later than one year following termination of such Lease. Time is of the essence with respect to the payment and performance of all of your obligations under any Lease.

**20. MERGER:** THE ABOVE TERMS AND CONDITIONS REPRESENT AND MERGE ALL OF THE TERMS AND CONDITIONS INTO THIS AGREEMENT. THIS AGREEMENT AND EACH SCHEDULE CANNOT BE MODIFIED OR ALTERED UNLESS IT IS IN WRITING AND SIGNED BY ONE OF OUR OFFICERS.

<b>Authorized Signer:</b> 	Lessee Full Legal Name	
	<LESSEE>	
<b>Signed By:</b> 	Title (Indicate President, Partner, Proprietor, etc.)	Contract Number
		<<ContractNo>>

**Accepted by: NetApp, Inc., dba NetApp Financial Solutions, Lessor**

# Lease/Purchase Agreement Lease Schedule

<LESSORFax> • FAX TO

Lease/Purchase Agreement Contract Number: <ContractNo>  
Lease Schedule Number: <SchNo> Dated: <SchDate>

The words **YOU** and **YOUR** refer to the Lessee. The words **WE**, **US** and **OUR** refer to the Lessor, <LESSOR>

## Lease/Purchase Agreement

The terms of the above Lease/Purchase Agreement ("Agreement") are incorporated into and made a part of this Lease Schedule ("Schedule") as if set forth in full. This Schedule, and every other Schedule that incorporates terms from the Agreement, are separate, assignable leases. If there is any inconsistency between the terms of this Schedule and those of the Agreement, then this Schedule will control.

## Customer & Billing Contact Information

Lessee Full Legal Name <LESSEE>				
Billing Contact Person <BillingContact>	Billing Contact Phone No. <BillingPhone>	Federal Tax ID # <FEIN>	Organization ID # (if any)	State of Organization <Stofnc>
Billing Address <BillingAddress>	City <BillingCity>	County <BillingCounty>	State <BillingSt>	Zip <BillingZip>
Equipment Location Address <EquipAddress>	City <EquipCity>	County <EquipCounty>	State <EquipSt>	Zip <EquipZip>

Complete Equipment Location **only** if different from billing address

## Equipment Description (continue on Exhibit D if necessary)

Quantity	Manufacturer	Model Number	Description	Serial Number
	See Exhibit D			

## Term / Payment Schedule

The Lease Term for this Schedule is set forth on Exhibit A hereto, and you agree, subject to Section 15 of the Agreement, to pay us the Lease payments on the Lease Payment Dates specified in Exhibit A hereto.

## Lessee Authorized Signature

Authorized Signer <b>X</b>	Date	Printed Name
	Title Indicate President, Partner, Proprietor, etc.	

## Equipment Acceptance Certificate

THIS SCHEDULE WILL NOT BE BINDING ON US UNTIL ACCEPTED IN OUR OFFICES. The undersigned hereby certifies that all Equipment described in this Schedule has been delivered to and has been received by you, that all installation or other work necessary prior to the use thereof has been completed, that the Equipment has been examined by you and is in good operating order and condition and is in all respects satisfactory to you, and the Equipment is accepted by you for all purposes under the Agreement and this Schedule. You acknowledge that this Lease is non-cancelable for any reason until all your obligations under this Lease have been fulfilled. You acknowledge that we have no responsibility as to the satisfactory performance or maintenance of the Equipment. The "Acceptance Date" is the date on which we accept this Lease as shown below.

Authorized Signer <b>X</b>	Date	Print name
	Title	

Accepted by <LESSOR>

Signed By: <b>X</b>	Acceptance Date
------------------------	-----------------

This schedule is attached to and becomes part of the Lease Schedule and UCC filing documents dated <SchDate> between the undersigned.

Equipment Description

Table with 5 columns: Quantity, Manufacturer, Model Number, Description, Serial Number. Multiple empty rows for data entry.

Equipment Location

Equipment Location Address City County State Zip
<EquipAddress>, <EquipCity>, <EquipCounty>, <EquipSt> <EquipZip>

Authorization

This schedule is hereby verified correct and the undersigned parties acknowledge receipt of a copy.

Lessee
<LESSEE>

Authorized Signer X

Print name

Title Indicate President, Partner, Proprietor, etc.

Lessor:
NetApp, Inc. dba NetApp Financial Solutions

Authorized Signer X

Print Name

Title

**EXHIBIT A  
PAYMENT SCHEDULE**

to: Lease Schedule No. <SchNo> dated as of <SchDate>  
to: Lease/Purchase Agreement No. <ContractNo> dated as of <ContractDate>  
between: <LESSOR> (together with its successors and assigns, ("Lessor"))  
located at: <LESSORAddress>, <LESSORCity>, <LESSORSt> <LESSORZip>  
and: <LESSEE> ("Lessee")  
located at: <LESSEEAddress>,

**Lease Term: <Term> <Mos/Qtr/Ann> Interest Rate: <IntRate> %**

**LEASE PAYMENT AND AMORTIZATION SCHEDULES**

Lease Payment Date	Lease Payment Amount	Amount Credited to Interest	Amount Credited to Principal	Unpaid Balance

**Lessee Authorized Signature**

Authorized Signer <b>X</b>	Date	Printed Name
	Title	

**EXHIBIT B  
FORM OF LEGAL OPINION**

**[THIS MUST BE ON THE LETTERHEAD OF LESSEE'S COUNSEL]**

<Date>

<LESSOR> ("Lessor")  
<LESSORAddress>, <LESSORCity>, <LESSORSt> <LESSORZip>

Attention: <ContactName>

**Re: Lease/Purchase Agreement No. <ContractNo> dated as of <ContractDate>, between <LESSOR>, as lessor, and <LESSEE>, as lessee, and Lease Schedule No(s). <SchNo> dated as of <SchDate>.**

Ladies and Gentlemen:

As counsel for <LESSEE> ("Lessee"), I have examined the above-described executed original Lease/Purchase Agreement and Lease Schedule No(s). <SchNo> thereunder (hereinafter the "Lease") between Lessee and <LESSOR> ("Lessor"), and the proceedings taken by the governing body of Lessee to authorize the execution and delivery of the Lease on behalf of Lessee. All capitalized terms herein shall have the same meanings as in the Lease.

Based upon the foregoing examination and upon an examination of such other documents and matters of law as I have deemed necessary or appropriate, I am of the following opinions:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State of <Stoflnc> (the "State"), has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power, and is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended through the date hereof. The name of Lessee specified above is its true, correct and complete legal name.
2. Lessee has the requisite power and authority to purchase the Equipment and to execute and deliver the Lease and to perform its obligations under the Lease.
3. The Lease has been duly authorized, executed and delivered by Lessee and, assuming due authorization, execution and delivery thereof by Lessor, constitute the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, and do not exceed or violate any usury law or any statutory or case law prohibiting or restricting the incurring of debt by Lessee; except that the enforcement of the Lease may be subject to any applicable bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights generally.
4. The Equipment leased pursuant to the Lease constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.
5. The authorization, approval and execution of the Lease and all other proceedings of Lessee and Lessee's governing body 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.
6. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lease or the security interest of Lessor or its assigns, as the case may be, in the Equipment.
7. The entering into and performance of the Lease does not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit lease or other instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in the Lease.

Lessor, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of Rental Payments are entitled to rely on this opinion.

Very truly yours,

[Counsel to Lessee]\_\_\_\_\_

**EXHIBIT C**  
**[ORDINANCE] [RESOLUTION] OF LESSEE'S GOVERNING BODY**

The undersigned, being the officer identified below of <LESSEE> (the "Lessee"), hereby certifies that the following is a true and correct copy of [an ordinance][a resolution] adopted by the governing body of the Lessee at a meeting duly held on \_\_\_\_\_, 20\_\_\_\_\_.

\* \* \* \*

**WHEREAS,** in order to facilitate the acquisition of certain equipment for the purpose of

\_\_\_\_\_ (the "Equipment") for use by the Lessee and to pay the cost thereof, it is necessary and desirable for the Lessee to enter into a Lease/Purchase Agreement (State and Municipal) and Lease Schedule(s) No. <SchNo> (together with all exhibits, the "Lease") with <LESSOR> (together with its successors and assigns, the "Lessor"), pursuant to which the Lessee will lease the Equipment from the Lessor with an option to purchase,

**NOW, THEREFORE, BE IT [ORDAINED][RESOLVED] BY THE GOVERNING BODY OF LESSEE, AS FOLLOWS:**

**Section 1. Approval of the Lease.** The Lease is hereby approved in substantially the form submitted to and reviewed by the governing body of the Lessee on the date hereof, with such changes therein as shall be approved by the following officer of the Lessee, said officer's execution thereof to be conclusive evidence of the approval thereof, provided that the maximum aggregate principal portion of rental payments under the Lease will not exceed \$ <DealCost> and the interest portions of rental payments will be calculated at a per annum rate not to exceed <IntRate>%:

Title

Printed Name

Signature

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Said officer is hereby authorized and directed to execute and deliver the Lease on behalf of and as the act and deed of the Lessee, and to affix the seal of the Lessee, if applicable.

**Section 2. Further Authority.** The Lessee shall, and the officials and agents of the Lessee are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this resolution and to carry out, comply with and perform the duties of the Lessee with respect to the Lease and the Equipment.

\* \* \*

I further certify that the foregoing [ordinance] [resolution] has not been modified, amended or repealed and is in full force and effect as of the date hereof.

I further certify that the persons whose names and titles appear above have been duly appointed or elected, have qualified and are now acting as officers of Lessee, and that the signature appearing opposite each person's name is the genuine signature of such person.

**WITNESS** my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

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

**BANK-QUALIFIED DESIGNATION**

The <LESSEE>, as lessee (the “*Lessee*”), under Lease Schedule No. <SchNum> to which this Designation is attached, hereby designates Lease Schedule No. <SchNum> as a “qualified tax-exempt obligation” for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Lessee hereby represents that the Lessee reasonably anticipates that the Lessee and other entities that the Lessee controls will not issue tax-exempt obligations (including Lease Schedule No. <SchNum>) that exceed the aggregate principal amount of \$10,000,000 during the calendar year in which Lease Schedule No. <SchNum> is executed and delivered and interest commences to accrue thereunder.

This Designation is attached to and made a part of Lease Schedule No. <SchNum> dated as of <SchDate>.

EXECUTED on \_\_\_\_\_, 20\_\_.

<LESSEE>, as lessee

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Lease Schedule No. <SchNum>

Dated: <SchDate>

Insurance Agent: \_\_\_\_\_  
Insurance Agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_

RE: Insurance Requirements under the Lease/Purchase Agreement No. <ContractNumber> dated as of <ContractDate> and Lease Schedule No. <SchNum> dated as of <SchDate>, each by and between <LESSOR>, as Lessor, and <LESSEE>.

Gentlemen:

In connection with the above referenced Lease Schedule No. <SchNum>, <LESSEE>, as lessee (the "Lessee"), is required to provide evidence of insurance for the coverages and endorsements set forth below, such evidence of insurance should reflect the interest of its assignee.

- A. *Liability Insurance.* Lessee is required to maintain public liability insurance, personal injury and property damage with policy limits of \$1,000,000.00. The policy should be endorsed to name <LESSOR> and/or its Assigns ("*<LESSORabbrev>*") as an additional insured.
- B. *Casualty Insurance.* Lessee is required to maintain all risk extended coverage, malicious mischief and vandalism insurance for the Equipment described in Lease Schedule No. <SchNum> attached hereto and in the amount not less than \$<DEALCOST>. Such insurance shall be endorsed to name <LESSORabbrev> as a co- loss payee with respect to such Equipment.

The required insurance should also be endorsed to give <LESSORabbrev> 30 days prior written notice of the effective date of any material alteration or cancellation of coverage, and an endorsement confirming that the interest of <LESSORabbrev> shall not be invalidated by any actions, inactions, breach of warranty or conditions or negligence of Lessee.

Lessee appreciates your prompt attention to this matter.

Very truly yours,

<LESSOR>

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



# Instructions for Form 8038-G

(Rev. May 2010)

## Information Return for Tax-Exempt Governmental Obligations



Department of the Treasury  
Internal Revenue Service

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

### General Instructions

#### Purpose of Form

Form 8038-G is used by 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

IF the issue price (line 21, column (b)) is...	THEN, for tax-exempt governmental obligations issued after December 31, 1986, issuers must file...
\$100,000 or more	A <b>separate</b> Form 8038-G for <b>each</b> issue
Less than \$100,000	Form 8038-GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales

#### When To File

File Form 8038-G on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond is issued. Form 8038-G may not be filed before the issue date and must be completed based on the facts as of the issue date.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-G under Section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file on time is not due to willful neglect. Enter at the top of the form "Request for Relief under Section 3 of Rev. Proc. 2002-48" and attach a letter explaining why Form 8038-G was not submitted to the IRS on time. Also indicate whether the bond issue in question is under examination by the IRS. Do not submit copies of the trust indenture or other bond documents. See *Where To File* below.

#### Where To File

File Form 8038-G, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely

mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

#### Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For build America bonds (Direct Pay), build America bonds (Tax Credit) and recovery zone economic development bonds, complete Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.

For qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, qualified school construction bonds, clean renewable energy bonds, Midwestern tax credit bonds, and all other qualified tax credit bonds (except build America bonds), file Form 8038-TC, Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.

#### Rounding to Whole Dollars

You may show amounts on this return as whole dollars. To do so, drop amounts less than 50 cents and increase amounts from 50 cents through 99 cents to the next higher dollar.

#### Questions on Filing Form 8038-G

For specific questions on how to file Form 8038-G send an email to the IRS at [TaxExemptBondQuestions@irs.gov](mailto:TaxExemptBondQuestions@irs.gov) and put "Form 8038-G Question" in the subject line. In the email include a

description of your question, a return email address, the name of a contact person, and a telephone number.

#### Definitions

**Tax-exempt obligation.** This is any obligation, including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**Private activity bond.** This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, **and**
- More than 10% of the payment of principal or interest of the issue is **either (a)** secured by an interest in property to be used for a private business use (or payments for such property) **or (b)** to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which **(a)** are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and **(b)** exceeds the lesser of 5% of the proceeds **or** \$5 million.

**Issue price.** The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the first price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

**Issue.** Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year **(a)** under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or **(b)** with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are

issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**Arbitrage rebate.** Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Construction issue.** This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, **and**
2. All the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1½% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

## Specific Instructions

### Part I—Reporting Authority

**Amended return.** An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the *Amended Return* box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new or corrected information. Attach an explanation of the reason for the amended return and write across the top, “Amended Return Explanation.”

**Line 1.** The issuer’s name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. For a lease or installment sale, the issuer is the lessee or the purchaser.

**Line 2.** An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. This form may be obtained at Social Security Administration offices or by calling 1-800-TAX-FORM (1-800-829-3676). You can also get this form on the IRS website at [www.irs.gov](http://www.irs.gov). You may receive an EIN by telephone by following the instructions for Form SS-4.

**Line 4.** This line is for IRS use only. Do not make any entries in this box.

**Line 6.** The date of issue is generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter’s (or other purchaser’s) funds. For a lease or installment sale, enter the date interest starts to accrue.

**Line 7.** If there is no name of the issue, please provide other identification of the issue.

**Line 8.** Enter the CUSIP (Committee of Uniform Securities Identification Procedure) number of the bond with the latest maturity. If the issue does not have a CUSIP number, write “None.”

**Lines 9 and 10.** Enter the name, title, and telephone number of the officer of the issuer whom the IRS may call for more information. If the issuer wishes to designate a person other than an officer of the issuer (including a legal representative or paid preparer) whom the IRS may call for more information with respect to this return, enter the name, title, and telephone number of such person here.

**Note.** By authorizing a person other than an authorized officer of the issuer to communicate with the IRS and whom the IRS may call for more information with respect to this return, the issuer authorizes the IRS to communicate directly with the individual listed in line 9 and consents to the disclosure of the issuer’s return information to that individual, as necessary, in order to process this return.

### Part II—Type of Issue



*Elections referred to in Part II are made on the original bond documents, not on this form.*

Identify the type of obligations issued by entering the corresponding issue price (see *Issue price* under *Definitions* on page 1). Attach a schedule listing names and EINs of organizations that are to use proceeds of these obligations if different from those of the issuer, include a brief summary of the use and indicate whether or not such user is a governmental or nongovernmental entity.

**Line 18.** Check the box on this line only if lines 11 through 17 do not apply. Enter a description of the issue in the space provided.

**Line 19.** If the obligations are short-term tax anticipation notes or warrants (TANs) or short-term revenue anticipation notes or warrants (RANs), check box 19a. If the obligations are short-term bond anticipation notes (BANs), issued with the expectation that they will be refunded with the proceeds of long-term bonds at some future date, check box 19b. Do not check both boxes.

**Line 20.** Check this box if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a “municipal lease.”) Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. **Do not** check this box if the proceeds of the obligation are received in the form of cash, even if the term “lease” is used in the title of the issue.

### Part III—Description of Obligations

**Line 21.** For column (a), the final maturity date is the last date the issuer must redeem the entire issue.

For column (b), see *Issue price* under *Definitions* on page 1.

For column (c), the stated redemption price at maturity of the entire issue is the sum of the stated redemption prices at maturity of each bond issued as part of the issue. For a lease or installment sale, write “N/A” in column (c).

For column (d), the weighted average maturity is the sum of the products of the issue price of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory redemptions), divided by the issue price of the entire issue (from line 21, column (b)). For a lease or installment sale, enter instead the total number of years the lease or installment sale will be outstanding.

For column (e), the yield, as defined in section 148(h), is the discount rate that, when used to compute the present value of all payments of principal and interest to be paid on the obligation, produces an amount equal to the purchase price, including accrued interest. See Regulations section 1.148-4 for specific rules to compute the yield on an issue. If the issue is a variable rate issue, write “VR” as the yield of the issue. For other than variable rate issues, carry the yield out to four decimal places (for example, 5.3125%). If the issue is a lease or installment sale, enter the effective rate of interest being paid.

## Part IV—Uses of Proceeds of Bond Issue

For a lease or installment sale, write "N/A" in the space to the right of the title for Part IV.

**Line 22.** Enter the amount of proceeds that will be used to pay interest from the date the bonds are dated to the date of issue.

**Line 24.** Enter the amount of the proceeds that will be used to pay bond issuance costs, including fees for trustees and bond counsel. If no bond proceeds will be used to pay bond issuance costs, enter zero. Do not leave this line blank.

**Line 25.** Enter the amount of the proceeds that will be used to pay fees for credit enhancement that are taken into account in determining the yield on the issue for purposes of section 148(h) (for example, bond insurance premiums and certain fees for letters of credit).

**Line 26.** Enter the amount of proceeds that will be allocated to such a fund.

**Line 27.** Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds within 90 days of the date of issue.

**Line 28.** Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds after 90 days of the date of issue, including proceeds that will be used to fund an escrow account for this purpose.

## Part V—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of tax-exempt bonds. For a lease or installment sale, write "N/A" in the space to the right of the title for Part V.

**Lines 31 and 32.** The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined in the same manner as on line 21, column (d).

**Line 34.** If more than a single issue of bonds will be refunded, enter the date of issue of each issue. Enter the date in an MM/DD/YYYY format.

## Part VI—Miscellaneous

**Line 35.** An allocation of volume cap is required if the nonqualified amount with respect to the issue exceeds \$15 million

but does not exceed the amount which would cause the issue to be private activity bonds.

**Line 36.** If any portion of the gross proceeds of the issue are or will be invested in a guaranteed investment contract (GIC), as defined in Regulations section 1.148-1(b), enter the amount of the gross proceeds so invested, as well as the final maturity date of the GIC.

**Line 37a.** Enter the amount of this issue used to fund a loan to another governmental unit, the interest of which is tax-exempt.

**Line 39.** Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of arbitrage rebate with this form. See Rev. Proc. 92-22, 1992-1 C.B. 736 for rules regarding the "election document."

**Line 40.** Check this box if the issuer identified a hedge on its books and records in accordance with Regulations sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5). These regulations permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for computing arbitrage.

## Signature and Consent

An authorized officer of the issuer must sign Form 8038-G and any applicable certification. Also print the name and title of the person signing Form 8038-G. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that have been designated in Form 8038-G.

**Note.** If authority is granted in line 9 for the IRS to communicate with a person other than an officer of the issuer, by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

## Paid Preparer

If an authorized officer of the issuer filled in this return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge

the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer's Use Only* area of the return.

- The paid preparer must:
- Sign the return in the space provided for the preparer's signature,
  - Enter the preparer information, and
  - Give a copy of the return to the issuer.

## Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws. Section 6109 requires paid preparers to provide their identifying number.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form varies depending on individual circumstances. The estimated average time is:

<b>Learning about the law or the form</b> . . . . .	2 hr., 41 min.
<b>Preparing, copying, assembling, and sending the form to the IRS</b> . . . . .	3 hr., 3 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:M:P:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this office. Instead, see *Where To File* on page 1.

**Information Return for Tax-Exempt Governmental Obligations**

▶ Under Internal Revenue Code section 149(e)

▶ See separate instructions.

OMB No. 1545-0720

**Caution:** If the issue price is under \$100,000, use Form 8038-GC.

<b>Part I Reporting Authority</b>		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name		2 Issuer's employer identification number (EIN)	
3 Number and street (or P.O. box if mail is not delivered to street address)		Room/suite	4 Report number (For IRS Use Only)
5 City, town, or post office, state, and ZIP code		6 Date of issue	
7 Name of issue		8 CUSIP number	
9 Name and title of officer of the issuer or other person whom the IRS may call for more information		10 Telephone number of officer or other person ( )	

<b>Part II Type of Issue (enter the issue price)</b> See instructions and attach schedule			
11 Education		11	
12 Health and hospital		12	
13 Transportation		13	
14 Public safety		14	
15 Environment (including sewage bonds)		15	
16 Housing		16	
17 Utilities		17	
18 Other. Describe ▶		18	
19 If obligations are TANs or RANs, check only box 19a	<input type="checkbox"/>		
If obligations are BANs, check only box 19b	<input type="checkbox"/>		
20 If obligations are in the form of a lease or installment sale, check box	<input type="checkbox"/>		

<b>Part III Description of Obligations.</b> Complete for the entire issue for which this form is being filed.				
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity
21		\$	\$ NA	years
				%

<b>Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)</b>				
22	Proceeds used for accrued interest		22	NA
23	Issue price of entire issue (enter amount from line 21, column (b))		23	
24	Proceeds used for bond issuance costs (including underwriters' discount)	24 NA		
25	Proceeds used for credit enhancement	25 NA		
26	Proceeds allocated to reasonably required reserve or replacement fund	26 NA		
27	Proceeds used to currently refund prior issues	27 NA		
28	Proceeds used to advance refund prior issues	28 NA		
29	Total (add lines 24 through 28)		29	NA
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)		30	

<b>Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)</b>				
31	Enter the remaining weighted average maturity of the bonds to be currently refunded	▶	NA	years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded	▶	NA	years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	▶	NA	
34	Enter the date(s) the refunded bonds were issued (MM/DD/YYYY)	▶		

**Part VI Miscellaneous**

<b>35</b>	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) . . .	<b>35</b>	<b>NA</b>
<b>36a</b>	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions) . . . . .	<b>36a</b>	<b>NA</b>
<b>b</b>	Enter the final maturity date of the GIC ▶ <u>NA</u>		
<b>37</b>	Pooled financings: <b>a</b> Proceeds of this issue that are to be used to make loans to other governmental units . . . . .	<b>37a</b>	<b>NA</b>
<b>b</b>	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____		
<b>38</b>	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box . . . . .		<input type="checkbox"/>
<b>39</b>	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box . . . . .		<input type="checkbox"/>
<b>40</b>	If the issuer has identified a hedge, check box . . . . .		<input type="checkbox"/>

<b>Signature and Consent</b>	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 that I have authorized above.		
	▶ _____ Signature of issuer's authorized representative	_____ Date	▶ _____ Type or print name and title

<b>Paid Preparer's Use Only</b>	Preparer's signature ▶ _____	Date _____	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN _____
	Firm's name (or yours if self-employed), address, and ZIP code ▶ _____	EIN _____	Phone no. ( ) _____	