

AGENDA
CITY COMMISSION SPECIAL MEETING
Thursday, June 27, 2013
9:00 A.M.

- I. SPECIAL MEETING CALLED TO ORDER AND CITY CLERK ANNOUNCING QUORUM PRESENT.**

- II. CONSIDERATION OF PETITIONS, MEMORIALS AND REMONSTRANCES.**
 - A. Governing Body consideration and approval to allow the Mayor and City Clerk to execute a closing certificate and tax compliance agreement necessary for inclusion in the transcript of and as a part of the proceedings authorizing and providing for the issuance by the Kansas Municipal Energy Agency of the \$5,000,000 revenue bond Series 2013A (Jameson Project).

- III. ADJOURN.**

June 27, 2013

**CITY OF GARDEN CITY, KANSAS
CLOSING CERTIFICATE**

**\$5,000,000
KANSAS MUNICIPAL ENERGY AGENCY
REVENUE BONDS
SERIES 2013A
(JAMESON PROJECT)
DATED JUNE 27, 2013**

The undersigned Mayor and City Clerk of the City of Garden City, Kansas (the "City"), do hereby make this certificate for inclusion in the transcript of and as a part of the proceedings authorizing and providing for the issuance by the Kansas Municipal Energy Agency of the above-described bonds (the "Bonds"); and do hereby certify as follows:

1. Authorization of Documents. Resolution No. 2521-2013 of the City (the "City Resolution") authorized the execution of a Preliminary Power Purchase Agreement (the "Preliminary Agreement"). The City Resolution is in full force and effect as of the date hereof. The Preliminary Agreement has been validly authorized and executed by appropriate officials of the City and constitutes the valid and legally binding obligation of the City in accordance with its terms.

Pursuant to the City Resolution, the City pledged the gross revenues of the City's electric utility system to the City's payment obligations under the Preliminary Agreement, which include the City's obligation to pay or reimburse KMEA for the cost of any financings necessary to acquire generation capabilities for the City. The Bonds constitute a financing necessary to acquire generation capabilities for the City.

The execution, delivery, receipt and due performance of the Preliminary Agreement under the circumstances contemplated thereby, and the City's compliance with the provisions thereof, will not conflict with or constitute on its part a breach of or a default under any agreement, indenture, mortgage, lease or by which it is or may be bound, or, to the knowledge of City, any existing law, court or administrative regulation, decree or order.

2. Non-litigation. There is no controversy, suit or other proceedings of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official City act shown to have been done in the transcript of proceedings evidencing the authorization, issuance, constitutionality or validity of the Bonds or any of the proceedings had in relation thereto by the City, or in the execution and delivery of the Preliminary Agreement.

WITNESS our hands and the seal of the City.

Signature

Official Title

Mayor

(SEAL)

City Clerk

TAX COMPLIANCE AGREEMENT

Dated as of June 27, 2013

Between

KANSAS MUNICIPAL ENERGY AGENCY,

And

CITY OF GARDEN CITY, KANSAS

**\$5,000,000
REVENUE BONDS
SERIES 2013A**

TAX COMPLIANCE AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
PARTIES AND RECITALS.....	1
 <u>ARTICLE I</u> 	
DEFINITIONS	
Section 1.1. Definitions of Words and Terms.....	1
 <u>ARTICLE II</u> 	
GENERAL REPRESENTATIONS AND COVENANTS	
Section 2.1. Representations and Covenants of the Agency.....	5
Section 2.2. Representations and Covenants of the City	8
Section 2.. Survival of Representations and Covenants.....	9
 <u>ARTICLE III</u> 	
ARBITRAGE CERTIFICATIONS AND COVENANTS	
Section 3.1. General.....	9
Section 3.2. Reasonable Expectations	9
Section 3.3. Purpose of Financing	9
Section 3.4. Funds and Accounts.....	9
Section 3.5. Amount and Use of Bond Proceeds and Other Money	10
Section 3.6. Multipurpose Issue.....	10
Section 3.7. No Advance Refunding.....	10
Section 3.8. No Current Refunding.....	10
Section 3.9. Project Completion	10
Section 3.10. Sinking Funds	10
Section 3.11. Reserve, Replacement and Pledged Funds	11
Section 3.12. Purpose Investment Yield.....	11
Section 3.13. Purchase Price and Yield on Bonds.....	11
Section 3.14. Miscellaneous Arbitrage Matters.....	11
Section 3.15. Conclusion	11
 <u>ARTICLE IV</u> 	
POST-ISSUANCE TAX REQUIREMENTS, POLICIES AND PROCEDURES	
Section 4.1. General.....	12
Section 4.2. Record Keeping, Use of Bond Proceeds and Use of Financed Facilities.....	12
Section 4.3. Temporary Periods/Yield Restriction	13
Section 4.4. Fair Market Value	13
Section 4.5. Certain Gross Proceeds Exempt from the Rebate Requirement	16
Section 4.6. Computation and Payment of Arbitrage Rebate	17

Section 4.7.	Successor Rebate Analyst.....	17
Section 4.8.	Rebate Report Records	18
Section 4.9.	Filing Requirements.....	18
Section 4.10.	Survival after Defeasance	18

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1.	Term of Tax Agreement.....	18
Section 5.2.	Amendments	18
Section 5.3.	Opinion of Bond Counsel	18
Section 5.4.	Reliance	18
Section 5.5.	Severability	19
Section 5.6.	Benefit of Agreement.....	19
Section 5.7.	Default; Breach and Enforcement.....	19
Section 5.8.	Execution in Counterparts.....	19
Section 5.9.	Governing Law	19
Section 5.10.	Electronic Transactions.....	19

Signatures.....	S-1
-----------------	-----

Exhibit A - Debt Service Schedule and Proof of Bond Yield

Exhibit B - IRS Form 8038G

Attachment to Form 8038G

Exhibit C - Official Intent

Exhibit D - Description of Property Comprising the Financed Facilities

Schedule 2.2 - List of Expenditures Reimbursed from Bond Proceeds

* * *

TAX COMPLIANCE AGREEMENT

THIS TAX COMPLIANCE AGREEMENT (the “Tax Agreement”), entered into as of June 27, 2013, between **KANSAS MUNICIPAL ENERGY AGENCY**, a municipal energy agency duly organized and existing under the laws of the State of Kansas (the “Agency”) and the **CITY OF GARDEN CITY, KANSAS**, a municipal corporation duly organized and existing under the laws of the State of Kansas (the “City”).

RECITALS

1. This Tax Agreement is being executed and delivered in connection with the issuance by the Agency of \$5,000,000 principal amount of Revenue Bonds, Series 2013A (the “Bonds”), under Bond Resolution No. 182 adopted by the Agency on May 15, 2013, for the purposes described in this Tax Agreement and in the Resolution.

2. The Internal Revenue Code of 1986, as amended (the “Code”), and the applicable Regulations and rulings issued by the U.S. Treasury Department (the “Regulations”) impose certain limitations on the uses and Investment of the Bond proceeds and of certain other money relating to the Bonds and set forth the conditions under which the interest on the Bonds will be excluded from gross income for federal income tax purposes.

3. The Agency and the City are entering into this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of Bond proceeds and the property financed or refinanced with those proceeds and the Investment of the Bond proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

4. The Agency will adopt a Tax-Exempt Financing Compliance Policy and Procedure (the “Tax Procedure”) for the purpose of setting out general procedures for the Agency and the City to continuously monitor and comply with the federal income tax requirements set out in the Code and the Regulations. This Tax Agreement is entered into, in part, to set out specific tax compliance procedures applicable to the Bonds.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Agency and the City represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Resolution, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

“Adjusted Gross Proceeds” means the Gross Proceeds of the Bonds reduced by allocable amounts (1) in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, (2) that as of the Issue Date are not expected to be Gross Proceeds, but which arise after the end of the applicable spending period, and (3) representing grant repayments or sale or Investment proceeds of any purpose Investment.

“Agency” means the Kansas Municipal Energy Agency, and its successors and assigns, or any body, agency or instrumentality of the State of Kansas succeeding to or charged with the powers, duties and functions of the Agency.

“Bona Fide Debt Service Fund” means a fund, which may include Bond proceeds, that (a) is used primarily to achieve a proper matching of revenues with principal and interest payments within each year; and (b) is depleted at least once each year, except for a reasonable carryover amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding year, or (2) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding year.

“Bond” or **“Bonds”** means any Bond or Bonds described in the recitals, authenticated and delivered under the Resolution.

“Bond Compliance Officer” means the Agency’s Director of Finance or other person named in the Tax Compliance Procedure.

“Bond Counsel” means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the Agency.

“City” means the City of Garden City, Kansas, and its successors and assigns, or any body, agency or instrumentality of the State of Kansas succeeding to or charged with the powers, duties and functions of the City.

“Code” means the Internal Revenue Code of 1986, as amended.

“Computation Date” means the date the last Bond is discharged.

“Financed Facilities” means any of the property financed or refinanced with the proceeds of the Bonds, and specifically the acquisition and installation of three (3) Siemens SGT-400 gas turbine generators, as described on **Exhibit D**.

“Gross Proceeds” means (a) sale proceeds (any amounts actually or constructively received by the Agency from the sale of the Bonds, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds, or other Investment proceeds), (c) any amounts held in a sinking fund for the Bonds, (d) any amounts held in a pledged fund or reserve fund for the Bonds, (e) any other replacement proceeds and (f) any transferred proceeds. Specifically, Gross Proceeds includes (but is not limited to) amounts held in the following funds and accounts:

- (1) Costs of Issuance Account.
- (2) Project Fund.
- (3) Debt Service Account.
- (4) Rebate Fund (to the extent funded with sale or investment proceeds of the Bonds).

“Guaranteed Investment Contract” is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (*e.g.*, a forward supply contract).

“Investment” means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

“IRS” means the United States Internal Revenue Service.

“Issue Date” means June 27, 2013.

“Management Agreement” means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Facilities, such as a contract to manage any portion of the Financed Facilities. Contracts for services that are solely incidental to the primary governmental function of the Financed Facilities (for example, contracts for janitorial, office equipment repair, billing, or similar services), however, are not treated as Management Agreements.

“Measurement Period” means, with respect to each item of property financed as part of the Financed Facilities, the period beginning on the later of (a) the Issue Date or (b) the date the property is placed in service and ending on the earlier of (1) the final maturity date of the Bonds or (2) the expected economic useful life of the property.

“Minor Portion” means the lesser of \$100,000 or 5% of the sale proceeds of the Bonds.

“Net Proceeds” means the sale proceeds (excluding pre-issuance accrued interest) of the Bonds, less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

“Non-Qualified Use” means use of Bond proceeds or the Financed Facilities in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Bond proceeds or the Financed Facilities are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facilities, will constitute use under Regulations § 1.141-3.

“Non-Qualified User” means any person or entity other than a Qualified User.

“Opinion of Bond Counsel” means the written opinion of Gilmore & Bell, P.C. or other nationally recognized firm of bond counsel concluding that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

“Output Contract” has the meaning intended in Regulations § 1.141-7, and generally includes any contract with a Non-Qualified User that provides for the purchase of the output of Financed Facilities.

“Post-Issuance Tax Requirements” means those requirements related to the use of proceeds of the Bonds, the use of the Financed Facilities and the investment of Gross Proceeds after the Issue Date of the Bonds.

“Purchaser” means UMB Bank, N.A., as purchaser of the Bonds.

“Qualified Use Agreement” means any of the following:

(1) A lease or other short-term use by members of the general public who occupy the Financed Facilities on a short-term basis in the ordinary course of the Agency’s or the City’s governmental purposes.

(2) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facilities for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of the Financed Facilities under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facilities under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facilities for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (c) the Financed Facilities were not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facilities under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facilities for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Financed Facilities were not constructed for a principal purpose of providing the property for use by that person.

“Qualified User” means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

“Reasonable Retainage” means Gross Proceeds retained by the City for reasonable business purposes, such as to ensure or promote compliance with a construction contract; provided that such amount may not exceed, for purposes of the 18-month spending test, 5% of net sale proceeds of the Bonds on the date 18 months after the Issue Date.

“Rebate Analyst” means Gilmore & Bell, P.C. or any successor Rebate Analyst selected pursuant to this Tax Agreement.

“Regulations” means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Bonds.

“Resolution” means Bond Resolution No. 182 adopted by the Agency on May 15, 2013, as amended and supplemented in accordance with the provisions thereof.

“Tax Agreement” means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

“Tax Compliance Procedure” means the Tax-Exempt Financing Compliance Procedure to be adopted by the Agency in connection with the issuance of long-term financing for the Project.

“Tax-Exempt Bond File” means documents and records for the Bonds maintained by the Bond Compliance Officer pursuant to the Tax Compliance Procedure.

“Transcript” means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

“Yield” means Yield on the Bonds, computed under Regulations § 1.148-4, and Yield on an Investment, computed under Regulations § 1.148-5.

ARTICLE II

GENERAL REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the Agency. The Agency represents and covenants as follows:

(a) *Organization and Authority.* The Agency (1) is a municipal energy agency, duly created, organized and existing under the laws of the State of Kansas, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Resolution, to enter into, execute and deliver the Resolution, the Bonds, and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Resolution, the Bonds, and this Tax Agreement, acting by and through its duly authorized officials.

(b) *Tax-Exempt Status of Bonds—General Representation and Covenants.* To the extent within its power and direction, and in order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Agency (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or Investment of, any Bond proceeds, other money held under the Resolution, or other funds of the Agency, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facilities in a manner that would cause any Bond to become a “private activity bond” as defined in Code § 141.

(c) *Governmental Obligations—Use of Proceeds.* Throughout the Measurement Period all of the Financed Facilities have been and are expected to be owned by the Agency or another Qualified User.

Throughout the Measurement Period no portion of the Financed Facilities has been or is expected to be used in a Non-Qualified Use, and the Agency will not permit any Non-Qualified Use of the Financed Facilities without first obtaining an Opinion of Bond Counsel.

(d) *Governmental Obligations–Private Security or Payment.* As of the Issue Date the Agency expects that none of the principal of and interest on the Bonds will be (under the terms of the Bonds or any underlying arrangement) directly or indirectly:

(1) secured by (A) any interest in property used or to be used for a private business use, or (B) any interest in payments in respect of such property; or

(2) derived from payments (whether or not such payments are made to the Agency) in respect of property, or borrowed money, used or to be used for a private business use.

For purposes of the foregoing, taxes of general application, including payments in lieu of taxes, are not treated as private payments or as private security. The Agency will not permit any private security or payment with respect to the Bonds without first obtaining an Opinion of Bond Counsel.

(e) *No Private Loan.* Not more than 5% of the net proceeds of the Bonds will be loaned directly or indirectly to any Non-Qualified User.

(f) *Management Agreements.* As of the Issue Date, the Agency has no Management Agreements with Non-Qualified Users that results in Non-Qualified Use. During the Measurement Period, the Agency will not enter into or renew any Management Agreement with any Non-Qualified User without first obtaining and delivering to the Agency an Opinion of Bond Counsel.

(g) *Leases.* As of the Issue Date, the Agency has not entered into any leases of any portion of the Financed Facilities other than Qualified Use Agreements. During the Measurement Period the Agency will not enter into or renew any lease or similar agreement or arrangement other than a Qualified Use Agreement without first obtaining an Opinion of Bond Counsel.

(h) *Output Contracts.* As of the Issue Date the Agency does not have any Output Contracts. During the Measurement Period the Agency has not entered and will not enter into any other Output Contract without first obtaining an Opinion of Bond Counsel.

(i) *Limit on Maturity of Bonds.* A list of the assets included in the Financed Facilities and a computation of the “average reasonably expected economic life” is attached to this Tax Agreement as **Exhibit D**. Based on this computation, the “average maturity” of the Bonds of 0.4278 years, as computed by Bond Counsel and shown on **Exhibit A**, does not exceed 120% of the average reasonably expected economic life of the Financed Facilities.

(j) *Reimbursement of Expenditures.* On May 15, 2013, the Agency adopted a resolution declaring its intent to issue tax-exempt obligations to finance or refinance costs of the Financed Facilities and to reimburse the Agency for expenditures made for the Financed Facilities prior to the issuance of such obligations, a copy of which resolution is attached as **Exhibit C**. The Agency will evidence each allocation of the proceeds of the Bonds to an expenditure in writing. The Agency seeks to reimburse from Bond proceeds expenditures made for the Financed Facilities prior to the Issue Date totaling approximately \$409,955.76, a list of which expenditures is attached as **Schedule 2.2**, *provided that:* (A) no Bond proceeds will be used to reimburse an expenditure paid by the Agency more than 60 days prior to the date the Agency’s resolution attached as **Exhibit C** was adopted, (B) no reimbursement allocation

will be made for an expenditure made more than three years prior to the date of the reimbursement allocation, and (C) no reimbursement allocation will be made more than 18 months following the later of the date of the expenditure or the date the Financed Facilities were placed in service.

(k) *IRS Form 8038-G.* Bond Counsel will prepare Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) based on the representations and covenants of the Agency and the City contained in this Tax Agreement or otherwise provided by such parties. Bond Counsel will sign the return as a paid preparer following completion and will then deliver copies to the Agency for execution and for its records. The Agency agrees to timely execute and return to Bond Counsel the execution copy of Form 8038-G for filing with the IRS. A copy of the Form 8038-G filed with the IRS, along with proof of filing, will be included as **Exhibit B**.

(l) *Registered Bonds.* The Resolution requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).

(m) *Hedge Bonds.* The Agency expects that at least 85% of the net sale proceeds (the sale proceeds less any sale proceeds invested in a reserve fund) of the Bonds will be used to carry out the governmental purpose of the Bonds within 3 years after the Issue Date, and not more than 50% of the proceeds of the Bonds will be invested in investments having a substantially guaranteed yield for 4 years or more.

(n) *Single Issue; No Other Issues.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c). No other debt obligations of the Agency (1) are being sold within 15 days of the sale of the Bonds, (2) are being sold under the same plan of financing as the Bonds, and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).

(o) *Bank Qualified Tax-Exempt Obligation.* The Bonds are not “qualified tax exempt obligations” under Code § 265(b)(3).

(p) *Interest Rate Swap.* As of the Issue Date, the Agency has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Bonds. The Agency will not enter into any such arrangement in the future without obtaining an Opinion of Bond Counsel.

(q) *Guaranteed Investment Contract.* As of the Issue Date of the Bonds, the Agency does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Bonds. The Agency will be responsible for complying with **Section 4.3(d)** hereof if it decides to enter into a Guaranteed Investment Contract at a later date.

(r) *Compliance with Future Tax Requirements.* The Agency understands that the Code and the Regulations may impose new or different restrictions and requirements on the Agency in the future. The Agency will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

Section 2.2. Representations and Covenants of the City. The City represents and covenants as follows:

(a) *Organization and Authority.* The City (1) is a municipal corporation, duly created, organized and existing under the laws of the State of Kansas (2) has lawful power and authority to enter into, execute and deliver this Tax Agreement and to carry out its obligations under this Tax Agreement, and (3) by all necessary action has been duly authorized to execute and deliver this Tax Agreement, acting by and through its duly authorized officials.

(b) *Tax-Exempt Status of Bonds—General Representation and Covenants.* In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the City (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or Investment of, any Bond proceeds, other money held under the Resolution, or other funds of the City, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facilities in a manner that would cause any Bond to become a “private activity bond” as defined in Code § 141.

(c) *Governmental Obligations—Use of Proceeds.* Throughout the Measurement Period all of the Financed Facilities have been and are expected to be owned by the Agency or another Qualified User. Throughout the Measurement Period no portion of the Financed Facilities has been or is expected to be used in a Non-Qualified Use, and the City will not permit any Non-Qualified Use of the Financed Facilities without first obtaining an Opinion of Bond Counsel.

(d) *Governmental Obligations—Private Security or Payment.* As of the Issue Date the City expects that none of the principal of and interest on the Bonds will be (under the terms of the Bonds or any underlying arrangement) directly or indirectly:

(1) secured by (A) any interest in property used or to be used for a private business use, or (B) any interest in payments in respect of such property; or

(2) derived from payments (whether or not such payments are made to the City) in respect of property, or borrowed money, used or to be used for a private business use.

For purposes of the foregoing, taxes of general application, including payments in lieu of taxes, are not treated as private payments or as private security. The City will not permit any private security or payment with respect to the Bonds without first obtaining an Opinion of Bond Counsel.

(e) *No Private Loan.* Not more than 5% of the net proceeds of the Bonds will be loaned directly or indirectly to any Non-Qualified User.

(f) *Management Agreements.* As of the Issue Date, the City has no Management Agreements with Non-Qualified Users that results in Non-Qualified Use. During the Measurement Period, the City will not enter into or renew any Management Agreement with any Non-Qualified User without first obtaining and delivering to the Agency an Opinion of Bond Counsel.

(g) *Leases.* As of the Issue Date, the City has not entered into any leases of any portion of the Financed Facilities other than Qualified Use Agreements. During the Measurement Period the City will not enter into or renew any lease or similar agreement or arrangement other than a Qualified Use Agreement without first obtaining an Opinion of Bond Counsel.

(h) *Output Contracts.* As of the Issue Date the City does not have any Output Contracts. During the Measurement Period the City has not entered and will not enter into any other Output Contract without first obtaining an Opinion of Bond Counsel.

(i) *Bonds Not Federally Guaranteed.* The City will not take any action or permit any action to be taken which would cause any Bond to be “federally guaranteed” within the meaning of Code § 149(b).

(j) *Compliance with Future Tax Requirements.* The City understands that the Code and the Regulations may impose new or different restrictions and requirements on the City in the future. The City will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

Section 2.3. Survival of Representations and Covenants. All representations, covenants and certifications of the Agency and the City contained in this Tax Agreement or in any certificate or other instrument delivered by the Agency or the City under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds.

ARTICLE III

ARBITRAGE CERTIFICATIONS AND COVENANTS

Section 3.1. General. The purpose of this Article III is to certify, under Regulations § 1.148-2(b), the expectations of the Agency as to the sources, uses and Investment of Bond proceeds and other money, in order to support the Agency’s conclusion that the Bonds are not arbitrage bonds. The persons executing this Tax Agreement on behalf of the Agency are the officers of the Agency responsible for issuing the Bonds.

Section 3.2. Reasonable Expectations. The facts, estimates and expectations set forth in this Article III are based upon and in reliance upon the Agency’s understandings of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the knowledge of the Agency, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the Agency set forth in this Tax Agreement are reasonable. The Agency does not have any knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

Section 3.3. Purpose of Financing. The Bonds are being issued for the purpose of providing funds to pay costs of the Financed Facilities.

Section 3.4. Funds and Accounts. The following funds and accounts have been established with respect to the Bonds:

Costs of Issuance Account.
Project Fund.

Debt Service Account.
Project Contract Revenue Fund.
Rebate Fund.

Section 3.5. Amount and Use of Bond Proceeds and Other Money.

(a) *Amount of Bond Proceeds.* The total proceeds to be received by the Agency from the sale of the Bonds will be as follows:

Principal Amount / Purchase Price	\$5,000,000.00
Accrued interest	<u>0.00</u>
Total Proceeds Received	\$5,000,000.00

(b) *Use of Bond Proceeds.* The Bond proceeds are expected to be allocated to expenditures as follows:

(1) Any accrued interest will be deposited into the Debt Service Account and applied to the payment of interest on the Series 2013A Bonds.

(2) \$20,000 will be deposited in the Costs of Issuance Account and used to pay costs of issuing the Bonds.

(3) \$4,980,000 of Bond proceeds will be deposited in the Project Fund and used to pay or reimburse costs of the Financed Facilities.

Section 3.6. Multipurpose Issue. The Agency is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue pursuant to Regulations § 1.148-9(h)(3)(i).

Section 3.7. No Advance Refunding. No proceeds of the Bonds will be used more than 90 days following the Issue Date to pay principal or interest on any other debt obligation.

Section 3.8. No Current Refunding. No proceeds of the Bonds will be used to pay principal or interest on any other debt obligation.

Section 3.9. Project Completion. The Agency has incurred, or will incur within 6 months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the net sale proceeds of the Bonds on the Financed Facilities. The completion of the Financed Facilities and the allocation of the net sale proceeds of the Bonds to expenditures will proceed with due diligence. At least 85% of the net sale proceeds of the Bonds are expected to be allocated to expenditures on the Financed Facilities within three years after the Issue Date.

Section 3.10. Sinking Funds. The Agency is required to make periodic payments in amounts sufficient to pay the principal of and interest on the Bonds. Such payments will be deposited into the Debt Service Account. Except for the Debt Service Account, no sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds has been established or is expected to be established. The Debt Service Account is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each year, and the Agency expects that the Debt Service Account will qualify as a Bona Fide Debt Service Fund.

Section 3.11. Reserve, Replacement and Pledged Funds.

(a) *Debt Service Reserve Fund.* No reserve or replacement fund is expected to be established for the Bonds.

(b) *No Other Replacement or Pledged Funds.* None of the Bond proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Facilities, and that instead has been or will be used to acquire Investments having a Yield greater than the Yield on the Bonds. Except for the Debt Service Account, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Agency or the City encounters financial difficulty.

(c) *Other Funds.* The Project Contract Revenue Fund is intended for the temporary deposit of revenues until such amounts are transferred to other funds and accounts, and therefore does not provide a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Agency or the City encounters financial difficulty.

Section 3.12. Purpose Investment Yield. The proceeds of the Bonds will not be used to purchase an Investment for the purpose of carrying out the governmental purpose of the financing.

Section 3.13. Purchase Price and Yield on Bonds.

(a) *Purchase Prices.* In the Purchaser's Receipt for Bonds and Closing Certificate, the Purchaser has certified that it has purchased all of the Bonds as principal for its own account, has not acted as agent for any person or entity, and, as of the date hereof has not sold and has no present intention to sell the Bonds to any person. The aggregate initial purchase price of the Bonds is \$5,000,000.

(b) *Bond Yield.* Based on the Offering Prices, the Yield on the Bonds is 3.003287%, as computed by Bond Counsel as shown on **Exhibit A**.

Section 3.14. Miscellaneous Arbitrage Matters.

(a) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Agency or the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) *No Over-Issuance.* The sale proceeds of the Bonds, together with expected Investment earnings thereon and other money contributed by the Agency and the City, do not exceed the cost of the governmental purpose of the Bonds as described above.

Section 3.15. Conclusion. On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the Agency and the City do not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an "arbitrage bond" within the meaning of Code § 148 and the Regulations.

ARTICLE IV

POST-ISSUANCE TAX REQUIREMENTS, POLICIES AND PROCEDURES

Section 4.1. General.

(a) *Purpose of Article.* The purpose of this Article is to set out specific policies and procedures governing compliance with the federal income tax requirements that apply after the Bonds are issued. The Agency and the City recognize that interest on the Bonds will remain excludable from gross income only if Post-Issuance Tax Requirements are followed after the Issue Date. The Agency and the City further acknowledge that written evidence substantiating compliance with Post-Issuance Tax Requirements must be retained in order to permit the Bonds to be refinanced with tax-exempt obligations and substantiate the position that interest on the Bonds is exempt from gross income in the event of an audit of the Bonds by the IRS.

(b) *Written Policies and Procedures of the Agency and the City.* The Agency and the City intend for the Tax Compliance Procedure to be the primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Bonds and to supplement any other formal policies and procedures related to tax compliance that the Agency or the City has established. The City will cooperate with the Agency to the extent necessary to carry out the Post Issuance Tax Requirements. The provisions of this Tax Agreement are intended to be consistent with the Tax Compliance Procedure. In the event of any inconsistency between the Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.

(c) *Bond Compliance Officer.* The Bond Compliance Officer will be responsible for working with the City and other Agency officials, departments and administrators and for consulting with Bond Counsel, other legal counsel and outside experts to the extent necessary to comply with the Post-Issuance Tax Requirements.

(d) *Costs.* The costs and expenses incurred by the Agency shall be treated as a reasonable cost of administering the Bonds and the Agency shall be entitled to reimbursement and recovery of its costs to the same extent as provided in the Resolution or State law.

Section 4.2. Record Keeping; Use of Bond Proceeds and Use of Financed Facilities.

(a) *Record Keeping.* The Bond Compliance Officer will maintain the Tax-Exempt Bond File for the Bonds in accordance with the Tax Compliance Procedure. Unless otherwise specifically instructed in an Opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Bond Compliance Officer shall retain records related to Post-Issuance Tax Requirements until 3 years following the final maturity of the Bonds or any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the Agency and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Agency's premises.

(b) *Accounting and Allocation of Bond Proceeds to Expenditures.* Bond proceeds will be used as described in **Section 3.5** hereof. The Bond Compliance Officer will, as part of the Tax-Exempt Bond File, account for the investment and expenditure of Bond proceeds in the level of detail required by the Tax Compliance Procedure. The expected allocation of Bond proceeds to expenditures for the Financed Facilities is summarized on **Exhibit D**. In connection with long-term financing for the Project, the Bond Compliance Officer will supplement this expected allocation with a final allocation, as required by the Tax Compliance Procedure.

(c) *Annual Compliance Checklist.* In connection with long-term financing for the Project, the Bond Compliance Officer will prepare and complete an annual compliance checklist for the Financed Facilities at least annually in accordance with the Tax Compliance Procedure. In the event the annual compliance checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Bond Compliance Officer will take the actions identified in an Opinion of Bond Counsel or the Tax Compliance Procedure to correct any deficiency.

(d) *Opinions of Bond Counsel.* The Bond Compliance Officer is responsible for obtaining and delivering to the Agency and the City any Opinion of Bond Counsel required under the provisions of this Tax Agreement.

Section 4.3. Temporary Periods/Yield Restriction. Except as described below, Gross Proceeds will not be invested at a Yield greater than the Yield on the Bonds:

(a) *Project Fund; Costs of Issuance Account.* Bond proceeds deposited in the Project Fund or Costs of Issuance Account, and investment earnings on such proceeds, may be invested without yield restriction for three years after the Issue Date. If any unspent proceeds remain in these accounts after three years, such amounts may continue to be invested without yield restriction so long as the Agency pays to the IRS all yield reduction payments in accordance with Regulations § 1.148-5(c). These payments are required whether or not the Bonds are exempt from the arbitrage rebate requirements of Code § 148.

(b) *Debt Service Account.* To the extent that the Debt Service Account qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for one year after the date of receipt of such earnings.

(c) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

Section 4.4. Fair Market Value.

(a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

(b) *Established Securities Market.* Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair

market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

(c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a “CD”) is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) *Guaranteed Investment Contracts.* The Agency is applying Regulations § 1.148-5(d)(6)(iii)(A) as amended by the Proposed Regulations (relating to electronic bidding of Guaranteed Investment Contracts) to the Bonds. The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. The Agency makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Agency or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the Agency or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the Agency’s reasonably expected deposit and draw-down schedule for the amounts to be invested.

(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(G) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(A) At least three bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest Yielding bona fide bid (determined net of any broker’s fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The Agency retains the following records with the bond documents until three years after the last outstanding Bond is redeemed:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Agency, and the certification as to fees paid, described in paragraph (d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(e) *Other Investments*. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (e.g., as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

Section 4.5. Certain Gross Proceeds Exempt from the Rebate Requirement.

(a) *General.* A portion of the Gross Proceeds of the Bonds may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds of the Bonds and will not otherwise affect the application of the Investment limitations described in **Section 4.3**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.6** applies even if a portion of the Gross Proceeds of the Bonds is exempt from the rebate requirement. To the extent all or a portion of the Bonds is exempt from rebate, the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.6**.

(b) *Applicable Spending Exceptions.* The following optional rebate spending exceptions can apply to the Bonds:

6-month Exception (Code § 148(f)(4)(B) and Regulations § 1.148-7(c)), and
18-month Exception (Regulations § 1.148-7(d)).

(c) *Special Elections Made with Respect to Spending Exception Elections.* No special elections are being made in connection with the application of the spending exceptions. At any time prior to the first Computation Date, the Agency may engage the Rebate Analyst to determine whether a spending exception has been satisfied.

(d) *Bona Fide Debt Service Fund.* To the extent that the Debt Service Account qualifies as a Bona Fide Debt Service Fund, Investment earnings in the account cannot be taken into account in computing arbitrage rebate for any year if the earnings thereon do not exceed \$100,000 for that year.

(e) *General Requirements for Spending Exception.* The following general requirements apply in determining whether the spending exception is met.

(1) Using Adjusted Gross Proceeds to pay principal of any Bonds is not taken into account as expenditure for purposes of meeting any of the spending tests.

(2) The six-month spending exception generally is met if all Adjusted Gross Proceeds are spent within six months following the Issue Date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial six-month period, so long as this amount is spent within one year of the Issue Date.

(3) The 18-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent in accordance with the following schedule:

Time Period After the Issue Date	Minimum Percentage of Adjusted Gross Proceeds Spent
6 months	15%
12 months	60%
18 months (Final)	100%

(4) For purposes of applying the 18-month spending exception only, the failure to satisfy the **final** spending requirement is disregarded if the Agency uses due diligence to complete the Financed Facilities and the failure does not exceed the lesser of 3% of the aggregate issue price the Bonds or \$250,000.

(5) For purposes of applying the 18-month spending exceptions only, the Bonds meet the spending test even if, at the end of the **final** spending period, proceeds not exceeding a Reasonable Retainage remain unspent, so long as such Reasonable Retainage is spent within 30 months after the Issue Date.

Section 4.6. Computation and Payment of Arbitrage Rebate.

(a) *Computation of Rebate Amount.* The Agency will provide the Rebate Analyst Investment reports relating to each fund or account that contains Gross Proceeds of the Bonds not later than ten days following each Computation Date. Each Investment report provided to the Rebate Analyst will contain a record of each Investment, including (1) purchase date, (2) purchase price, (3) information establishing the fair market value on the date such Investment was allocated to the Bonds, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) frequency of interest payments, (8) disposition price, (9) any accrued interest received, and (10) disposition date. Such records may be supplied in electronic form. The Rebate Analyst will compute rebate following each Computation Date and deliver a written report to the Agency, together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals.

(b) *Rebate Payments.* Within 60 days after each Computation Date, the Agency must pay to the United States the rebate amount then due, determined in accordance with the Regulations. Each payment must be (1) accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations, and (2) mailed or delivered to the IRS at the address shown below, or to such other location as the IRS may direct:

Internal Revenue Service Center
Ogden, UT 84201

Section 4.7. Successor Rebate Analyst. If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if the Agency desires that a different firm act as the Rebate Analyst, then the Agency, by an instrument or concurrent instruments in writing delivered to the firm then serving as the Rebate Analyst and any other party to this Tax Agreement, will engage a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel or a firm of independent certified public accountants and such firm must expressly agree to undertake the responsibilities assigned to the Rebate Analyst hereunder.

Section 4.8. Rebate Report Records. The Agency will retain copies of each arbitrage rebate report and opinion until three years after the final Computation Date.

Section 4.9. Filing Requirements. The Agency will file or cause to be filed with the IRS such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel.

Section 4.10. Survival after Defeasance. Notwithstanding anything in the Resolution to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Bonds.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1. Term of Tax Agreement. This Tax Agreement will be effective concurrently with the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Bonds have been fully paid and all such Bonds are cancelled; provided that, the provisions of **Section 4.6** of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States and the provisions in **Section 4.2** relating to record keeping shall continue in force for the period described therein for records to be retained.

Section 5.2. Amendments. This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Bondowners, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then-existing law, assuming compliance with this Tax Agreement as so amended such amendment will not cause interest on any Bond to be included in gross income for federal income tax purposes. No such amendment will become effective until the Agency and the, the City receive this Opinion of Bond Counsel.

Section 5.3. Opinion of Bond Counsel. The Agency and the City may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel addressed to each of them to the effect that the proposed deviation will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Agency and the City will comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds.

Section 5.4. Reliance. In delivering this Tax Agreement the Agency and the City are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. Neither the Agency nor the City is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Agreement understand that their certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its

opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

Section 5.5. Severability. If any provision in this Tax Agreement or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

Section 5.6. Benefit of Agreement. This Tax Agreement is binding upon the Agency and the City and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Bonds. Nothing in this Tax Agreement or in the Resolution or the Bonds, express or implied, gives to any person, other than the parties to this Tax Agreement, and their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement.

Section 5.7. Default; Breach and Enforcement. Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement may be pursued by the Bondowners or the other party or parties to this Tax Agreement pursuant to the terms of the Resolution or any other document which references this Tax Agreement and gives remedies for a misrepresentation or breach thereof.

Section 5.8. Execution in Counterparts. This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

Section 5.9. Governing Law. This Tax Agreement will be governed by and construed in accordance with the laws of the State of Kansas.

Section 5.10. Electronic Transactions. The parties agree that the transaction described in this Tax Agreement may be conducted, and related documents may be stored, by electronic means.

The parties to this Tax Agreement have caused this Tax Compliance Agreement to be duly executed by their duly authorized officers as of the Issue Date of the Bonds.

KANSAS MUNICIPAL ENERGY AGENCY

By: _____
Title:

By: _____
Title:

CITY OF GARDEN CITY, KANSAS

By: _____
Title:

By: _____
Title:

EXHIBIT A

DEBT SERVICE SCHEDULE AND PROOF OF BOND YIELD

\$5,000,000.00
Kansas Municipal Energy Agency
Revenue Bonds, Series 2013A

Schedule of Bond Payments

Payment Date	Amort. Pmt. No.	Interest Rate	Payments			Principal Balance	Bond Years
			Interest	Principal	Total		
6/27/2013	-					\$ 5,000,000.00	-
12/1/2013	1	3.000%	64,166.67	5,000,000.00	5,064,166.67	-	2,138.889
Total			64,166.67	5,000,000.00	5,064,166.67		2,138.889

Bond Statistics			
Principal amount	\$ 5,000,000.00	Day-Count Method	30/360
Interest rate	3.000%	Computed Payment Amount	\$5,150,000.00
Dated date	6/27/2013	Actual Payment Amount	\$5,150,000.00
Issue date	6/27/2013	Days of accrued interest	-
First interest payment	12/1/2013	Accrued interest	\$0.00
First principal payment	12/1/2013	Bond years	2,138.889
Last payment	12/1/2013		
No. of principal payments per year	1	Weighted avg. maturity (years)	0.4278
Total no. of principal payments	1	Bond yield	3.003239%
Denomination	0.01	Net interest cost	3.000000%

\$5,000,000.00
Kansas Municipal Energy Agency
Revenue Bonds, Series 2013A

Proof of Arbitrage Yield

Payment Date	Days After Closing	Bond Payments	Pres. Val. Factor 3.00324%	Present Value to 6/27/2013
6/27/2013	-	-	1.0000000	-
12/1/2013	154	5,064,166.67	0.9873293	5,000,000.00
Total		5,064,166.67		5,000,000.00

Yield Target Amount:

Principal	5,000,000.00
Original issue premium/discount	-
Sale proceeds	5,000,000.00
Accrued interest	-
Total	5,000,000.00

Difference (0.00)

Bond yield 3.0032387%

EXHIBIT B

IRS FORM 8038-G

Part VI Miscellaneous

- | | | |
|------------|--|--|
| 35 | | |
| 36a | | |
| 37 | | |
- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)
- b** Enter the final maturity date of the GIC ▶ _____
- c** Enter the name of the GIC provider ▶ _____
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box and enter the following information:
- b** Enter the date of the master pool obligation ▶ _____
- c** Enter the EIN of the issuer of the master pool obligation ▶ _____
- d** Enter the name of the issuer of the master pool obligation ▶ _____
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶
- 41a** If the issuer has identified a hedge, check here and enter the following information:
- b** Name of hedge provider ▶ _____
- c** Type of hedge ▶ _____
- d** Term of hedge ▶ _____
- 42** If the issuer has superintegrated the hedge, check box ▶
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ▶
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box ▶
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here and enter the amount of reimbursement ▶ 409,955.76
- b** Enter the date the official intent was adopted ▶ 03/01/2013

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 that I have authorized above.				
	Signature of issuer's authorized representative ▶ _____ Date ▶ <u>June 26, 2013</u>	Greg DuMars, President Type or print name and title			
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Sarah O. Steele		June 26, 2013		P01080535
	Firm's name ▶ <u>Gilmore & Bell, P.C.</u>			Firm's EIN ▶ <u>43-1611738</u>	
Firm's address ▶ <u>2405 Grand Boulevard, Suite 1100, Kansas City, MO 64108</u>			Phone no. <u>816-221-1000</u>		

ATTACHMENT TO IRS FORM 8038-G:

Issuer Name: Kansas Municipal Energy Agency
Issuer EIN: 48-0879434

\$5,000,000
Kansas Municipal Energy Agency
Revenue Bonds
Series 2013A

PART II: Type of Issue

Form 8038-G Line Number	User Name	Employer Identification Number	Governmental or Nongovernmental Entity	Summary of Use
17	Garden City, Kansas	48-6009982	Governmental	User/recipient of output of the financed project

EXHIBIT C

OFFICIAL INTENT

[SEE TAB 1]

EXHIBIT D

DESCRIPTION OF PROPERTY COMPRISING THE FINANCED FACILITIES

The Bonds are being issued to provide short-term financing for certain costs associated with the acquisition and installation of three (3) Siemens SGT-400 gas turbine generators to be located within Garden City, Kansas.

SCHEDULE 2.2

LIST OF EXPENDITURES REIMBURSED FROM BOND PROCEEDS

**Payment Schedule
Jameson Energy Center**

<u>Payee Name</u>	<u>Payee Address</u>	<u>Purpose or Nature of Payment</u>	<u>Amount</u>
Amounts paid by KMEA:			
Sawvel & Associates, Inc.	100 E. Main Cross St. Ste. 300 Findlay, OH 45840-4889	Consulting Services	\$49,375.94
KS Depart of Health & Enviro	1000 SW Jackson, Suite 310 Topeka, KS 66612-1366	Air permit	\$4,000.00
Card Services - UMB	P.O. Box 875852 Kansas City, MO 64187-5852	Poehling Travel - UK & Houston	\$2,909.78
Sega, Inc.	P.O. Box 801107 Kansas City, MO 64180-1107	Balance of Plant - Eng., Proc & Const.	\$165,213.44
Columbia Capital	6330 Lamar Avenue Suite 200 Overland Park, KS 66202	Financial Advisor	\$1,232.00
Lutz, Daily & Brain, LLC	6400 Glenwood, Suite 200 Overland Park, KS 66202	Owner's Engineer	\$180,872.10
Jennings Strouss & Salmon, PLC	One East Washington Street, Suite 1900 Phoenix, AZ 85004-2554	Legal	\$6,352.50
Total Amount to be reimbursed to KMEA			\$409,955.76
UMB	1010 Grand Boulevard Kansas City, MO 64106	Placement Agency Fees	\$20,000.00
Siemens Energy, Inc.	10730 Telge Road Houston, TX 77095	5% of Contract for SCT-400 Mobile Units	\$1,325,000.00
Total			<u>\$1,754,955.76</u>

Agency Operations
General Ledger
For the Period From Jan 1, 2013 to May 31, 2013

Agency Operations
General Ledger
From January 1, 2013 to June 24, 2013

Account ID	Account Description	Date	Reference	Jrnl	Trans Description	Debit Amt	Balance
246900	A/R - Garden City Project Cost	1/1/13			Beginning Balance		
246900	A/R - Garden City Project Cost	1/14/13	Sawvel - 1/14/12	SJ	Garden City Project Costs	11,121.67	
246900	A/R - Garden City Project Cost	1/31/13	KDH&E - Air Permit	SJ	Garden City Project Costs	4,000.00	
246900	A/R - Garden City Project Cost				Current Period Change	15,121.67	15,121.67
246900	A/R - Garden City Project Cost	2/1/13			Beginning Balance		15,121.67
246900	A/R - Garden City Project Cost	2/13/13	Travel Poehling	SJ	Garden City Project Costs	1,805.80	
246900	A/R - Garden City Project Cost	2/18/13	Sawvel 2/18/13	SJ	Garden City Project Costs	18,681.07	
246900	A/R - Garden City Project Cost	2/18/13	Sega 021481	SJ	Garden City Project Costs	19,476.81	
246900	A/R - Garden City Project Cost	2/25/13	Columbia Cap 1314900	SJ	Garden City Project Costs	1,232.00	
246900	A/R - Garden City Project Cost				Current Period Change	41,195.68	41,195.68
246900	A/R - Garden City Project Cost	3/1/13			Beginning Balance		56,317.35
246900	A/R - Garden City Project Cost	3/1/13	Sega 021492	SJ	Garden City Project Costs	10,400.00	
246900	A/R - Garden City Project Cost	3/13/13	Sawvel - Feb srv	SJ	Garden City Project Costs	6,594.82	
246900	A/R - Garden City Project Cost	3/13/13	Poehling - Travel	SJ	Garden City Project Costs	1,103.98	
246900	A/R - Garden City Project Cost	3/18/13	Sega Sherman & Tolma	SJ	Garden City Project Costs	24,586.33	
246900	A/R - Garden City Project Cost	3/20/13	Sega - Air Permit	SJ	Garden City Project Costs	4,600.00	
246900	A/R - Garden City Project Cost	3/27/13	LD&B Inv 1 - Task 1	SJ	Garden City Project Costs	78,143.81	
246900	A/R - Garden City Project Cost	3/27/13	LD&B Inv 1 - Task 2	SJ	Garden City Project Costs	38,076.56	
246900	A/R - Garden City Project Cost				Current Period Change	163,505.50	163,505.50
246900	A/R - Garden City Project Cost	4/1/13			Beginning Balance		219,822.85
246900	A/R - Garden City Project Cost	4/1/13	Sega Inc 021957	SJ	Garden City Project Costs	1,000.00	
246900	A/R - Garden City Project Cost	4/11/13	Sega - Air Permit 4-	SJ	Garden City Project Costs	4,000.00	
246900	A/R - Garden City Project Cost	4/18/13	Sega - 021848	SJ	Garden City Project Costs	6,417.50	
246900	A/R - Garden City Project Cost	4/18/13	Sega - 021859	SJ	Garden City Project Costs	85,078.20	
246900	A/R - Garden City Project Cost	4/30/13	LD&B - April Srv	SJ	Garden City Project Costs	59,721.27	
246900	A/R - Garden City Project Cost				Current Period Change	156,216.97	156,216.97
246900	A/R - Garden City Project Cost	5/1/13			Beginning Balance		376,039.82
246900	A/R - Garden City Project Cost	5/17/13	Jnngs Strss 482504	SJ	Garden City Project Costs	6,352.50	
246900	A/R - Garden City Project Cost	5/20/13	Sawvel-0701	SJ	Garden City Project Costs	2,709.80	
246900	A/R - Garden City Project Cost	5/22/13	Sega Inv 022018	SJ	Garden City Project Costs	5,654.60	
246900	A/R - Garden City Project Cost	5/29/13	Lutz,Daily,Brain -3	SJ	Garden City Project Costs	4,930.46	
246900	A/R - Garden City Project Cost				Current Period Change	19,647.36	19,647.36
246900	A/R - Garden City Project Cost	6/1/13			Beginning Balance		395,687.18
246900	A/R - Garden City Project Cost	6/10/13	Sawvel May	SJ	Garden City Project Costs	10,268.58	
246900	A/R - Garden City Project Cost	6/12/13	Sega 022139	SJ	Garden City Project Costs	4,000.00	
246900	A/R - Garden City Project Cost				Current Period Change	14,268.58	14,268.58
		6/30/13			Ending Balance		409,955.76