RESOLUTION NO. 2009-29

A RESOLUTION ADOPTING POLICY AND PROCEDURES FOR COMPLIANCE OF THE ARBITRAGE REBATE REQUIREMENTS FOR REFINANCING OF ELECTRIC REVENUE REFUNDING BONDS, SERIES 2009.

WHEREAS, the City's Bond Council has recommended the adoption of a policy and procedures for compliance of the "Arbitrage Rebate Requirements" for refinancing of the Electric Revenue Refunding Bonds, Series 2009.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wayne, Nebraska, that the proposed "Arbitrage Rebate Requirements Policy", which is attached hereto, is hereby approved, and shall be effective upon the passage of this Resolution.

APPROVED AND ADOPTED this 7th day of April, 2009.

THE CITY OF WAYNE, NEBRASKA,

By________________________________

Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM AND CONTENT:

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City Attorney

CITY OF WAYNE, NEBRASKA

ARBITRAGE REBATE REQUIREMENTS POLICY

Electric Revenue Refunding Bonds, Series 2009

Rebate Instructions

This letter sets forth basic instructions to the City regarding the investment of funds deposited in the various accounts under Ordinance No. 2009-2 passed and approved by the Mayor and Council of the City on February 17, 2009 (the "Ordinance"). The purpose of these instructions is to provide summary guidance concerning investments and payment of rebates with respect to the 2009 Bonds under arbitrage limitations and rebate requirements provided for in Sections 103(b) and 148 of the Internal Revenue Code of 1986, as amended (the "Code").

Under the Ordinance, the City is required to provide for payments of principal and interest on the 2009 Bonds from the revenues of its electric system. Under the terms of the Ordinance the following accounts are required: Operation and Maintenance Account, Bond Payment Account, 2009 Debt Service Reserve Account and Surplus Account. It is our understanding of the requirements of the Ordinance that only the Bond Payment Account and the 2009 Debt Service Reserve Account are to have funds or investments on hand which, if the City encountered financial difficulties, could be reasonably expected or are required to have amounts available for payment of the 2009 Bonds. All of the proceeds of the 2009 Bonds are to be applied to the payment of outstanding bonds. The following instructions apply to the respective accounts referred to above:

1. Monies in the Bond Payment Account may be invested without yield restriction. Such monies should not exceed amounts which are to be expended for the payments on the 2009 Bonds within thirteen months from the time of receipt by or on behalf of the City. Carry-over amounts should not be allowed to accumulate in an amount in excess of one-twelfth (1/12) of the principal and interest payments for the immediate prior bond year.

2. All of the proceeds of the 2009 Bonds are being expended immediately to pay outstanding bonds and will not result in any investment earnings.

3. With respect to monies or investments in the 2009 Debt Service Reserve Account in accordance with the terms of the Ordinance, such monies may be invested without yield restriction (as a reasonably required reserve or minor portion) but any earnings on such monies will be subject to the rebate requirements of Section 148 of the Code. Investment earnings on monies in such account should not be accumulated in a manner which increases the amount held in the account to an amount in excess of the required amount ($153,500 as set forth in the Certificate with Respect to Tax Matters for the 2009 Bonds) and referred to in this letter as the "Reserve Requirement". So long as the Reserve Requirement is being maintained in accordance with the requirements of the Ordinance, investment earnings on amounts in the 2009 Debt Service Reserve Account should be commingled with other electric system funds and applied to general operating costs.

In connection with the rebate requirements of Section 148 of the Code, we advise as follows:

1. Regulations have been promulgated under Section 148 by the United States Department of Treasury consisting of Regulation Sections 1.148-0 through 1.148-11 (the "Regulations"). A copy of Section 148 of the Code and the current Regulations is attached to this letter. In order to meet the requirements of the Regulations, it will be necessary for the City to keep detailed records of all investments and payments related to "nonpurpose investments." **Such detailed records will need to be made, kept and stored throughout the period when the 2009 Bonds are outstanding and for a period of six years after the final retirement of the 2009 Bonds.**
2. Under Section 148 of the Code, the amount which is required to be paid to the United States by the issuer is to be paid in installments which are to be made at least once every five years. Payment must be made for a selected computation date which is not later than five years after the issuance date for the first such computation date and each fifth anniversary of the initial computation date thereafter. The final computation date must coincide with the final retirement of the issue. All rebate payments are to be made not later than 60 days after their related computation date. Each installment is to be made in an amount which when added to the future value (as of the computation date) of all previous rebate payments made for the issue equals at least 90% of the rebate amount calculated to be due as of the computation date. The last installment of rebatable arbitrage is to be made no later than 60 days after the final computation date and shall be made in an amount sufficient, after taking into consideration all prior payments, to pay the entire rebate amount for such issue.
3. "Nonpurpose investments" are defined in Section 148 of the Code to include any investment property which: (i) is acquired with the gross proceeds of a bond issue; and (ii) is not acquired in order to carry out the governmental purpose of the issue. In such connection, "gross proceeds" of the 2009 Bonds will include amounts held in the 2009 Debt Service Reserve Account and investment earnings thereon.
4. For purposes of determining the aggregate amount earned on a "nonpurpose investment" any gain or loss on the disposition of the "nonpurpose investment" is to be taken into account. If any "nonpurpose investment" is retained after retirement of the 2009 Bonds, any unrealized gain or loss as of the date of retirement of the 2009 Bonds must be taken into account in calculating the aggregate amount earned on "nonpurpose investments," with such investments being treated as sold for value on the final maturity date. .
5. In addition to the foregoing general guidelines based upon the wording of Section 148 and the Regulations, we make the following suggestions as to matters of record keeping practice and investment: .

    a. **Recordkeeping on Investments**. In connection with each purchase or sale of investment securities exact records should be maintained. In determining payments and receipts certain qualified administrative costs, including separately stated brokerage and selling commissions, may be taken into account with respect to investments, if such costs are comparable to those on other comparable investments not-related to a tax exempt bond issue.

b. **Valuation of Investments**. The Regulations provide guidance on the valuing of certain kinds of common investments, including treasury securities and certificates of deposit:

(i) ***Treasury Securities***. For purposes of determination of rebatable arbitrage, securities prices are to be based upon fair market value under the Regulations. For any investment in an obligation of the United States, the price is to be determined based upon prices paid in a bona fide arms-length transaction without regard to any amount paid to reduce the yield on an obligation. As a precaution in connection with any purchase of obligations of the United States in the open market we would suggest that the City, acting through its broker or bank, provide for the obtaining of at least three bids and retain in its records information concerning each of the bids received. The City should request that copies of the records concerning such bidding be furnished to it.

(ii) ***Certificates* of *Deposit***. For certificates of deposit the purchase price of a certificate of deposit will be considered its fair market value under a safe harbor provision in the Regulations provided that the following conditions are satisfied:

(1) such certificate must have a fixed interest rate, a fixed principal payment schedule, a fixed maturity and a substantial penalty for early withdrawal;

(2) the yield on the certificate of deposit must not be less than the yield on a reasonably comparable direct obligation of the United States;

(3) the yield on the certificate must not be less than the highest yield that is published or posted by the provider on reasonably comparable certificates offered to the public.

If *either* certificates of deposit or United States Treasury Securities are selected as an investment vehicle we would suggest that appropriate records be kept of all supporting documentation including statements from the certificate of deposit issuers (see attached form) showing compliance with the foregoing described requirements.

c. **Selection of Bond Year**. Under the Regulations any day in the calendar year may be selected for purposes of determining the one year periods to be used in calculating rebatable arbitrage. The selection must be made by the issuer prior to that day which is five years after the issue date. Selecting the maturity date (June 15) as the date for such computations appears a logical choice although other considerations may make another date convenient. We would suggest that a determination as to selection of date be made no later than four years from the date of issuance of the 2009 Bonds. If no action for selection is taken, the date of issue (March 26) under the terms of the Regulations will automatically become the selected end date for each bond year.

d. **Establishing Procedures for Payment Under Regulation Section 1.148-4.** Under the Regulations, any allocation of the gross proceeds of an issue to an expenditure must involve a current outlay of cash for the governmental purpose of the issue. A current outlay of cash occurs under the Regulations when it *is* reasonably expected that the drawing of funds will occur not later than five banking days after the allocation. Procedures should be established to see that all checks for payments are delivered or mailed in such manner that it can be reasonably expected that the checks will be cashed no later than five banking days after the expenditure.