



City of Grand Island

Tuesday, June 25, 2002

Council Session

Item G17

#2002-186 - Approving Agreement to Join the Nebraska Habitat Conservation Coalition

The United States Fish and Wildlife Service (USF&W) has promulgated a wide ranging critical habitat designation for the Piping Plover. In Nebraska, this designation includes reaches of the Platte, Niobrara, Loup and Missouri Rivers. It also includes river reaches and lakes in North and South Dakota and Minnesota. A map of the Nebraska designation is attached.

Discussion:

This designation has the potential to greatly change the way water is used in the State, including the City's well field. The importance of the designation, and its possible effects on Nebraska water use, has been the catalyst to bring a number of organizations together as the Nebraska Habitat Conservation Coalition (NHCC). The group includes natural resource districts, power districts, irrigation districts and farm groups. Given this designation has the potential to affect the primary source of Grand Island's drinking water supply, the Well Field, the City should participate in the coalition. A copy of the Interlocal Agreement for the NHCC is attached.

Recommendation:

It is the recommendation of the Utilities Department that the City join the coalition, funding from Fund 525, Water Enterprise Fund.

Fiscal Effects:

Expenditure of \$3,000.00 annually for three years from Fund 525. There are sufficient funds available.

Alternatives:

Do not participate in the coalition. See attached RESOLUTION.

Staff Contact: Gary R. Mader

INTERLOCAL COOPERATION AGREEMENT

This Agreement is entered into by and between

Central Platte Natural Resources District
Lower Loup Natural Resources District
Lower Elkhorn Natural Resources District
Upper Big Blue Natural Resources District
Loup Public Power District
Nebraska Public Power District
The Central Nebraska Public Power and Irrigation District
Twin Platte Natural Resources District
North Platte Natural Resources District
Twin Loups Reclamation District
Upper Loup Natural Resources District
Upper Elkhorn Natural Resources District
Lower Platte North Natural Resources District
Tri-Basin Natural Resources District
Southern Public Power District
Dawson Public Power District
Middle Loup Public Power and Irrigation District
North Loup River Public Power and Irrigation District
Farwell Irrigation District/Sargent Irrigation District
South Platte Natural Resources District
Lewis & Clark Natural Resources District
Papio-Missouri River Natural Resources District
City of Lexington

all of which are political subdivisions of and are situated in the State of Nebraska.

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO, EACH ACKNOWLEDGING THE RECEIPT OF GOOD, ADEQUATE, AND VALUABLE CONSIDERATION, AS FOLLOWS:

1. **AUTHORITY:** This Agreement is made and entered into by the parties pursuant to the authority conferred upon each under the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 through §13-827.

2. **COALITION:** The parties herewith and hereby create the Nebraska Habitat Conservation Coalition (hereinafter referred to as "COALITION"). The COALITION shall be governed by the terms hereof and shall be the instrument through which and by which the parties to this Agreement pursue the purposes described in this Agreement. The COALITION shall be an entity separate and distinct from the respective parties hereto, and no party hereto is the agent, employee or representative of the COALITION or any other party. The parties hereto agree that contracts entered into, obligations undertaken, and liabilities incurred by the COALITION shall be the separate contracts, obligations and liabilities of the COALITION, and not the contracts, obligations or liabilities of the respective parties hereto.

3. **PURPOSE:** The COALITION established hereby shall provide the authority, resources, services, studies, and facilities needed for the representation of the interests of the parties to this Agreement in proceedings before all agencies, tribunals, courts, and any administrative, legislative, executive, or judicial bodies concerning or affecting the designation of critical habitat for piping plovers in Nebraska by the U.S. Department of Interior, U.S. Fish & Wildlife Service and, to inform and educate the public concerning the proposed designation and the effects and impacts thereof on the people and resources of the State of Nebraska and to perform and pursue such other activities concerning such other matters related to critical habitat

designation in Nebraska as the COALITION may determine necessary and beneficial, including the support of alternatives to critical habitat designation for piping plovers (and least terns as appropriate). This Agreement shall provide the organizational and administrative structure and enumeration of the powers, privileges and authority of the financial cooperative effort and the COALITION. The powers, privileges and authorities of the COALITION shall not exceed those powers, privileges or authorities exercised or capable of being exercised by each of the parties to this Agreement, nor shall they be used in a manner that is in violation of any of the parties' public purposes.

4. BOARD OF DIRECTORS: The affairs, actions and conduct of the business of the COALITION shall be by a Board of Directors. Each member of the Board of Directors shall be entitled to one vote and the majority of the votes cast on any issue shall determine the issue, except where a higher percentage shall be specifically required by this Agreement or by-laws adopted by the Board. The Board of Directors shall be composed of 23 members, one each representing each of the parties to this Agreement. Each director and any designated alternate shall be duly and properly appointed by the respective governing bodies of each of the separate and individual parties to this Agreement, but it shall not be required that any director of the COALITION so appointed be a publicly elected member of the governing body of any party to this Agreement. Each Board member shall serve at the pleasure of his or her respective organization. Any vacancy, which occurs in the Board, shall be filled within 60 days through the appointment of a replacement by the represented party. Members of the Board of Directors shall select from their membership a Chairman, Vice Chairman, and Secretary/Treasurer. The Board of Directors shall exercise authority over the COALITION in accordance with applicable laws and shall set the policy, and shall delegate executive, supervisory and organizational authority to its officers and committees. Meetings of the Board of Directors shall be conducted at least annually and at such other frequent times as may be required by the business of the COALITION. A majority, i.e. 12 of the members of the Board of Directors shall constitute a quorum for the transaction of business. A lesser number in attendance at any meeting shall have power to adjourn.

5. CHAIRMAN, VICE CHAIRMAN, AND SECRETARY/TREASURER: The Chairman shall preside at all the meetings of the Board of Directors, shall decide all questions of order, with advice of the Board appoint the members to all committees except the executive committee, be an ex-officio member of all committees, and have such general powers and duties of supervision and management as shall be necessary and germane or required for the execution and prosecution of the affairs of the COALITION. The Vice Chairman shall serve in the absence of the Chairman and in the Chairman's absence shall have all of the powers and duties of the Chairman and shall have such other powers and duties as the Chairman or Board of Directors shall from time to time delegate to the Vice Chairman. The Secretary/Treasurer to the Board shall keep minutes of all meetings conducted by the COALITION, and shall be the keeper of the records of the COALITION. The Secretary/Treasurer shall prepare and submit in writing a monthly report of the state of the finances of the COALITION and pay COALITION money only upon authorization signed by the chairman of the Board or in the absence of the Chairman by the Vice Chairman. Payment of all accounts after authorization shall be made on check signed by the Secretary/Treasurer. The Secretary/Treasurer shall serve without bond. In addition to the foregoing, the officers shall have such other and additional duties, powers, privileges and authority as the Board of Directors may, in by-laws or otherwise, determine appropriate or necessary and by Board action delegate or direct.

6. COMMITTEES: The Board of Directors or the Chairman shall have the power to establish such committees as may be necessary, appropriate or beneficial to the conduct of the affairs of the COALITION. Such committees shall have such powers, duties and authorities as shall be delegated to it by the Board of Directors, which powers, duties, and authorities shall not be inconsistent with or exceed those powers and duties granted to the COALITION under this Agreement. The Board of Directors and the Chairman are authorized to designate from its members an executive committee which shall consist of the COALITION'S Chairman, Vice

Chairman, Secretary/Treasurer and the Chairmen of the various committees established by the Board, which executive committee shall have and may exercise only such powers and authorities as are delegated to it by the Board of Directors. The designation of any committees and the delegation thereto of authority shall not operate to relieve the Board of Directors or any member thereof of any responsibility imposed by this Agreement nor shall the Board of Directors delegate to any committee the authority to set policy or to make expenditures on behalf of the COALITION. Any committee established by the Chairman shall be approved by the Board at its next meeting.

7. POWERS: The COALITION shall have all the powers, privileges and authority exercised or capable of being exercised by each of the individual and separate parties to this Agreement to achieve the purposes of the COALITION as set forth in this Agreement. Such powers, privileges and authority shall include but not be limited to, the power, privilege and authority to:

(a) Receive and accept donations, gifts, grants, bequests, appropriations or other contributions or assistance in monies, services, materials or otherwise from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any persons, and to use or expend all such contributions in carrying on its operations.

(b) Establish advisory groups by appointing individuals from among the parties to this Agreement and pay necessary and proper expenses of such groups as the Board shall determine, and dissolve such groups.

(c) Employ such persons as are necessary to carry out the purposes of the COALITION and this Agreement and to pay the necessary and proper expenses of said persons.

(d) Adopt and promulgate rules and regulations to carry out the purposes of the COALITION and this Agreement.

(e) Establish such committees as are necessary to carry out the purposes of the COALITION and this Agreement and to pay the necessary and proper expenses of such committee.

(f) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(g) From time to time to make, amend and repeal by-laws, rules and regulations to carry out and effectuate its powers and purposes, which by-laws, rules and regulations shall not be inconsistent with the Interlocal Cooperation Act or this Agreement.

The foregoing clauses shall be construed both as objects and powers but no recitation, expression or declaration as to such specific powers herein enumerated shall be deemed to be exclusive and it is hereby expressly declared that all other lawful power conferred upon each of the individual and separate parties to this Agreement not inconsistent with the authorization given under the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 through §13-827 are hereby included. As used in this Agreement the term "persons" shall have the same meaning as used in Neb. Rev. Stat. §49-801(16). Provided further nothing in this Agreement shall operate to relieve any party hereto of any obligation or responsibility imposed upon it by law nor shall this Agreement or its operation preclude any party hereto from conducting or pursuing independent action in regard to each party's separate and independent obligations or responsibilities.

8. DURATION: The COALITION shall commence business from and after the date on which the parties to this Agreement have executed this Agreement and the COALITION and this Agreement shall continue in existence until the completion of all proceedings including appeals and remands from appeals affecting or concerning the designation of critical habitat within

Nebraska in any agency, court, tribunal, or administrative, legislative, executive or judicial body within or outside the State of Nebraska.

9. **FINANCES AND BUDGET:** Annually or at such other frequent intervals as the Board of Directors of the COALITION may determine, each of the parties hereto shall contribute such funds as are necessary to conduct the operations and to pursue the purposes of the COALITION and the purposes and objects of this Agreement as provided hereinafter in this Section 9. Each of the entities hereto irrevocably commit the following funds to the initial operation of the COALITION:

<u>Party</u>	<u>1st Year Contribution</u>	<u>3 Year – Maximum Contribution</u>
Central Platte Natural Resources District	\$5,000.00	\$15,000.00
Lower Loup Natural Resources District	\$5,000.00	\$15,000.00
Lower Elkhorn Natural Resources District	\$5,000.00	\$15,000.00
Upper Big Blue Natural Resources District	\$5,000.00	\$15,000.00
Loup Public Power District	\$5,000.00	\$15,000.00
Nebraska Public Power District	\$5,000.00*	\$15,000.00*
The Central Nebraska Public Power and Irrigation District	\$5,000.00*	\$15,000.00*
Twin Platte Natural Resources District	\$4,000.00	\$12,000.00
North Platte Natural Resources District	\$4,000.00	\$12,000.00
Twin Loups Reclamation District	\$3,000.00	\$ 9,000.00
Upper Loup Natural Resources District	\$2,000.00	\$ 6,000.00
Upper Elkhorn Natural Resources District	\$2,000.00	\$ 6,000.00
Lower Platte North Natural Resources District	\$5,000.00	\$15,000.00
Tri-Basin Natural Resources District	\$4,000.00	\$12,000.00
Southern Public Power District	\$3,000.00	\$ 9,000.00
Dawson Public Power District	\$3,000.00	\$ 9,000.00
Middle Loup Public Power and Irrigation District	\$3,000.00	\$ 9,000.00
North Loup River Public Power and Irrigation District	\$3,000.00	\$ 9,000.00
Farwell Irrigation District/Sargent Irrigation District	\$3,000.00	\$ 9,000.00
South Platte Natural Resources District	\$2,000.00	\$ 6,000.00
Lewis & Clark Natural Resources District	\$2,000.00	\$ 6,000.00
Papio-Missouri River Natural Resources District	\$5,000.00	\$15,000.00
City of Lexington	\$2,000.00	\$ 6,000.00

* Up to \$2,000.00 provided as “in-kind” each year.

Annually, beginning no more than 30 days after the formation of the COALITION and commencement of business, and continuing each year thereafter during the existence of this COALITION, the Board of Directors shall establish and adopt a budget for the prosecution and completion of the work undertaken by the COALITION.

Concurrent with the establishment of the budget each year, the Board of Directors of the COALITION shall consult with each remaining party to this Agreement regarding their ability to contribute toward such funds as are necessary to conduct the operations and to pursue the purposes of the COALITION. Upon completion of the budget, the Board of Directors of the COALITION shall determine the assessment to be submitted to each remaining party to this Agreement and shall thereafter assess each of such parties for said amount. Upon receipt of the assessment, each remaining party shall have 60 days to pay the assessment or submit a written notice of withdrawal, in the event of such withdrawal the withdrawing party shall not be liable for the assessment imposed during the sixty days preceding the withdrawal. In addition, the Board of Directors shall be entitled to and shall have the power to solicit and obtain such contributions and other funds and monies as may be available to the COALITION from all persons, associations, and entities of any kind whatsoever including persons not a party to this Agreement.

10. WITHDRAWAL: Any party to this Agreement may withdraw from this Agreement and from representation on the COALITION upon written notification to the Chairman of the COALITION. Such withdrawal shall be effective upon receipt of the written notification. Any party withdrawing from the Agreement and from representation shall be entitled to immediately secure their own representation. Following withdrawal the withdrawn member shall no longer be a party to this Agreement, and the withdrawn member shall not be bound by this Agreement, except that (a) the withdrawn member shall not be entitled to any refund of any contribution or assessment previously paid to the efforts of the COALITION, and (b) the withdrawn member shall remain liable for its share of any costs properly approved and incurred (costs for labor and services are not considered incurred until the work has been performed for the COALITION) by the COALITION through the effective date and time of withdrawal to the extent such costs exceed all sums available to the COALITION through the date of withdrawal. Such share shall be determined in accordance with the allocation for the assessment of parties outlined in 9 above as of the date of the withdrawal notice. The parties agree that a withdrawn party shall not be liable or responsible for any costs, obligations or liabilities incurred by the COALITION after such party's withdrawal. In the event of such withdrawal, the COALITION shall make such adjustments as are necessary to the composition of its Board of Directors, and its future budgets and finances as are necessary to accommodate and continue the operation of the COALITION in the absence of such withdrawing member.

11. PARTIAL AND COMPLETE TERMINATION: This Agreement and the COALITION created hereby shall be terminated upon the earlier of the completion of its purposes and objects described herein or upon the vote of two-thirds of the then constituted Board of Directors for the complete or partial termination of the COALITION and this Agreement. At such time as two-thirds of the Board of Directors shall vote to terminate the COALITION and the Agreement, all outstanding debts and obligations of the COALITION shall be paid, all property acquired by the COALITION shall be disposed of by distribution of the same to the remaining members as represented by the Board of Directors and all unused funds and appropriations shall be returned to the then-remaining members as represented by the Board of Directors in such proportion as represented by the pro rata share paid by each member based upon the last contributions made by remaining members during the last assessment period preceding the date of termination.

12. AMENDMENT AND MODIFICATION: For all matters other than membership, this Agreement may be amended or modified upon the approval of written modifications by all then remaining parties hereto in a writing signed by and duly adopted and approved by the governing bodies of each of the remaining parties hereto.

13. CHANGE IN MEMBERSHIP: This Agreement may be amended or modified to increase or decrease its membership upon approval by 2/3rds vote of the members of the Board of Directors of the COALITION. Any additional new members shall be required to have the written approval of its governing body and shall have admission to membership in the COALITION and as a party hereto approved by a duly adopted resolution of its governing body.

14. APPROVAL: This Agreement shall be effective and the COALITION established hereby shall come into existence as soon as the governing bodies of the respective parties hereto shall have adopted resolutions approving and authorizing the execution of this Agreement and the establishment of the COALITION described herein at a duly called public meeting.

15. ADDITIONAL AND FURTHER CONTRACTS FOR SUPPORT AND MUTUAL ASSISTANCE: The COALITION is authorized and empowered to seek and obtain contracts, Agreements and other arrangements whereby the COALITION shall receive support and assistance for the purpose of pursuing its objects and purposes from such other entities as COALITION from time to time shall determine necessary or appropriate including, but not limited to, municipalities, for-profit and non-profit organizations, and all other persons as defined by Neb. Rev. Stat. §49-801(16). Provided, however, such contract shall not exceed any authority or

powers delegated to the COALITION by the parties to this Agreement and such contract shall not give rise to nor create any ability of any such third parties to participate in the management or operation of the COALITION. Provided further, that upon a majority vote of the then existing members of the Board of Directors of the COALITION, any person or entity providing support and mutual assistance may be allowed to appoint, for such period of time as the Board shall determine, a representative to the Board of Directors, which representative shall be a non-voting ex-officio member of the Board of Directors, but which representative shall be entitled to attend all meetings of the Board of Directors and to be appointed to such committees and attend such committee meetings as the Board of Directors shall determine.

16. INTEGRATION: This Agreement contains the entire agreement of the parties. No representations were made or relied upon by any party other than those expressly set forth herein. All prior and contemporaneous negotiations, discussions, memos and other writing are merged and incorporated herein, it being the intention of the parties that this be a final and full expression of their agreement. No agent, employee or other representative of any party hereto is empowered to alter any of the terms herein unless such alteration is done in writing and signed by all parties hereto.

17. ASSIGNMENT: No party hereto may assign its rights under this Agreement without the express written consent of all other parties as represented by the remaining Board of Directors at the time of the request for approval of the assignment.

IN WITNESS WHEREOF, the parties have signed and executed this agreement on the dates shown next to their respective signatures as follows.

CENTRAL PLATTE NATURAL RESOURCES DISTRICT

By _____ Date _____

LOWER LOUP NATURAL RESOURCES DISTRICT

By _____ Date _____

LOWER ELKHORN NATURAL RESOURCES DISTRICT

By _____ Date _____

UPPER BIG BLUE NATURAL RESOURCES DISTRICT

By _____ Date _____

LOUP PUBLIC POWER DISTRICT

By _____ Date _____

NEBRASKA PUBLIC POWER DISTRICT

By _____ Date _____

THE CENTRAL NEBRASKA PUBLIC POWER & IRRIGATION DISTRICT

By _____ Date _____

TWIN PLATTE NATURAL RESOURCES DISTRICT

By _____ Date _____

NORTH PLATTE NATURAL RESOURCES DISTRICT

By _____ Date _____

TWIN LOUPS RECLAMATION DISTRICT

By _____ Date _____

UPPER LOUP NATURAL RESOURCES DISTRICT

By _____ Date _____

UPPER ELKHORN NATURAL RESOURCES DISTRICT

By _____ Date _____

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT

By _____ Date _____

TRI-BASIN NATURAL RESOURCES DISTRICT

By _____ Date _____

SOUTHERN PUBLIC POWER DISTRICT

By _____ Date _____

DAWSON PUBLIC POWER DISTRICT

By _____ Date _____

MIDDLE LOUP PUBLIC POWER AND IRRIGATION DISTRICT

By _____ Date _____

NORTH LOUP RIVER PUBLIC POWER AND IRRIGATION DISTRICT

By _____ Date _____

FARWELL IRRIGATION DISTRICT/SARGENT IRRIGATION DISTRICT

By _____ Date _____

SOUTH PLATTE NATURAL RESOURCES DISTRICT

By _____ Date _____

LEWIS & CLARK NATURAL RESOURCES DISTRICT

By _____ Date _____

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

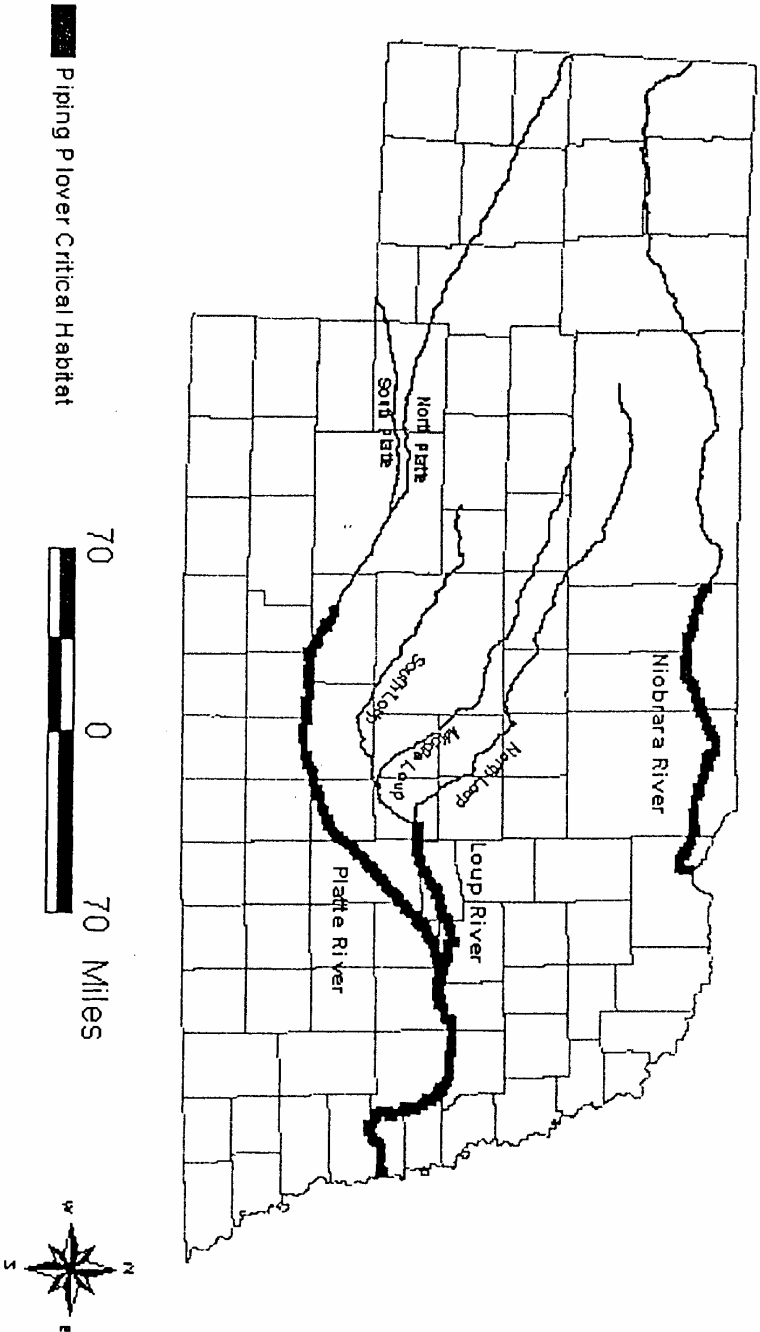
By _____ Date _____

CITY OF LEXINGTON

By _____ Date _____



Nebraska Piping Plover Critical Habitat



RESOLUTION 2002-186

WHEREAS, the United States Fish and Wildlife Service (USF&W) has promulgated a wide ranging critical habitat designation for the Piping Plover. In Nebraska, this designation includes reaches of the Platte, Niobrara, Loup and Missouri Rivers. It also includes river reaches and lakes in North and South Dakota and Minnesota; and

WHEREAS, this habitat designation has the potential to greatly change the way water is used in the state, including the City's well field; and

WHEREAS, the importance of the designation, and its possible effects on the Nebraska water use, has been the catalyst to bring a number of organizations together as the Nebraska Habitat Conservation Coalition (NHCC), which group includes natural resource districts, power districts, irrigation districts and farm groups; and

WHEREAS, because this habitat designation has the potential to affect the primary source of Grand Island's drinking water supply, the Platte River Wellfield, it is in the best interests that the City of Grand Island should participate as a member of the Coalition; and

WHEREAS, the office of the City Attorney has reviewed and approved as to form and content the Interlocal Agreement for NHCC members; and

WHEREAS, any application of the City for membership in the coalition requires submission of an application, and approval by a vote of two-thirds of the current coalition members.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the City apply for member in the Nebraska Habitat Conservation Coalition through the Utilities Department, and that the Mayor is hereby authorized to execute the application and the appropriately revised Interlocal Agreement upon approval of the City's application by current coalition members.

BE IT FURTHER RESOLVED, that an expenditure of \$3,000 annually for a period of three years for membership contributions is hereby approved and authorized.

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Adopted by the City Council of the City of Grand Island, Nebraska on June 25, 2002.

Approved as to Form ? _____ June 21, 2002 ? City Attorney
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RaNae Edwards, City Clerk

Approved as to Form ? _____
June 21, 2002 ? City Attorney