

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF MEETING
OF THE MAYOR AND CITY COUNCIL OF
THE CITY OF DAVID CITY, NEBRASKA**

The undersigned members of the governing body of the City of David City, Nebraska, hereby acknowledge receipt of advance notice of a special meeting of said body and the agenda for such meeting to be held at 6:30 o'clock p.m. on the **23rd day of May, 2018**, in the meeting room of the City Office, 557 North 4th Street, David City, Nebraska.

This agenda is available for public inspection in the office of the City Clerk and may be modified up to twenty-four hours prior to the opening of the meeting.

Dated this 18th day of May, 2018.

AGENDA AS FOLLOWS:

1. Roll Call;
2. Pledge of Allegiance;
3. Inform the Public about the location of the Open Meetings Act and the Citizens Participation Rules;
4. Consideration of adjourning the Council Meeting from May 9, 2018 which has been in recess;
5. Consideration of a Memo of Understanding with Timpte, Inc.;
6. Consideration of awarding a bid for the Wastewater Treatment Plant Improvements (WWTP);
7. Consideration of the Park Shelter and/or Restroom/Shower Facility;
8. Adjourn.

CITY COUNCIL PROCEEDINGS

May 23, 2018

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 North 4th Street, David City, Nebraska. The Public had been advised of the special meeting by publication of notice in The Banner Press on May 17th, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Alan Zavodny, Council members Gary Smith, Thomas Kobus, Dana Trowbridge, John Vandenberg, Kevin Hotovy, and Deputy City Clerk Tami Comte. Council member Pat Meysenburg, City Attorney Jim Egr and City Clerk/Interim City Administrator Joan Kovar were absent.

Also present for the meeting were: John Kabourek, Darci Betzen, Superintendent of Schools Chad Denker, Sewer Supervisor Travis Hays, and Park/Auditorium Supervisor Bill Buntgen.

The meeting opened with the Pledge of Allegiance.

Mayor Alan Zavodny informed the public of the "Open Meetings Act" posted on the east wall of the meeting room and asked those present to please silence their cell phones.

Council member Trowbridge made a motion to adjourn the May 9, 2018 City Council meeting which had been in recess. Council member Hotovy seconded the motion. Voting AYE: Council members Smith, Kobus, Hotovy, Vandenberg, and Trowbridge. Voting NAY: None. Council member Meysenburg was absent. The motion carried.

Mayor Zavodny said, "Subsequent to our meeting with the Council that Timpte was present at, we met, Councilman Trowbridge, myself, some Timpte people, N.P.P.D., Nebr. Dept. of Economic Development, and Mike Bacon. We talked about what they are thinking about. We are in competition with Kentucky, Ohio and Indiana for this. Some of their questions, which we have already started to work on, were the ability to provide clean energy, TIF is obviously what their needs might be in prioritizing. I did an initial letter to request consideration. One of the first things that they wanted was doing something with "S" Street to make that a little better intersection for them. Now we're in the application phase. We will be working with Timpte to get that filled out and submitted. The next day, Councilman Trowbridge went to a meeting that they had out at Timpte. Councilman Trowbridge, do you have anything to add to what I've laid out?"

Council member Trowbridge said, "It was more of plan setting. I think that the dye had been cast at that point in time that Mike Bacon was somebody that Dale Jones found great value in Mike's wisdom on TIF projects and development in Nebraska, in particular, and we went through what needed to happen for this project to begin and end in David City, Nebraska. Mike did a great job with that. There were assignments made. The mayor's work with the Department of Transportation on one of their issues and there are a couple of other issues that are not of great consequence that we can get through, TIF being the big one, and that's what brings us here this evening."

Mayor Zavodny said, "Real quick. I would ask for your help on this. As far as prioritizing, we don't know exactly yet what they want. They've made a huge commitment to us and we are obviously committed to them. But, looking ahead, some of the things that we would have to consider as a City are another street potentially going north."

Council member Trowbridge said, "The potential of a street going just to the west of the Niemann property and Burwell's and then back to the highway, giving them another way for their employees to access the plant and then doing the turn lanes at "S" Street and I don't know what they plan on doing on "O" Street, if anything could be done."

Mayor Zavodny said, "I don't think that anything can be done on "O" Street. When we did "O" Street last time, we had their input, and we have fiberoptics there and a lot of utilities. I think we've done what we can on "O" Street. They had asked, the day after our meeting, Connie called and asked what we could do on "O" Street. In my initial letter of intent that I had to do, I did put "O" Street. I said I don't know but I can ask but I think that we are probably limited there. We may have to look at something at the airport because that's one of the things

that they talked about. These are expenses that may even be passed us as Council have to consider but they talked about losing a 200 trailer order because Wilson Trailers was able to fly someone in and wine and dine them and show them importance. I thought the biggest factors in this was to have something of the scale that they are talking about in David City, it's kind of a shining example of what small towns can have and you don't expect this kind of facility and building structure in a small town."

Council member Trowbridge said, "The assessments that they've made with their clientele, in doing some research, indicates that their clientele finds value in the corporate headquarters being in a small rural community and we fit nicely. Lincoln was in the mix with Indiana and Kentucky because they did buy a plant in Lincoln in the past couple of years and across the street is a great big vacant area but I believe the Memorandum of Understanding this evening probably pretty much locks this up on coming our direction because they do want to start with earth work very quickly."

Mayor Zavodny said, "I think that we could probably do this the fastest of the places that they are looking at because we already have the blighted designation and some of the work done. So, without further ado, unless there's something else that you think we should add before proceeding."

Council member Trowbridge said, "No."

Mayor Zavodny said, "The next item is consideration of the memorandum of understanding and authorizing me to sign said document as you've had time to review."

Council member Hotovy made a motion to authorize Mayor Zavodny to sign the Memorandum of Understanding with Timpote, Inc. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Kobus, Trowbridge, Smith and Vandenberg. Voting NAY: None. Council member Meysenburg was absent. The motion carried.

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (the "**MOU**") is made and entered into this 23rd day of May, 2018, between the City of David City, Nebraska (the "**City**"), and Timpote, Inc., a Delaware corporation (the "**Company**").

WHEREAS, the Company has indicated an interest in developing certain real property in the City legally described on Exhibit "A" (the "**Property**") and constructing multiple buildings thereon (the "**Project**");

WHEREAS, upon completion, the Company intends to continue its operation at the Project and do business on the Property; and

WHEREAS, the City finds it in the public interest to consider any future request for tax increment financing (TIF) to promote the development of business activity in the City.

NOW, THEREFORE, the parties hereby set forth their understanding in regard to improvements that the Company will make prior to any approval of TIF but which shall be eligible for inclusion for reimbursement from the TIF bond issue:

1. *Definitions.* Capitalized terms used in this MOU shall have the meanings assigned herein.

2. *Company's Obligations.* Upon execution of this MOU, the Company may proceed with the following actions:

a. *Development of Project.* The Company agrees to use its best efforts to continue evaluation and development of the project and commence construction on the Project no later than August 1, 2018, subject to the City awarding Company TIF.

b. *Creation of Jobs.* The Company agrees to use its best efforts to create new jobs within the City.

c. *Site Preparation.* The Company may under undertake site preparation including, but not limited to, excavation, compaction other earth work.

3. *City's Obligations.* The Agency shall consider, after appropriate proceedings as required by law, authorizing a tax increment financing grant for the Project to pay costs eligible for reimbursement as redevelopment project costs as defined by Neb. Rev. Stat. 18-2103(27), including site preparation as authorized in Section 17 of LB 874 adopted by the Nebraska's 105th Legislature, Second Session in 2018. Such grant shall be payable only from Community Development Agency of the City from funds generated by the Property pursuant to Neb. Rev. Stat. 18-2147(1)(b). The City in entering into this MOU does not pre judge any action it may take regarding the award of such grant. The Company knowingly and intelligently accepts its own risk in undertaking site preparation prior to the City's approval of TIF.

4. *Economic Feasibility.* The Company has provided to the City written calculations which demonstrate that the Project is not financially feasible without TIF and would not occur at the Property without TIF. Neb. Rev. Stat. 18-2116(1) requires the City to make findings as follows if a TIF application requests the use of funds as described in Section 3 above: (i) the Project would not be economically feasible without the use of tax-increment financing, (ii) the Project would not occur in the City without the use of tax-increment financing. Due to the proposed construction schedule of the Project, the Company desires to begin site preparation on the Project immediately. The purpose of this MOU is to make clear the parties' intention to consider as eligible for TIF funding if, and only if, TIF is approved for the Project, even if site preparation commences prior to the approval of TIF by the City.

5. *Counterparts.* This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this MOU and all other agreements, certificates, instruments and other documents contemplated by this MOU and exchange the counterparts of such documents by means of facsimile transmission. The parties agree that the receipt of such executed counterpart shall be binding on such parties and shall be construed as originals.

6. *Governing Law.* This MOU shall be governed by the laws of the State of Nebraska.

CITY OF DAVID CITY, NEBRASKA

By : _____
Alan Zavodny, Mayor

Timpte, Inc.

By: _____
Dale D. Jones, President and CEO

Exhibit "A"
Legal Description

Parcel 1 and 2:

Lots One (1), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), and Thirteen (13), Block One (1), Schmid's Addition to the City of David City, Butler County, Nebraska.

Note: Subject to Leases for Part of Lot One (1)

- Lease executed by City of David City, Lessor to Nebraska Public Power District, Lessee dated February 11, 1981 and recorded March 26, 1981 in Book 81, Page 304; records of Butler County, Nebraska; leasing the land for a term of 99 years commencing February 11, 1981, assigned to Butler County Public Power District, recorded January 23, 2001, in Book 01, Page 108; records of Butler County, Nebraska.
- Lease executed by Ticor, Inc., Lessor to Nebraska Public Power District, Lessee dated March 3, 1981 and recorded March 26, 1981 in Book 81, Page 305; records of Butler County, Nebraska; leasing the land for a term of 99 years commencing March 3, 1981, assigned to Butler County Public Power District, recorded January 23, 2001, in Book 01, Page 108; records of Butler County, Nebraska.

Parcel 3:

A tract of land located in the North Half of the Northeast Quarter of the Southwest Quarter (N ½ NE ¼ SW ¼) of Section Eighteen (18), Township Fifteen (15) North, Range Three (3) East of the 6th P.M., Butler County, Nebraska, described as follows: Commencing at the Southeast corner of said North Half (N ½); thence Westerly, 341.60 feet, on the south line of said North half (N ½), to the Point of Beginning, said Point being the Southwest corner of a parcel of land conveyed in Microfilm Book 81, Page 521; thence continuing Westerly, 977.83 feet, on the last described line, to the Southwest Corner of said North Half (N ½); thence Northerly, 658.98 feet, to the Northwest corner of said North Half (N ½); thence Easterly, 979.92 feet, on the North line of said North Half (N ½); thence Southerly 657.35 feet, to the Point of Beginning.

Council member Trowbridge said, "The last meeting that I had, and it's been a while, that Egr, Councilman Kobus and I had in Omaha with Henningsen's attorney and Terry Tanaka, their head of operations, we left on a good note – that we had pretty much reached an agreement and about ten days later they changed their mind and they decided.... If there's one thing in the whole mix that we can't change it's the bid price and that's what they don't like. They would like us to change the bid price. I had a long drawn out discussion with Terry right here, several days later, and I tried to explain to him that we can not impact the bid price and we cannot ask them to do less or we have to bring everybody in to rebid it and I don't think that we want to rebid it at this point in time. I said, "What is your problem Mr. Tanaka?" and he said that his problem is that our engineer gave a half a million dollar less estimate of costs the year before so we have a two million dollar estimate a year ago and the bids came in at \$2.481 million dollars. So, then he said we have to add \$350,000 for engineering to the 2.481 million, which puts us to almost three million dollars and we don't like that. So, he said we would pay 65% of \$2.481 million dollars and you guys eat the \$350,000. I told Terry that was a game breaker. We're not going there. We've already given you a preferential treatment on the slip lining to the tune of about \$165,000. They just won't quit. They just beat on you and beat on you and then when you

reach an agreement then they find another area that they don't like and they begin beating again. So, at that point in time, Egr and I decided that it's best to drop it for a while and let them sit quietly and wonder what's going on and that's where we are. Also, at that meeting, the USDA strongly suggested that we not allow any bids or make any moves until we have Henningsen's signed on the line."

Mayor Zavodny said, "Where does that put us in trying to get into compliance? Before we begin I want to thank both Councilmen Trowbridge and Kobus for working on that and it's been a beat your head against the wall with this whole thing, to some extent and for following through on the process for us so thank you for that."

Council member Trowbridge said, "We probably need to address as a group, though, that we are on the same page that we're not going to give another \$350,000."

Mayor Zavodny said, "Yeah, that's a deal breaker for me."

Council member Trowbridge said, "On this deal it is for me. I know Tom wasn't happy with that at all."

Mayor Zavodny said, "Would you say that we're in a cooling off period and let them think about it a little bit? At some point, in the not too distant future, we're going to have to move ahead assuming we don't have Henningsen's."

Council member Trowbridge said, "I think we're going to, in the very near term, have to make contact with Tanaka and the attorney and say, here's the deal that we'll sign and if there are any other revisions to it, there is no deal and you're going to have to plan how to run your operation without the David City component."

Council member Kobus said, "That's about all we can do."

Council member Trowbridge said, "Yes. We have some time with EPA but we're running short of it."

Mayor Zavodny said, "We're getting right up against it."

Water/Sewer Supervisor Travis Hays said, "EPA and DEQ aside, as far as the USDA funding, how long do we have until that is off the table?"

Council member Trowbridge said, "We're not even close. No issues there. They want to see it happen."

Mayor Zavodny said, "Any recommendations on how long we go on this thing?"

Council member Kobus said, "It's already been about two months since they were supposed to commit, right?"

Council member Hotovy said, "I would think that we'd want to act on it by the June 13th Council meeting."

Council member Trowbridge said, "I'd like to have their attorney with Tanaka, because their attorney sees a different story than Terry Tanaka sees. He's reasonable."

Mayor Zavodny said, "Let's put that on the agenda for the June Council meeting that the 13th is decision night."

Mayor Zavodny said, "As far as the park shelter and restroom shower facility, I think the only option that we have is to rebid it. When the engineer called me last, he could not get ahold of the contractor. Prior to the meeting, Bill said that he tried to call the engineer today and he didn't call him back. If we're going to do this, I think we have to start over with the bidding process and if we want to make any changes, then we make those changes. I think to satisfy the grant, the things we have to have are the shelter and the restroom/shower facility and that's what we're going to build."

Council member Trowbridge said, "Let's bid a stick built shelter as maybe an option and my suggestion would be to allow bidders to bid any of the components, not making them bid all of them."

Mayor Zavodny said, "So we could mix and match or have it all as one. That's a good suggestion."

Council member Trowbridge said, "I've got construction drawings and an estimate from a local contractor on my desk at home at \$24,000 which is eighteen less than the pre-fab which is where the money is. But, Game and Parks won't fund it because it wasn't part of the bid package. It's outside of the bid package and therefore, they don't recognize it."

Mayor Zavodny said, "We just rebid and then we have that option."

Council member Trowbridge said, "We have a December of this year deadline or next year?"

Park/Auditorium Supervisor Bill Buntgen said, "December of 2019 deadline."

Mayor Zavodny said, "Bill, are you clear on what the Council is asking for on how to structure the bid, as an all in one project, or bidding the two items separately. Can you start working on that tomorrow? Are we in agreement that we rebid it? I would like to do it specifically as you said, as a whole project or separate components."

Council member Trowbridge said, "If we want to ask for bids for a prefab shelter then that's fine but we also want an option of a stick built shelter to the same performance standards."

Council member Trowbridge made a motion to rebid the park shelter and or restroom/shower facilities as an all in one facility or separate components to the same performance standards. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Trowbridge, Vandenberg, Smith and Kobus. Voting NAY: None. Council member Meysenburg was absent. The motion carried.

There being no further business to come before the Council, Council member Hotovy made a motion to adjourn. Council member Kobus seconded the motion. Voting AYE: Council members Trowbridge, Hotovy, Vandenberg, Kobus, and Smith. Voting NAY: None. Council member Meysenburg was absent. The motion carried and Mayor Zavodny declared the meeting adjourned at 6:47 p.m.



CERTIFICATION OF MINUTES
May 23, 2018

I, Tami Comte, duly qualified and acting Deputy City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of May 17th, 2018; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Tami Comte, Deputy City Clerk