

ORDINANCE NO. 2023-15

AN ORDINANCE PROVIDING FOR THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT BETWEEN THE CITY OF HEBER SPRINGS, ARKANSAS, THE ARKANSAS ENERGY OFFICE, AND THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY; PROVIDING FOR THE PAYMENT OF LEASE PAYMENTS PURSUANT TO SUCH AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A PACT AGREEMENT BETWEEN HEBER SPRINGS, ARKANSAS AND TRANE U.S. INC.; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY;

WHEREAS, the City of Heber Springs, Arkansas (the "City") has acknowledged the need for acquiring and installing certain energy equipment and other related energy facilities (the "Facilities") in various facilities owned by the City for the use and benefit of the citizens of the City; and

WHEREAS, the City is authorized and empowered under the laws of the State of Arkansas, including particularly Amendment 89 to the Constitution of the State of Arkansas and Arkansas Code Annotated Title 14, Chapter 164, Subchapter 8, as amended (the "Act"), to issue its tax exempt lease obligations for the purpose of financing the Facilities; and

WHEREAS, in order to provide for the acquisition and installation of the Facilities, the City has negotiated the terms of a guaranteed energy savings contract in the form of a PACT Agreement between the City and Trane U.S. Inc. (the "PACT Agreement") substantially in the form presented to and before this meeting; and

WHEREAS, in order to finance the acquisition and installation of the Facilities, the City intends to execute and deliver an Equipment Lease/Purchase Agreement (together with the Exhibits attached thereto and made a part thereof, the "Lease Agreement") among the City, as Lessee (the "Lessee"), the Arkansas Energy Office, as Lessor (the "Lessor"), and the Arkansas Development Finance Authority, as Servicer (the "Servicer") substantially in the form presented to and before this meeting; and

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Heber Springs, Arkansas:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including

particularly Amendment 89 to the Constitution of the State of Arkansas and Arkansas Code Annotated Title 14, Chapter 164, Subchapter 8, as amended, the obligations to be evidenced by the Lease Agreement (the "Obligations") are hereby approved and authorized in the total principal amount of not to exceed \$1,619,571.00, for a term not exceeding twenty (20) years from the date of execution and delivery thereof, and bearing interest at a rate not to exceed ____%. The Obligations are not and shall not be general obligations of the City, but shall be special obligations payable solely from revenues in the form of savings received by the City pursuant to the PACT Agreement. Notwithstanding the foregoing, the City is authorized, but not required, to make payments under the Lease Agreement from any lawful revenues of the City.

Section 2. Pursuant to the provisions of Arkansas Code Annotated Sections 14-164-805 and 14-164-806, the City has solicited and evaluated the proposal of Trane U.S. Inc. with respect to the acquisition and installation of the Facilities, and has determined that the PACT Agreement meets the requirements of Arkansas Code Annotated Section 14-164-807. Accordingly, the acquisition and installation of the Facilities pursuant to the PACT Agreement is hereby authorized and approved.

Section 3. That there be and is hereby authorized the execution and delivery of the Lease Agreement and the PACT Agreement, and the Mayor and City Clerk are hereby, authorized to execute, acknowledge and deliver the Lease Agreement and the PACT Agreement for and on behalf of the City. The Lease Agreement and the PACT Agreement are hereby approved substantially in the forms submitted to this meeting, and the Mayor is hereby authorized to confer with the Trane US, Inc. and the Arkansas Energy Office in order to complete the Lease Agreement and the PACT Agreement in substantially the forms submitted to this meeting with such changes as shall be approved by such persons executing the documents, their execution to constitute conclusive evidence of such approval.

Section 4. That the Mayor and the City Clerk, for and on behalf of the City, be, and they are hereby, authorized and directed to do any and all things necessary to affect (i) the execution and delivery of the Lease Agreement and the performance of all obligations of the City under the Lease Agreement, (ii) the execution and delivery of the PACT Agreement and the performance of all obligations of the City under and pursuant to the PACT Agreement, and (iii) the use of a portion of the proceeds from the Obligations to commence

acquisition and installation of the Facilities and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. That the Mayor and the City Clerk be, and they are hereby, further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 5. That the City is hereby involved with the acquiring, constructing and equipping of industrial facilities, and pursuant to the applicable laws of the State of Arkansas, including particularly the Act, competitive bidding is waived.

Section 6. That the City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting in which this Ordinance is adopted, for inspection by any interested persons, a copy of the Lease Agreement, the PACT Agreement, and such documents shall be on file for inspection by any interested person.

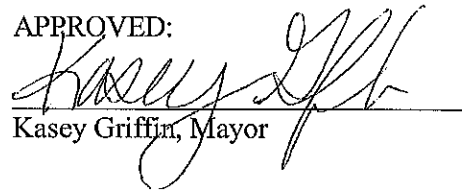
Section 7. That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 8. That all orders, ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. It is hereby ascertained and declared that the planning, design, acquisition, and construction of the Facilities must be accomplished as soon as possible in order to provide economic savings to the City and its inhabitants, without which the welfare thereof is jeopardized, and that the execution and delivery of the of the Lease Agreement and the taking of the other action authorized by this Ordinance is necessary for the accomplishment thereof. It is, therefore, declared that an emergency exists and this Ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage.

ADOPTED as an Ordinance of the City Council of the City of Heber Springs, Arkansas, this 22nd
day of August, 2023.

APPROVED:


Kasey Griffin, Mayor

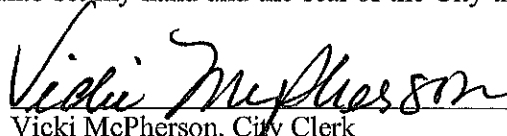
ATTEST:


Vicki McPherson, City Clerk

CERTIFICATE

I, Vicki McPherson, City Clerk, within and for the City of Heber Springs, Arkansas do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2023-15 of the Ordinances of the City of Heber Springs, Arkansas entitled: **"AN ORDINANCE PROVIDING FOR THE EXECUTION AND DELIVERY OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT BETWEEN THE CITY OF HEBER SPRINGS, ARKANSAS, THE ARKANSAS ENERGY OFFICE, AND THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY; PROVIDING FOR THE PAYMENT OF LEASE PAYMENTS PURSUANT TO SUCH AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A PACT AGREEMENT BETWEEN HEBER SPRINGS, ARKANSAS AND TRANE U.S. INC.; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY;"** adopted by the City Council of the City on August 22 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City this 23 day of August, 2023.


Vicki McPherson, City Clerk

(SEAL)