

FCO 2020-17

**AN ORDINANCE OF THE FLOYD COUNTY BOARD OF COMMISSIONERS
AUTHORIZING AN ADDITIONAL TRANSFER OF HOSPITAL SALE PROCEEDS TO
THE FLOYD COUNTY LEGACY FOUNDATION AND USE FOR OTHER PURPOSES,
APPROVING CERTAIN POLICIES RELATED TO THE FLOYD COUNTY LEGACY
FOUNDATION, AND TAKING CERTAIN OTHER ACTIONS IN CONNECTION
THEREWITH**

WHEREAS, Floyd County, Indiana (the "County") has previously sold its hospital and the proceeds from the sale thereof exceeded \$50,000,000; and

WHEREAS, pursuant to Ordinance No. 2018-2, adopted by the Floyd County Council (the "County Council") on July 11, 2018, and Ordinance No. FCO 2018-8, adopted by the Board of Commissioners of the County (the "Board of Commissioners") on August 7, 2018, the Council and the Board of Commissioners previously established the Floyd County Legacy Foundation (the "Legacy Foundation"), in accordance with IC 36-1-14-5, et seq., as currently in effect or as the same may be amended from time to time (the "Act"), for the purpose of holding all or a portion of the proceeds resulting from the sale of the former Floyd Memorial Hospital (the "Hospital Sale Proceeds") in order to provide a resource to meet the County's current and future community needs; and

WHEREAS, the County Council and the Board of Commissioners have previously made joint determinations, by the adoption of substantially identical ordinances or resolutions, to donate and transfer \$13,000,000 from the Hospital Sale Proceeds to the Legacy Foundation in accordance with the Act (such donation and all investment income therefrom, the "Initial Donation"); and

WHEREAS, the County previously issued its Bond Anticipation Note, Series 2018, dated August 16, 2018, in the aggregate principal amount of \$14,780,000, bearing interest at a rate of 2.76% per annum, maturing on August 1, 2021, and subject to prepayment upon fifteen (15) days' notice (the "2018 BAN"), for the purpose of providing interim construction financing for capital improvement and equipping projects at the Floyd County Jail; and

WHEREAS, following discussions with the County Council and studying various options for possible uses of the remaining balance of the Hospital Sale Proceeds, the Board of Commissioners now desires to authorize and transfer the remaining Hospital Sale Proceeds as follows (1) to make an additional donation to the Legacy Foundation in accordance with the Act, (2) to prepay and retire the 2018 BAN at the earliest possible date, (3) to replenish amounts in the County's Rainy Day Fund, and (4) to replenish one or more fund or funds identified by the Board of Commissioners for the purpose of paying the costs of various capital improvement projects throughout the County; all subject to the terms and conditions set forth herein; and

WHEREAS, Section 5(i)(2) and Section 5(j)(3) of the Act require the County Council and the Board of Commissioners to jointly establish, respectively, (1) a policy concerning distributions of income and principal from the Legacy Foundation, and (2) a policy to set the annual rate of spending from the Legacy Foundation; and

WHEREAS, the Board of Commissioners has reviewed the proposed “Income and Principal Distribution and Annual Spend Rate Determination Policy Regarding the Floyd County Legacy Foundation”, attached hereto as Exhibit A and incorporated herein (the “Policy”); and

WHEREAS, pursuant to the Act, the County Council and the Board of Commissioners are required to adopt substantially similar ordinances or resolutions in order to (1) determine the amount of Hospital Sale Proceeds that shall be transferred by the County fiscal officer to the Legacy Foundation, and (2) establish the Policy;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FLOYD COUNTY, INDIANA, AS FOLLOWS:

Section 1. Authorization and Transfers of Hospital Sale Proceeds. After investigation, the Board of Commissioners hereby finds and determines that it is in the best interests of the County to make additional transfers of the Hospital Sale Proceeds, in the aggregate amount of \$32,000,000, for the purposes and in the amounts described as follows:

(a) \$1,000,000 to be transferred to the County’s Rainy Day Fund and used for the purposes as permitted by Indiana law;

(b) \$1,000,000 to be transferred to one or more funds of the County established to pay for the costs of capital improvement projects as identified by the Board of Commissioners from time to time in the County’s Capital Improvement Plan;

(c) An amount sufficient to prepay all outstanding principal of, and accrued interest on, the 2018 BAN to the date fixed for prepayment (approximately \$15,810,000), reduced by an amount equal to any remaining proceeds of the 2018 BAN (approximately \$500,000), which remaining proceeds shall also be applied to the prepayment thereof; and

(d) The remaining balance of the Hospital Sale Proceeds, in the approximate amount of \$14,700,000 (hereinafter, the “Additional Donation”), to be transferred to a separate account established within and held by the Legacy Foundation, hereinafter referred to as the “Capital Improvements Account”.

Subject to the adoption by the County Council of an ordinance substantially identical to this Ordinance, the Board of Commissioners hereby approves, authorizes and directs the County fiscal officer to make the foregoing transfers from the Hospital Sale Proceeds.

Section 2. Request and Direction to Establish Separate Accounts. The Board of Commissioners hereby requests and directs that the Board of Trustees of the Legacy Foundation create two separate accounts within the Legacy Foundation with respect to the donations of Hospital Sale Proceeds, to be known as the “Legacy Account” and the “Capital Improvements Account”, which separate accounts shall not be commingled with other funds or accounts established therein. The Board of Commissioners hereby further requests and directs the Board of Trustees of the Legacy Foundation that (a) all principal and investment income from the Initial Donation shall be transferred to and become a part of the Legacy Account pending disbursements therefrom from time to time, and (b) all principal and investment income from the Additional

Donation shall be transferred to and become a part of the Capital Improvements Account pending disbursements therefrom from time to time.

Section 3. Adoption of the Policy. The Board of Commissioners hereby approves and adopts the Policy, as set forth in Exhibit A, subject to the adoption by the County Council of an ordinance substantially identical to this Ordinance.


Section 4. Setting of Spend Rates and Permitted Uses. (a) The annual rate of spending from the Capital Improvements Account shall be five percent (5%) of the principal amount of the donation to such account, calculated on January 1 of each year in accordance with the Act, as currently in effect or as the same may be amended from time to time, and such rate of spending from the Capital Improvements Account shall remain in effect for a period of ten (10) years, beginning January 1, 2021. All amounts disbursed to the County from the Capital Improvements Account of the Legacy Foundation shall be appropriated by the County Council solely for use by the Board of Commissioners to carry out the County's capital improvement plan, as in effect on the date hereof and as may be supplemented or amended from time to time, including payment of: (i) the costs for any capital projects, facilitates or equipment, including expenses related thereto, to be owned or operated by, or on behalf of, the County, (ii) the principal of or interest on bonds or loans, lease rental payments under a lease agreement, installment purchase contracts or amounts due under other obligations issued or incurred by, or on behalf of, the County to finance the costs of capital projects, facilitates or equipment, including expenses related thereto, to be owned or operated by, or on behalf of, the County, or (iii) any lawful expense or purpose of a capital nature or related thereto for which money in any of the County's other funds may be used in the exercise of the County's powers.

(b) The annual rate of spending from the endowment previously established by the County with the Community Foundation of Southern Indiana from a portion of the Hospital Sale Proceeds (the "Community Foundation Fund") shall be five percent (5%) of the income from the Community Foundation Fund, calculated in accordance with the Designated Endowment Fund Agreement, dated November 4, 2016, as currently in effect or as the same may be amended from time to time, and such rate of spending from the Community Foundation Fund shall remain in effect for a period of ten (10) years, beginning January 1, 2021. All amounts disbursed to the County from the Community Foundation Fund may be appropriated by the County Council and used to pay any lawful expense or purpose for which money in any of the County's other funds may be used in the exercise of the County's powers.

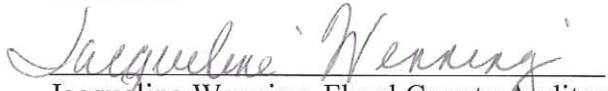
Section 5. Effectiveness; Severability. This Ordinance shall be in full force and effect from and after its adoption and the procedures required by applicable law, subject to the adoption by the County Council of an ordinance substantially identical to this Ordinance. All ordinances, resolutions, and orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall render the remaining provisions of this Ordinance null and void and of no force or effect.

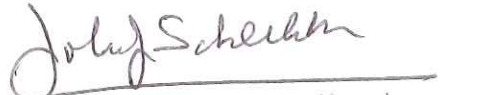
DULY ADOPTED by the Board of Commissioners of Floyd County, Indiana, on this 15 day of December, 2020, by a vote of 3 in favor, 0 opposed, and 0 abstaining.

BOARD OF COMMISSIONERS OF
FLOYD COUNTY, INDIANA


Shawn Carruthers, President

ATTEST:


Jacqueline Wenning, Floyd County Auditor


John J. Schellenbarger



TIMOTHY D KAMER

EXHIBIT A

FLOYD COUNTY, INDIANA

INCOME AND PRINCIPAL DISTRIBUTION AND ANNUAL SPEND RATE DETERMINATION POLICY REGARDING THE FLOYD COUNTY LEGACY FOUNDATION

This policy (hereinafter referred to as the “**Policy**”) of Floyd County, Indiana (the “**County**”) covers matters related to (a) distributions of income and principal from the Floyd County Legacy Foundation (the “**Foundation**”) in accordance with Ind. Code. § 36-1-14-5(i)(2), and (b) setting the annual rate of spending from the Foundation in accordance with Ind. Code. § 36-1-14-5 (j)(3). This Policy supplements, but does not replace, any other policies or procedures of the County pertaining to the foregoing subject matter.

1. Policy on Distributions of Income and Principal from the Foundation.

The Floyd County Council (the “**County Council**”) and the Board of Commissioners of the County (the “**Board of Commissioners**”) have previously jointly determined to transfer to the Foundation a portion of the proceeds resulting from sale of the former Floyd Memorial Hospital (the “**Hospital Sale Proceeds**”) in an amount equal to \$13,000,000 from (such amount and all investment income therefrom, the “**Initial Donation**”). Contemporaneously with the adoption and approval of this Policy, the County Council and the Board of Commissioners have jointly determined to transfer to the Foundation an additional donation from the Hospital Sale Proceeds in the approximate amount of \$14,700,000 (such amount and all investment income therefrom, the “**Additional Donation**”). Within the Legacy Foundation, there shall be created and established separate accounts, to be known as the “Legacy Account” and the “Capital Improvements Account”.

(a) *Legacy Account*: All funds from the Initial Donation, together with all investment income therefrom, shall be deposited and held in the Legacy Account pending distribution therefrom in accordance with this Policy and the Act. Notwithstanding anything in the Act to contrary or herein to the contrary, the principal and investment income in the Legacy Account shall be distributed from time to time, in accordance with the procedures set forth in the Act (including any distribution of principal or income that is used to meet the annual rate of spending from the Legacy Account which does not exceed the annual rate of spending established from time to time), but shall be restricted and used solely to provide grants to meet community needs for the benefit of the County of a type which are not ordinarily funded or included (i.e., extraordinary items) in the County’s annual budget, and shall not be distributed or used to pay expenses or purposes ordinarily funded or included in the County’s annual budget.

(b) *Capital Improvements Account*. All funds from the Additional Donation, together with all investment income therefrom, shall be deposited and held in the Capital Improvements Account pending distribution therefrom in accordance with this Policy and the Act. Notwithstanding anything in the Act or herein to the contrary, the principal and investment income in the Capital Improvements Account shall be distributed from time to time, in accordance with the procedures set forth in the Act (including any distribution of principal or income that is used

to meet the annual rate of spending from the Capital Improvements Account which does not exceed the annual rate of spending established from time to time), and used to provide grants or payments to the County for the purpose of paying: (i) the costs for any capital projects, facilitates or equipment, including expenses related thereto, to be owned or operated by, or on behalf of, the County, (ii) the principal of or interest on bonds or loans, lease rental payments under a lease agreement, installment purchase contracts or amounts due under other obligations issued or incurred by, or on behalf of, the County to finance the costs of capital projects, facilitates or equipment, including expenses related thereto, to be owned or operated by, or on behalf of, the County, or (iii) any lawful expense or purpose of a capital nature or related thereto for which money in any of the County's other funds may be used in the exercise of the County's powers.

2. Policy on Setting the Annual Rate of Spending from the Foundation.

(a) Legacy Account. The annual rate of spending from the Legacy Account of the Foundation shall not exceed five percent (5%) of the principal amount of the Initial Donation calculated on January 1 of each year (such rate, the "Legacy Account Annual Spend Rate"). The County Council and the Board of Commissioners shall annually determine the Legacy Account Annual Spend Rate by a simple majority vote members of the County Council and a simple majority vote of the members of the Board of Commissioners, evidenced by the adoption of substantially identical resolutions. Once such rate is established for a given year, it may not be changed until the following calendar year.

(b) Capital Improvements Account. From January 1, 2021 through December 31, 2030, the annual rate of spending from the Capital Improvements Account of the Foundation shall be, and hereby is, set at the lesser of: (i) five percent (5%) of the principal amount of the Additional Donation, calculated on January 1 of each year; or (ii) five percent (5%) of the three (3) year average principal amount of the Additional Donation, calculated on January 1 of each year, based on the opening balance of the principal amount of the Additional Donation on the first day of each month of each of the immediately preceding thirty-six (36) months, once the Capital Improvements Account has been in existence for a three (3) year period (such rate, the "Capital Improvements Account Annual Spend Rate"). Beginning January 1, 2031, the Capital Improvements Account Annual Spend Rate may be set at a rate not exceeding the lesser of: (i) five percent (5%) of the principal amount of the Additional Donation, calculated on January 1 of each year; or (ii) five percent (5%) of the three (3) year average principal amount of the Additional Donation, calculated on January 1 of each year, based on the opening balance of the principal amount of the Additional Donation on the first day of each month of each of the immediately preceding thirty-six (36) months. On or after January 1, 2031, the County Council and the Board of Commissioners shall annually determine the Capital Improvements Account Annual Spend Rate by a simple majority vote members of the County Council and a simple majority vote of the members of the Board of Commissioners, evidenced by the adoption of substantially identical resolutions. Once such rate is established for a given year, it may not be changed until the following calendar year.

3. Effectiveness; Amendment.

This Policy shall not become effective until the adoption by the County Council and the Board of Commissioners of substantially similar ordinances approving and adopting the terms of this Policy. This Policy may be amended solely by the adoption by the County Council and the

Board of Commissioners of substantially identical ordinances pursuant to the following procedures:

- i. Five (5) of the seven (7) members of the County Council and two (2) of the three (3) members of the Board of Commissioners, at joint meetings of the County Council and the Board of Commissioners, must vote in favor of amending this Policy. The votes of the County Council and the Board of Commissioners at the joint meetings must occur on two (2) occasions as provided in item (ii) below.
- ii. The votes described in item (i) must occur on two (2) occasions that are at least one (1) year apart, but not more than two (2) years apart.
- iii. The votes described in item (i) must be based on identical language in an ordinance that sets forth the proposed amendment to this Policy. If the language in an ordinance under this clause is different from the language used in the first vote, the process to vote on amending this Policy must start over.