

Husch Blackwell LLP
DRAFT
FORM OF PARTICIPATING
COUNTY RESOLUTION

RESOLUTION NO. 2021-_____

INITIAL RESOLUTION APPROVING INDUSTRIAL DEVELOPMENT
REVENUE BOND FINANCING FOR BUG TUSSEL WIRELESS, LLC,
APPROVING INTERGOVERNMENT AGREEMENT, AND
APPROVING LIMITED GUARANTY OF [_____] COUNTY

INTRODUCED BY: Administrative/Finance Committee

INTENT & SYNOPSIS: To provide (i) approval of an Initial Resolution of [_____] County to participate with other counties in accordance with an Intergovernmental Agreement pursuant to which Fond du Lac County, Wisconsin will serve as the conduit bond issuer for Taxable Revenue Bond Financing for Bug Tussel Wireless, LLC to finance a project for acquisition, construction and installation of certain telecommunications infrastructure, for the purpose of providing wireless internet and telephone communication services to businesses, governmental units and residents of rural communities where such service is currently unavailable or prohibitively expensive (the "Project"), which includes Project costs located in [_____] County in an amount not to exceed [\$_____] and (ii) approval of a limited guaranty by [_____] County which shall not exceed [\$_____] equal to the amount of improvements for said infrastructure made within [_____] County.

FISCAL NOTE: None.

WHEREAS, Section 66.1103 of the Wisconsin Statutes (the "Act") authorizes municipalities to authorize the issuance and sale of bonds to construct, equip, re-equip, acquire by gift, lease or purchase, install, reconstruct, rebuild, rehabilitate, improve, supplement, replace, maintain, repair, enlarge, extend or remodel industrial projects; and

WHEREAS, Bug Tussel Wireless, LLC, a Wisconsin limited liability company (the "Company"), and/or one or more of its subsidiaries (including, without limitation, Hilbert Communications, LLC and Cloud 1, LLC), whether existing on the date hereof or to be formed and whether owned directly or indirectly by the Company, to finance a project consisting of the acquisition, construction and installation of certain telecommunications infrastructure that includes, among other things (i) acquisition of tower sites by purchase or lease of land and equipping such sites with towers and electronics to provide broadband, high speed cellular, emergency communications and point to point (P2P) data communications; (ii) constructing fiberoptic data transmission facilities (cable and electronics) between towers, key community facilities, businesses and residential aggregation points; (iii) where appropriate, connecting individual premises into the broadband network including the cost of Consumer Premise Equipment (CPE); (iv) payment of capitalized interest; (v) funding of a debt service reserve fund; (vi) payment

of project costs located in [_____] County in an amount not to exceed [\$_____]; and (vii) payment of professional fees (collectively, the "Project"), all of which will be for the purpose of providing wireless internet and telephone communications services to businesses, governmental units and residents of rural communities where such service is currently unavailable or is prohibitively expensive; and

WHEREAS, [_____] County, Wisconsin is a political subdivision of the State within whose boundaries a portion of the Project is located; and

WHEREAS, pursuant to Sections 66.1103 and 66.0301 of the Wisconsin Statutes, individual counties or two or more counties, each a "Participating County", acting pursuant to an Intergovernmental Agreement may serve as the conduit issuer for such financing; and

WHEREAS, (i) the aggregate cost of the Project in [_____] County and the Participating Counties is presently estimated to be not greater than \$300,000,000, (ii) the aggregate amount of the Project proposed to be financed with one or more series of taxable revenue bonds does not exceed **[\$240,000,000]** (the "Bonds") to be issued by Fond du Lac County, Wisconsin (the "Issuing County") acting pursuant to intergovernmental powers, and (iii) the portion of the Project located in [_____] County does not exceed [\$_____]; and

WHEREAS, Section 66.1103(3)(f) of the Wisconsin Statutes provides that a municipality also may finance an industrial project which is located entirely outside the geographic limits of the municipality, but only if the revenue agreement for the project also relates to another project of the same eligible participant, part of which is located within the geographic limits of the municipality; and

WHEREAS, the Project includes necessary infrastructure for essential services by and for [_____] County and local units of government in [_____] County and is in furtherance of the public purposes set forth in the Act; and

WHEREAS, the proposed Project is a multi-jurisdictional project which is located in multiple counties to be identified, and the Company has requested that each of the Participating Counties approve an initial resolution (the "Initial Resolution") providing for the financing of the Project in an aggregate amount not to exceed **[\$240,000,000]**; and

WHEREAS, pursuant to the Intergovernmental Agreement, Fond du Lac County shall be the Issuing County of said revenue Bonds, and it shall be determined at a future date which county or counties shall be Participating Counties; and

WHEREAS, the Company has requested that [_____] County and other Participating Counties who will directly benefit from the Project to each provide a limited guaranty to enhance the collateral position of the Company in an amount equal to the pro rata portion of the Project costs incurred and essential services benefits derived in such Participating County; and

WHEREAS, the limited guaranty by [_____] County shall not exceed [\$_____] (the "Guaranty") which is equal to the amount of Project improvements for said infrastructure made within [_____] County; and

WHEREAS, the Company will have the primary obligation to make all scheduled principal and interest payments when due on the Bonds, and [_____] County's Guaranty will apply only in the event that the Company does not make the required payments due on the Bonds; and

WHEREAS, in return for [_____] County's Guaranty, [_____] County shall receive an annual guaranty fee of [_____] basis points] (based upon the amount of its Guaranty) and the Company will pay all costs to [_____] County and all expenses by [_____] County related to the bond issue; and

WHEREAS, as further security for its Guaranty, [_____] County shall receive a first mortgage on all land, buildings, and improvements of the Company located in [_____] County which are financed with proceeds of the Bonds.

NOW, THEREFORE, BE IT RESOLVED by the [_____] County Board of Supervisors as follows:

1. The Intergovernmental Agreement is hereby approved, and [_____] County approves that Fond du Lac County shall be the Issuing County for the Bonds. The County Chairman of [_____] County is authorized to execute and deliver the Intergovernmental Agreement.

2. [_____] County hereby approves that Fond du Lac County, as the Issuing County, acting pursuant to the Intergovernmental Agreement, shall:

(a) Finance the Project in an aggregate amount not to exceed **[\$240,000,000]** which includes Project costs located in [_____] County in an amount not to exceed [\$_____]; and

(b) Acting pursuant to the Intergovernmental Agreement by and among one or more Participating Counties, Fond du Lac County shall issue industrial development revenue bonds in one or more series of taxable bonds in an aggregate amount not to exceed **[\$240,000,000]** in order to finance costs of the Project located in the Participating Counties, pursuant to Section 66.1103(3)(f) of the Wisconsin Statutes.

3. [_____] County approves the Guaranty in an amount not to exceed [\$_____], subject to such conditions and other terms as shall be identified by the Company and the underwriter, and approved by [_____] County.

4. The aforesaid plan of financing contemplates, and is conditioned upon, the following:

(a) The Bonds shall be limited obligations of the Issuing County, acting pursuant to the Intergovernmental Agreement, and are payable solely from revenues provided by the Company and are secured in part by the limited Guaranty of [_____] County;

(b) The Bonds shall never constitute an indebtedness of [_____] County, the Issuing County or the Participating Counties within the meaning of any state constitutional provision or statutory limitation;

(c) The Project shall be subject to property taxation in the same amount and to the same extent as though the Project were not financed with industrial development revenue bonds;

(d) The Company shall find a purchaser for all of the Bonds; and

(e) All out-of-pocket costs, including but not limited to legal fees, incurred by [_____] County in connection with the issuance and sale of the Bonds shall be paid by the Company, whether or not the Issuing County or another Participating County ultimately issues the Bonds; and

(f) [_____] County shall be paid an annual guaranty fee of [_____] basis points (_____%)] (based upon the amount of [_____] County's Guaranty).

5. The aforesaid plan of financing shall not be legally binding upon [_____] County nor be finally implemented unless and until:

(a) The details and mechanics of the bond financing are authorized and approved by a further resolution of Fond du Lac County, as the Issuing County. Such approval shall be solely within the discretion of the Issuing County, acting pursuant to the Intergovernmental Agreement and approval of the Board of Supervisors of the Issuing County;

(b) Said approval and Guaranty are further conditioned upon terms and conditions of one or more written agreements between [_____] County and the various parties involved, ensuring that all of the proceeds from the sale of the Bonds shall be administered by a duly appointed independent trustee, that the bond proceeds shall be used exclusively for the development of the Project and for no other purpose, and that the project funds shall be paid over to the Company by the trustee only as they become needed for completion of the Project;

(c) The County Clerk of [_____] County shall cause notice of adoption of this Initial Resolution, in the form attached hereto as Exhibit A, to be published once in a newspaper of general circulation in [_____] County, and the electors of [_____] County shall have been given the opportunity to petition for a referendum on the matter of the aforesaid bond issue, all as required by law;

(d) Either no such petition shall be timely filed or such petition shall have been filed and said referendum shall have approved the bond issue;

(e) The county clerks of [_____] County and the Participating Counties shall each have received an employment impact estimate issued under Section 560.034 of the Wisconsin Statutes;

(f) The Bonds shall be limited obligations of the Issuing County, acting pursuant to the Intergovernmental Agreement and are payable solely from revenues provided by the Company and secured in part by a limited guaranty of each Participating County;

(g) All Participating Counties have entered into the Intergovernmental Agreement and identified Fond du Lac County as the Issuing County;

(h) All Participating Counties shall approve their respective guaranties; and

(i) All documents required to consummate the financing have been duly authorized and delivered.

6. Pursuant to the Act, all requirements that the Project be subject to the contracting requirements contained in Section 66.1103 are waived, the Company having represented that it is able to negotiate satisfactory arrangements for completing the Project and that [_____] County's interests are not prejudiced thereby.

7. The County Clerk of [_____] County is directed following adoption of this Initial Resolution (i) to publish notice of such adoption not less than one time in the official newspaper of [_____] County, such notice to be in substantially the form attached hereto as Exhibit A and (ii) to file a copy of this Initial Resolution, together with a statement indicating the date the Notice to Electors was published, with the Wisconsin Economic Development Corporation within twenty (20) days following the date of publication of such notice.

8. This Initial Resolution is an "initial resolution" within the meaning of the Act and official action toward issuance of the Bonds. Furthermore, it is the reasonable expectation of [_____] County that proceeds of the Bonds may be used to reimburse expenditures made on the Project prior to the issuance of the Bonds. The maximum principal amount of debt expected to be issued for the Project on the date hereof is **[\$240,000,000]**.

9. [_____] County Corporation Counsel shall forthwith negotiate and confer with all interested parties, draft, edit, or approve and deliver the contracts or other documents necessary to carry out the provisions of this Initial Resolution; provided, however, that if so required by [_____] County, Corporation Counsel shall present the same to the Board of Supervisors for the Board's final review, ratification, and approval of

all of the specific terms and conditions contained in said documents prior to the issuance of the Bonds on behalf of the Company.

DRAFT

Recommended for adoption this ____ day of _____, 2021.

Adopted _____

Defeated _____ by the [_____] County Board of Supervisors this

Tabled _____ day of _____, 2021.

County Board Chair

County Clerk

I, the undersigned, the duly appointed and qualified Clerk of [_____] County, Wisconsin do hereby certify that the foregoing resolution was duly adopted by the County Board of Supervisors at a meeting of said County held in open session in accordance with the requirements of Subchapter V of Chapter 19 of the Wisconsin Statutes on _____, 2021.

[_____] COUNTY, WISCONSIN

[_____] County Clerk

EXHIBIT A

NOTICE TO ELECTORS OF
[] COUNTY, WISCONSIN

TAKE NOTICE that the Board of Supervisors of [] County, Wisconsin (the "[] County"), at a meeting held at [], Wisconsin, on _____, 2021, adopted an initial resolution (the "Initial Resolution") pursuant to Section 66.1103 of the Wisconsin Statutes, as amended, expressing the intention to issue not to exceed **[\$240,000,000]** of industrial development revenue bonds (the "Bonds") on behalf of Bug Tussel Wireless, LLC, a Wisconsin limited liability company (the "Company"), and/or one or more of its subsidiaries (including, without limitation, Hilbert Communications, LLC and Cloud 1, LLC), to finance a project consisting of the acquisition, construction and installation of certain telecommunications infrastructure that includes, among other things (i) acquisition of tower sites by purchase or lease of land and equipping such sites with towers and electronics to provide broadband, high speed cellular, emergency communications and point to point (P2P) data communications; (ii) constructing fiberoptic data transmission facilities (cable and electronics) between towers, key community facilities, businesses and residential aggregation points; (iii) where appropriate, connecting individual premises into the broadband network including the cost of Consumer Premise Equipment (CPE); (iv) payment of capitalized interest; (v) funding of a debt service reserve fund; (vi) payment of project costs located in [] County in an amount not to exceed [\$]; and (vii) payment of professional fees (collectively, the "Project"), all of which will be for the purpose of providing wireless internet and telephone communications services to businesses, governmental units and residents of rural communities. The Company has represented that the net number of full-time equivalent jobs which will be created in [] County is [].

Pursuant to the terms of Section 66.1103 of the Wisconsin Statutes, all requirements that the Project be subject to the contracting requirements contained in Section 66.1103 are waived, the Company having represented that it is able to negotiate satisfactory arrangements for completing the Project and that [] County's interests are not prejudiced thereby.

THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF [] COUNTY, NOR SHALL THE BONDS GIVE RISE TO ANY PECUNIARY LIABILITY OF [] COUNTY, NOR SHALL THE BONDS BE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF [] COUNTY. RATHER, THE BONDS SHALL BE PAYABLE SOLELY FROM THE REVENUES AND OTHER AMOUNTS TO BE DERIVED PURSUANT TO THE REVENUE AGREEMENT RELATING TO SAID PROJECT TO BE ENTERED INTO BETWEEN THE ISSUING COUNTY OR ISSUING COUNTIES AND THE COMPANY.

The Initial Resolution may be inspected in the office of the [_____] County Clerk at [_____] , Wisconsin, during business hours.

TAKE FURTHER NOTICE THAT THE ELECTORS OF [_____] COUNTY MAY PETITION FOR A REFERENDUM ON THE QUESTION OF THE BOND ISSUE. Unless within thirty (30) days from the date of the publication of this Notice a petition signed by not less than five percent (5%) of the registered electors of the [_____] County is filed with the County Clerk requesting a referendum on the question of the issuance of the Bonds, the Issuing County will issue the Bonds without submitting the proposition for the electors' approval. If such petition is filed as aforesaid, then the Bonds shall not be issued until approved by a majority of the electors of [_____] County voting thereon at a general or special election.

[_____] , County Clerk
[_____] County, Wisconsin