

RESOLUTION

ROCK COUNTY BOARD OF SUPERVISORS

Ad Hoc Broadband Committee
INITIATED BY



5/20/2022
DATE DRAFTED

Initial Resolution Approving Revenue Bond Financing for Bug Tussel 1, LLC. Information with respect to the job impact of the project will be available at the time of consideration of the Resolution.

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 1, LLC, a Wisconsin limited liability company (the “Company”), and/or one or more of its affiliates (including, without limitation, Bug Tussel Wireless, LLC, 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, desires 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 such project costs located in Rock County in an amount not to exceed ~~\$8,000,000~~ \$10,900,000; 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, Rock 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 Rock County and the Participating Counties is presently estimated to be not greater than \$240,000,000, (ii) the aggregate amount of the Project proposed to be financed with one or more issues or series of tax-exempt or 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 Rock County does not exceed ~~\$8,000,000~~ \$10,900,000; 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 Rock County and local units of government in Rock 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 Issuing County has heretofore on December 16, 2021, issued the first tranche of conduit revenue bonds for a portion of the Project, in the aggregate amount of \$70,000,000; and

WHEREAS, the Company has requested that Rock County and other Participating Counties who will directly benefit from the Project to each provide a limited guaranty (the "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 Company will have the primary obligation to make all scheduled principal and interest payments when due on the Bonds, and Rock 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 Rock County's Guaranty, Rock County shall receive an annual guaranty fee of 40 basis points (0.40%) (based upon the amount of its Guaranty), and the Company will pay all costs to Rock County and all expenses by Rock County related to the bond issue; and

WHEREAS, at the option of the Company, bond insurance may be purchased with respect to the Bonds which will require approval by subsequent resolution of Rock County; and

WHEREAS, the Company shall enter into a Reimbursement Agreement (the "Reimbursement Agreement") with Rock County agreeing to reimburse Rock County for any payment required under Rock County's Guaranty and to indemnify Rock County for any and all costs, expenses and liabilities related to the Bonds; and

WHEREAS, as security for the Reimbursement Agreement, Rock County shall receive a first mortgage on all land, buildings, and improvements of the Company located in Rock County which are financed with proceeds of the Bonds.

NOW, THEREFORE, BE IT RESOLVED by the Rock County Board of Supervisors as follows:

1. Rock 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 Rock County in an amount not to exceed ~~\$8,000,000~~ \$10,900,000; 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 issues or series of tax-exempt or 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.

2. 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 Rock County;

(b) The Bonds shall never constitute an indebtedness of Rock 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 Rock 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) Rock County shall be paid an annual guaranty fee of 40 basis points (0.40%) (based upon the

amount of Rock County's Guaranty).

3. The aforesaid plan of financing shall not be legally binding upon Rock 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, by a vote of at least three-fourths of the members-elect (as defined in Section 59.001(2m) of the Wisconsin Statutes) of the Board of Supervisors. 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 Rock 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 Rock 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 Rock County, and the electors of Rock 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 Rock County and the Participating Counties shall each have received an employment impact estimate issued under Section 238.11 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 by a vote of at least three-fourths of the members-elect of their respective County Board of Supervisors; such subsequent approval shall be solely within the discretion of each Participating County; and

(i) All documents required to consummate the financing have been duly authorized and delivered and the Bonds are issued and sold not later than December 31, 2022.

4. 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 Rock County's interests are not prejudiced thereby.

5. The County Clerk of Rock 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 Rock 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.

6. 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 Rock 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.

7. Rock County Officers and 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 such Officers and 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. Such subsequent approval shall be solely within the discretion of

Rock County and its Board of Supervisors, notwithstanding this Initial Resolution.

FISCAL NOTE:

This resolution is just the first step in the process and does not have a fiscal impact on the County at this time.

Sherry Oja
Finance Director

LEGAL NOTE:

This resolution authorizes the first step in the process of issuing Industrial Revenue Bonds pursuant to Wis. Stat. § 66.1103. Under the terms of the proposed financing, the County would authorize up to ~~\$8,000,000~~ \$10,900,000 in bonds, that would be paid out of the revenue that Bug Tusell Wireless, LLC would generate from the construction and leasing of wireless towers and fiber optic infrastructure to provide wireless broadband internet access to rural portions of Rock County. Before the bonds can be issued, the County will have to pass another resolution by 3/4 of the members elect approving the various financing and security instruments described in this resolution.

Richard Greenlee
Corporation Counsel

ADMINISTRATIVE NOTE:

The Ad Hoc Broadband Committee has recommended a financing approach to broadband expansion that includes a mix of ARPA funds, grants, and borrowing. The County's third-party bond counsel indicates that passage of an initial borrowing resolution is necessary, even though Rock County is not directly issuing the bonds. Therefore, if the Board wants to proceed with the project as proposed, passage of this resolution will be necessary to secure sufficient financing.

Josh Smith
County Administrator

Committee Action

Finance Committee

Finance Committee recommended this resolution for approval by a roll call vote of 3-1 in which Supervisors Bostwick, Mawhinney, and Fox voted "Aye" and Supervisor Farrell voted "Nay." Supervisor Clasen was absent.

EXHIBIT A

NOTICE TO ELECTORS OF ROCK COUNTY, WISCONSIN

TAKE NOTICE that the Board of Supervisors of Rock County, Wisconsin ("Rock County"), at a meeting held at the Rock County Courthouse, 51 South Main Street, Janesville, Wisconsin, on May 26, 2022, adopted an initial resolution (the "Initial Resolution") pursuant to Section 66.1103 of the Wisconsin Statutes, as amended, expressing the intention to approve Fond du Lac County (the "Issuing County"), acting pursuant to an intergovernmental agreement, to issue not to exceed \$240,000,000 of industrial development revenue bonds (the "Bonds") on behalf of Bug Tussel 1, LLC, a Wisconsin limited liability company (the "Company"), and/or one or more of its affiliates (including, without limitation, Bug Tussel Wireless, LLC, 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 Rock County in an amount not to exceed \$8,000,000; 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 Rock County is 1.

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 Rock County's interests are not prejudiced thereby.

THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF ROCK COUNTY, NOR SHALL THE BONDS GIVE RISE TO ANY PECUNIARY LIABILITY OF ROCK COUNTY, NOR SHALL THE BONDS BE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF ROCK 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 AND THE COMPANY.

The Initial Resolution may be inspected in the office of the Rock County Clerk at 51 South Main Street, Janesville, Wisconsin, during business hours.

TAKE FURTHER NOTICE THAT THE ELECTORS OF ROCK 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 Rock 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 Rock County voting thereon at a general or special election.

Lisa Tollefson, County Clerk
Rock County, Wisconsin

EXECUTIVE SUMMARY
Initial Resolution Approving Revenue Bond Financing for
Bug Tussel 1, LLC

This resolution approves an Initial Resolution of Rock 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 Revenue Bond Financing for Bug Tussel 1, 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 Rock County in an amount not to exceed \$8,000,000.

The funds are to cover the Rock County Broadband Expansion project including project activities not funded from ARPA and/or potential Public Service Commission (PSC) grant.