

RESOLUTION**ROCK COUNTY BOARD OF SUPERVISORS**Finance Committee
INITIATED BY7/1/2022
DATE DRAFTED**Final Resolution Regarding Unconditional County Guaranty of Its Pro Rata Share,
Intergovernmental Agreement and Taxable Revenue Bond Financing for Bug Tussel 1, LLC
Project**Section 1 - Recitals.

WHEREAS, 1.01 Under Wisconsin Statutes, Section 66.1103, as amended (the "Act"), the Issuer (as hereinafter defined) is authorized and empowered to issue revenue bonds to finance eligible costs of qualified "projects" (as defined in the Act), and to enter into "revenue agreements" (as defined in the Act) with "eligible participants" (as defined in the Act); and

WHEREAS, 1.02 Bug Tussel 1, LLC, a Wisconsin limited liability company (the "Borrower"), Hilbert Communications, LLC, a Wisconsin limited liability company (the "Company" and the "Guarantor") and/or one or more of its affiliates (including, without limitation, Bug Tussel Wireless, 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 the participating counties, which includes project costs in Rock County to be financed with Series 2022A Bonds in an amount not to exceed \$10,000,000; 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 where such service is currently unavailable or is prohibitively expensive; and

WHEREAS, 1.03 The Project will be constructed and installed in one or more of the following Wisconsin counties yet to be determined, with each respective county that has agreed to participate in the issuance of the Series 2022A Bonds to be evidenced by such participating county entering into the Joinder Agreement (defined herein) in connection with the issuance of the Series 2022A Bonds (each a "2022A Participating County" and collectively, the "2022A Participating Counties"): (i) Clark County, (ii) Green Lake County, (iii) Iowa County, (iv) Jefferson County, (v) Oconto County, (vi) Rock County, (vii) Taylor County, and (viii) Wood County; and

WHEREAS, 1.04 The Act authorizes the Issuer to make loans to an eligible participant, in connection with financing a qualified project; and

WHEREAS, 1.05 Pursuant to initial resolutions duly adopted by the (i) Clark County Board on May 19, 2022, (ii) Green Lake County Board on June 21, 2022, (iii) Iowa County Board on March 15, 2022, (iv) Jefferson County Board on May 10, 2022, (v) Oconto County Board on May 19, 2022, (vi) Rock County Board on June 23, 2022, (vii) Taylor County Board on March 4, 2022, and (viii) Wood County Board on May 17, 2022, the 2022A Participating Counties expressed their intention to enter into an Intergovernmental Agreement (the "Intergovernmental Agreement") originally by and among the Issuer, Calumet County, Jackson County, Marathon County, and Waushara County, each in Wisconsin (the "2021 Participating Counties"), and the 2022A Participating Counties, pursuant to which the Issuer would issue revenue bonds to be issued in one or more issues or series in an aggregate amount not to exceed \$240,000,000 to finance the Project. Notices of adoption of the initial resolutions adopted by the respective 2022A Participating Counties on March 4, 2022, March 15, 2022, May 10, 2022, May 17,

2022, May 19, 2022, June 21, 2022, and June 23, 2022 were published as provided in the Act, and no petition requesting a referendum upon the question of issuance of the revenue bonds has been filed in any 2022A Participating County as of the date of this resolution, and the closing of the Series 2022A Bonds shall not occur until the 30-day petition period following publication has expired in all 2022A Participating Counties; and

WHEREAS, 1.06 The 2022A Participating Counties shall enter into the Intergovernmental Agreement by executing the Counterpart and Joinder to Intergovernmental Agreement (the “Joinder Agreement”) to appoint Fond du Lac County as the issuer (the “Issuer”) of the Series 2022A Bonds for the purpose of financing the Project on behalf of the Borrower, and as agent on behalf of the 2022A Participating Counties with respect to the Pledge of Membership Agreement, dated as of December 16, 2021, by and between Hilbert Communications, LLC, a Wisconsin limited liability company, and the Issuer for the benefit of the 2021 Participating Counties, the 2022A Participating Counties, and other counties as may be joined to the Intergovernmental Agreement after the date hereof; and

WHEREAS, 1.07 The Borrower has requested that Rock County and each other 2022A Participating County who will directly benefit from the Project provide an unconditional general obligation guaranty, to which the full faith and credit and taxing power of Rock County and each other 2022A Participating County are pledged (the “County Guaranty”) to enhance the collateral position of the Borrower in an amount equal to Rock County’s or such 2022A Participating County’s pro rata share of the principal of and interest on the Series 2022A Bonds in an amount necessary to replenish the debt service reserve fund, which for Rock County will be in an amount not to exceed \$10,000,000 (plus interest to accrue thereon annually at a rate not to exceed 7.50%, including any compound interest payable on amounts paid by the Insurer (as defined herein) for the Series 2022A Bonds); and

WHEREAS, 1.08 The Guarantor will provide a guaranty (the “Hilbert Guaranty”) to Rock County, and each 2022A Participating County, guaranteeing the full and prompt payment to Rock County, and each 2022A Participating County, of amounts due from the Borrower pursuant to, and the performance of all other obligations, covenants and agreements of the Borrower under the Reimbursement Agreements by and between the Borrower and each of the 2022A Participating Counties, the Intergovernmental Agreement, and the Mortgage or Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Financing Statement referenced below; and

WHEREAS, 1.09 The Borrower will have the primary obligation to make all scheduled principal and interest payments when due, and each 2022A Participating County’s guaranty will apply only in the event that the Borrower does not pay such debt service as required and a draw is made on the debt service reserve fund for the Series 2022A Bonds (defined below) established under the Indenture; and

WHEREAS, 1.10 In return for each 2022A Participating County’s Guaranty, each 2022A Participating County shall receive a guaranty fee as further described in Section 3.02, and the Borrower and the Guarantor will pay any and all costs of each 2022A Participating County and all expenses incurred by each 2022A Participating County related to the Series 2022A Bonds; and

WHEREAS, 1.11 As further security for the County Guaranty, Rock County and each 2022A Participating County shall receive a first fee or leasehold mortgage on all land, buildings, and improvements of the Borrower and a first security interest, subordinate only to the security interest of the State of Wisconsin, the Public Service Commission of Wisconsin, or similar agency, political subdivision, or instrumentality of the state (the “State”) to the extent required by the State as a condition of grant funding provided for financed assets, in all fixtures and equipment of the Borrower located in the applicable county in which the Project financed with proceeds of the Series 2022A Bonds is constructed; and

WHEREAS, 1.12 The Project includes necessary infrastructure for essential services, including emergency response and public safety communications 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, Wisconsin Statutes, Section 59.54, and promotes the economic development and well-being of Rock County; and

WHEREAS, 1.13 Rock County’s obligations under its County Guaranty are expected to be insured by Build America Mutual Assurance Company (the “Insurer”) under its Municipal Bond Insurance Policy (the “Policy”) containing provisions consistent with the provisions of this resolution and the documents listed in Section 1.14, approved by the Issuer’s counsel, bond counsel and the appropriate officer or officers of Rock County and issued at the Borrower’s and/or Guarantor’s expense; and

WHEREAS, 1.14 Drafts of the following documents have been submitted to this County Board and are ordered filed in the office of the County Clerk:

- (a) Preliminary Limited Offering Memorandum;

- (b) a Bond Purchase Agreement by and among UBS Financial Services Inc., as underwriter (the "Underwriter"), and the Issuer, with the Letter of Representations from the Borrower and accepted and agreed to by the Issuer;
- (c) a Supplemental Series Indenture No. 1 (Series 2022A Bonds) relating to the issuance of the Series 2022A Bonds and the Indenture of Trust dated as of December 1, 2021 (collectively, the "Indenture") by and between the Issuer and U.S. Bank Trust Company, National Association, as trustee and successor to U.S. Bank National Association (the "Trustee");
- (d) a Supplemental Series Loan Agreement No. 1 (Series 2022A Bonds) relating to the issuance of the Series 2022A Bonds and the Loan Agreement dated as of December 1, 2021 (collectively, the "Loan Agreement") by and between the Issuer and the Borrower;
- (e) a Series 2022A Promissory Note from the Borrower to the Issuer, and assigned to the Trustee;
- (f) a Reimbursement Agreement from the Borrower to Rock County;
- (g) a Facilities Access Agreement from the Borrower to Rock County;
- (h) a form of Mortgage or Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Financing Statement from the Borrower to Rock County;
- (i) a Continuing Disclosure Agreement;
- (j) a Guaranty Agreement (Hilbert Guaranty) from the Guarantor to Rock County;
- (k) a Borrower's Closing Certificate;
- (l) the Intergovernmental Agreement and Joinder Agreement to be signed by each 2022A Participating County; and
- (m) the unconditional County Guaranty from Rock County; and Section 2 - Findings and Determinations.

WHEREAS, It is hereby found and determined that:

- (a) on representations of the Borrower, the Project constitutes a "project" authorized by the Act;
- (b) the purpose of the Issuer's financing costs of the Project is and the effect thereof will be to promote the public purposes set forth in the Act;
- (c) 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, Wisconsin Statutes, Section 59.54, and promotes the economic development and well-being of Rock County;
- (d) it is desirable that a series of taxable revenue bonds in the aggregate principal amount not to exceed \$140,000,000 (the "Series 2022A Bonds") be issued by the Issuer upon the terms set forth in the Indenture and Loan Agreement, under the provisions of which the Issuer's interest in the Indenture and Loan Agreement (except for certain rights as provided therein) and the loan repayments will be assigned to the Trustee as security for the payment of principal of and interest on and premium, if any, on all the Series 2022A Bonds outstanding under the Indenture;
- (e) the loan payments provided for in the Loan Agreement, and the formula set out for revising those payments under the Loan Agreement as required under the Act, are sufficient to produce income and revenue to provide for prompt payment of principal of and interest on and premium, if any, on Series 2022A Bonds issued under the Indenture when due; the amount necessary in each year to pay the principal of and interest on the Series 2022A Bonds is the sum of the principal and interest on the Series 2022A Bonds due in such year, whether on a stated payment date, a redemption date, or otherwise; the Loan Agreement provides that the Borrower shall provide for the maintenance of the Project in good repair, keeping it properly insured; and
- (f) under the provisions of the Act, the Series 2022A Bonds shall be limited obligations of the Issuer and the Series 2022A Bonds do not constitute an indebtedness of the Issuer or the 2022A

Participating Counties within the meaning of any state constitutional or statutory provision, and do not constitute nor give rise to a charge against the Issuer's or the 2022A Participating Counties' general

credit or taxing powers or a pecuniary liability of the Issuer or the 2022A Participating Counties.

Section 3 - Approvals and Authorizations; Authentication of Transcript.

NOW, THEREFORE, BE IT RESOLVED 3.01 that the Rock County Board of Supervisors duly assembled this day of , 2022, does hereby approve the issuance by the Issuer of its Taxable Revenue Bonds, Series 2022A (Bug Tussel 1, LLC Project) (Social Bonds) (specifically, the Series 2022A Bonds) in an aggregate principal amount not to exceed \$140,000,000, for the purpose of financing the Project.

BE IT FURTHER RESOLVED 3.02 (a) In furtherance of the public purposes recited above, Rock County shall provide an unconditional County Guaranty to enhance the collateral position of the Borrower in an amount equal to Rock County's pro rata share of the principal of and interest on the Series 2022A Bonds in an amount necessary to replenish the debt service reserve fund in an amount not to exceed \$10,000,000 (plus interest to accrue thereon annually at a rate not to exceed 7.50%, including any compound interest payable on amounts paid by the Insurer (as defined herein) for the Series 2022A Bonds). In return for its County Guaranty, Rock County shall receive either (i) an annual guaranty fee equal to 40 basis points (0.40%) of the outstanding par amount of the Series 2022A Bonds covered by its County Guaranty, payable on a semi-annual basis on each May 1 and November 1, or (ii) a discounted upfront guaranty fee as agreed to by the Borrower and Rock County. Prior to issuance of the Series 2022A Bonds, each 2022A Participating County on behalf of which Series 2022A Bonds are being issued shall have each authorized the execution and delivery of its respective County Guaranty.

(b) There is hereby authorized the issuance by Rock County of general obligation promissory notes pursuant to Wisconsin Statutes, Section 67.12(12) to finance payment of the County Guaranty. The terms and provisions of any such notes shall be established pursuant to a subsequent resolution of this County Board.

BE IT FURTHER RESOLVED 3.03 Rock County hereby authorizes the execution and delivery of the Joinder Agreement to the Intergovernmental Agreement, the County Guaranty and the other documents listed in Section 1.14 above to which Rock County is a signatory.

BE IT FURTHER RESOLVED 3.04 Subject to the conditions set forth herein, the County Board Chairperson and the County Clerk are authorized and directed to execute and deliver the County Guaranty, the Intergovernmental Agreement and the other documents listed in Section 1.14 above to which Rock County is a signatory. In addition, Rock County hereby authorizes the execution and delivery of a commitment with the Insurer consistent with the provisions of this resolution and the documents listed in Section 1.14 above as well as any other agreements, certificates or documents necessary to obtain the Policy.

BE IT FURTHER RESOLVED 3.05 The County Board Chairperson and the County Clerk and other officers of Rock County are authorized to prepare and furnish to the Trustee and bond counsel certified copies of all proceedings and records of the Rock County of relating to the Series 2022A Bonds, and such other affidavits and certificates as may be required by the Trustee and bond counsel.

BE IT FURTHER RESOLVED 3.06 The approval hereby given to the various documents referred to in this Resolution includes the approval of such additional details therein and additional documents or agreements all as may be necessary and appropriate for their completion and such modifications thereto, deletions therefrom and additions thereto as may be approved by the Rock County counsel and bond counsel. The execution of any document by the appropriate officer or officers of Rock County herein authorized shall be conclusive evidence of the approval by Rock County of such document in accordance with the terms hereof.

FISCAL NOTE:

The issuance of these bonds do not affect Rock County's debt levy capacity and won't be recorded as a liability in Rock County's financials. An initial debt service reserve will be funded from the bond proceeds.

Sherry Oja Finance Director

LEGAL NOTE:

This resolution authorizes the joint issuance of up to \$140 million of Industrial Revenue Bonding by Fond du Lac County, of which \$10 million will be guaranteed by Rock County. Proceeds of the bonds will be used by Bug Tussel 1, LCC, to construct a middle mile fiber network, and fixed wireless broadcasting points for providing last mile internet connections to the public. In exchange for providing that guarantee, the County will receive a security interest in the physical assets located in Rock County constructed by Bug Tussel 1, LLC, the right to co-locate County broadcasting equipment on tower sites constructed in Rock County, and up to 24 strands of "dark fiber" constructed along the middle mile fiber corridor. The County will also receive a 40 basis point fee in consideration of its guarantee of the debt. As additional collateral to the County's guarantee, Hilbert Communications, Bug Tussel's parent company, is providing a corporate guarantee on the County's contingent liability. The resolution authorizes the appropriate County officials to execute such documents as may be required and listed in the resolution above. The County is authorized to take this action pursuant to Wis. Stats. §§ 59.02, 59.51, 66.0301 & 66.1103.

This resolution also provides authorization to fund the contingent liability created by the County Guarantee through the issuance of general obligation promissory notes. However, the terms and provisions of any such notes would be established pursuant to a subsequent resolution of the County Board.

Pursuant to Wis. Stats. § 67.045, adoption of this resolution requires three-quarters of the members-elect.

Richard Greenlee
Corporation Counsel

ADMINISTRATIVE NOTE:

Adoption of this resolution is necessary if the County wishes to proceed with the \$10 million in borrowing needed to fund a portion of the broadband project as currently proposed.

Josh Smith
County Administrator

Committee Action
Finance Committee