

**MEMORANDUM OF AGREEMENT (MOA)  
REGARDING  
BROADBAND PLANNING**

This Memorandum of Agreement, hereinafter, AGREEMENT, is made and entered into by and between the Columbia Pacific Economic Development District, hereinafter **COL-PAC**, and Tillamook County, by and through its Board of Commissioners, hereinafter **COUNTY**. COL-PAC and COUNTY collectively referred to as **PARTIES**.

**RECITALS**

- A. The purpose of this AGREEMENT is to define PARTIES' responsibilities regarding COL-PAC's Broadband Planning Project. COL-PAC has contracted with Uptown Services, LLC to evaluate the financial feasibility of creating a regional middle-mile dark fiber network that will connect anchor institutions, provide a path to the regional Portland NOC, offer low-cost commercial connectivity for economic development, and bring a dark fiber backbone close enough to underserved broadband areas to help incentivize private sector development of last mile connectivity.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants, promises and undertakings hereinafter set forth, PARTIES agree as follows:

1. COL-PAC will provide the services and personnel to complete the work activities described in Exhibit A: Proposal for Consulting Services.
2. TILLAMOOK COUNTY will provide such assistance and guidance as may be required to support the objectives set forth in the Scope of Work and will provide compensation for services as set forth in provision #3 below.
3. TILLAMOOK COUNTY will provide an amount not to exceed twenty-five thousand dollars (\$25,000) as compensation to COL-PAC. COL-PAC shall submit an invoice to TILLAMOOK COUNTY to request compensation. Payment should be made by TILLAMOOK COUNTY to COL-PAC within 30 days of the invoice.
4. TERM.
  - 4.1 The period of performance under this AGREEMENT will be from July 8, 2021 through July 8, 2022, unless sooner terminated as provided herein.
5. TERMINATION. This AGREEMENT shall terminate:
  - 5.1 This AGREEMENT may be suspended or terminated if COL-PAC materially fails to comply with any terms of this AGREEMENT. This AGREEMENT may also be terminated for convenience upon written notification by either party with a minimum notice of 30 calendar days. In the event of termination for convenience, COL-PAC shall be due payment for all work completed by the time of termination.

6. INDEMNITY.

6.1 Each party shall include appropriate indemnity clauses in any design, construction or repair contracts issued for the Project. Such indemnity clauses shall require consultants, subconsultants, contractors, subcontractors, and suppliers to defend, indemnify and hold the PARTIES harmless from all claims, costs, damages, or expenses of any kind, including attorneys' fees and other costs and expenses of litigation, for personal injury or property damage to the extent such claims, costs, damages, or expenses arise out of that party's fault.

7. GENERAL PROVISIONS.

7.1 ENTIRE AGREEMENT. This AGREEMENT constitutes the entire agreement between PARTIES. There are no understandings, agreements or representations, oral or written not specified herein regarding this AGREEMENT. Any waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given.

7.2 MODIFICATION & WAIVER. The rights and duties under this AGREEMENT shall not be modified, delegated, transferred or assigned, except upon the written-signed consent of the parties. Failure to enforce any provision of this AGREEMENT shall not operate as a waiver of such provision or of any other provision.

7.3 ATTORNEYS' FEES. Attorney fees, costs, and disbursements necessary to enforce this agreement through mediation, arbitration and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

7.4 LEGAL REPRESENTATION. In entering into this AGREEMENT, each party has relied solely upon the advice of their own attorney. Each party has had the opportunity to consult with counsel.

7.5 NOTICES. Any notice required or permitted under this AGREEMENT shall be in writing and deemed given when:

7.5.1 actually delivered if not sent by mail as described below, or

7.5.2 three days after deposit in United States certified mail, postage prepaid, addressed to the other party at their last known address.

7.6 LANGUAGE. The headings of the contract paragraphs are intended for information only and shall not be used to interpret paragraph contents. All masculine, feminine and neuter genders are interchangeable. All singular and plural nouns are interchangeable, unless the context requires otherwise.

7.7 SAVINGS. Should any clause or section of this AGREEMENT be declared by a court to be void or voidable, the remainder of this AGREEMENT shall remain in full force and effect.

7.8 JURISDICTION; LAW. This AGREEMENT is executed in the State of Oregon and is subject to Tillamook County and Oregon law and jurisdiction. Venue shall be in Tillamook County, Oregon, unless otherwise agreed by the parties.

7.9 NO THIRD PARTY BENEFICIARIES. There are no intended third-party beneficiaries of this AGREEMENT.

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**COLUMBIA PACIFIC ECONOMIC  
DEVELOPMENT DISTRICT**



Ayreann Colombo, Executive Director

DATED THIS 11 DAY OF October, 2021

**THE BOARD OF COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON**

DATED THIS 20th DAY OF October, 2021

Aye      Nay      Abstain/Absent

\_\_\_\_\_  
Mary Faith Bell, Chair

\_\_\_    \_\_\_    \_\_\_/\_\_\_

\_\_\_\_\_  
David Yamamoto, Vice-Chair

\_\_\_    \_\_\_    \_\_\_/\_\_\_

\_\_\_\_\_  
Erin D. Skaar, Commissioner

\_\_\_    \_\_\_    \_\_\_/\_\_\_

ATTEST:      Tassi O'Neil, County Clerk

APPROVED AS TO FORM.

By: \_\_\_\_\_  
Special Deputy

\_\_\_\_\_  
Joel W. Stevens, County Counsel

Exhibit A  
Proposal for Consulting Services

**A. Task 1: Identify Current Broadband Gaps**

Uptown will use FCC broadband availability data for the Col-Pac region to identify the recently reported level of broadband capability at the census block level. Additionally, for Columbia, Clatsop and Western Washington counties, Uptown will import survey GIS layers previously developed to capture speed test data. If a state-level mapping tool is made available, Uptown will also import this data as part of this task. These additional data layers will need to be in a standard GIS format: either shape files or a geodatabase. We will create a heat map for the region that shows the different levels of download speeds and reveals the gaps that exist in the region.

**B. Task 2: Characterize Current Aerial Infrastructure and Fiber Assets**

Uptown will work with Col-Pac staff to collect information from local electric utilities and fiber providers that can be used map the current aerial systems and fiber networks. Some fiber providers will not want to share such information, but it should be possible to secure the current pole locations for electric utilities with the assistance of Col-Pac staff. This information will serve as the basis for the high-level middle mile fiber network design process.

**C. Task 3: Identify Potential Operating Partners and Terms**

Uptown will work with Col-Pac staff to identify potential operating partners that could enhance and expand broadband capabilities in the region. We will hold meetings with potential partners and discuss the different structures for operating a new fiber network. This work will be focused on filling the broadband gaps identified in Task 1. We will also discuss service design, pricing and how the operating roles would play out under different scenarios. Finally, we will discuss financial arrangements at a high level in terms of how capital, expenses and revenues might be shared. The results of these discussions will be key to the development and analysis work outlined in Task 4.

**D. Task 4: Identify Business Model Options / Pro Forma Analysis**

Uptown will complete an analysis of the business model options available for a middle-mile broadband network by exploring the strategic, financial, and organizational implications of each. Uptown will evaluate the potential business structure options with Client staff to make sure all appropriate options are being considered and then go about evaluating the alternatives from both qualitative and quantitative points of view.

Completion of this task will include an analysis of the following business structure options, with other potential structures as identified by the Client:

**a. Business Model Option #1 – Dark Fiber Leasing**

Uptown will evaluate the potential for Col-Pac to lease dark fiber to community anchor institutions (CAI), including transport to Pittock. This will include pricing models whereby the CAI pays for the construction of the fiber lateral to connect to the fiber backbone upfront or over time (recouped via term contract through recurring dark fiber lease rates). This model can typically capture revenue through one-off transport circuit requests from local/regional ISPs.

**b. Business Model Option #2 – Operating Partnerships with ISPs**

This model will examine the potential for Col-Pac to form one or more partnerships with ISP providers in the delivery of their internet services over the proposed fiber backbone. While this model also involves easing the middle-mile capacity to other providers, it is more strategic in nature for two reasons:

- The intent would be to secure a long-term partnership with a provider committed to bringing last-mile fiber access to the homes and businesses in the region.
- Whereas dark fiber leasing involves providing a ‘commodity’ to any user in the form of backbone capacity, this financial feasibility of this model would depend upon establishing long-term wholesale revenues through one or more operating partners that would serve as the ‘anchor tenant’ of the Col-Pac fiber network.

**c. Business Model Option #3 – TBD by Client**

Uptown will analyze a third, hybrid business model that the Client anticipates will merge during the course of the project, either through discussions with a potential operating partner or as a results of federal grant funding requirements. It is further expected that this hybrid model will involve adding a last-mile fiber architecture component to the proposed services strategy. As such, Uptown will complete additional analysis to understand the typical capital requirement within the proposed service area(s) to extend the fiber build to full last-mile (passing all premises within the service area). The objective of this task would be to provide budgetary estimates/sizing for potential use with ISP partners considering connection to the middle-mile backbone as an operating partner. Furthermore, depending upon the goals and criteria for expected federal grant funding programs support enhance broadband infrastructure in un- underserved areas, this analysis could be a source of key data required for grant submittals. This task would involve additional sample designs to identify plant mileage, density, type of construction and would utilize typical unitary construction cost parameters typical for the region.

## **2. Deliverable: Financial Analysis of Business Models**

Uptown will use our financial models to evaluate in detail the financial feasibility and outcomes for the business models being evaluated. Accordingly, the feasibility analysis methodology will allow creation of a market-driven demand-planning tool that is flexible and allows for mutations of the various strategies depending on certain variables, rather than a detailed business plan of a single option.

This approach will put Col-Pac in the best position to assess the viability of the business models being considered in their go-forward strategy. With this approach, Uptown will complete a scenario analysis within its financial models to quantify and present back-to-back comparison of each business structure from a financial perspective. The financial metrics that will be addressed will include over a 20-year projection:

- Working Capital Requirement
- Bond Amount
- Total Funding Requirement
- Total Revenue
- Total Expense
- Operating Income
- Cash Flow with Debt Service
- Cumulative Cash Flow
- Project Net Payback Period

### **E. Task 5: Create High Level Fiber Backbone Design**

Uptown will use the information provided by Col-Pac and local utilities to develop a high-level middle mile plan for the region. We will use GIS to map the optimal routes for a new middle mile system that passes the required anchor institutions and connects to the key service providers and regional points of interconnection. This design will be detailed enough for the development of a capital budget that could be used for future business planning and grant applications. The design will characterize the new middle mile network in terms of fiber cable size, outside plant construction method (aerial vs. underground), total miles of construction and future lateral network requirements (potential customers or network interconnections). The primary deliverables for this task will be design maps and bill of materials for all labor and material requirements.

### **F. Task 5a: Evaluate Potential Starlink impact**

Uptown will undertake to evaluate the potential for Starlink to either contribute or detract from the regional broadband project under the following two scenarios:

- Project Asset: Starlink could potentially serve the near-term need of end users in underserved areas for improved broadband access while the middle-mile system is constructed. Projects of this nature require significant start-up time – both for initial construction as well as ramping up an operating partner’s market share – and Starlink could provide an immediately available technology for that purpose.
- Project Liability: Starlink could potentially become a competitive broadband offering that could limit the market potential of an operating partner ISP that is a ‘late market entrant.’ This would depend upon a number of factors, but Uptown would expect any potential operating partner considering last-mile expansion off of the Col-Pac fiber backbone to evaluate supply-side conditions.

To complete this task, Uptown will conduct a strategic assessment of Starlink’s competitive position, end user value proposition, likely marketplace developments, technology developments, and resulting opportunities/risks. A combination of secondary research and subject matter expert opinions will be incorporated into our analysis.

## **II. Optional Task**

### **A. Optional Task 6: Operating Plan and Grant Application Support**

At the option of the Client, Uptown will assimilate the findings of the Task 1-5 deliverables into a business plan that will cover the following topics, as appropriate as appropriate and reflective of the business models selected by the Client. These tasks are intended to reflect Tasks 6 and 7 of the Col-Pac scope, but are optional to allow a ‘decision point’ for the Client subsequent to the findings of Tasks 1-5:

- Middle-Mile Services Offered: Fiber IRU terms, proposed lease fees, cost allocation
- Network Operations: Operational Model, outage response, service level agreement targets
- Partnership Management: Partner roles, dispute resolution, contract template, and assistance developing an Operating Agreement between the parties.
- Personnel Plan: Staffing, Compensation
- Software Tools: Identify required/recommended software
- Grant Applications: Uptown will provide data, maps, analysis, financial forecasts, and grant writing assistance as need to assist the Client in developing and submitting grant applications.