

BROADBAND FUNDING AND DEVELOPMENT AGREEMENT

This Broadband Funding and Development Agreement (“Broadband Agreement”) is entered into by and between the Town of Marbletown, 1925 Lucas Turnpike, Cottekill, New York 12419 (“Town”) and Archtop Fiber LLC (“Archtop”) 300 Enterprise Dr., Kingston, NY 12401. Town and Archtop are referred to collectively herein as the “Parties” and individually as a “Party.”

RECITALS

- a. WHEREAS, the Town seeks to provide broadband internet service to the Town and all the unserved/ underserved residents and businesses in the Town (“Project”); and,
- b. WHEREAS, Archtop and the Town agree on the objectives of the Project and desire to further make available broadband service (“Service”) to the unserved/underserved areas within the Town via the System (defined below); and,
- c. WHEREAS, there are multiple, overlapping programs at the federal and State level that support broadband access as their main purpose, including Federal Communications Commission, Rural Utility Services, US Department of Commerce and National Telecommunications and Information Administration programs, creating difficulty in determining the most effective approach to securing public funding for the Project; and
- d. WHEREAS, Archtop is willing to assist the Town’s efforts to secure public funding from all available sources for the Project if all funding which the Town derives from this joint effort is dedicated to the maximum extent legally permissible to support infrastructure within portions of the Town for Archtop to provide broadband internet service (“System”), and if applicable permit and inspection fees on Town property and rights-of-ways required for the construction of the System are waived; and
- e. WHEREAS, Town is willing to assist in such efforts as part of the Project, under the terms of this Broadband Agreement.

NOW THEREFORE, for value received and in consideration of the covenants and conditions set forth below, the Parties agree as follows:

1. Identify and Pursue Public Funding; Nonexclusive Agreement.

- a. The Parties shall work cooperatively to identify and pursue available public funding options for the Project, including but not limited to American Rescue Plan Act (ARPA), Broadband Equity, Access and Development (BEAD) Program, New York State's Connect ALL program, and other state and federal funding sources to be determined by the Town.
- b. Public funds secured pursuant to this Broadband Agreement will be earmarked by the Town to support deployment of the System in pursuit of the Project as mutually determined by the Parties and to the maximum extent permissible under applicable law. Any unused funds will be repurposed toward another Town project in accordance with applicable law.
- c. Archtop shall provide technical and other expertise to the Town upon request and at no cost to assist in pursuing available public funding options for the Project;
 - (1) Archtop shall assist in developing any funding applications required;
 - (2) Archtop shall assist the Town to develop any maps or materials required for funding applications the Town elects to pursue;
 - (3) Archtop shall cooperate in responding to any questions raised by the funding agencies to assist the Town.
- d. This Broadband Agreement is non-exclusive and each Party reserves the right to pursue available public funding options through any lawful means and with or without other parties.

2. Town Obligations.

- a. To the extent permitted by applicable law, the Town will waive all permit and inspection fees required for the initial construction of the System in the Town on Town property and rights-of-ways to facilitate the Project;
- b. Town shall, as a part of its overall road and right-of-way design standards, update Town projects currently in process to add standards for communication conduit installation for existing and all future planned subdivisions, thus allowing the installation of future backbone on Town property and rights-of-ways without the need for street cutting.

3. Archtop Obligations.

- a. Archtop shall extend the System to unserved/underserved areas of the Town in support of the Project, subject to receipt of funding pursuant to this Broadband Agreement and agreement with the Town as to the terms and conditions of such construction and Service activation;
- b. Any System construction using public funds secured pursuant to this Broadband Agreement shall be scheduled as mutually determined by the Parties;
- c. The System shall at all times be owned by Archtop. To the extent applicable law requires that ownership of the System, in whole or in part, not reside with Archtop or the parties are unable to reach mutual agreement as to the terms and conditions of any System construction or Service activation, Archtop may decline funding obtained pursuant to this Broadband Agreement and shall have no further obligation to extend the System unless it expressly agrees to do so on mutually acceptable terms and conditions.

4. Compliance with Law.

The Town and Archtop shall comply with applicable law in the performance of their respective obligations and the use of any funding obtained pursuant to this Broadband Agreement.

5. Independent Contractor.

Each Party under the Broadband Agreement shall be for all purposes an independent contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. Archtop shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the Town for any purpose.

6. Entire Agreement.

All prior understandings and agreements in connection with or relating to this settlement are merged into this Broadband Agreement, which supersedes all prior understandings and agreements. Each of the Parties agree, represent, and warrant that in entering into this Broadband Agreement, it is not relying upon any representation, promise, understanding, statement or inducement not expressly set forth in this Broadband Agreement.

7. Successors and Assigns.

This Broadband Agreement governs the rights of and binds and inures to the benefit of the Parties and each of their respective heirs, legatees, devisees, executors, successors, administrators, and assigns.

8. Authority to Execute and Bind.

Each of the Parties represents and warrants that each of the persons executing this Broadband Agreement on its behalf has full and complete legal authority to do so and thereby binds the Party on behalf of which this Broadband Agreement is executed by them.

9. Necessary Acts.

The Parties agree to perform any further acts and execute and deliver any further documents that may reasonably be necessary to carry out the provisions of this Broadband Agreement.

10. Severability.

In case any part, term, portion or provision of this Broadband Agreement is or shall be invalid, illegal or unenforceable, the remaining parts, terms, portions and provisions shall not be affected or impaired, unless an arbitrator or tribunal with jurisdiction over the matter concludes the material purpose of this Broadband Agreement would be frustrated by such an interpretation.

11. Amendment of Broadband Agreement.

This Broadband Agreement may only be amended by written agreement, executed by both Parties, which expressly amends this Broadband Agreement.

12. New York Law.

This Broadband Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding the operation of any conflict or choice of law statutes or decisional law to the contrary.

13. Counterparts.

This Broadband Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. Term; Effective Date.

This Broadband Agreement shall be effective upon execution by both Parties hereto and shall continue until such time as either Party provides the other with sixty (60) days prior written notice of termination. The Parties shall work together in good faith to complete any funding requests pending upon the termination of this Broadband Agreement and shall use such funds to extend the System whether or not this Broadband Agreement is in effect to the maximum extent allowed by law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the Parties has executed this Broadband Agreement on the date and year set forth below.

Dated: _____, 2023

Town of Marbletown

Signature: _____

Printed Name: _____

Title: _____

Dated: _____, 2023

Archtop Fiber Networks LLC

Signature: _____

Printed Name: Jeffrey DeMond

Title: CEO

