

EXHIBIT A

ORDINANCE _____

CITY OF PORT TOWNSEND, WASHINGTON and
JEFFERSON COUNTY, WASHINGTON

AN ORDINANCE relating to the Port Townsend and Jefferson County Public Development Authority and creating the Jefferson County Public Fiber Network Authority; authorizing a charter and bylaws therefor; establishing a Board of Directors to govern the affairs of the Authority; providing how the Authority shall conduct its affairs and approving an ordinance summary for publication.

PASSED: _____

TABLE OF CONTENTS

- SECTION 1. Interlocal Agreement - Authority to Establish Regional Public Development Authority
- SECTION 2. Authority Created-Town Liability Limited
- SECTION 3. Name
- SECTION 4. Definition
- SECTION 5. Powers – Generally
- SECTION 6. Limitation of Powers
- SECTION 7. Charter
- SECTION 8. Commencement of Authority’s Existence; Compliance with Charter
- SECTION 9. Board of Directors
- SECTION 10. Organization Meeting
- SECTION 11. Board Review and Concurrence.
- SECTION 12. Proposing Charter Amendments
- SECTION 13. Charter Amendment
- SECTION 14. Bylaws
- SECTION 15. Corporate Treasurer; Fidelity Bond
- SECTION 16. Code of Ethic – Conflict of Interest
- SECTION 17. Equal Employment Opportunity
- SECTION 18. Access to Records
- SECTION 19. Meetings of the Board
- SECTION 20. Quorum
- SECTION 21. Deposit of Public Funds
- SECTION 22. Establishment and Maintenance of Office and Records
- SECTION 23. Reports and Information
- SECTION 24. Audits and Inspections
- SECTION 25. Termination
- SECTION 26. Withdrawal
- SECTION 27. Continuation of the Authority
- SECTION 28. Admission of New Towns
- SECTION 29. Dissolution – Statement
- SECTION 30. Dissolution – Disposition of Assets
- SECTION 31. Liquidation and Distribution - Procedures
- SECTION 32. Insurance
- SECTION 33. Unauthorized Representatives
- SECTION 34. Ancillary Authority
- SECTION 35. Construction
- SECTION 36. Effective Date

WHEREAS, by Chapter 37, Laws of 1974, extraordinary session, as amended by Chapter 322, Laws of 1985, regular session and codified as RCW 35.21.730 through RCW 35.21.757 (the Act), the legislature of the State of Washington authorized municipalities to create public corporations, commissions and authorities; and

WHEREAS, the City Council of the City of Port Townsend and the Board of Commissioners of Jefferson County, Washington (the Legislative Bodies) have determined that a regional public development authority should be created for the City of Port Townsend (the “City”) and Jefferson County (the “County”), Washington pursuant to the Act.

NOW, THEREFORE, THE CITY OF PORT TOWNSEND AND JEFFERSON COUNTY DO ORDAIN AS FOLLOWS:

Section 1. Interlocal Agreement – Authority to Establish Regional Public Development Authority.

The City and County entered into an Interlocal Agreement (the “Interlocal Agreement”) pursuant to the Interlocal Cooperation Act for the purpose of establishing a joint and cooperative Regional Public Development Authority.

Section 2. Authority Created - City and County Liability Limited.

A. Authority Created. A regional public authority is hereby created to administer and execute federal and state grants or programs; receive and administer private funds, goods or services for any lawful public purpose; and perform any lawful public purpose or public function within the limits of the incorporated area of the City of Port Townsend and Jefferson County and without said limits to the extent provided by RCW 35.21.740 as enacted or hereafter amended.

B. City and County Liability Limited. The Authority is an independent legal entity exclusively responsible for its own debts, obligations and liabilities. All liabilities incurred by the Authority shall be satisfied exclusively from the assets and credit of the Authority; no creditor or other person shall have any recourse to the assets, credit or services of the City or County on account of any debts, obligations, liabilities, acts, or omissions of the Authority.

Section 3. Name.

The name of the regional public authority shall be the Jefferson County Public Fiber Network Authority.

Section 4. Definitions. As used herein, the term:

A. Act means Chapter 37, Laws of Washington, 1974, extraordinary session, as amended by Chapter 332, Laws of Washington, 1985, regular session and codified as RCW35.21.730 through RCW 35.21.757.

B. Authority means the Jefferson County Public Fiber Network Authority created under this ordinance.

C. Board of Directors or Board means the governing body vested with the management of the affairs of the Authority.

D. Bonds means any bonds, promissory notes, interim certificates, debentures, certificates of indebtedness or other obligations issued by the Authority pursuant to the Act, this ordinance and the Charter.

E. Bylaws means the rules adopted for the regulations or management of the affairs of the Authority adopted by this ordinance and all subsequent amendments thereto.

F. Charter means the articles of organization of the regional public development authority adopted by this Ordinance and all subsequent Amendments thereto.

G. Director means a member of the Board.

H. "Interlocal Cooperation Act" means Chapter 37, Title 34 of the Revised Code of Washington.

I. Open Public Meetings Act means Chapter 42.30 RCW, as now or hereafter amended.

J. Planning Director means the Planning Director of the City or County or a person authorized on his or her behalf.

K. State means the State of Washington.

L. City means the City of Port Townsend and County means Jefferson County, Washington.

M. City Clerk means the Clerk of the Port Townsend City Council or a person authorized to act on his or her behalf.

N. County Clerk means the Clerk of Jefferson County or a person authorized to act on his or her behalf.

O. City Council means the legislative authority of Port Townsend.

P. Board of Commissioners means the legislative authority of Jefferson County.

Section 5. Powers - Generally.

Except as otherwise limited by the State constitution, state statute, and ordinances of the City, County, this ordinance, or the Charter, the Authority shall have and may exercise all lawful power necessary or convenient to effect the purposes for which the Authority is organized and to perform authorized corporate functions, including, without limitation, the power to:

A. Own and sell real and personal property;

B. Contract for any purpose with the United States, the State and any political subdivision or agency of either, and with individuals, associates and corporations;

C. Sue and be sued in its name;

D. Lend and borrow funds;

E. Do anything a natural person may do;

F. Provide and implement such municipal and community services and functions as the City and County may by ordinance direct;

G. Receive and administer federal, state, local or private funds, goods, or services for any lawful public purpose;

H. Purchase, lease, exchange, mortgage, encumber, improve, use or otherwise transfer or grant security interest in real or personal property or any interest herein; grant or acquire options on real and personal property; and contract regarding the income or receipts from real and personal property;

I. Issue Bonds in conformity with applicable provisions of State law in such principal amounts as in the discretion of the Authority shall be necessary or appropriate to provide sufficient funds for achieving any corporate purposes; provided, however, that all Bonds or liabilities occurring thereunder shall be satisfied exclusively from the assets, properties or credit of such Authority, and no creditor or other person shall have any recourse to the assets, credit or services of the City or County thereby;

J. Contract for, lease and accept transfers, gifts or loans of funds or property from the United States, a state, and any municipality or political subdivision or agency of either, including property acquired by any such governmental unit through the exercise of its power of eminent domain, and from corporations, associations, individuals or any other source, and to comply with the terms and conditions therefor;

K. Manage, on behalf of the City or County, any property acquired by the City or County;

L. Initiate, carry out and complete such improvements of benefit to the public consistent with its Charter;

M. Lend its funds, property, credit or services for corporate purposes, or act as a surety or guarantor for corporate purposes;

N. Provide advisory, consultive, training, educational, and community services advice to individuals, associations, corporations, or governmental agencies, with or without charge;

O. Control the use and disposition of corporate property, assets, and credit;

P. Invest and reinvest its funds;

Q. Fix and collect charges for services rendered or to be rendered, and establish the consideration (if any) for property transferred;

R. Maintain books and records as appropriate for the conduct of its affairs;

S. Conduct corporate affairs, carry on its operations, and use its property as allowed by law and consistent with the Act, this ordinance, its Charter and its Bylaws; name corporate officials, designate agents, and engage employees, prescribing their duties, qualifications, and compensation; secure the services of consultants for professional services (including lawyers, accountants and others), technical assistance or advice;

T. Exercise and enjoy such other powers as may be authorized by law.

Section 6. Limitation of Powers.

The Authority in all activities and transactions shall be limited in the following respects:

A. The Authority shall have no power of eminent domain nor any power to levy taxes or special assessments.

B. The Authority may not incur or create any liability that permits recourse by any party or member of the public to any assets, services, resources or credit of the City or County. All liabilities incurred by the Authority shall be satisfied exclusively from the assets and credit of the Authority; no creditor or other person shall have any recourse to the assets, credit or services of the City or County on account of any debts, obligations, liabilities, acts or omissions of the Authority.

C. All funds, assets or credit of the Authority shall be applied toward or expended upon services, projects and activities authorized by the Charter. No part of the net earnings of the Authority shall inure to the benefit of, or be distributable as such to, the Directors, officers of the Authority or other private persons, except that the Authority is authorized and empowered to:

1. Compensate Authority officials and others performing services for the Authority, including legal counsel, a reasonable amount for services rendered, and reimburse reasonable expenses actually incurred in performing their duties;

2. Assist Authority officials as members of a general class of persons to be assisted by an Authority approved project or activity to the same extent as other members of the class as long as no special privileges or treatment accrued to such corporate official by reason of his or her status or position in the Authority;

3. Defend and indemnify any current or former Board member or employee and their successors, spouses and marital communities against all costs, expenses, judgments and liabilities, including attorneys fees, reasonably incurred by or imposed upon him or her in connection with or resulting from any claim, action or proceeding, civil or criminal, in which he or she is or may be made a party by reason of being or having been a corporate official, or by reason of any action alleged to have been taken or omitted by him or her as such official, provided that he or she was acting in good faith on behalf of the Authority and within the scope of duties imposed or authorized by law. This power of indemnification shall not be exclusive of other rights to which corporate officials may be entitled as a matter of law;

4. Purchase insurance to protect and hold personally harmless any of its officials (including its employees and agents) from any action, claim or proceeding instituted against the foregoing individuals arising out of the performance, in good faith, of duties for, or employment with, the Authority and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims or proceedings. The purchase of such insurance and its policy limits shall be discretionary with the Board, and such insurance shall not be considered to be compensation to the insured individuals. The powers conferred by this subsection shall not be exclusive of any other powers conferred by law to purchase liability insurance; and

5. Sell assets for a consideration greater than their reasonable market value or acquisition costs, charge more for services than the expense of providing them, or otherwise secure an increment in a transaction, or carry out any other transaction or activity, as long as such gain is not the principal object or purpose of the Authority's transactions or activities and is applied to or expended upon services, projects and activities as aforesaid.

D. The Authority shall not issue shares of stock, pay dividends, make private distribution of assets, make loans to its Directors or employees or otherwise engage in business for private gain.

Section 7. Charter.

The Charter of the Authority (the Charter), attached hereto and incorporated herein as Exhibit B of this ordinance, is hereby approved. Upon the effective date of this ordinance, the Charter shall be issued in triplicate originals, each bearing the City and County seals attested by the City and County Clerks. One original shall be retained by the City and County Clerks and filed as a public record; a duplicate original shall be provided to the Authority. The City and County Clerks shall give notice of the issuance of the Charter to the Secretary of State.

Section 8. Commencement of Authority Existence; Compliance with Charter.

The Authority shall commence its existence upon the issuance of the Charter. The Authority shall conduct its affairs in accordance with the Charter.

Section 9. Board of Directors.

A board of directors (the Board of Directors or Board) is hereby established to govern the affairs of the Authority, and shall be composed as set forth in the Charter. All corporate powers of the Authority shall be exercised by or under the authority of the Board of Directors and the business, property and affairs of the Authority shall be managed under the direction of the Board of Directors, except as may be otherwise provided for by law or in the Charter.

Section 10. Organization Meeting.

The City Council and Board of Commissioners shall call an organizational meeting of the initial Board members within thirty (30) days of the effective date of this Ordinance, giving at least two (2) days advance written notice to each, unless waived in writing. At such meeting, the Board shall organize itself.

Section 11. Board Review and Concurrence.

A. At least once each year, the Board shall review monthly statements of income and expenses which compare budgeted expenditures to actual expenditures. The Board shall review all such information at its meetings, the minutes of which shall specifically note such reviews and include such information.

B. General or particular authorization or review and concurrence of the Board by resolution shall be necessary for any of the following:

1. Adoption of an annual budget and a separate capital budget;
2. Transfer or conveyance of an interest in real estate other than release of a lien or satisfaction of a mortgage after payment has been received and the execution of a lease for a current term more than one year;
3. The contracting of debts, issuance of Bonds, and the mortgaging or pledging of authority assets or credit to secure the same;
4. An action by the Authority as a surety or guarantor;
5. All unbudgeted expenditures and all capital expenditures in excess of Five Thousand (\$5,000.00) , and all other transactions in which: (i) the consideration exchanged or received by the Authority exceeds the greater of one percent (1%) of the previous year's operating budget or Five Thousand (\$5,000.00); (ii) the performance by the Authority shall extend over a period exceeding one (1) year from the date of execution of an agreement therefor; or (iii) the Authority assumed duties of, or assigned duties to, the City, the County, the State, the United States or other governmental entity;
6. Certification of annual reports and statements to be filed with the City and County Clerks as true and correct in the opinion of the Board and of its members except as noted;
7. Proposed amendments to the Charter and Bylaws; and
8. Such other transactions, duties and responsibilities as the Charter shall repose in the Board or the Board may reserve.

Section 12. Proposing Charter Amendments.

A. The Authority may propose to the City Council and Board of Commissioners that its Charter be amended by resolution of its Board passed by a procedure outlined in its Charter at a regular or special meeting of which two (2) days advance written notice was given to Board members.

B. Information regarding a proposed Charter amendment shall be provided to members of the Board two (2) days prior to the meeting at which a vote shall be taken and shall include the proposed amendment and a statement of its purpose and effect.

Section 13. Charter Amendment.

After adoption of a proposed Charter amendment by unanimous vote of the Board of Directors, the Authority shall file; two (2) complete copies of the Charter with the City and County Clerks. The Charter may be amended only by ordinance of the City Council and Board of Commissioners. If the City Council and Board of Commissioners approve the proposed amendment, the revised Charter shall be issued in triplicate originals, each bearing the City and County seals and attested by the City and County Clerks. An original copy shall be retained by the City and County Clerks as a public record and the other original shall be delivered to the Authority. A Charter amendment proposed by the Authority shall take effect and become a part of the Charter upon issuance of the revised Charter by the City and County Clerks.

Section 14. Bylaws.

A. The initial Bylaws (the Bylaws) of the Authority, attached hereto and incorporated herein as Exhibit C of this Ordinance, are hereby approved. The power to alter, amend or repeal the Bylaws or adopt new ones shall be vested in the Board unless otherwise provided in the Charter or Bylaws.

Section 15. Corporate Treasurer; Fidelity Bond.

The Treasurer shall file as soon as practicable with the Authority a fidelity bond in an amount determined by the Authority to be adequate and appropriate, and may hold the corporate office only as long as such bond continues in effect.

Section 16. Code of Ethics - Conflict of Interest.

A. No member of the Board or any officer or employee of the Authority shall derive a personal profit, direct or indirect, from any contract or in the sale to the Authority or to a contractor supplying the Authority of any land or rights or interests in any land, material, supplies, or services except as provided in Chapter 42.23 RCW.

B. The Board may adopt additional conflict of interest and ethical rules it considers appropriate within its bylaws.

Section 17. Equal Employment Opportunity.

The Authority shall comply with all applicable federal, state and local laws, regulations, rules and standards relating to equal employment opportunity.

Section 18. Access to Records.

A. The Authority shall keep an official journal containing the minutes of proceedings at all meetings of the Board and the resolutions of the Board.

B. Any person shall have access to records and information of the Authority to the extent required by State law.

Section 19. Meetings of the Board.

A. The Board shall meet at least one (1) time each year; special meetings of the Board may be called as provided by the Charter, the Bylaws and the Open Public Meetings Act.

B. The Board shall be the governing body of a public agency as defined in the Open Public Meetings Act, and all meetings of the Board shall be held and conducted in accordance with the Open Public Meetings Act.

C. All Board meetings, including executive Committee meetings, all other permanent and ad hoc committee meetings shall be open to the public to the extent required by the Open Public Meetings Act or otherwise by law. The Board and committees may hold executive sessions to consider matters enumerated in the Open Public Meetings Act, or privileged matters recognized by law, and shall enter the cause therefor upon its official journal.

Section 20. Quorum.

The Charter or Bylaws shall establish the requirements for a quorum. The act of a majority of the Board present at a meeting at which a quorum is present shall be the act of the Board; provided, however, that:

A. A quorum to commence a Board meeting shall be no fewer than a majority of the Board's total membership.

B. Any resolution authorizing or approving an action described in Section 11 of this Ordinance shall require an affirmative vote of a majority of the Board members voting on the issue.

Section 21. Deposit of Public Funds.

All moneys belonging to or collected for the use of the Authority, coming into the hands of any corporate official or officer thereof, shall be deposited in a qualified public depository as determined by the Washington Public Deposit Protection Commission. Such moneys may be invested at the direction of the Board, by resolution, in investments which would be lawful for the investments of City or County funds.

Section 22. Establishment and Maintenance of Office and Records.

The Authority shall:

A. Maintain a principal office at a location within the limits of Jefferson County;

B. File and maintain with the City and County Clerks a current listing of all Authority officials, their positions and their business numbers, the address of its principal office, and a current set of its Bylaws; and

Section 23. Reports and Information.

The Authority shall, on or before January 31 of each year, beginning on or before January 31, 2006, file an annual report with the City and County Clerks and the City Council and Commissioners containing a certified statement of assets and liabilities, income and expenditures and changes in its financial position during the previous year; a summary of significant accomplishments; a list of depositories used; a projected operating budget for the current fiscal year; a summary of projects and activities to be undertaken during the current year; a list of Authority officials and a list of officials bonded pursuant to Section 15 of this ordinance.

Section 24. Audits and Inspections.

The Authority shall, at any time during normal business hours and as often as the City Council, Commissioners, or the State Auditor may deem necessary, make available to the City Council, Commissioners, and the State Auditor for examination all of its financial records, and shall permit the City Council, Commissioners, and State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all the aforesaid matters. The City Council, Commissioners, and State Auditor shall have no right, power or duty to supervise the daily operations of the Authority, but shall oversee such operations only through their powers to audit, modify the Charter and Bylaws and to remove Board members all as set forth in this ordinance, all for the sole purpose of correcting any deficiency and assuring that the purposes of the Authority are reasonably accomplished.

Section 25. Termination.

If the City Council and Commissioners make an affirmative finding that termination is warranted for any reason, the existence of the Authority may be terminated by ordinance of the City Council and Commissioners at or after a public hearing, held with notice to the Authority and affording it a reasonable opportunity to be heard and present testimony.

Section 26. Withdrawal.

The City or County may at any time give written notice of withdrawal of the City's or County Board Members from the Authority by enacting an Ordinance to that effect. Actual withdrawal shall not take effect for a period of forty-five (45) days from the date of such notification. The City or County withdrawing from the Authority at a time when such withdrawal does not result in dissolution of the Authority shall forfeit its claims to any assets of the Authority.

Section 27. Continuation of the Authority.

The Authority shall continue and shall not be dissolved because of the withdrawal of the City or the County.

Section 28. Admission of New Towns.

Additional Towns may be admitted to the Authority upon application to, and approval by, the Board of Directors. Approval by the Board for admission of additional Towns shall be conditioned upon the following:

A. Reimbursement. Reimbursement by the new Towns of the Authority for expenses of the Authority resulting from addition of the new Town, including, but not limited to, securing the services of consultants for professional services (including lawyers, accountants and others) and all other such reasonable out-of-pocket expenses as may be incurred.

B. Adoption. Adoption by the Town Council of the new Town of such Charter, resolutions and ordinances as shall be appropriate to permit the new Town to participate in the Authority, and the Authority to operate, in a manner that is consistent with the existing operation of the Authority.

C. Compliance. Compliance by the new Town of such other conditions as may be determined appropriate by the Board of Directors before such new Town is admitted to the Authority.

Section 29. Dissolution - Statement.

Upon enactment of an ordinance by the City Council and Board of Commissioners for termination of the Authority, the Authority shall file a dissolution statement with the Secretary of State and the City and County Clerks setting forth:

A. The name and principal office of the Authority;

B. The debts, obligations and liabilities of the Authority, including conditions of grants and donations, and the property and assets available to satisfy the same; the provisions to be made for satisfaction of outstanding liabilities and performance of executory contracts; and the estimated time for completion of its dissolution;

C. Any pending litigation or contingent liabilities; and

D. A list of persons to be notified upon completion of dissolution.

The City Council and Commissioners shall review the statement filed and oversee the dissolution to protect the public interest, or if so authorized by law, authorize or initiate proceedings in the Superior Court for the appointment and supervision of a receiver for such purposes. Upon satisfactory completion of dissolution proceedings, the City Council and Commissioners shall indicate such dissolution by inscription of “charter canceled” on the original charter of the Authority, on file with the City and County Clerks and, when available, on the triplicate original of the Authority, and the existence of the Authority shall cease. The City and County Clerks shall give notice thereof to the Secretary of State and other persons requested by the Authority in its dissolution statement.

Section 30. Dissolution - Disposition of Assets.

Upon dissolution of the Authority and the winding up of its affairs, the City Council and Commissioners may provide for the transfer of the rights, assets and property of the Authority to a qualified entity or entities which will fulfill the purposes for which the authority was chartered. Otherwise, title to all remaining property or assets of the authority shall be liquidated as set forth in Section 31.

Section 31. Liquidation and Distribution – Procedures.

Upon dissolution of the Authority:

A. The affairs of the Authority shall be wound up and assets liquidated and/or distributed in kind under the direction of the Board which shall act by majority vote.

B. The Board shall use its best efforts to liquidate and/or distribute in kind the Authority’s assets within six (6) months of the date of dissolution unless the City Council and Commissioners shall have agreed otherwise in writing. The Board shall use its best judgment as to the manner in which the Authority’s assets should be liquidated and/or distributed in kind, and as to the most advantageous time to do so, and as to when to make distributions in cash.

C. The assets of the Authority shall be liquidated and/or distributed in kind to creditors in the order of priority established by law.

D. Any surplus assets shall be liquidated and/or distributed in kind to the City and County comprising the Authority at the date of dissolution in the following order:

1. The City or County that contributed assets to the Authority shall receive a liquidated value and/or distribution in kind equal to the assessed fair market value at the date the asset was contributed to the Authority; and
2. To the City and County equally.

Section 32. Insurance.

The Authority shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to projects and activities of the Authority, naming the City and County as additional insured; provided, however, the City and/or County may pursuant to a lease or contract with the Authority agree to provide all or part of such insurance.

Section 33. Unauthorized Representation.

All persons who assume to act for the Authority without actual authority to do so shall be liable for the debts and liabilities incurred or arising as a result thereof.

Section 34. Ancillary Authority.

The Mayor, City Council, Commissioners, appropriate City or County Committees, City and County Clerks are granted all such power and authority as reasonably necessary or convenient to enable them to administer this Ordinance efficiently and to perform the duties imposed in this Ordinance.

Section 35. Construction.

This Ordinance shall be liberally construed so as to effectuate its purposes and the purposes of the Act.

Section 36. Effective Date.

This Ordinance shall be effective immediately upon its passage and publication by the City and County Clerks of a summary hereof.

PASSED, by the City Council of the City of Port Townsend and the Board of Commissioners of Jefferson County, Washington, at a regular meeting thereof, held this _____ day of _____, 2005.

CITY OF PORT TOWNSEND

By: _____ Dated: _____
Mayor

ATTEST: _____
City Clerk

JEFFERSON COUNTY

By: _____ Dated: _____
Commission Chairperson

ATTEST: _____
County Clerk