



CITY COUNCIL AGENDA
April 18, 2011

6:00 – 7:00 p.m.

Closed session as provided by Section 2.2-3712 of the Virginia Code
(Second Floor Conference Room)

TYPE OF ITEM

SUBJECT

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL

AWARDS/RECOGNITIONS
ANNOUNCEMENTS

Fair Housing Month; Women & Girls' Wellness Month; Roller Derby "Derby Dames"

MATTERS BY THE PUBLIC

Public comment will be permitted until 7:35 p.m. (limit of 3 minutes per speaker) and at the end of the meeting on any item, including items on the agenda, provided that a public hearing is not planned or has not previously been held on the matter. Persons are asked to sign up in advance of the start of the meeting.

COUNCIL RESPONSES TO MATTERS BY THE PUBLIC

1. CONSENT AGENDA*

(Items removed from the consent agenda will be considered at the end of the regular agenda.)

a. Minutes of April 4

b. **APPROPRIATION:**

\$595,584.45 – Funds for 2011-2012 CDBG (2nd of 2 readings)

c. **APPROPRIATION:**

\$215,419.83 – 2011-2012 HOME Funds (2nd of 2 readings)

d. **APPROPRIATION:**

\$41,884.67 – Aquatic Facility Rental Revenue – Crow Indoor Pool (1st of 2 readings)

e. **APPROPRIATION:**

Appropriation of FY 2011 Additional Transit Revenues (1st of 2 readings)

f. **APPROPRIATION:**

\$1,500 – Donation Toward Purchase of "Azure" Sculpture (1st of 2 readings)

g. **ORDINANCE:**

Overlay Zoning Restriction for 233 4th St NW / Individually Protected Property Designation (Jefferson School) (2nd of 2 readings)

h. **ORDINANCE:**

Telecommunications Franchise – Windstream (2nd of 2 readings)

i. **ORDINANCE:**

Zoning text changes for Music Halls (2nd of 2 readings)

j. **ORDINANCE:**

Amendment of Noise Ordinance (1st of 2 readings)

**2. PUBLIC HEARING/
RESOLUTION***

Silvercrest Lease (1st of 1 reading)

**3. PUBLIC HEARING/
RESOLUTION***

Virginia Discovery Museum Lease (1st of 1 reading)

4. REPORT

Sustainability Grant and Charlottesville Comprehensive Plan Update

5. REPORT

250th Anniversary Committee Report

*ACTION NEEDED

2011-2012 CDBG BUDGET ALLOCATIONS
RECOMMENDED BY CDBG TASK FORCE: 02/7/2011
RECOMMENDED BY PLANNING COMMISSION: 03/08/2011
APPROVED BY CITY COUNCIL:

I. HOUSING IN ALL CDBG ELIGIBLE NEIGHBORHOODS

A. AHIP- Homeowner Rehabs	\$39,570*
B. Building Goodness- Build Day	\$15,000*
C. PHA, Downpayment Assistance	\$18,750
D. CRHA, Avon Environmental	\$37,500
E. JABA, Land Acquisition	\$75,000
F. ARC, Facility Improvements	\$11,250

HOUSING PROGRAMS TOTAL: **\$197,070** 33%

II. PRIORITY NEIGHBORHOOD

A. Fifeville	\$200,000	34%
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III. SOCIAL PROGRAMS

A. Adult Learning Center	\$ 4,600
B. Banah Familia	\$ 2,800
C. CRHA, Tuition to PVCC	\$12,000
D. C4K, Teen Tech	\$12,880
E. MACAA, Back to Work	\$38,650
F. OAR- Reentry Program	\$ 9,200
G. PACEM, Overflow Services	\$ 9,200

SOCIAL PROGRAMS TOTAL: **\$89,337** 15%

IV. ADMINISTRATION AND PLANNING: To pay direct costs of staff, auditing, citizen participation

ADMINISTRATION AND PLANNING TOTAL: **\$109,214.45** 18%

GRAND TOTAL:	\$595,584.45
ENTITLEMENT AMOUNT:	\$540,000.00
PROGRAM INCOME:	\$ 52,523.76
REPROGRAMMING:	\$ 3,060.69

* Funding includes program income/reprogrammed funds

2011-2012 HOME BUDGET ALLOCATIONS

A. Habitat for Humanity	\$123,750
B. CRHA- HOP	\$ 37,500
C. CRHA- DP	\$ 18,750
D. AHIP	\$ 20,000
B. Tenant Based Rental Assistance (SRO)	\$ 10,128.83
C. Administration and Planning – (funds from the Planning District)	\$ 5,291

TOTAL:	\$215,419.83
ENTITLEMENT AMOUNT:	\$118,663
PROGRAM INCOME:	\$ 68,413.83
LOCAL MATCH:	\$ 28,343

**A RESOLUTION
 APPROPRIATING FUNDS FOR
 THE CITY OF CHARLOTTESVILLE'S 2011-2012
 COMMUNITY DEVELOPMENT BLOCK GRANT
 \$595,584.45**

WHEREAS, the City of Charlottesville has been advised of the approval by the U.S. Department of Housing and Urban Development of a Community Development Block Grant (CDBG) for the 2011-2012 fiscal year in the total amount of \$595,584.45 that includes the estimated entitlement from HUD of \$540,000 and reprogramming and program income of \$55,584.45.

WHEREAS, City Council has received recommendations for the expenditure of funds from the CDBG Task Force and the City Planning Commission; and has conducted a public hearing thereon as provided by law; now, therefore

BE IT RESOLVED by the City Council of Charlottesville, Virginia, that the sums hereinafter set forth are hereby appropriated from funds received from the aforesaid grant to the following individual expenditure accounts in the Community Development Block Grant Fund for the respective purposes set forth; provided, however, that the City Manager is hereby authorized to transfer funds between and among such individual accounts as circumstances may require, to the extent permitted by applicable federal grant regulations.

ACCOUNT CODE**	PURPOSE	AMOUNT
	HOUSING and PUBLIC IMPROVEMENTS	
	AHIP, Homeowner Rehabs	\$39,570 *
	Building Goodness in April, Build Day	\$15,000 *
	PHA, Downpayment Assistance	\$18,750
	CRHA, Avon St. Environmental	\$37,500
	JABA, Timberlake Place	\$75,000
	ARC, Facility Improvements	\$11,250
	Fifeville Priority Area	\$200,000
	Total	\$397,070
	SOCIAL PROGRAMS	
	Adult Learning Center, Computer Classes	\$4,600
	Banah Familia, Youth Entrepreneurship	\$2,800
	CRHA, Tuition to PVCC	\$12,000
	Computers4Kids, Teen Tech	\$12,880
	MACAA, Back to Work	\$38,650
	OAR- Reentry Program	\$9,200
	PACEM, Overflow Services	\$9,200
	Total	\$89,337
	ADMINISTRATION AND PLANNING	
	Admin & Planning 11-12	\$109,214.45
Grand Total		\$595,584.45

*Funded through reprogrammed/ program income.

**Codes are not available through SAP at this time. Codes will be assigned at a later date.

The amounts so appropriated as grants to other public agencies and private non-profit, charitable organizations (subreipients) are for the sole purpose stated. The City Manager is authorized to enter into agreements with those agencies and organizations as he may deem advisable to ensure that the grants are expended for the intended purposes, and in accordance with applicable federal and state laws and regulations; and

The City Manager, the Directors of Finance or Neighborhood Development Services, and staff of the Charlottesville Redevelopment and Housing Authority (CRHA) are authorized to establish administrative procedures and provide for mutual assistance in the execution of the programs as provided by the Board of CRHA.

**A RESOLUTION
 APPROPRIATING FUNDS FOR
 THE CITY OF CHARLOTTESVILLE'S 2011-2012
 HOME FUNDS
 \$215,419.83**

WHEREAS, the City of Charlottesville has been advised of the approval by the U.S. Department of Housing and Urban Development of HOME Investment Partnership (HOME) funding for the 2011-2012 fiscal year;

WHEREAS, the region is receiving an estimated award of \$1,007,754 for year nineteen or fiscal year 11-12 in HOME funding of which the City will receive an estimated \$113,372 to be expended on affordable housing initiatives such as Rehabilitation of Owner Occupied Structures, Downpayment Assistance, and Tenant Based Rental Assistance.

WHEREAS, it is a requirement of this grant that projects funded with HOME initiatives money be matched with local funding in varying degrees;

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the local match for the above listed programs will be covered by the Charlottesville Housing Fund account (P-00439 in SAP system) in the estimated amount of \$28,343; the resolution for this appropriation will come forward after July 1, 2010. Program income from previous FYs amounts to \$68,413.83 available for FY 11-12. The total of the HUD money, program income, and the local match, \$210,128.83, will be distributed as shown below. Administrative funds for the year total \$5,291.83, which do not require a City match.

HOME Program Funds (Fiscal Year 11-12)	HOME FUNDING	% MATCH REQUIRED	LOCAL MATCH	TOTAL
AHIP- Homeowner Rehab	\$16,000	25%	\$4,000	\$ 20,000
Habitat for Humanity	\$112,682*	25%	\$11,068	\$123,750
CRHA- HOP	\$30,000	25%	\$7,500	\$37,500
CRHA- Down Payment	\$15,000	25%	\$3,750	\$18,750
Tenant Based Rental Assist.	\$ 8,103	25%	\$2,025	\$10,128
Administration & Planning	\$ 5,291.83			\$ 5,291.83
	\$187,076.83		\$28,343	\$215,419.83

* includes Program Income which does not require local match.

**AN ORDINANCE
AMENDING AND REENACTING THE ZONING MAP INCORPORATED
WITHIN SECTION 34-1 OF THE CHARLOTTESVILLE CITY CODE,
1990, AS AMENDED, BY THE REZONING OF 233 FOURTH STREET, N.W. TO ADD AN
HISTORIC OVERLAY DISTRICT DESIGNATION TO THE PROPERTY, AND ALSO
AMENDING AND REENACTING SECTION 34-273 OF THE CHARLOTTESVILLE CITY
CODE TO ADD THE PROPERTY TO THE CITY’S LIST OF INDIVIDUALLY PROTECTED
PROPERTIES.**

WHEREAS, at its meeting on September 20, 2010, City Council directed the Board of Architectural Review (BAR) and the Planning Commission to research and pursue individually protected property designation for the property at 233 4th Street, N.W., commonly known as the Jefferson School; and

WHEREAS, on January 18, 2011, the BAR considered the factors set forth within Sec. 34-274 of the City Code and unanimously recommended the designation of 233 4th Street, N.W. (Jefferson School) as an individually protected property, hereinafter the “Subject Property,” and rezoning of the Subject Property to add an historic overlay district designation to the Subject Property on the City’s Zoning Map, and to include the Subject Property on the City’s list of individually protected properties identified within Sec. 34-273(b) of the Charlottesville City Code (together, the “Proposed Rezoning”); and

WHEREAS, a joint public hearing on the Proposed Rezoning was held before the City Council and Planning Commission on February 8, 2011, following notice to the public, to the property owner, and to adjacent property owners as required by law; and

WHEREAS, on February 8, 2011 the Planning Commission voted to recommend the Proposed Rezoning; and

WHEREAS, this Council finds and determines that:

(1) The Proposed Rezoning is consistent with the Comprehensive Plan, and with the purpose and intent of Chapter 34, Article I, Division 2 of the City’s Zoning Ordinance (Historical Preservation and Architectural Design Control Overlay Districts), including Sec. 34-273 thereof (Individually Protected Properties); and

(2) Upon consideration of the criteria set forth within Sec. 34-274 of the City Code, the Subject Property is suitable and appropriate for designation as an individually protected historic property; and

(3) The public necessity, convenience, general welfare, or good zoning practice requires the Proposed Rezoning, and granting the Proposed Rezoning will further the goals and objectives set forth within Sections 34-271 and 34-273 of the City Code; now, therefore,

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia, that:

1. The Zoning District Map Incorporated by reference within Chapter 34, Article I, Division 1, Section 34-1 of the Code of the City of Charlottesville, 1990, as amended, is hereby amended and reenacted, to designate 233 4th Street, N.W. as an Individually Protected Property and minor design control district.

2. Section 34-273 of Article II of Chapter 34 (Zoning) of the Charlottesville City Code, 1990, as amended, is hereby amended and reordained, as follows:

Sec. 34-273. Individually protected properties.

(a)

(b) Following is a list of landmarks, buildings and structures outside the city’s major design control districts, which are deemed by city council to be of special historic, cultural, or architectural value (each, individually, a “Protected Property”). Each parcel containing a protected property is hereby designated a minor design control district.

1.	759	Belmont Avenue	Tax Map 58	Parcel 172
2.	123	Bollingwood Road	Tax Map 7	Parcel 22
3.	1102	Carlton Avenue	Tax Map 56	Parcel 86, Lots 1, 2, 3
		
21.	233	<u>Fourth Street, N.W.</u>	<u>Tax Map 32</u>	<u>Parcel 89</u>
		
		

**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
WINDSTREAM KDL-VA, INC., ITS SUCCESSORS AND ASSIGNS
TO USE THE STREETS AND OTHER PUBLIC PLACES
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA
FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES,
FOR A PERIOD OF FIVE (5) YEARS**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that Windstream KDL-VA, Inc., (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof be and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the “City”) as its business may from time to time require; provided that:

ARTICLE I

SECTION 101 PURPOSE AND SCOPE

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the Public Rights-of-Way, the City strives to keep the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this Ordinance relating to a telecommunications right-of-way franchise and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and equipment owned by the Company currently within the City’s Public Rights-of-Way or to be placed therein at some future time. The Ordinance is intended to complement, and not replace, the regulatory roles of both state and federal agencies. Under this Ordinance, when excavating and obstructing the Public Rights-of-Way, the Company will bear financial responsibility for their work to the extent provided herein. Finally, this Ordinance provides for recovery of the City’s reasonable out-of-pocket costs related to the Company’s use of the Public Rights-of-Way, subject to the terms and conditions herein.

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company’s use of the City’s Public Rights-of-Way along city roads pursuant to the authority granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

SECTION 103 DEFINITIONS

103.1 CITY means the City of Charlottesville, Virginia, a municipal corporation.

103.2 COMPANY means Windstream KDL-VA, Inc., including its successors and assigns.

103.3 DIRECTOR means the Director of Public Works for the City of Charlottesville.

103.4 FACILITY means any tangible asset in the Public Rights-of-Way required to provide utility service, which includes but is not limited to; cable television, electric, natural gas, telecommunications, water, sanitary sewer and storm sewer services.

103.5 PATCH means a method of pavement replacement that is temporary in nature.

103.6 PAVEMENT means any type of improved surface that is within the Public Rights-of-Way including but not limited to any improved surface constructed with bricks, pavers, bituminous, concrete, aggregate, or gravel or some combination thereof.

103.7 PUBLIC RIGHTS-OF-WAY or PROW means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, included other dedicated rights-of-way for travel purposes and utility easements of the City, paved or otherwise. This definition does not include a state highway system regulated pursuant to the direction of the Commonwealth Transportation Board.

ARTICLE II

SECTION 201 INITIAL INSTALLATION

The initial installation of equipment, lines, cables or other Facilities by the Company shall be affixed to Dominion Virginia Power poles located along Fontaine Avenue, Jefferson Park Avenue, Cherry Avenue, 7-1/2 Street, SW, Dice Street, and 5th Street, SW. Any additional installation of equipment, lines, cables or other Facilities shall be underground unless it shall be determined by the Director as set forth in Article III that it is not feasible to do so.

SECTION 202 SUBSEQUENT INSTALLATION

202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:

Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such installations that have been adopted by the City from time to time.

202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES: As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate. Any additional installation of lines, cable, equipment or other Facilities shall be underground unless it shall be determined by the Director, pursuant to Article III, that it is not feasible to do so.

202.3 INSTALLATION OF OVERHEAD FACILITIES: Where a subsequent PROW plan is approved for overhead installation, the Company shall use its existing Facilities, or those of another utility where available. If the PROW plan calls for overhead installation and existing Facilities cannot accommodate the proposed installation, the Company will clearly indicate in the PROW plan its intended placement of new Facilities for the Director's review and consideration pursuant to Article III.

202.4 FUTURE ORDINANCES: Nothing herein shall be construed to limit the authority of the city to adopt an ordinance that will restrict the placement of overhead lines for all utilities using the PROW within a defined area of the City.

202.5 CONDITIONS FOR RELOCATING UNDERGROUND: The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 203 INSPECTION BY THE CITY

The Company shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times, during the execution of, and upon completion of, all work conducted pursuant to this Ordinance.

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION

At the time of inspection, or any other time as necessary, the City may order the immediate cessation and correction of any work within the Public Rights-of-Way which poses a serious threat to the life, health, safety or well being of the public.

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

In general, all posts, poles, wires, cables and conduits which the Company places within the Public Rights-of-Way pursuant to this Ordinance shall in no way permanently obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the Public Rights-of-Way within the City of Charlottesville.

SECTION 206 OBSTRUCTION OF THE PROW

Generally, any obstruction of the PROW is limited to the manner clearly specified within an approved PROW plan.

206.1 REMOVAL OF OBSTRUCTIONS: Obstructions of the PROW not authorized by an approved PROW plan shall be promptly removed by the Company upon receipt of notice from the City. The City's notice of the Obstruction will include a specified reasonable amount of time determined by the Director for the Company's removal of the obstruction, given the location of the obstruction and its potential for an adverse effect on the public's safety and the public's use of the PROW. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the City, at its election, will make such removal and the Company shall pay to the City its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative, overhead mobilization, material, labor, and equipment related to removing the obstruction.

206.2 NO OBSTRUCTION OF WATER: The Company shall not obstruct the PROW in a manner that interferes with the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterway.

206.3 PARKING, LOADING AND UNLOADING OF VEHICLES SHALL NOT OBSTRUCT THE PROW: Private vehicles of those doing work for the Company in the PROW must be parked in a manner that conforms to the City's applicable parking regulations. The loading or unloading of trucks must be done in a manner that will not obstruct normal traffic within the PROW, or jeopardize the safety of the public who use the PROW.

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

The Director is the principal City official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all of the duties hereunder to an authorized representative.

SECTION 302 SUBMISSION OF PROW PLAN

At least thirty (30) days before beginning any installation, removal or relocation of underground or overhead Facilities, the Company shall submit detailed plans of the proposed action to the Director for his or her review and approval, which approval shall not unreasonably be withheld, conditioned, or delayed.

SECTION 303 GOOD CAUSE EXCEPTION

303.1 WAIVER: The Director, at his or her sole judgment, is authorized to waive the thirty (30) day requirement in Section 302 for good cause shown.

303.2 EMERGENCY WORK: The Company shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

If the City becomes aware of an emergency regarding the Company's facilities, the City will attempt to contact the Company's emergency representative as indicated in Section 1202. In any event, the City shall take whatever action it deemed necessary by the Director to make an appropriate and reasonable response to the emergency. The costs associated with the City's respond shall be borne by the person whose facilities occasioned the emergency.

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR

304.1 DECISION: The Director, or his or her authorized representative, shall, within thirty (30) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

304.2 APPEAL: Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director's decision within forty-five (45) days of receipt of such a request. A decision by the City Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

SECTION 305 MAPPING DATA

Upon completion of each project within the Public Rights-of-Way pursuant to this Ordinance, the Company shall provide to the City such information necessary to maintain its records, including but not limited to:

- (a) location and elevation of the mains, cables, conduits, switches, and related equipment and other Facilities owned by the Company located in the PROW, with the location based on (i) offsets from property lines, distances from the centerline of the Public Rights-of-Way, and curb lines; (ii) coordinates derived from the coordinate system being used by the City; or (iii) any other system agreed upon by the Company and the City;
- (b) the outer dimensions of such Facilities; and
- (c) a description of above ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

Obtaining this telecommunications franchise shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any applicable state or federal rule, law or regulation. The Company shall comply with and fulfill all generally applicable laws and regulations, including ordinances, regulations and requirements of the City, regarding excavations and any other work in or affecting the Public Rights-of-Way. The Company shall perform all work in conformance with all applicable codes and established rules and regulations, and it is responsible for all work conducted by the Company, another entity or person acting on its behalf pursuant to this Ordinance in the Public Rights-of-Way.

ARTICLE V

SECTION 501 RELOCATION OF COMPANY FACILITIES WITHIN THE PUBLIC RIGHTS-OF WAY

Upon written notice from the Director of a planned and authorized improvement or alteration of City sidewalks, streets or other property, or of a proposed relocation of any City-owned utilities that necessitate relocation of some or all of the Facilities owned by the Company and lines to accommodate same, the Company shall relocate at its own expense any such Facilities within one hundred eighty (180) days of receipt of the notice. At Company's request, the city may consent to a longer period, such consent not to be unreasonably or discriminatorily withheld, conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

502.1 RESTORATION STANDARD: Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

502.2 TEMPORARY SURFACING: The Company shall perform temporary surfacing patching and restoration including, backfill, compaction, and landscaping according to standards determined by, and with the materials determined by, the Director.

502.3 TIMING: After any excavation by the Company pursuant to this Ordinance, the patching and restoration of the Public Rights-of-Way must be completed promptly and in a manner determined by the Director.

502.4 GUARANTEES: The Company guarantees its restoration work and shall maintain it for twenty-four (24) months following its completion. The previous statement notwithstanding, the Company will guarantee and maintain plantings and turf for twelve (12) months. During these maintenance periods, the Company shall, upon notification by the City, correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of notice from the Director, within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure. Notwithstanding the foregoing, the Company's guarantees set forth hereunder concerning restoration and maintenance, shall not apply to the extent another company, franchisee, licensee, permittee, other entity or person, or the City disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

502.6 FAILURE TO RESTORE: If the Company fails to restore the Public Rights-of-Way in the manner and to the condition required by the Director pursuant to Section 502.5, or fails to satisfactorily and timely complete all restoration required by the Director pursuant to the foregoing, the City shall notify the Company in writing of the specific alleged failure or failures and shall allow the Company at least ten (10) days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the City's notice as provided above, the City may, at its election, perform the necessary work and the Company shall pay to the City its reasonable costs for such restoration within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such restoration.

502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY: The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such repair.

502.8 DIRECTOR'S STANDARD: All determinations to be made by the Director with respect to the manner and extent of restoration, patching, repairing and similar activities under the franchise granted by this Ordinance, shall be reasonable and shall not be unreasonably conditioned, withheld, or delayed. The Company may request additional time to complete restoration, patching, repair, or other similar work as required under the franchise granted by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

ARTICLE VI

SECTION 601 INDEMNIFICATION AND LIABILITY

601.1 SCOPE OF INDEMNIFICATION: Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City council members, officials and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

- (a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the City pursuant to the franchise granted by this Ordinance;
- (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or
- (c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under the franchise granted by this Ordinance.

601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS: If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless in any such suit, at the cost of the Company, provided that the City promptly provides written notice of the commencement or threatened commencement of the action or proceeding involving a claim in respect of which the City will seek indemnification hereunder. The Company shall be entitled to have sole control over the defense through counsel of its own choosing and over settlement of such claim provided that the Company must obtain the prior written approval of City of any settlement of such claims against the City, which approval shall not be unreasonably withheld or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

SECTION 602 WAIVER BY THE CITY

The City waives the applicability of these indemnification provisions in their entirety if it:

- (a) elects to conduct its own defense against such claim;

- (b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;
- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

603.1 The Company shall also maintain in force a comprehensive general liability policy in a form satisfactory to the City Attorney, which at minimum must provide:

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self insurance acceptable to the City Attorney;
- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and
- (e) verification that the policy has a combined single limit coverage of not less than two million dollars (\$2,000,000).

The policy shall include the City as an additional insured party, and the Company shall provide the City Attorney with a certificate of such coverage before execution of this franchise.

603.2 The Company shall also require similar indemnification and insurance coverage from any contractor working on its behalf in the public right-of-way.

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify the City, its agents, or employees, for the negligence or intentional acts of the City, its Council members, its agents or employees, or a permittee of the City.

ARTICLE VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the city in the amount of twenty-five thousand dollars (\$25,000). The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. The Performance Bond shall be maintained at this amount through the term of this franchise.

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

At any time during the Term, the City may, acting reasonably, require or permit the Company to change the amount of the Performance Bond if the City finds that new risk or other factors exist that reasonably necessitate or justify a change in the amount of the Performance Bond. Such new factors may include, but not be limited to, such matters as:

- (a) material changes in the net worth of the Company;
- (b) changes in the identity of the Company that would require the prior written consent of the City;
- (c) material changes in the amount and location of Facilities owned by the Company;
- (d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and
- (e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;

- (b) any expenditure, damage or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Ordinance;
- (c) payment of compensation required by this Ordinance;
- (d) the payment of premiums for the liability insurance required pursuant to this Ordinance ;
- (e) the removal of Facilities owned by the Company from the Streets at the termination of the Ordinance, at the election of the City, pursuant to this Ordinance;
- (f) any loss or damage to the Streets or any property of the City during the installation, operation, upgrade, repair or removal of Facilities by the Company;
- (g) the payment of any other amounts that become due to the City pursuant to this Ordinance or law;
- (h) the timely renewal of any letter of credit that constitutes the Performance Bond; and
- (i) any other costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Ordinance.

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE

704.1 FEE OR PENALTY: The Company shall be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law.

704.2 APPEAL: The Company may, upon written request within thirty (30) days of the City's decision to assess a fee or penalty and for reasons of good cause, ask the City to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The City shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The City's decision on the Company's appeal shall be in writing and supported by written findings establishing the reasonableness of the City's decision. During the pendency of the appeal before the City or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account. Nothing herein shall limit the Company's right to challenge such assessment or the City's decision on appeal, in a court of competent jurisdiction.

ARTICLE VIII

SECTION 801 COMPENSATION/PROW USE FEE.

The City reserves the right to impose at any time on the Company consistent with Section 253(c) of the Communications Act of 1934, as amended:

- (a) a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia, and/or
- (b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

The Company shall be obligated to remit the PROW Use Fee and any other lawful fee enacted by the City, so long as the City provides the Company and all other affected certificated providers of local exchange telephone service appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Company and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by the Company for Telecommunications.

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

The compensation and other payments to be made pursuant to Article VIII: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Company shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company.

SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS, INTEREST ON LATE PAYMENTS

(1) If any payment required by this Ordinance is not actually received by the City on or before the applicable date fixed in this Ordinance, or (2), in the event the City adopts an ordinance imposing a PROW Use Fee, if such Fee has been received by the Company from its customers, and has not been actually received by the City on or before the applicable date fixed in this Ordinance or thirty (30) days after receipt of the PROW Use Fee from its customers, whichever is later, then the Company shall pay interest thereon, to the extent permitted by law, from the due date to the date paid at a rate equal to the rate of interest then charged by the City for late payments of real estate taxes.

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the City. Without limitation as to the generality of the foregoing the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates as may be allowed by law.

Notwithstanding anything herein to the contrary, nothing herein shall be construed to extend, limit or otherwise modify the authority of the City preserved under Sections 253 (b) and (c) of the Communications Act of 1934, as amended. Nothing herein shall be construed to limit, modify, abridge or extend the rights of the Company under the Communications Act of 1934, as amended.

SECTION 902 SEVERABILITY

If any portion of this Ordinance is for any reason held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

The Company will maintain the poles, wires, cable, conduits, lines, manholes, equipment and other Facilities it owns within the City's PROW in good order and operating condition throughout the term of the franchise granted by this Ordinance.

SECTION 1002 TREE TRIMMING

Should the Company install any overhead lines, it shall have the authority to trim trees upon or overhanging the streets, alleys, walkways or Public Rights-of-Way to prevent the branches of such trees from interfering with its lines or other Facilities. However, all such trimmings shall be performed in a safe and orderly manner under the general direction of the Director of Public Works or his or her designee and in compliance with the pruning standards of the National Arborists Association as currently in effect.

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

The term of the franchise granted by this Ordinance shall be for a period of five (5) years from the effective date of this Ordinance.

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

If the Company wishes to maintain its equipment within the City and to continue the operation of the system beyond the term of the franchise granted by this Ordinance, it shall give written notice to the City at least one hundred twenty (120) days before expiration of the franchise granted by this Ordinance, stating that it wishes to apply for a new franchise. Such application shall include a report of the location of the Facilities owned by the Company within the City's PROW, and a statement as to whether the Company has complied with the provisions of this Ordinance.

SECTION 1103 OPERATION OF FACILITIES OWNED BY THE COMPANY WHILE RENEWAL IS PENDING

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts. Nothing herein shall be construed to grant the Company a perpetual franchise interest.

ARTICLE XII

SECTION 1201 NOTICE

All notices, except for in cases of emergencies, required pursuant to the franchise granted by this Ordinance shall be in writing and shall be mailed or delivered to the following address:

To the Company:

Windstream KDL-VA, Inc.
3701 Communications Way
Evansville IN 47715
Attn: Senior Vice President

To the City:

City of Charlottesville
Attn: City Manager
605 East Main Street
Charlottesville, VA 22902

All correspondences shall be by registered mail, certified mail or regular mail with return receipt requested; and shall be deemed delivered when received or refused by the addressee. Each Party may change its address above by like notice.

SECTION 1202 EMERGENCY NOTIFICATION

Notices required pursuant to Section 303.2 shall be made orally and by facsimile to the

following:

To the Company:

Network Management Office
877-700-4535 (24/7 Emergency Line)

Jeff Raymond
Manager, OSP Engineering
(262) 792-4926 (office)
jeff.raymond@windstream.com

To the City:

Gas Dispatchers
(434) 970-3800 (office)
Emergency (434)293-9164 (leaks)
(434) 970-3817 (facsimile)

Judith Mueller, Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)
(434) 971-6645 (home)

SECTION 1203 REGISTRATION OF DATA

The Company, including any subleasee or assigns, must keep on record with the City the following information:

- (a) Name, address and e-mail address if applicable, and telephone and facsimile numbers;
- (b) Name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative that is available for consultation at all times. This information must include how to contact the local representative in an emergency; and
- (c) A certificate of insurance as required under Article VI, Section 603 of this telecommunications franchise, and a copy of the insurance policy.

The Company shall keep update all of the above information with the City within fifteen (15) days following its knowledge of any change.

ARTICLE XIII

SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE

The franchise granted by this Ordinance may be terminated:

- (a) by the Company, at its election and without cause, by written notice to the City at least sixty (60) days prior to the effective date of such termination; or
- (b) by either the Company or the City, after thirty (30) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this

Ordinance, if the defaulting party fails to cure or commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

Notwithstanding the provisions of this Section, the terms and conditions of the franchise granted by this Ordinance pertaining to indemnification shall survive a termination under this Section.

ARTICLE XIV

SECTION 1401 REMOVAL OF FACILITIES FROM THE PUBLIC RIGHTS-OF-WAY

The Company shall remove all Facilities owned by the Company from the streets, alleys and public places of the City at the expense of the Company within six (6) months after the termination, abandonment, or expiration of this franchise granted by this Ordinance, or by such reasonable time to be prescribed by the City Council, whichever is later. No such removal will be required while any renewal requests as provided for in Section 1102 and Section 1103, are pending before the City. If such renewal request is denied, the six (6) month period provided above shall commence on the date of denial or expiration, whichever is later. The City reserves the right to waive this requirement, as provided for in Section 1402 herein. The City shall grant the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

SECTION 1402 ABANDONMENT OF FACILITIES OWNED BY THE COMPANY IN THE PUBLIC RIGHTS-OF-WAY

The telecommunications Facilities owned by the Company may be abandoned without removal upon request by the Company and approval by the City. This Section survives the expiration or termination of this franchise granted by this Ordinance.

ARTICLE XV

SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT

The franchise granted by this Ordinance shall not be assigned or transferred without the expressed written approval of the City, which shall not be unreasonably or discriminatorily conditioned, withheld or delayed.

In addition, the City agrees that nothing in this Ordinance shall be construed to require Company to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use ("IRU") in the Facilities owned by the Company, or any portion thereof, to any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this

Ordinance.

SECTION 1502 SUCCESSORS AND ASSIGNS

Notwithstanding Section 1501, the Company may assign, transfer, or sublet its rights, without the consent of the City, to any person or entity that controls, is controlled by or is under common control with the Company, any company or entity with which or into which the Company may merge or consolidate, to any lender of the Company provided the City is advised of the action prior to enactment. Any successor(s) of the Company shall be entitled to all rights and privileges of this franchise granted by this Ordinance and shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed.

ARTICLE XVI

SECTION 1601 NONEXCLUSIVE FRANCHISE

Nothing in the franchise granted by this Ordinance shall be construed to mean that this is an exclusive franchise, as the City Council reserves the right to grant additional telecommunications franchises to other parties.

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

Subject to the foregoing, any waiver of the franchise granted by this Ordinance or any of its provisions shall be effective and binding upon the Parties only if it is made in writing and duly signed by the Parties.

SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED

If either Party fails to enforce any right or remedy available under the franchise granted by this Ordinance, that failure shall not be construed as a waiver of any right or remedy with respect to any breach or failure by the other Party. Nothing herein shall be construed as a waiver of any rights, privileges or obligations of the City or the Company, nor constitute a waiver of any remedies available at equity or at law.

ARTICLE XVIII

SECTION 1801 NO DISCRIMINATION

The Company's rights, privileges and obligations under the franchise granted by this Ordinance shall be no less favorable than those granted by the City to and shall not be interpreted by the

City in a less favorable manner with respect to any other similarly situated entity or person or user of the City's Public Rights-of-Way.

ARTICLE XIX

SECTION 1901 FORCE MAJEURE

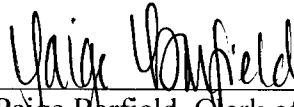
Neither the Company nor the City shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations embargoes, epidemics, terrorist acts, riots insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

ARTICLE XX

SECTION 2001 EFFECTIVE DATE

This Ordinance shall be effective upon its passage.

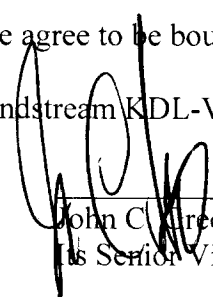
Adopted by the Council of the City of Charlottesville on the 18 day of April, 2011.



Paige Barfield, Clerk of Council

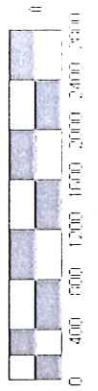
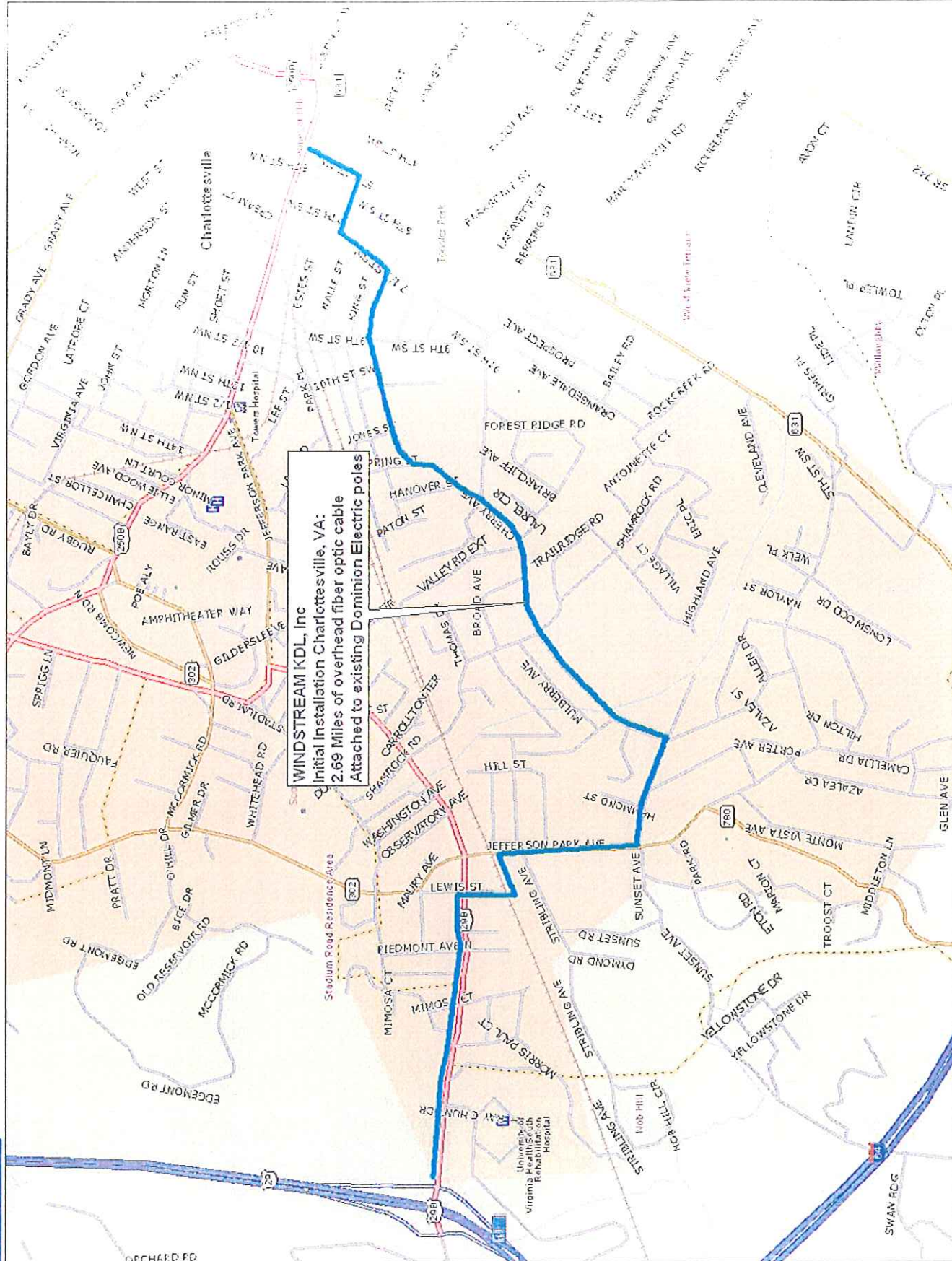
ACCEPTED: This franchise is accepted, and we agree to be bound by its terms and conditions.

Windstream KDL-VA, Inc.

By 

John C. Greenbank
Its Senior Vice President

Date 3-7-2011



Data Source: 11-15



For 2nd reading on April 18, 2011

**AN ORDINANCE
AMENDING AND REORDAINING SECTIONS 34-480 AND 34-796
OF CHAPTER 34 (ZONING) OF THE CODE
OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,
ALLOWING MUSIC HALLS TO OPERATE IN CERTAIN
COMMERCIAL AND MIXED USE ZONING DISTRICTS**

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that Section 34-480 of Article IV (Commercial Districts) and Section 34-796 of Article VI (Mixed Use Corridor Districts) of Chapter 34 (Zoning), are hereby amended and reordained as follows:

CHAPTER 34. ZONING

ARTICLE IV. COMMERCIAL DISTRICTS

Sec. 34-480. Use matrix – Commercial districts.

The uses and residential densities allowed within the city’s commercial zoning districts are those identified within the matrix following below. (For a list of each of the city’s zoning districts and their abbreviations, see section 34-216.)

A = Ancillary use	GFA = Gross floor area
B = By-right use	MFD = Multifamily development
CR = Commercial/residential	P = Provisional use permit
A/S = Ancillary or Special use permit	S = Special use permit
DUA = Dwelling units per acre	T = Temporary use permit

[See attached Matrix with amended areas highlighted in yellow – Changes to Matrix described below]

Under the category “NON-RESIDENTIAL: GENERAL AND MISC. COMMERCIAL, add a row labeled “Music halls” and allow such use with a provisional use permit by inserting a “P” in the B-2 and B-3 columns; allow such use with a special use permit by adding an “S” in the M-I column; and allow such use by-right by adding a “B” in the IC column.

...

ARTICLE VI. MIXED USE CORRIDOR DISTRICTS

Sec. 34-796. Use matrix – Mixed use corridor districts.

The uses and residential densities allowed within the city's mixed use corridor zoning districts are those identified within the matrix following below. (For a list of each of the city's zoning districts and their abbreviations, see section 34-216.)

A = Ancillary use

B = By-right use

CR = Commercial/residential

A/S = Ancillary or Special use permit

M/S = Mixed use or special use permit

DUA = Dwelling units per acre

GFA = Gross floor area

MFD = Multifamily development

P = Provisional use permit

S = Special use permit

T = Temporary use permit

M = Mixed use development

[See attached Matrix with amended areas highlighted in yellow – Changes to Matrix described below]

Under the category "NON-RESIDENTIAL: GENERAL AND MISC. COMMERCIAL, in the row labeled "Music halls", allow such use by right by inserting a "B" in the D, DE, WMN, WMS, HW, WSD, URB and CD columns; allow such use with a provisional use permit by adding an "P" in the CC column.

COMMERCIAL LEASE

THIS LEASE AGREEMENT is made as of this 1st day of April, 2011, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA** and the **COUNTY OF ALBEMARLE, VIRGINIA**, both political subdivisions of the Commonwealth of Virginia (hereinafter "Lessors"), and **SILVERCREST ASSET MANAGEMENT GROUP, LLC** (hereinafter "Lessee").

WITNESSETH:

WHEREAS, the Lessors are the owners of the Premises described herein, and represent that they have clear and unencumbered title to said Premises and are able to lease the same and deliver possession of the Premises to the Lessee upon the Commencement Date as set forth herein; and

WHEREAS, the Lessee is currently in possession of the Premises pursuant to an Assignment of Lease dated August 1, 2005 and desires to continue to lease the Premises for use as commercial office space; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties hereby agree as follows:

1. **LEASED PREMISES.** The leased premises, herein referred to as the "Premises", shall be all the property identified as Parcel 111 on City Real Property Tax Map 53, including the building containing approximately 6,218 square feet and commonly known as the Jessup Building, 614 East High Street, and labeled as "Town Hall Two" on the attached Site Plan (Attachment A), together with the parking area hereinafter designated. The property lies between East High Street and Jefferson Street, and on the west side of 7th Street, N.E. in the City of Charlottesville.

The designated parking area shall include ten (10) individual parking spaces.

2. **TERM.** The Term of this Lease shall be for a period of five (5) years, beginning July 1, 2010 ("Commencement Date") and terminating at midnight on June 30, 2015. This Lease may be terminated effective on or after June 30, 2014 upon joint agreement of the Lessors, provided the Lessors provide written notice of such termination to the Lessee at least one (1) year prior to the effective date of termination
3. **RENT.** (A) The "Base Monthly Rent" for the Premises shall be Seven Thousand Four Hundred Fifteen and 00/100 Dollars (\$7,415). Said rent is payable in advance in monthly installments on the first day of each successive month of the lease term commencing on July 1, 2010. If such monthly rental payment is not received by Lessors on or before the fifth (5th) day of the month in which it is due, Lessee shall pay Lessors a late charge in addition to the monthly rental of five percent (5%) of such late monthly rental payment(s). All payments shall be made to Lessors at the address specified herein.

(B) Lessee and Lessors agree that the Base Monthly Rent for each twelve-month period following the initial twelve months of the Lease shall equal the amount of Base Monthly Rent payable during the previous period, increased by the "Rent Increase Percentage". The Rent Increase Percentage shall mean the greater of (i) the percentage increase of the Consumer Price Index for All Urban Consumers for All Items [CPI-U (1982-1984=100)] that occurred during the preceding twelve months; or (ii) three percent (3%) of the Base Monthly Rent payable during the previous period. The Lessors shall notify the Lessee of the Rent Increase Percentage and the net adjusted amount of the annual Rent no less than thirty (30) days prior to the effective date of the Rent increase. Failure to notify will not result in abatement of the increase, and the increased rate shall be due and payable notwithstanding failure to notify per the above terms.

(C) The Lessees agree to pay "Additional Monthly Rent" during the term of this lease, as recompense to the Lessors for rent in arrears from the previous lease. The Lessee agrees to reimburse the Lessors a total of Twenty-Eight Thousand Nine Hundred Fifteen Dollars and 00/100 (\$28,915) in equal monthly installments, beginning with the first full month following the execution of this Lease by all parties through and including June 30, 2015, as Additional Monthly Rent. This Additional Monthly Rent will be due each month, and will be subject to the terms and conditions regarding late payment as defined for the Base Monthly Rent. Should either party terminate this lease in advance of the expected termination date, the Lessee agrees to pay the remaining balance of the debt owed as a condition of the fulfillment of its obligation.

4. **SECURITY DEPOSIT.** Lessors have received a security deposit from lessee in the amount of Four Thousand, One Hundred and Sixty-Six and 00/100 Dollars (\$4,166.00) as security for the full and faithful performance by Lessee of every provision, covenant and condition of this Lease, including without limitation the surrender of possession of the Premises to Lessors as herein provided. If Lessors apply any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessors the amount so applied so that Lessors shall have the full deposit on hand at all times during the term of the Lease. At the termination of this Lease, in the event that Lessee shall fully and faithfully comply with every provision, covenant and condition of this Lease, such security deposit or any balance of it shall be returned to Lessee within thirty (30) days after expiration or earlier termination (without default of Lessee) of the Lease and delivery of possession of the Premises to the Lessors. Acceptance of the security deposit by Lessors does not constitute any waiver of damages that may exceed the amount of the security deposit or any waiver of any other rights the Lessors may have against the Lessee, at law or in equity, by reason of Lessee's default, and in the event of damages suffered by Lessors by reason of Lessee's default, that exceed the amount of the security deposit, Lessors shall be entitled to such additional damages directly attributable to Lessee's use of the Premises.
5. **REAL PROPERTY TAXES.** Throughout the term of this Lease Lessee shall pay all real property taxes lawfully assessed against its leasehold interest by the City of Charlottesville pursuant to Virginia Code § 58.1-3203. In the event that the taxing

authority of the City of Charlottesville determines that the Premises is not eligible for an exemption from real property taxation pursuant to Virginia Code § 58.1-3603, Lessee shall within thirty (30) days of receipt of written notice and proof of payment by Lessors, reimburse Lessors for the amount of real property taxes each has paid as an owner of the Premises.

6. **USE**. Lessee shall use and occupy the Premises for general office purposes in the conduct of its business and shall not use the Premises for activities that would in any way violate any law or requirement of any public authority, cause structural damage to the improvements, interfere with the normal operation of the utility systems, cause undue noise or disturbance to neighboring properties or alter the exterior of the building. Lessee shall not use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables, or other inherently dangerous substance, chemical, thing or device.
7. **QUIET ENJOYMENT**. Lessors covenant that, upon payment of rent and conditioned upon performance of all of the covenants and conditions of this Lease, the Lessee shall peacefully and quietly have, hold and enjoy the said leased Premises for the term aforesaid.
8. **CONDITION OF PREMISES / CARE AND MAINTENANCE**. (A) Except as may be expressly provided otherwise herein, Lessee accepts said premises and fixtures therein, if any, in their present condition and agrees to keep said premises and fixtures in a good clean condition; to commit no waste thereon; to obey all laws and ordinances affecting said Premises; and at termination hereof to surrender the premises and fixtures in like condition as when taken, reasonable wear and tear excepted.

(B) Lessee shall be responsible for all routine and ordinary interior and exterior maintenance and repairs to the building and Premises during the term of the Lease, except that Lessors will be responsible for the maintenance, repair and replacement of the heating, ventilation and air conditioning system;

Any extraordinary repairs or replacements, including but not limited to repair or replacement to the roof, shall be performed by the Lessors, “extraordinary” being defined as those non-routine repairs or replacements with a life expectancy longer than the term of this lease.

9. **ALTERATIONS**. Lessee shall not, without first obtaining the written consent of the Lessors, make any alterations, additions, or improvements in, to or about the Premises, without the express written consent of the Lessors. The Lessors’ written consent will not be unreasonably withheld for any alterations, additions or improvements Lessee deems necessary or convenient to its use of the Premises for its intended purpose. Any permanent fixtures shall become the property of the Lessors upon termination of the Lease. Lessee shall be entitled to make improvements and additions to the existing gardens on the Premises. All alterations shall be in accordance with applicable law, regulations and codes, including but not limited to the applicable building codes and the

City of Charlottesville's zoning ordinance. Any changes to the exterior appearance of the building shall not be made until the Lessee has obtained a certificate of appropriateness from the City's Board of Architectural Review or, on appeal, City Council.

10. **ORDINANCES AND STATUTES.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.
11. **ASSIGNMENT AND SUBLETTING.** Lessee shall not assign this Lease or sublet any portion of the Premises without the prior written consent of the Lessors, which consent may be withheld for any reason or for no reason, or which may be conditioned in any way Lessors choose. Any such assignment or subletting without consent shall be void and the Lessors, at their option, may terminate this Lease.
12. **UTILITIES.** Lessee shall provide and pay all charges incurred by Lessee for utilities, including gas, electricity, water, sanitary sewer and trash disposal services incurred by Lessee during the term of this Lease. Lessee shall be responsible for the costs of any telephone, cable television and internet services to the Premises. Lessors may interrupt or suspend the supply of any utility service to the Premises in order to make any necessary repairs or perform any maintenance for which Lessors are responsible so long as Lessors shall pursue with reasonable diligence the completion of the work. No such interruption shall exceed a period of five (5) days without prior consent of Lessee. If such interruption is necessary, Lessors shall give Lessee prior written notice of the dates and times of the contemplated interruption and shall cooperate with Lessee in order to minimize any inconvenience to Lessee.
13. **ENTRY AND INSPECTION:** Lessees shall permit Lessors or Lessors' agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessors at any time within sixty (60) days prior to the expiration of this Lease to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.
14. **INSURANCE.** Lessee shall obtain and maintain in full force and effect during the term hereof renter's insurance, including fire and extended coverage insurance, to cover its property and operations within the Premises, and general liability insurance with policy limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) in the aggregate and not less than One Hundred Thousand Dollars (\$100,000.00) with respect to property damage resulting from any one occurrence. The Lessee's general liability insurance policy shall name the City of Charlottesville and the County of Albemarle as additional insureds as it pertains to the Premises. A certificate evidencing that the Lessors have been named as additional insureds shall be provided to the City of Charlottesville as fiscal agent for Lessors. The Lessors, at their sole expense, shall adequately insure the building for fire, casualty, hazard and liability.

15. **INDEMNIFICATION.** (A) Lessee agrees to indemnify and hold harmless Lessors and their officials, officers, agents and employees from and against any and all claims, losses, liabilities, damages and expenses which arise from Lessee's possession, use, occupation, management, repair, maintenance or control of the Premises, or any portion thereof, which arise from any negligent or wrongful act or omission of Lessee or Lessee's agents, employees, licensees, or invitees, or result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Lessee. Lessee shall, at its own cost and expense, defend any and all actions, suits or proceedings which are brought against Lessors with respect to the foregoing. Lessee shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against Lessors as a result of the foregoing. Lessors shall fully cooperate in the defense of any such actions, suits or proceedings.

(B) Lessors shall not be liable for any damage or injury to person or property caused by or resulting from steam, electricity, gas, oil, rain, ice, snow, or any leak or flow from or into any part of the Premises or the building of which the same is a part, or for any damage or injury resulting or arising from any other cause or happening whatsoever unless said damage or injury is caused by the negligent act or omission of the Lessors or either of them; and, notwithstanding the foregoing or any other provision of this Lease, Lessors shall not be liable to Lessee or any insurance company insuring Lessee for any loss or damage to Lessee's personal property within the Premises or on Lessors' property which was covered by fire and extended coverage insurance.

16. **EMINENT DOMAIN.** If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the Premises shall be taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking. The rent shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for relocation expenses.

17. **DAMAGE BY FIRE OR OTHER CASUALTY.** If all or any portion of the Premises shall be damaged or destroyed by fire or other casualty, this Lease shall not be terminated or otherwise affected unless Lessors decide not to replace, repair or rebuild in accord with the following provisions. Lessee hereby waives any and all rights to terminate this Lease by reason of damage to the Premises by fire or other casualty pursuant to any presently existing or hereafter enacted statute or pursuant to any other law. In the event of any damage to the Premises by fire or other casualty which renders the premises unfit for Lessee's purposes, in whole or in part, there shall be an abatement of the rent payable hereunder during the period of such condition for so long as Lessee is not engaged in the conduct of its business operations in the Premises to substantially the same extent as that prior to said casualty and only to that extent which the Premises are rendered unusable, *pro rata*. If all or any portion of the Premises is damaged or destroyed by fire or other casualty, then all insurance proceeds under the policies referred to in the preceding paragraphs hereof that are payable to Lessee on account of any such damage by fire or

other casualty shall be paid to the Lessors or made available for the payment for repair, replacement, or rebuilding, and the Lessors may elect as soon as practical after the damage has occurred, but no later than twenty (20) days thereafter, whether or not to repair or rebuild the Premises or any such portion thereof to its condition immediately prior to such occurrence; provided, however, that the foregoing provisions shall not require the Lessor to repair or rebuild any part of the Premises, or of Lessee's fixtures, equipment or appurtenances not constituting a part of the Premises owned by Lessors. In any event, Lessors shall provide Lessee written notice of its decision either to elect to or refuse to replace or rebuild said Premises within the aforesaid twenty (20) day period. If Lessors elect not to replace or rebuild then said Lease shall be deemed terminated thirty (30) days following the occurrence causing said damage. If at the time of Lessors' election to replace or rebuild, Lessors do not agree in writing to complete the repair or rebuilding within ninety (90) days after the election is made, or within a reasonable period if ninety (90) days is unreasonable under the circumstances in light of the nature and extent of the damages, Lessee shall have the option to terminate this Lease by written notice to Lessors within fifteen (15) days after Lessors' election.

18. **DEFAULT PROVISIONS.** (A) The following shall constitute events of default:

- (1) Abandonment of the Premises;
- (2) The default of seven (7) days in payment of rent or other sums due to Lessors hereunder;
- (3) Breach of any of the covenants or conditions of this Lease continuing for more than fifteen (15) days following receipt of written notice thereof from Lessors to Lessee;
- (4) Dissolution or commencement of any proceedings to dissolve Lessee;
- (5) Termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors of all or any part of the property of the Lessee, or commencement of any proceedings under any bankruptcy or insolvency law by or against Lessee.

No failure on the part of the Lessors to enforce any covenant or provision herein, nor the waiver of any right hereunder by Lessors, shall discharge or invalidate such covenant or provision or any other covenant, condition or provision hereof, or affect the right of the Lessors to enforce the same in the event of subsequent breach or default.

(B) **REMEDIES ON DEFAULT.** Upon the occurrence of any event of default, Lessors shall have the right, then or at any time thereafter while such event of default shall continue, to terminate this Lease on not less than ten (10) days notice to Lessee. On the date specified in such notice the term of this Lease shall terminate, and Lessee shall then quit and surrender the Premises to Lessors, without extinguishing Lessee's liability. If this Lease shall have been so terminated by Lessors, Lessors may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. In the event of default by Lessee, rentals received by Lessors following reentry shall be applied to liability of the Lessee resulting from said default.

(C) **LIABILITY OF TENANT ON DEFAULT.** If the Lessors rightfully terminate this Lease or reenters pursuant to the foregoing section, Lessee shall remain liable for the rent and all of the sums provided for in this Lease until the date this Lease would have expired had such termination not occurred and any and all expenses incurred by Lessors in reentering the Premises, repossessing the same, making good any default of the Lessee, and repairing any damage which may have resulted from Lessee's use of the Premises excepting normal wear and tear and the expense which Lessors may incur in obtaining a new tenant. Lessee agrees to pay to Lessors the amount of the foregoing liability with respect to each month during the term of this Lease, all of which shall be accelerated upon any default. In the event of default, and in addition to the foregoing, Lessee shall pay Lessors all costs incurred, including reasonable attorney's fees with respect to any collection efforts, suit, or action taken or instituted by Lessors against Lessee to enforce the provisions of this Lease provided the Lessors substantially prevail.

(D) **LIQUIDATED DAMAGES.** If Lessors rightfully terminate this Lease pursuant to the foregoing, Lessors shall have the right at any time, at their option, to require Lessee to pay to Lessors, on demand, as liquidated and agreed final damages in lieu of Lessee's liability hereinbefore provided, the rent and all of the charges which would have been payable from the date of such demand to the date when this Lease would have expired if it had not been terminated. If the Premises have been relet for all or part of the remaining balance of the term by Lessors after default by Lessee, the amount of said rent shall be credited against any liquidated damages. Upon payment of any such liquidated and agreed final damages, Lessee shall be released from all further liability under this Lease.

19. **RIGHT OF LESSORS TO CURE LESSEE'S DEFAULT.** If Lessee shall fail to keep or perform any of its obligations as provided in this Lease, then Lessors may, upon the continuance of such failure on Lessee's part for fifteen (15) days after receipt of written notice from Lessors to Lessee and without waiving or releasing Lessee from any obligations, and as an additional but not exclusive remedy, make such payment or perform any such obligation and all sums so paid by Lessors and all necessary and incidental costs and expenses incurred by Lessors in making such payment or performing such obligation together with interest thereon at the judgment rate of interest, from time to time as provided by the Code of Virginia, shall be paid by Lessee to Lessors on demand, or at Lessors' option may be added to any installment of rent thereafter falling due.
20. **ATTORNEY'S FEES.** In the event that suit is brought by either party in furtherance of its rights under this Lease, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.
21. **WAIVER.** No failure of Lessors to insist upon the strict performance of any term or provision of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by Lessors of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term or provision of this Lease. Any waiver by Lessors must be by a written instrument executed by Lessors clearly describing the waiver and its extent.

22. **SURRENDER OF LEASED PREMISES.** Upon the expiration or other termination of the term of this Lease, Lessee shall quit and surrender the Premises in good order, repair, and in clean condition, and shall remove all of its property therefrom, except as otherwise provided in this Lease.
23. **ESTOPPEL CERTIFICATE.** Lessee shall, without charge therefore, at any time and from time to time, within ten (10) days after receipt of a written request by Lessors, execute, acknowledge and deliver to Lessors a written estoppel certificate certifying to Lessors or any purchaser of the Premises, or any other person designated by Lessors, as of the date of such certificate, to be prepared at Lessors' expense, stating whether or not Lessee is in possession of the Premises; whether or not this Lease is unmodified and in full force and effect; whether or not there are then existing any setoffs or defenses against the enforcement of any right or remedy of Lessors known to Lessee at that time; the dates, if any, to which any rent or other charges have been paid in advance; that Lessee has no knowledge of any then uncured defaults on the part of the Lessors under this Lease or if Lessee has knowledge of any such uncured defaults, specifying the same; that Lessee has no knowledge of any event having occurred that authorizes the termination of this Lease by Lessee; and the address to which notices to Lessee should be sent. Further, Lessors agree to provide an estoppel certificate covering the same items to Lessee or other person designated by Lessee without charge, within ten (10) days of Lessee's request for the same.
24. **NOTICES.** Any notice which either party may or is required to give shall be given by mailing the same, postage prepaid, to the following and, unless otherwise provided for herein, shall be deemed given as of the date postmarked in the United States mail to the following addresses or at such other addresses as are specified by written notice delivered in accordance herewith.

To Lessee: Russell J. Bell
 Managing Director
 Silvercrest Asset Management Group LLC
 614 East High Street
 Charlottesville, VA 22902

To Lessors: City of Charlottesville, Virginia
 City Hall, 601 East Market Street
 P.O. Box 911
 Charlottesville, VA 22902
 Attn: City Manager

and

County of Albemarle, Virginia
County Office Building

401 McIntire Road
Charlottesville, VA 22902
Attn: County Executive

with a copy to: Charlottesville City Attorney
City Hall, 601 East Market Street
P.O. Box 911
Charlottesville, VA 22902

and

Albemarle County Attorney
County Office Building
401 McIntire Road
Charlottesville, VA 22902

25. **HEIRS, ASSIGNS AND SUCCESSORS.** This Lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.
26. **SUBORDINATION.** This Lease is and shall be subordinated to all existing and future liens and encumbrances against the property.
27. **NONAPPROPRIATION.** This Lease is subject to the approval, ratification and annual appropriations by the City of Charlottesville City Council and the County of Albemarle Board of Supervisors of the necessary money to fund the obligations of the Lessors under the Lease for succeeding fiscal years. Should either or both of the governing bodies fail to appropriate necessary funding, the Lessors shall promptly give notice of such nonappropriation to Lessee and either party may terminate this Lease without incurring any penalty, liability or additional costs whatsoever, other than the rent due for the month in which the Lessees vacate the Premises and the balance of monies owed in Additional Monthly Rent.
28. **COMMISSIONS.** Lessors and Lessee agree that no real estate agent or company has provided services in connection with this Lease.
29. **ENTIRE AGREEMENT AND AMENDMENTS.** This Lease represents the entire agreement between the parties, and may only be amended by written addendum executed by authorized representatives of both the Lessors and the Lessee.
30. **APPLICABLE LAW.** This Lease shall be governed by the laws of the Commonwealth of Virginia.
31. **FISCAL AGENT.** The City of Charlottesville shall serve as the Fiscal Agent for the Lessors under this Lease, and shall be the initial payee of all rents or other monies due.

WITNESS the following authorized signatures and seals, all as of the day and year first herein above written.

LESSEE:

BY: *[Signature]*
David J. Campbell
General Counsel
Silvercrest Asset Management Group LLC

STATE: NEW YORK
CITY: NEW YORK to-wit:

The forgoing Lease was executed and acknowledged before me, a Notary Public, by David J. Campbell, an agent acting on behalf of Silvercrest Asset Management Group, LLC, on this 14 day of April, 2011.

My commission expires: 10-4-2014.

[Signature]
Notary Public

Notary Public State of N
Commission Expires 10-4-14
No OISI 6229023
Qualified in Nassau C

LESSORS:

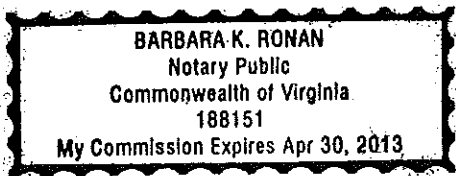
CITY OF CHARLOTTESVILLE

BY: *[Signature]*
Maurice Jones, City Manager

STATE OF VIRGINIA
CITY OF CHARLOTTESVILLE, to-wit:

The forgoing Lease was executed and acknowledged before me, a Notary Public, by Maurice Jones, City Manager for the City of Charlottesville, Virginia on this 20th day of April, 2011.

My commission expires: 4/30/2013.



[Signature]
Notary Public
Reg # 188151

COUNTY OF ALBEMARLE

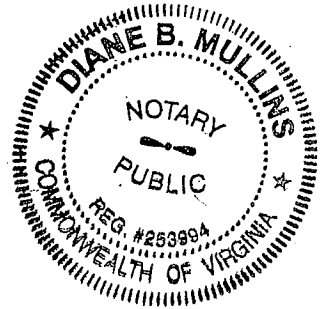
BY: Thomas C. Foley
Thomas C. Foley., County Executive

STATE OF VIRGINIA
CITY OF CHARLOTTESVILLE, to-wit:

The forgoing Lease was executed and acknowledged before me, a Notary Public, by Thomas C. Foley, County Executive for the County of Albemarle, Virginia on this 13th day of May, 2011.

My commission expires: June 30, 2013

Diane B. Mullins
Notary Public



Approved as to form:

S. Craig Brown
City Attorney

Approved as to form:

[Signature]
County Attorney

THIS LEASE AGREEMENT, made as of this ____ day of April, 2011, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (hereinafter the "Landlord"), and the **VIRGINIA DISCOVERY MUSEUM, INC.**, (hereinafter the "Tenant");

W I T N E S S E T H:

That Landlord hereby leases unto the Tenant and the Tenant hereby agrees to lease from the Landlord that property located at 524 East Main Street in the City of Charlottesville, Virginia (hereinafter referred to as the "Premises").

1. **Term**. The term of this lease shall commence July 1, 2011, and shall end, if not sooner terminated, June 30, 2016 (the "Term").
2. **Rent**. The Tenant agrees to pay the Landlord rent during the Term of this lease in the amount of Three Thousand Three Hundred Dollars (\$3,300.00) per year, such rent being payable in twelve (12) equal monthly installments in advance, on the first business day of each month. The Landlord may increase the amount of rent for any year after the first, to be effective beginning July 1st of each such year, provided the Landlord notifies the Tenant, on or before March 15th preceding such proposed effective date, of the amount of such increase and offers the Tenant the option to terminate its lease or begin paying such increased rent as of the July 1st effective date. The amount of the annual rent increase shall be the greater of (i) the percentage increase of the Consumer Price Index for All Urban Consumers for All Items [CPI-U (1982-1984=100)] that occurred during the preceding twelve months; or (ii) three percent (3%) of the rent payable during the previous period.
3. **Improvements**. Any alterations, additions and improvements to the Premises must be approved by Landlord prior to the commencement of construction. Except as otherwise provided hereafter, all such alterations, additions, and improvements to the Premises shall inure to the benefit of and shall be the property of the Landlord.

4. **Right of First Refusal**. If during the Term the Landlord receives a bona fide offer from a third party to purchase the Premises, the Landlord shall not accept such offer without first offering the Premises for sale to the Tenant on the same terms and conditions contained in the offer from such third party. Tenant shall have a period of sixty (60) days from the date of said offer by Landlord to accept such offer. If Tenant fails to exercise said right of first refusal, the Landlord may elect to terminate this lease upon ninety (90) days prior written notice to Tenant.

5. **Maintenance and Repairs**. Landlord shall maintain and repair all structural systems, building exterior facades, heating, air conditioning, and other mechanical systems, and electrical and plumbing systems on the Premises. Tenant shall be responsible for all other routine, non-structural repairs and maintenance of the Premises.

6. **Tenant Duties**. The Tenant agrees to comply with all the sanitary laws and ordinances affecting the cleanliness, occupancy and preservation of the Premises, and with all applicable laws, ordinances and regulations designed to protect the public health, safety and welfare. The Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable or explosive character which might increase the danger of fire upon the Premises. The Tenant shall use the Premises and all facilities contained therein in a reasonable manner and shall not deliberately or negligently destroy or deface, damage, impair or remove any part of the Premises or permit any person to do so. The Tenant shall pay for all janitorial services provided to the exterior and interior of the building, including but not limited to trash disposal and pest control services. The Tenant shall pay its own utility bills and shall indemnify the Landlord against any liability or damages on such account.

7. **Indemnification**. The Tenant agrees to indemnify the City, its officers, agents and employees and hold them harmless from any loss of any nature whatsoever, which may occur by reason of the Tenant's use of the Premises. The Tenant shall maintain in force comprehensive public liability insurance coverage in a minimum amount of One Million Dollars (\$1,000,000.00), with an insurer authorized to do business in Virginia. Such policy shall name the City as an additional insured and shall provide that such coverage shall not be cancelled without 30 days prior written notice to the City. The Tenant shall submit evidence of such insurance coverage to the City Attorney for approval prior to the commencement date of this lease, and annually thereafter no later than June 30th.

8. **Sublet or Assignment**. The Tenant shall have no right to assign or sublet the Premises or any portion thereof to any other party without the prior written consent of the Landlord, which consent shall be entirely within the discretion of the Landlord.

9. **Access**. The Landlord shall have the right to enter the Premises during normal business hours in order to inspect the Premises, make necessary agreed repairs or exhibit the Premises to either prospective or actual purchasers, tenants, workers or contractors. The Landlord may so enter without the consent of the Tenant at any time in case of emergency. Except in the case of emergency, or if it is impractical to do so, the Landlord shall give the Tenant reasonable notice of its intention to enter.

10. **Damage to Premises**. In the event that the Premises shall be substantially damaged by fire or other casualty, the Premises shall be forthwith repaired, restored or rebuilt, as the case may be, within a reasonable time by the Landlord at the Landlord's expense to its condition immediately prior to such damage or destruction. All provisions of this lease with respect to the payment of any rent shall be suspended from the date of the casualty until such repairs are completed. The term of the lease shall be extended by a similar period.

11. **Additional Tenant Obligations**. As of the date of the execution of this Lease Agreement the Tenant's regular hours during which the Premises are open to the public are as follows:

Tuesdays – Saturdays: 10:00 a.m. to 5:00 p.m.

Sundays: 1:00 p.m. to 5:00 p.m.

During the Term of this Lease Agreement Tenant shall not substantially reduce those hours of operation. At a minimum, the Premises shall be open to the public five (5) days per week, forty eight (48) weeks per year. For purposes of this requirement, a full day shall be deemed to be six (6) hours.

12. **Events of Default**. The occurrence of any of the following shall constitute an event of default of the Tenant:

(a) Delinquency in the payment of any rent under this lease for a period of 30 days after written notice.

(b) Delinquency by the Tenant in the performance of or the compliance with any of the conditions or obligations of the Tenant contained in this lease for a period of 30 days after written notice thereof. The Tenant shall be accorded such 30 day period to cure the default, which time shall

be extended for so long as may be necessary to cure such default, provided Tenant commences promptly and proceeds diligently to cure such default.

(c) Filing by the Tenant or against the Tenant in any court pursuant to any statute of a petition of bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property or an assignment by the Tenant for the benefit of creditors, provided that such proceedings are not dismissed within 90 days after the commencement of same.

(d) Failure by the Tenant to maintain its status as a charitable, non-profit organization.

13. **Landlord's Remedies.** Upon the occurrence of any event of default, the Landlord, at any time thereafter, may give written notice to the Tenant specifying the event of default and stating that the lease shall expire on a date certain, which date shall be at least 60 days after the giving of such notice, and upon the date specified on such notice, this lease and all rights of the Tenant hereunder shall terminate.

At any time after such termination, the Landlord may re-let the Premises or any part thereof as the Landlord may, in its discretion, determine. The failure of the Landlord to re-let the Premises or any part thereof shall not make the Landlord liable to the Tenant for damages. No such termination of this lease shall relieve the Tenant of its liability and obligations under this lease, including the obligation for rent for the balance of the term.

14. **Termination or Expiration of Lease Term.** Upon termination or expiration of this lease, Landlord shall have the right to reenter and repossess the Premises and may dispossess the Tenant and remove the Tenant and all other persons and property from the Premises. Tenant shall leave the Premises in good and "broom clean" condition, ordinary wear and tear excepted.

15. **Waiver.** Failure of the Landlord to insist, in any one or more instances, upon a strict performance of the covenants of this lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment of such right, but the same shall continue and remain in full force and effect. No waiver by the Landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Landlord.

16. **Notice.** Any notice to the Tenant shall be sent by regular mail, postage prepaid to:

Executive Director
Virginia Discovery Museum, Inc.
524 East Main Street
Charlottesville, Virginia 22902

Any notice to the Landlord shall be sent by regular mail, postage prepaid to:

City Manager
City of Charlottesville
P.O. Box 911
Charlottesville, Virginia 22902

18. **Entire Agreement.** This lease embodies the entire agreement between the parties and shall not be altered, changed or modified in any respect without a written instrument duly executed by both parties.

19. **Applicable Law.** This instrument shall be construed, interpreted and applied in accordance with the laws of the Commonwealth of Virginia.

20. **Benefits.** This agreement is binding upon and shall inure to the benefit of all the respective parties hereto, their respective successors, legal representatives and assigns.

WITNESS the following signatures and seals.

CITY OF CHARLOTTESVILLE, VIRGINIA

By: Maurice Jones

Title: City Manager

THE VIRGINIA DISCOVERY MUSEUM, INC.

By: Amy Nicks-Horn

Title: Executive Director