



## **MEMORANDUM**

**TO:** Timothy J. Barood, City Manager  
**FROM:** Suzanne Tills, Director of Information Technology  
Kathleen Dooley, City Attorney  
**DATE:** February 11, 2021 (for February 23 Council meeting)  
**SUBJECT:** Proposed transfer of Medicorp Properties fiber to Cox Communications

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### **ISSUE**

Shall City Council approve a request from Cox Communications for the transfer of rights held by Medicorp Properties, Inc., for fiber in City public rights of way?

### **RECOMMENDATION**

We recommend approval of this request and have prepared a Resolution for this purpose.

Medicorp has asked Cox to assume network management and maintenance duties for its fiber optic communication facilities, which Medicorp will continue to use for its own communications purposes. Cox will use the excess capacity of these facilities to serve its customers with high speed data and other telecommunications services. Cox Communications holds a cable franchise with the City, and it has agreed to special conditions to protect City fiber optic assets that are co-located with the Medicorp assets.

### **DISCUSSION**

- History of Medicorp and related City fiber installations:

In the 2008 – 2013 time frame, City Council granted Medicorp Properties, Inc. (aka Mary Washington Healthcare), the right to lay fiber optic communication facilities in the public rights of way (primarily along U.S. Route 1) and across public property (Old Mill Park). The purpose of these facilities was to connect Medicorp's Fredericksburg properties with the then-new Stafford County hospital. The first route served as a primary route of connection. The second route provided system redundancy for Medicorp. The agreements between the City and Medicorp required City approval for any assignment of the rights to occupy public rights of way and parks.

The City installed its own parallel conduit and fiber optic line in conjunction with the Medicorp installation in U.S. Route 1, sharing the same contractor. Co-locating with Medicorp allowed the City to maximize limited right-of-way space in the U.S. Route 1 corridor and achieve cost savings for the project. When this installation was complete, the City was able to stop leasing third party telecommunications lines and move to its own lines.

- Proposal to assign Medicorp's rights to Cox:

Now, Medicorp wishes to sell its fiber optic assets to Cox Communications. The benefits to Medicorp include the off-loading of fiber management and maintenance to a company with deep experience and capacity for this work. Cox would benefit by adding additional fiber capacity to its assets and by avoiding the cost of installing new assets. The City benefits by avoiding another potential entry in an already-crowded right of way. Medicorp and Cox have asked the City to approve the assignment of Medicorp's rights to Cox.

- Condition for assignment:

The fact that these facilities are co-located with the City's own added a level of complexity to what would otherwise have been a fairly straightforward transfer. When the Medicorp fiber facilities were to be owned by the hospital and used only for its own communications, the risk of damage to City facilities was deemed to be minimal. The proposal to transfer ownership to Cox gave rise to concerns that Cox would be more active in the rights of way, possibly splicing the fiber facilities or tapping in to them with multiple "laterals" – and that this more active use would jeopardize the City's own fiber communications.

In order to address these concerns, the IT Department developed five proposed conditions, and Cox has responded favorably to these proposals:

1. If Cox does damage the City's co-located fiber facilities, it will provide redundant fiber and expedited repairs within 8 hours (or pay liquidated damages escalating on an hour-by-hour basis.) This condition is consistent with the response time in the City's current contract for fiber maintenance and repair. *Moreover*, Cox notes that it does not in fact anticipate accessing the fiber line along U.S. Route 1. This is not its plan.
2. When installing new or redundant laterals, Cox shall install using existing handholds and not otherwise splice into fiber runs at locations between handholds.
3. Cox shall perform repair work between handholds using only potholing and hand digging to gain access to areas where both networks share commonality.
4. If Cox damages City fiber it shall pay for and expedite repairs.
5. Prior to disturbing soils in areas common to both networks, Cox shall notify the City's IT department via email and acquire an applicable permits.

With these conditions, staff feels that Cox has mitigated any increase in risk associated with its ownership and use of the fiber facilities.

**FISCAL IMPACT**

None

Attachments:

- July 7, 2020 Letter from Brian Jenkins of Mary Washington Healthcare
- February 9, 2021 Letter from Michael Stull, Corporate Counsel, Cox Communications



**February 23, 2021  
Regular Meeting  
Resolution No. 21-\_\_**

**MOTION:**

**SECOND:**

**RE:            Approving the Transfer of Medicorp Properties, Inc. Fiber Optic Facilities in the Public Rights of Way to Cox Communications**

**ACTION:        APPROVED; Ayes: 0; Nays: 0**

MediCorp Properties, Incorporated, D/B/A Mary Washington Healthcare (“MWHC”), owns and operates a fiber optic network and all associated equipment (“Network”) constructed and placed pursuant to City Ordinance 08-24 and City Ordinance 10-13, both of which expire under their own terms in 2023 and 2025 (“Ordinance”), respectively, and both of which require City of Fredericksburg (“City”) approval prior to Network sale and/or transfer. A portion of the Network is co-located with fiber serving City governmental buildings and operations, thus necessitating special conditions for its management.

CoxCom, LLC, a Delaware limited liability company (“Cox”), currently owns and operates a cable television system (“System”) occupying City rights-of-way pursuant to franchise granted to Cox under Chapter 46, Article II of the City’s Code, dated July 12, 2013 (“Franchise”).

MWHC has indicated intent to sell its Network to Cox, and Cox has indicated its intent to purchase and operate the Network under the terms and conditions contained within the Franchise (“Transaction”), as modified herein, thus negating the need for continuation of the Ordinance.

The City Council believes it is in the interest of the City and the residents of the City to approve the Transaction and termination of the Ordinance, upon the conditions stated herein.

Therefore, the City Council hereby resolves that:

- The City hereby consents to the Transaction, all in accordance with the terms of the Ordinance. Upon completion of the Transaction, the City hereby consents to the termination of the Ordinance and directs that, going forward, Network shall be governed under the terms contained within the Franchise.
- The conditions of this transfer are stated in the letter dated \_\_\_\_\_ from \_\_\_ to \_\_\_\_\_, which are incorporated by reference.
- Effective on the closing date of the Transaction, Cox shall assume any obligations and liabilities under the terms of the Ordinance and, upon the subsequent cancellation of the

Ordinance, responsible for any obligations and liabilities as may be applicable under the terms of the Franchise.

This Resolution is effective immediately.

**Votes:**

**Ayes:**

**Nays:**

**Absent from Vote:**

**Absent from Meeting:**

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***Clerk's Certificate***

*I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 21- duly adopted at a meeting of the City Council meeting held February 23, 2021, at which a quorum was present and voted.*

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***Tonya B. Lacey, MMC  
Clerk of Council***



## Mary Washington Healthcare

July 7, 2020

Kathleen Dooley  
City of Fredericksburg - City Attorney  
601 Caroline Street  
P.O. Box 7447  
Fredericksburg, VA 22404-7447  
(540) 372-1020

Dear Kathleen,

This letter requests permission/approval from the City of Fredericksburg to transfer MediCorp Properties, Inc.'s (MPI) rights and obligations to Cox Communications related to MPI's fiber optic lines in the City's public rights of way:

1. The 2008 approval (Ord. 08-24) related to MPI's fiber connection between 2300 Fall Hill Avenue to the new hospital facility in Stafford County via a route crossing the Falmouth Bridge. The 2008 easement was for a term of 15 years (expiring in 2023).
2. The 2009 approval (Ord. 09-11) related to a "redundant fiber optic cable run" beginning at Cowan Boulevard/Hospital Drive to Old Mill Park where it crosses the river to Stafford County. Like the 2008 easement, the 2009 easement was limited to a term of 15 years (expiring in 2024).

Both City approvals include an assignment provision stating that the rights shall not be assigned except by written request from MPI and approval by City Council. MPI seeks to assign both easements to Cox Communications for the duration of their terms. In addition, MPI requests that the City's resolution approving the transfer of each of the fiber lines be drafted to read that following the remaining term of the leases, the fiber shall become subject to and governed by the terms of Cox's then-existing franchise agreement with the City.

Sincerely,

/s/ Brian Jenkins

Brian Jenkins, JD, MHA  
Vice President, Corporate Counsel & Properties  
MediCorp Properties, Inc.

CC: Doug Fawcett, Assistant City Manager  
Bill Freehling, Director Economic Development



Michael Stull  
Corporate Counsel  
Cox Communications – Law & Policy  
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Michael.Stull@cox.com

DELIVERED VIA E-MAIL ONLY

February 9, 2021

Mr. Timothy J. Baroody  
City Manager  
City of Fredericksburg  
715 Princess Anne Street  
Fredericksburg, VA 22401

Re: City of Fredericksburg approval of asset transfer of Medicorp Properties, Inc.  
to COXCOM, LLC.

Dear Mr. Baroody,

As you are aware, COXCOM, Inc., d/b/a Cox Communications Northern Virginia (hereinafter “Cox”) and Medicorp Properties, Inc.(hereinafter “Medicorp”) have entered into an agreement whereby Cox has agreed to purchase a fiberoptic network currently owned by Medicorp. Cox’s purchase of this fiberoptic network will directly benefit Medicorp since Cox will assume network management and maintenance duties while Medicorp will continue utilizing the fiberoptic network without the added cost and worry of maintaining it. Additionally, Cox’s purchase of this fiberoptic network will benefit local economic development as Cox will be able to serve additional business and residential customers with high speed data and other telecommunications services.

Since a small portion of the fiberoptic network is located within city boundaries, Cox is requesting City approval of this transfer. The City’s IT department has noted that a small portion of the City’s nonredundant fiber network is located in close proximity to the Medicorp fiber network. Consequently, they are concerned that Cox might, at some point, damage the City’s fiber cable and disrupt service. Cox appreciates the need to assure continuity of the City’s network and, at the request of City staff, Cox has agreed to condition City approval on agreement with the following five requirements.

City Requirements to Approving Medicorp Network Transfer to Cox

**First, Cox will provide redundant fiber and expedited repairs within eight (8) hours or agree to the application of liquidated damages escalating on an hour-by-hour basis. Cox shall also provide a performance bond.**

Cox Response: Cox does not anticipate accessing fiber at any point where the two networks share commonality, so a Cox-caused disturbance of City fiber is unlikely. Regardless, if disturbance of City fiber occurs and is caused by the sole actions of Cox at a point where the two networks share

commonality, Cox will provide redundant fiber during the time needed to conduct permanent repairs and agrees to restore city service within eight (8) hours. If restoration of service should take longer than eight (8) hours, and such delay is the sole responsibility of Cox, then Cox will agree to the assessment of reasonable liquidated damages based on the City's documented and direct financial loss. Additionally, Cox will ensure that our existing performance bond, which we maintain as a requirement of operating our network within the City as part of the cable franchise effective February 1, 2008, will cover City fiber damages, subject to the conditions outlined above.

**Second, when installing new or redundant laterals, Cox shall install using existing handholds and not otherwise splice into fiber runs at locations between handholds.**

Cox Response: Because other Cox network fiber assets are already placed in the small area where the two fiber networks share commonality, it is highly unlikely that Cox will need to access the Medicorp fiber network at this location or anywhere else within the city limits of Fredericksburg. However, if network access becomes necessary, Cox agrees with the City's requirement that such access only occur via existing handholds.

**Third, Cox shall perform repair work between handholds using only potholing and hand digging to gain access to areas where both networks share commonality.**

Cox Response: Any access needed by Cox in this area would be to repair damage caused by another party. Cox can agree to use Potholing and hand digging when it is necessary and appropriate to access portions of the fiber cabling in order to perform repairs.

**Fourth, if Cox damages City fiber it shall pay for and expedite repairs.**

Cox Response: As stated above in Cox's response to the City's first condition, if Cox's actions are the sole cause of service interruptions to the City's network in a location where the two networks share commonality, at its cost, Cox agrees to restore service in conformity with the stated terms and conditions.

**Fifth, prior to disturbing soils in areas common to both networks, Cox shall notify the City's IT department via e-mail and acquire any applicable permits.**

Cox Response: Although unlikely, if circumstances require Cox to access its network in an area common to both networks, we agree to provide prior notice to the City's IT department and to secure applicable permits prior to performing related work.

In summary, Cox agrees with all the stipulations requested by the City. Should you have any questions please contact me at your convenience.

Sincerely,

*Michael Stull*

Michael Stull  
Corporate Counsel

cc Mr. Brian Jenkins  
Ms. Annabond Thompson

Ms. Kathleen Dooley