

**COUNCIL ACTION FORM**

**SUBJECT:**        **LUMEN 3-YEAR DATA SERVICES CONTRACT**

**BACKGROUND:**

The City's primary data connection to City Hall is from Lumen, formerly known as CenturyLink. When this connection is interrupted, the City uses a backup data connection to Iowa State University. Switching to the backup connection allows data to transmit but causes the City's external website to not function correctly.

Lumen is offering a new 3-year contract effective March 21, 2021, to provide two data connections to the City:

- Connection #1 will connect to City Hall in the same way as the existing connection. This connection will ultimately lead to Kansas City.
- Connection #2 will connect to the Water Treatment Plant. This connection will ultimately lead to Minneapolis.

The two external Lumen connections will both be accessible through the City network. This will provide geographic backup of the external network; if the Kansas City connection has a problem, the Minneapolis connection may be unaffected. This arrangement should also allow the City's website to remain functional if the data connection needs to switch from one Lumen connection to the other.

The City's cost for Lumen's current single connection is \$3,800 per month. The new contract with Lumen would provide a second connection at a lower cost: \$2,400 total per month, with no cost change for the entire 3-year term. Funding for this contract is available in the Information Technology budget. The existing backup connection to ISU will be maintained under a separate contract as an additional layer of redundancy in the event both Lumen connections fail.

**ALTERNATIVES:**

1. Award a contract to Lumen of Monroe, Louisiana, for a 3-year data services contract in the amount of \$2,400 per month.
2. Reject the bid and ask City staff to seek additional bids.

**CITY MANAGER'S RECOMMENDED ACTION:**

The City has a long-standing relationship with Lumen/CenturyLink. This new service will provide external physical redundancy and improve website reliability at a lower cost.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as stated above.

Customer Information	Account Information	Prepared By
<b>Name:</b> CITY OF AMES - IA <b>Primary Contact:</b> William Ledvina <b>Primary Contact Phone:</b> (515) 239-5384 <b>Primary Contact Email:</b> wledvina@city.ames.ia.us <b>Billing Contact:</b> <b>Billing Contact Phone:</b> <b>Billing Contact Email:</b>	<b>BPID:</b> 606451 <b>Billing Account:</b> <b>Billing Address:</b> 515 CLARK AVE AMES, IA 50010 <b>Contract ID#:</b> New (Internal Use Only)	<b>Name:</b> Dan Wilcox <b>Phone:</b> <b>Email:</b> dan.t.wilcox@lumen.com

## Order

### Pricing Table

Product	Qty	Service Address	Service Details	Service Attributes	Term (Months)	MRC	NRC	Waived NRC
IQ Networking	1	1800 E 13TH ST AMES IA 50010	IQ Networking Port - Internet	Flat 1000BT 1000 Mbps	36 Months	\$843.00	\$325.00	\$325.00
Local Access	1	1800 E 13TH ST AMES IA 50010	ELA Native Single- CoS Medium	Lumen (LPA) GIG E 1G	36 Months	\$357.00	\$600.00	\$600.00
IQ Networking	1	515 CLARK AVE AMES IA 50010	IQ Networking Port - Internet	Flat 1000BT 1000 Mbps	36 Months	\$843.00	\$325.00	\$325.00
Local Access	1	515 CLARK AVE AMES IA 50010	ELA Native Single- CoS Medium	Lumen (LPA) GIG E 1G	36 Months	\$357.00	\$600.00	\$600.00
Service Sub Total:						\$2,400.00	\$0.00	

### "Terms and Conditions for CenturyLink IQ Networking Internet Port Service."

Lumen provides CenturyLink IQ Networking Internet Port Service ("Internet Port" or "Service") under the Internet Services Service Schedule. Each Internet Port has a Minimum Service Term of 12 months. Service will not be provided at a residential address. Lumen may use a Lumen affiliate or a third party to provide Service to Customer, but Lumen will remain responsible to Customer for Service delivery and performance. Any references to a Revenue Commitment, Contributory Charges, or Renewal Order will not apply to Internet Ports. "Order Form" means an electronic order confirmation process using an architecture confirmation document ("ACD") or other document that Customer and Lumen mutually agree to prior to submitting a Service order request. Lumen must approve each Order Form and Customer must send it via e-mail, fax, or other Lumen-approved electronic process to Lumen.

Scheduled Maintenance and Local Access. Customer may request a specific Local Access provider ("Preferred Provider") for Off-Net Access from a list of available providers with whom Lumen has interconnect agreements. Lumen will attempt to use Customer's Preferred Provider, but both final routing and the provider actually used will be chosen by Lumen. If Customer selects a Preferred Provider and Lumen is unable to use Customer's Preferred Provider for a specific Service Address as designated in this Quote, then the rate for Service at that Service Address may be subject to change.

Scheduled maintenance will not normally result in Service interruption. If scheduled maintenance requires Service interruption, Lumen will use commercially reasonable efforts to minimize such interruptions and provide notice to Customer. If third-party local access services are required for the Services, Customer will: (a) provide Lumen with circuit facility and firm order commitment information and design layout records to enable cross-connects to Lumen Service(s) (provided by Lumen subject to applicable charges), (b) cooperate with Lumen (including changing demarcation points and/or equipment and providing necessary LOAs) regarding circuit grooming or re-provisioning, and (c) where a related Service is disconnected, provide Lumen a written disconnection firm order commitment from the relevant third-party provider. Lumen may re-provision any local access circuits from one off-net provider to another or to the Lumen owned and operated network (on-net), and such changes will be treated as scheduled maintenance.

Customer may request additional wiring from the demarcation point to Customer's network interface equipment (where available). If Customer requests additional wiring, Lumen will notify Customer of the charge to be billed to Customer. Customer may either approve or disapprove Lumen providing the additional wiring. Additional wiring could entail electrical or optical cabling into (a) existing or new conduit or (b) bare placement in drop down ceilings, raise floors, or mounted to walls/ceiling. Once Service is accepted by Customer, the additional wiring then becomes property of and maintained by Customer. Lumen will maintain Service to the demarcation point only. Customer is responsible for any facility or equipment repairs on Customer's side of the demarcation point. Customer may request a technician dispatch for Service problems. Before dispatching a technician, Lumen will notify Customer of the dispatch fee. Lumen will assess a dispatch fee if it determines the problem is on Customer's side of the demarcation point or was not caused by Lumen's

facilities or equipment on Lumen's side of the demarcation point.

If Customer orders Diversity Enhancement or Diversity Backhaul, the Domestic Network Diversity Service Exhibit applies. A copy of the Domestic Network Diversity Service Exhibit is available upon request.

If Customer orders Building Extension Service, the Building Extension Service Service Schedule applies. A copy of the Building Extension Service Service Schedule is available upon request.

**Cancellation and Termination Charges.** Either party may terminate an individual Service: (a) with 60 days prior written notice to the other party, or (b) for Cause. "Cause" means the failure of a party to perform a material obligation under the Agreement, which failure is not remedied: (i) for payment defaults by Customer, within five days of separate written notice from Lumen of such default; or (ii) for any other material breach, within 30 days after written notice (unless a shorter notice period is identified in a Service Attachment). If an individual Service is terminated by Customer for any reason other than for Cause or by Lumen for Cause prior to conclusion of the applicable Service Term, then Customer will pay the Cancellation Charges set forth below, in addition to any and all charges that are accrued but unpaid as of the termination date. If the Agreement is terminated by Customer for any reason other than for Cause, or by Lumen for Cause prior to the conclusion of the Service Term, all Services are deemed terminated, and Customer will pay the Cancellation Charges set forth below, in addition to any and all charges that are accrued but unpaid as of the termination date.

**CPNI.** Lumen is required by law to treat CPNI confidentially. Customer agrees that Lumen may share CPNI within its business operations (e.g., wireless, local, long distance, and broadband services divisions), and with businesses acting on Lumen's behalf, to determine if Customer could benefit from the wide variety of Lumen products and services, and in its marketing and sales activities. Customer may withdraw its authorization at any time by informing Lumen in writing. Customer's decision regarding Lumen's use of CPNI will not affect the quality of service Lumen provides Customer. "CPNI" means Customer Proprietary Network Information, which includes confidential account, usage, and billing-related information about the quantity, technical configuration, type, destination, location, and amount of use of a customer's telecommunications services. CPNI reflects the telecommunications products, services, and features that a customer subscribes to and the usage of such services, including call detail information appearing in a bill. CPNI does not include a customer's name, address, or telephone number.

Service(s) Total for Services priced in this Order		
	Monthly Recurring Charges (\$)	Non-Recurring Charges (\$)
Total	\$ 2,400.00	\$ 0.00

## Terms and Conditions Governing This Order

1. "Lumen" is defined for purposes of this Order as CenturyLink Communications, LLC d/b/a Lumen Technologies Group and its affiliated entities providing Services under this Order. This confidential Order may not be disclosed to third parties and is non-binding until accepted by Lumen, as set forth in section 4. Customer places this Order by signing (including electronically or digitally) or otherwise acknowledging (in a manner acceptable to Lumen) this document and returning it to Lumen.

2. Prior to installation, Lumen may notify Customer in writing (including by e-mail) of price increases due to off-net vendors. Customer has 2 business days following notice to terminate this Order without liability; or otherwise, Customer is deemed to accept the increase.

3. Unless otherwise agreed by the parties in writing, the demarcation point for on-net services will be Lumen's Minimum Point of Entry (MPOE) at such location (as determined by Lumen). Off-net demarcation points will be the off-net vendor's MPOE. If this Order identifies aspects of services that are procured by Customer directly from third parties, Lumen is not liable for such services.

4. The Service identified in this Order is subject to the Lumen or CenturyLink Master Service Agreement(s) and applicable Service Exhibit(s)/Service Schedule(s) between CenturyLink Communications, LLC d/b/a Lumen Technologies Group and Customer (or its affiliate if expressly provided for under such affiliate Master Service Agreement). If Customer has not executed a Lumen or CenturyLink Master Service Agreement with CenturyLink Communications, LLC d/b/a Lumen Technologies Group but has executed a services agreement for applicable services with an affiliate of Lumen ("Affiliate Agreement"), then the terms of the most recent Affiliate Agreement will apply to the Service (to the extent not inconsistent with this Order); in such cases, the current standard Service Exhibit(s)/Service Schedule(s) applicable to the Services will apply. If Lumen and Customer have not executed a Lumen or CenturyLink Master Service Agreement and/or applicable Service Exhibit(s)/Service Schedule(s) governing the Service and have not executed an Affiliate Agreement, Lumen's current standard Master Service Agreement and Service Exhibit(s)/Service Schedule(s) as of the date of this Order will govern, copies of which are available upon request. The Lumen entity providing Services is identified on the invoice.

Notwithstanding anything in any Affiliate Agreement to the contrary, Lumen will notify Customer of acceptance of requested Service in this Order by delivering (in writing or electronically) the date by which Lumen will install Service (the "Customer Commit Date"), by delivering the Service, or by the manner described in a Service Exhibit/Service Schedule. Lumen will deliver a written or electronic notice that the Service is installed (a "Connection Notice"), at which time billing will commence. If the Affiliate Agreement governs and does not include early termination charges and if Customer cancels or terminates Service for any reason other than Lumen's uncured default or if Lumen terminates due to Customer's uncured default, then Customer will pay Lumen's standard early termination liability charges as identified in the then standard applicable Service Exhibit(s)/Service Schedule(s). If such Service Exhibit(s)/Service Schedule(s) does not contain early termination charges, Customer will pay Lumen's standard early termination charges described in its then standard Lumen or CenturyLink Master Service Agreement. "Affiliate Agreement" for CenturyLink Communications, LLC d/b/a Lumen Technologies Group or any companies that were affiliates of CenturyLink Communications, LLC before the merger with Level 3 Communications ("Merger") means only an applicable Interexchange Carrier (IXC) network agreement, e.g. CenturyLink Total Advantage Agreement, CenturyLink Total Advantage Express Agreement, or CenturyLink Wholesale Services Agreement (each, an Affiliate Agreement). Affiliate Agreement also includes an Agreement between Customer and any entity that was an affiliate of Level 3 Communications before the Merger.

5. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement service, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Order. Customer's sole remedies for any nonperformance, outages, failures to deliver or defects in Service are contained in the service levels applicable to the affected Service.

6. All transport services ordered from Lumen will be treated as interstate for regulatory purposes. Customer may certify transport service as being intrastate (for regulatory purposes only) in a format as required by Lumen, but only where the transport services are sold on a stand-alone basis, the end points for the service are located in the same state and neither end point is a Lumen provided IP port ("Intrastate Services"). Where Customer requests that services be designated as Intrastate Services, Customer certifies to Lumen that not more than 10% of Customer's traffic utilizing the Intrastate Services will be originated or terminated outside of the state in which the Intrastate Services are provided. Such election will apply prospectively only and will apply to all Intrastate Services stated in this Order.

7. Charges for certain Services are subject to (a) a per month property tax surcharge and (b) a per month cost recovery fee to reimburse Lumen for various governmental taxes and surcharges. Such charges are subject to change by Lumen and will be applied regardless of whether Customer has delivered a valid tax exemption certificate. For additional details on taxes and surcharges that are assessed, visit [www.lumen.com/taxes](http://www.lumen.com/taxes) or the RSS, if indicated by the applicable Service Exhibit(s)/Service Schedule(s).

8. Unless otherwise set forth in a Service Attachment, Customer will pay Lumen's standard: (a) expedite charges (added to the NRC) if Customer requests a delivery date inside Lumen's standard interval duration (available upon request or in Control Center at <https://www.centurylink.com/business/login/>) and (b) ancillary charges for additional activities, features or options as set forth in the



Ancillary Fee Schedule, available at [www.lumen.com/ancillary-fees](http://www.lumen.com/ancillary-fees). If Lumen cannot complete installation due to Customer delay or inaction, Lumen may begin charging Customer and Customer will pay such charges.

9. Charges/Orders. Despite anything to the contrary, NRCs are NOT waived unless this Order expressly states NRCs are waived or the NRCs appear in the waived column in the above table(s). If a Cancellation Charge requires Customer to pay the amount of any waived or discounted NRC, the NRC will be the amount stated in this Order or shown in the "Waived NRC" column in the above table(s) despite anything to the contrary. If in this Order Customer is upgrading, moving, disconnecting or otherwise changing an existing Service, cancellation charges may apply as set forth in the Agreement.

10. For Internet Services provided in certain countries in the Asia-Pacific region where Lumen does not currently hold a license to provide such Services, Customer consents to Lumen providing Service by procuring services of third-party carriers as Customer's agent, and Customer appoints Lumen as its agent to the extent necessary to obtain such Service. Lumen's affiliate is licensed in Hong Kong, Japan, Singapore and Australia.

<b>Customer: CITY OF AMES - IA</b>
_____
Authorized Signature
_____
Name Typed or Printed
_____
Title
_____
Date

**APPROVED AS TO FORM**  
 BY *Victoria A. Feilmeyer*  
**Vikki Feilmeyer**  
**Assistant City Attorney**