City of Fayetteville Staff Review Form

2020-0286

Legistar File ID

5/5/2020

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Tim Nyander	4/13/2020	WASTEWATER TREATMENT (730)
Submitted By	**Submitted Date**	**Division / Department**

Action Recommendation:

Staff recommends approval of a one-year Ozone Equipment Service Contract with Pinnacle Ozone Solutions, LLC in an amount not to exceed $24,920.00 for the ozone disinfection system at the Noland Water Resource Recovery Facility.

Budget Impact:

5400.730.5800-5314.00	Water and Sewer
Account Number	Fund
02069.1	Plant Pumps and Equipment - WWTP
Project Number	Project Title

Budgeted Item?	Yes	Current Budget	$	1,477,313.00
		Funds Obligated	$	262,582.21
		Current Balance	**$**	**1,214,730.79**
Does item have a cost?	Yes	Item Cost	$	24,920.00
Budget Adjustment Attached?	No	Budget Adjustment	$	-
		Remaining Budget	**$**	**1,189,810.79**

V20180321

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

CITY OF
FAYETTEVILLE
ARKANSAS

CITY COUNCIL MEMO

MEETING OF MAY 5, 2020

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Tim Nyander, Utilities Director

DATE: April 13, 2020

SUBJECT: **Pinnacle Ozone Solutions, LLC - Ozone Equipment Service Contract**

RECOMMENDATION:
Staff recommends approval of a one-year Ozone Equipment Service Contract with Pinnacle Ozone Solutions, LLC in an amount not to exceed $24,920.00 for the ozone disinfection system at the Noland Water Resource Recovery Facility.

BACKGROUND:
The ozone disinfection system at the Noland WRRF includes specialized equipment that the manufacturer must provide. Pinnacle Ozone Solutions, LLC is the sole manufacturer and service provider of this specialized ozone generating equipment used at the treatment facility.

DISCUSSION:
Pinnacle will perform quarterly service visits, perform annual service items to the equipment, and perform bi-weekly remote monitoring of the system (26 total). With the regular testing and inspections that are included in a preventative maintenance agreement, potential problems can be identified in advance. These issues can then be resolved based on a schedule that makes sense for the city rather than dealing with costly downtime if an emergency occurs. Routine maintenance on the ozone equipment will also increase the longevity of the ozone system. A technician can identify simple repair issues before they become more serious or cause system failures. With a preventative maintenance agreement in place, the City can be confident that the system will continue to perform as designed.

BUDGET/STAFF IMPACT:
Funds are available in the Plant Pumps and Equipment account within the Water & Sewer fund.

Attachments:
Ozone Equipment Service Contract

PINNACLE
OZONE SOLUTIONS, LLC

April 13th, 2020

City of Fayetteville
Atten: Mayor Lioneld Jordan
1400 N. Foxhunter Rd.
Fayetteville, AR 72756

RE: Ozone Equipment Service Contact Proposal v2.0-2020
Fayetteville Waste Treatment Facility

Dear Mayor Jordan,

Pinnacle Ozone Solutions, LLC (Pinnacle) is pleased to offer this proposal for an Ozone Equipment Service Contract for the above referenced project.

1.0 System Specific Information

The following is background information regarding this project:

SITE INFORMATION

FACILITY NAME:	Fayetteville Waste Treatment Plant
ADDRESS:	Fayetteville, AR
COVERED EQUIPMENT:	Ozone Generators, Qty. 2 MTA Chillers, Qty. 2

2.0 Scope of Services

Pinnacle will provide the listed services and consumables during the contract period as follows:

2.1. Quarterly Service Visits

a) Four (4) services visits of up to eight (8) hours each by one (1) factory trained technician including onsite labor and travel to/from the site. Schedule of Quarterly Service visits to be coordinated with the City a minimum of one (1) week prior to performance of work.
b) Inspection of all 'covered equipment'.
c) Oxygen/Ozone System Leak Check
d) Ozone Generator Output/Performance Verification
e) Chiller Inspection (Physical Inspection, pH, coolant level, differential temperature verification, and coolant flow rate / pressure).
f) Zero Check Ambient Ozone Analyzers. Re-Zero if required
g) Service report including details of equipment condition, work performed, calibration certificates, and any recommendations for additional service and/or changes to system operation.

PINNACLE
OZONE SOLUTIONS, LLC

2.2 Annual Service Items

a) The following service items will be performed one (1) time per service contract year during one (1) of the regularly scheduled service visits.
b) Validation of readings one (1) High-Range Ozone Concentration Analyzer (1) and up to three (3) Oxygen Mass Flow Meter(s) inside the ozone generator enclosure. Pinnacle will provide a quote for instrument recalibration services if required.

2.3 Online Remote Monitoring:

Pinnacle recommends bi-weekly remote monitoring for the 2020 contract year.

a) Bi-weekly (26 annual) check of system operation via remote interface via existing remote access capability.

3.0 **On-Call Repair Services (Standard & Emergency)**

Pinnacle will provide on-call services for troubleshooting and/or repair of the covered equipment as follows:

3.1 Service Request:

Provide a qualified engineer or technician (as required) on-site within 24 hours of a service request.

3.2 Labor Rates:

Engineer: $170/hr.
Technician: $115/hr.
*Note: Labor Charges apply for both travel and time onsite.

3.2 Travel Expenses:

- Mileage =$0.54/mile to and from Pinnacle office to the project site (or current year rate)
- Travel, Meals, Lodging Expenses: Cost +15% as required for sites

3.3 Parts & Materials:

A written estimate will be provided for any parts, materials, and/or consumables required to complete repairs to the system. Pricing will include any shipping charges incurred for delivery / return of parts and/or materials that are not covered under warranty.

4.0 **Client Responsibilities**

The Client agrees to provide the following:

4.1 Parts & Materials:

Client agrees to provide access to the site and equipment at the agreed time of service, and for the required duration of service conducted under this Agreement.

PINNACLE
OZONE SOLUTIONS, LLC

4.1 Waste Materials:
Client agrees to ownership, handling, and disposal of any waste materials generated as the result of equipment service completed under this Agreement.

5.0 Effective Date, Term, Renewal, and Schedule

The service contract term shall commence on **5/1/2020** and extend for a period of one (1) calendar year.

a) Unless otherwise cancelled in writing prior to the date of renewal, this service contract shall automatically renew upon expiration of the contract period.
b) All scheduled service visits to be coordinated with the City a minimum of one (1) week prior to visiting the site and approved in writing or by email.

6.0 Pricing, Terms & Conditions

The price for the Service Agreement as described herein is:
Twenty-four-thousand-nine-hundred-twenty-US-dollars per year (US$ 24,920.00/yr).

Service Agreement fee will be invoiced at the beginning of each service contract renewal. On-Call Services will be invoiced at the time of service. All invoicing is Net 30 days. All pricing and work performed under this Agreement shall be subject to Pinnacle's Standard Terms & Conditions of Sale, which are included with this proposal and incorporated by reference.

7.0 Closing

Pinnacle Ozone sincerely appreciates this opportunity to provide technical service for your existing ozone system. We trust this proposal is responsive to your needs. Please feel free to contact us if we can be of any further assistance.

Best Regards

PINNACLE OZONE SOLUTIONS, LLC

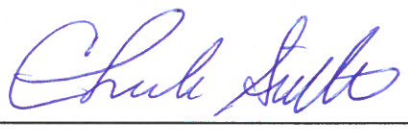
Chuck Smith

Chuck Smith
CEO

PINNACLE
OZONE SOLUTIONS, LLC

Project Authorization

Upon both Parties endorsement below, the Client and Pinnacle / PRDL agree that the scope of work, price, and terms & conditions of this Agreement are acceptable to both Parties, and work is Authorized to Proceed.

SIGNATURE:	**SIGNATURE:** 
PRINTED NAME: Lioneld Jordan	**PRINTED NAME:** Chuck Smith
TITLE: Mayor of Fayetteville	**TITLE:** CEO
COMPANY: City of Fayetteville, Arkansas	**COMPANY:** Pinnacle Ozone Solutions, LLC
DATE:	**DATE:** April 13, 2020

PINNACLE
OZONE SOLUTIONS, LLC

Purchase Order Terms and Conditions

1. ACCEPTANCE. The purchase order of Pinnacle ozone Solutions LLC ("POS " or "Seller") attached hereto or which otherwise references these terms and conditions, or any Buyer purchase order which POS is accepting, is expressly subject to the herein terms and conditions and no others unless the same have been consented to in writing by POS . The placing of this order by Buyer and its acceptance of the articles being sold hereunder shall be conclusive evidence of Buyer's approval of and consent to the terms and conditions herein contained.

2. PRICES AND PAYMENT. All prices set forth in the purchase order are FOB Origin, POS's facilities, Cocoa Florida, USA, and, unless otherwise stated do not include cartage insurance, taxes, imposts, or other similar charges. All payments shall be made in accordance with the terms set forth in the purchase order. The maximum allowable service charge, under the laws of the State in which POS is located shall be applied to all past due accounts commencing from the due date of the invoice until paid.

3. PERFORMANCE/DELIVERIES. POS shall not be liable for delays in delivery, performance, or failure to perform, manufacture or deliver due to causes beyond its reasonable control; or acts of God, acts of the Buyer, acts of civil or military authority, Governmental priorities, fires, strikes, floods, epidemics, war, not delays in transportation or shortages; or inability due to causes beyond its reasonable control to obtain necessary labor, materials, utilities, components or manufacturing facilities. In the event of any such delay, the date of performance/delivery shall be extended for a period of time as may be necessary to compensate for any such delay.

4. WARRANTY.

(a) POS warrants that the articles delivered hereunder conform to final specifications, drawings, and other description agreed in writing to be applicable and are free from defects in materials and workmanship. These warranties shall run to the Buyer, its successors, assigns and customers.

(b) The responsibility of POS hereunder, and the sole and exclusive remedy of Buyer, its successors assigns or customers for a breach of any warranty hereunder, is limited to correction or replacement by POS at its plant without charge of any article or part which has been returned to POS and which is not in accordance with this warranty provided, however; (1) POS must be notified in writing of the defect or non-conformity within the warranty period, Buyer must obtain a Return Material Authorization (RMA) number from seller and the affected article or part returned to POS within thirty (30) days after discovery of such defect or conformity (2) if POS is unable to repair or replace defective or non-conforming articles or parts within a

reasonable time after receipt thereof, Buyer shall be credited for their value at the original purchase price.
Pinnacle Ozone Solutions LLC 2971-A Oxbow Circle Cocoa, FL 32926 12201 | Phone: (321) 631-4580 Fax: (321) 631-4517Toll Free: (800) 632-3071 is responsible for costs of removal and reinstallation. POS will not be held responsible for items returned without a RMA. Transportation is at the risk of POS.

(c) POS shall have the sole right to determine whether returned articles or parts shall be repaired or replaced.

(d) POS's responsibility under these warranties shall expire 12 (twelve) months after delivery of the article, including any spares, to the Buyer or in the case of any part or component repaired or replaced by POS the warranty shall remain in effect for the remainder of the 12 (twenty four) month period from the date of shipment of the repaired or replaced part or component, whichever is longer.

(e) Unless otherwise agreed, and except as may be necessary to comply with these warranties, POS reserves the right to make changes in its products without any obligation to incorporate such changes in any product manufactured, overhauled or repaired theretofore.

(f) POS assumes round-trip transportation costs (shipping and handling) for defective or non-conforming articles to and from POS's facility.

(g) These warranties will not apply if the articles or any parts thereof have been subjected to (1) any maintenance, overhaul, installation, storage, operation, or use handling or environment which is improper or not in accordance with POS's instructions, (2) any alteration, modification, or repair by anyone other than POS or its authorized representative, or (3) any accident, misuse, neglect, or negligence after delivery by POS. The warranty shall not apply to any article to the extent that the defect or non-conformity is attributable to any part not supplied by or approved by POS.

(h) POS's obligations under these warranties are conditioned on Buyer's obligation to maintain records which will accurately reflect maintenance performed on POS's equipment and establish the nature of any unsatisfactory condition of POS's equipment. POS, at its request, shall be given access to such records for substantiating warranty claims.

(i) Except as set forth in paragraph (b), parts or components not manufactured by POS shall be in accordance with the standard warranty provisions of the manufacturer or supplier thereof, which warranty constitutes the sole obligation of POS and the sole remedy of Buyer.

(j) No warranty is given with respect to articles or parts not overhauled or replaced by POS.

PINNACLE
OZONE SOLUTIONS, LLC

(k) ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, SUCH AS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED AND DISCLAIMED TO THE EXTENT THEY EXCEED THE WARRANTIES GRANTED HEREIN. THIS WARRANTY COMPRISES POS'S ENTIRE LIABILITY IN RELATION TO ANY FAILURE OR DEFECT TO THE EXCLUSION OF ALL OTHER LIABILITY IN TORT (WHETHER FOR NEGLIGENCE OR OTHERWISE) OR IN CONTRACT. IN NO EVENT SHALL POS BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES.

(l) No agreement extending this warranty shall be binding upon POS, unless in writing and signed by POS's duly authorized officer or representative.

(m) The above warranty is the only warranty given unless other warranties are attached and thereby made a part hereof.

5. LIMITATION OF LIABILITY. POS's, liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from this order, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any article covered by or furnished under this order shall in no case exceed the price applicable to the article or part thereof which gives rise to the claim. In no event shall POS be liable for special or consequential damages.
Except as herein expressly provided to the contrary, the provisions of this order are for the benefit of the parties in the order and not for the benefit of any other person.

6. Limitation of liability. Notwithstanding anything else to the contrary, seller shall not be liable for any consequential, incidental, special, punitive or other indirect damages, and seller's total liability arising at any time from the sale or use of the equipment shall not exceed the purchase price paid for the equipment. These limitations apply whether the liability is based on contract, tort, strict liability or any other theory.

7. Cancellation. If you cancel or suspend your Order for any reason other than POS's breach, you shall immediately pay POS for work performed prior to cancellation or suspension and any other direct costs incurred by POS as a result of such cancellation or suspension.

8. Changes. POS shall not implement any changes in the scope of work described in POS's Documentation unless you and POS agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes necessitated by a change in applicable law occurring after the effective date of any contract including these terms.

PINNACLE
OZONE SOLUTIONS, LLC

9. Liens & Insurance. Title to the Equipment and risk of loss shall pass to you at the time the Equipment is delivered to the carrier for shipment, or when delivered to the location specified by you, whichever comes first. Prior to full payment of the purchase price, you shall not permit any lien, encumbrance or security interest to attach to the Equipment or be levied upon the Equipment under legal process or dispose of the Equipment or permit anything to be done that may impair the value of the Equipment. You shall insure the Equipment against risk of loss or damage by fire, including extended coverage, theft and such other casualties, in an amount equal to full replacement value.

10. Default & Remedies. Any of the following events will constitute an event of default under this Order: (a) your failure to pay any amount when due; (b) your failure to perform any covenant or obligation in this Order; (c) your giving any untrue or misleading representation or warranty or furnishing any untrue or misleading financial information; (d) your refusal to accept delivery of all or a portion of non-defective, conforming Equipment upon delivery; (e) your business failure, or failure or inability to pay debts in the ordinary course or as they become due, or insolvency within the meaning of the federal bankruptcy laws or state insolvency laws or otherwise; (f) the commission of any act of bankruptcy, assignment for the benefit of creditors, composition of creditors or commencement of any proceedings, whether voluntary or involuntary, under any federal or state bankruptcy, reorganization or insolvency laws; or (g) the attachment or garnishment of, or levy or execution upon, your assets, property, business or income, or the appointment of a receiver or trustee of or for any part of your assets, property or business. Upon the occurrence of any event of default, POS shall have all the rights and remedies available under the Arkansas Uniform Commercial Code or other applicable law and all rights provided in this agreement, all of which shall be cumulative. Without limiting the generality of the foregoing, upon the occurrence of any such event of default, POS shall have the right not to continue to perform service activities as described in this Order.

11. Force Majeure. Under no circumstances shall either party be liable for any breach (except for breach of payment obligations) caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, failure of normal sources of supply, act of government or any other cause beyond such party's reasonable control.

12. General Provisions. All notices, requests, demands and other communications under this Order shall be in writing and shall be deemed duly given (a) if transmitted by facsimile, upon telephone confirmation of receipt of the transmission, (b) if sent by overnight courier, one business day after delivery to said courier, or (c) if mailed by first-class mail, postage prepaid, three business days after mailing, to you at the address on this Order and to POS , Attn.: General Counsel, 2971-A Oxbow Circle

PINNACLE
OZONE SOLUTIONS, LLC

Cocoa, FL 32926 or such other address designated in writing from time to time. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. You may not assign or permit any other transfer of the Agreement without POS's prior written consent. This Order shall be governed by and construed in accordance with the laws of Arkansas.

13. Taxes. The amount of Federal, State or local taxes applicable to the sale, use or transportation of the articles sold or the work performed hereunder and all duties, imposts, tariffs, or other similar levies shall be added to the prices and paid by the Buyer, except where the Buyer shall furnish an appropriate certificate of exemption there from.

14. Export. If any article sold hereunder is for export, Buyer shall be responsible for arranging for transportation, insurance and compliance with local country export/import or re-export laws and clearances.

15. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by applicable law each party hereby waives any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

16. Applicable Law. This Agreement shall be interpreted in accordance with the laws of the State of Arkansas. The parties hereto agree that any litigation arising out of this Agreement shall be in the State of Arkansas. Any legal action by Buyer for breach must be commenced within one (1) year from the date of the breach. Buyer agrees to pay all costs and expenses, including reasonable attorney's fees incurred by POS in any action to enforce its rights hereunder. The United Nations Convention on the Contracts for International Sale of Goods, 1980, and any amendment or successor thereto is expressly excluded from this Agreement.

17. Waiver. Failure by POS to assert all or any part of its rights upon any breach of this agreement shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach nor shall any waiver be implied from the acceptance of any payment or service. No written waiver of any right shall extend to or affect any other right POS may possess nor shall such written waiver extend to any subsequent similar or dissimilar breach.

18. Estimated Pricing. Estimated pricing is defined to mean an approximate calculation only. The final price may exceed the estimate price.

PINNACLE
OZONE SOLUTIONS, LLC

19. Intellectual Property Rights. POS retains all intellectual property rights in the articles including but not limited to any and all patent, trade secret, trademark or copyright rights. Buyer shall have no such rights by virtue of entering into this Agreement. Specifically, and without limiting the generality of the foregoing, Buyer agrees that it shall not, following its purchase of the articles hereunder, build, manufacture, fabricate or reverse engineer the articles, or sell any item so built, manufactured, fabricated or reverse engineered.

20. U.S. Export Control and Embargo Laws. Buyer shall bear all responsibility for complying with any and all export control and embargo laws and regulations of the United States and shall promptly provide POS with any requested export control documentation, including but not limited to any requested end user information. Buyer hereby certifies that any products, technology, or software disclosed or provided by POS will not be exported, reexported, sold, leased, or transferred in violation of: (a) the U.S. Export Administration Regulations; and (b) applicable U.S. trade and economic sanctions administered by the U.S. Department of Treasury's Office of Foreign Assets Control. Buyer shall defend, indemnify and hold harmless POS for any Buyer failure to comply with such laws or regulations.

21. Shipment, Title, Risk of Loss. The articles being sold hereunder shall be delivered to Buyer FOB origin and shall be deemed accepted by Buyer at POS's facility. Buyer shall take title at POS's facility upon acceptance and shall bear all risk of loss from and after that time.

22. Entire Agreement. Upon acceptance of this Agreement by Buyer, the provisions hereof (including the pertinent documents, drawings and specifications applicable hereto) shall constitute the entire Agreement between the parties and supersedes all prior prices, offers, negotiations and agreements relating to the subject matter hereof.