
City of Broken Bow

Monday, June 25, 2012

City Council Regular Session

Consideration of notice to terminate and consideration of waiver of termination notice requirement for Energy Pioneer Solution contract.

City Council will consider notice to terminate and waiver of the six (6) month contract termination notice as provided by Energy Pioneer Solutions .

Staff Contact: City Administrator

AGREEMENT

This AGREEMENT (the "Agreement"), dated as of October 13, 2010, is made and entered into by and among the Broken Bow Municipal Utilities of the City of Broken Bow, NE, dba Broken Bow Utilities, a proprietary function of the City of Broken Bow, Nebraska ("Broken Bow"), and Energy Pioneer Solutions, Inc., a Nebraska corporation ("EPS").

RECITALS

WHEREAS, Broken Bow desires to offer its ratepayers energy efficiency services at no cost to non-participating ratepayers;

WHEREAS, EPS is in the business of providing energy efficiency services to property owners;

WHEREAS, EPS desires to enter into an Agreement with Broken Bow whereby EPS shall offer Broken Bow ratepayers certain energy efficiency services and Broken Bow shall assist EPS in its provision of and billing for such services and remit Qualifying Revenues to EPS once per month, commencing upon Broken Bow's completion of all internal work necessary to carry out its obligation under this agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is hereby agreed by and between the parties as follows:

AGREEMENT

Section 1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

- a. "Agreement" means this Agreement, including the exhibits and schedules attached hereto.
- b. "Confidential Information" means: (a) intellectual property of either Party; (b) the business and technical information of either Party, including any information relating to such party's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; and (c) any information designated by a Party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential.
- c. "Efficiency Services" means retro-fitting energy efficiency services.
- d. "Party" means a party to this Agreement.
- e. "Payment Default" means if a Ratepayer Customer does not pay the EPS Monthly Service Fee in full within 90 days of Broken Bow issuing a bill.
- f. "Qualifying Revenues" means those monthly revenues as identified in the EPS customer agreements that Ratepayer Customers have agreed to allow Broken Bow to bill and collect for on a monthly basis. Qualifying Revenues shall only be remitted to EPS after payment has been received by Broken Bow from participating Ratepayer Customers.
- g. "Ratepayer(s)" means customers of Broken Bow.

- j. "Ratepayer Customer(s)" means Ratepayer(s) who become customers of EPS that are paying and continue to pay an active utility bill to Broken Bow during the entire term of the Customer Agreement for the same account location where EPS performed the Efficiency Services

Section 2. Non-exclusive Agreement EPS hereby acknowledges that this Agreement is a non-exclusive agreement for the sale of Efficiency Services to Ratepayers. EPS shall at no time infer, imply or state, either verbally or in its written material or documents of any kind, it has received any endorsement by Broken Bow of EPS or the Efficiency Services.

Section 3. Term. The term of this Agreement shall commence on the Effective Date and shall continue for two (2) years, continuing thereafter for twelve (12) month periods unless terminated by either party upon giving the other party not less than six (6) months written notice prior to the next renewal term. In the event that a Party delivers a termination notice to the other Party pursuant to this Section 3, Broken Bow shall continue to invoice the existing Ratepayer Customers for a maximum period of forty two (42) months from the effective date of termination or if shorter, the remaining term of the relevant Customer Agreements pursuant to Section 4, and shall remit the funds received from such existing Ratepayer Customers pursuant to said invoices and provide EPS with the electric and gas usage and cost information for such existing Ratepayer Customers through that same time period.

Section 4. Customer Agreement. EPS agrees to utilize a customer agreement substantially similar to the one attached hereto as Exhibit "A" in order to enter into service relationships with each of its Ratepayer Customers for the provision of Efficiency Services (the "Customer Agreement"). EPS agrees that Broken Bow has the right to review the Customer Agreement content and to require specific language be included or excluded prior to the Customer Agreement being utilized by EPS. As part of such Customer Agreement, Ratepayer Customers shall consent to the following:

- a. Broken Bow' provision to EPS of three (3) years historical electric and gas usage and cost information (or whatever shorter period such Ratepayer Customer has paid the monthly utility bill for the relevant property);
- b. Billing of the fees associated with the Efficiency Services on the Ratepayer Customer's monthly bill from Broken Bow;
- c. Broken Bow' provision of up to five (5) years electric usage and cost information following the completion of the Efficiency Services (or such shorter period of time as the Ratepayer Customer pays the monthly bill for the relevant property); and
- d. The terms and conditions of the Customer Agreement shall not be materially modified except by written agreement of the parties hereto;

Section 5. Disclosure of Ratepayer Customer Information.

- a. Historical Electric and Gas Usage and Cost Information. Broken Bow agrees to provide EPS with historical electric and gas usage and cost information for all Ratepayer Customers upon receipt of (i) a signed Customer Agreement that is compliant with the terms and conditions set forth in Section 4 above, or (ii) a signed disclosure consent in the form attached hereto as Exhibit "B" (the "Consent Form").
- b. Institution of Procedures for the Sharing of Ratepayer Customer Information. It is understood by the parties that EPS has a proprietary software application that will allow EPS to use electric and gas usage and cost information provided by Broken Bow in order to determine Efficiency Services programs for Ratepayer Customer's properties as well as analyze the success of Efficiency Services performed by EPS

subsequent to its performance of services at a property. Broken Bow and EPS agree to work in good faith to establish a commercially reasonable procedure for Broken Bow upon receipt of proper documentation as outlined in Section 5(a) above, to share Ratepayer Customers' information with EPS in order to best address efficiency, security and confidentiality concerns of both Parties. EPS shall limit access to Ratepayer Customer Information received from Broken Bow to those of its employees, agents or contractors with a bona fide need to have such access in connection with the Efficiency Services. All ratepayer account, consumption, and identification numbers of any kind disclosed to EPS or any other ratepayer information obtained by EPS shall be deemed to be, and treated as, Confidential Information of Broken Bow hereunder. EPS understands and agrees that under this Agreement neither EPS nor any employee, agent or subcontractor of EPS will be allowed direct computer access to Broken Bow' customer or billing information system for any purpose.

Section 6. Notice of Provision of Efficiency Services; Billing. Once EPS has completed its provision of Efficiency Services for a Ratepayer Customer, EPS shall deliver to Broken Bow a notice of provision of efficiency services in the form attached hereto as Exhibit "C" (the "Notice of Provision of Efficiency Services") and a copy of the Customer Agreement executed by the Ratepayer Customer. Upon receipt of these documents from EPS, Broken Bow agrees to (i) bill such Ratepayer Customer the amount set forth in the relevant Notice of Provision of Efficiency Services as a line item on the Broken Bow's standard billing invoice (the "EPS Service Fee") for the term indicated on same, not to exceed sixty months (60), or in the event a termination notice is issued by either party, forty two (42) months from the effective date of termination, and (ii) provide EPS with the electric and gas usage and cost information for such Ratepayer Customer for that same time period. Broken Bow agrees to accompany each remittance payment to EPS with a report detailing commercially reasonable and relevant Ratepayer Customer information, in a form that is mutually agreeable to the parties. In the event that a Ratepayer Customer defaults on a payment of the EPS Service Fee, Broken Bow shall have no obligation to take any action in order to enforce payment from the Ratepayer Customer under any Customer Agreement(s). Broken Bow shall notify EPS as soon as practicable of a Ratepayer Customer's Payment Default. Upon a Ratepayer Customer's payment default that lasts ninety (90) days, Broken Bow may remove EPS' Services Fee from such Ratepayer Customer's bill and shall have no future obligation for billing or collecting said Ratepayer Customer payments under the terms of the Customer Agreement. The billing obligations described in the immediately preceding sentence for Ratepayer's who have a Payment Default shall only apply upon Harris Systems' completion of modifications to the Broken Bow billing system in order to allow such continued billing to be performed on an automated basis.

Section 7. Representations, Covenants and Warranties. Each party represents, warrants and covenants to the other that (a) it has full power and authority to execute, deliver and perform this Agreement, and (b) it shall perform its respective obligations in a manner that complies, in all material respects, with applicable laws. Broken Bow represents and warrants that it shall perform its obligations hereunder in a professional and workmanlike manner consistent with industry standards. EPS represents and warrants that it shall provide its Efficiency Services to Ratepayer Customers in a professional and workmanlike manner consistent with industry standards. EXCEPT AS EXPRESSLY SPECIFIED IN THIS AGREEMENT, BROKEN BOW AND EPS DO NOT MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE AND EXPLICITLY DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

Section 8. Limitation of Liability.

a. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR ANY OTHER INDIRECT LOSS OR DAMAGE, INCLUDING LOST PROFITS, ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, WHETHER IN AN ACTION FOR OR ARISING OUT OF ANY CAUSE WHATSOEVER, REGARDLESS OF

THE FORM OF ACTION, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

b. EXCEPT FOR (i) CLAIMS ARISING OUT OF A BREACH OF CONFIDENTIALITY PROVIDED FOR IN SECTION 10, (ii) PAYMENT OBLIGATIONS HEREUNDER, AND (iii) CLAIMS ARISING UNDER SECTION 11, EACH PARTY'S CUMULATIVE AGGREGATE LIABILITY ARISING UNDER THIS AGREEMENT, FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES, OR EXPENSES, FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO DIRECT, PROVEN DAMAGES IN AN AMOUNT NOT TO EXCEED \$10,000.

Section 9. Indemnification. Each party (the "Indemnitor") shall indemnify, defend and hold the other party (the "Indemnitee") harmless from any and all claims, actions, demands, judgments, losses, costs, expenses, damages and liabilities (including reasonable attorneys fees and other expenses of litigation) resulting from or arising out of: (1) Indemnitor's negligence or willful misconduct; (2) any third party claim to the extent arising out of Indemnitor's performance of its obligations under this Agreement; or (3) any third party claim to the extent arising out of Indemnitor's performance of the Efficiency Services.

Section 10. Confidentiality. The parties acknowledge that in connection with the provision and receipt of Marketing Services, each party may obtain access to Confidential Information of the other party. For the purposes of this Section 10, "Confidential Information" will not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) is known to the receiving party at the time of disclosure without violation of any confidentiality restriction and without any restriction on the receiving party's further use or disclosure; or (iii) is independently developed by the receiving party. Each Party will, during the Term and perpetually after termination or expiration of this Agreement, (A) refrain from using Confidential Information of the other party except as contemplated herein, and (B) refrain from disclosing Confidential Information of the other party to any third party except to employees, agents and independent contractors as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees, agents and independent contractors). Each party may disclose Confidential Information of the other party pursuant to any order or requirement of a court, administrative agency or other governmental body, provided that such disclosing party give reasonable and, if practicable, advance notice to the other party of such order or requirement.

Section 11. Default. This Agreement may be terminated by Broken Bow upon EPS' breach of Section 10 of this Agreement and EPS' failure to cure such breach within ten (10) business days following the receipt by EPS of written notice from Broken Bow specifying such breach with specificity. In the event of a termination of this Agreement pursuant to this Section 11, Broken Bow shall discontinue all services provided to EPS under this Agreement and have no future obligation whatsoever, except for, Broken Bow will remit to EPS any payments that are received from Ratepayer Customers from invoices already issued at the time of Default.

Section 12. Dispute Resolution Process. Except for defaults expressly delineated in Section 11, the parties agree that in the event any claim, demand or dispute arises in connection with the performance of one or both of the Parties hereunder or the interpretation or implementation of this Agreement (whether one or more, a "Dispute"), the Parties shall resolve such Dispute as follows:

a. Internal Mediation. The Parties shall attempt to resolve the Dispute through discussions between the Parties' respective designated representatives. Such discussions shall become necessary only after the initiating Party has given the responding Parties written notice of the existence of the Dispute with specific reference to this Section 13(a). Such written notice shall

Section 15. Fees. In all cases a charge of \$.75 per monthly bill, per customer, will be applied to the bill of each participating customer as part of any agreement for services covered within this contract or for any services provided by the City of Broken Bow pertaining to this contract.

include all relevant information (e.g., the nature of the Dispute, dates, times, persons involved, etc.). The responding Party shall respond to the notification within seven (7) days. Thereafter, the Parties shall use their best efforts to resolve the dispute within thirty (30) days following the responding Parties delivery of a response.

b. In the event the Internal Mediation process listed above is not successful in reaching a mutually agreeable resolution, EPS has the right to request a hearing with the Broken Bow Board of Public Works (BPW) to present its position. Whatever decision is made by the BPW after hearing pertinent information will be considered final. If EPS is not satisfied with the decision made by the BPW, this Agreement shall terminate immediately and Broken Bow shall have no further obligation to EPS except for remitting Ratepayer Customer payments that had already been invoiced at the time this Agreement terminated that are received after the termination.

Section 13. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile, or by registered or certified mail (postage prepaid, return receipt requested) to the respective persons at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section):

If to EPS:

Energy Pioneer Solutions
625 West 2nd Street, 2nd Floor
Hastings, NE
68901

If to Broken Bow, to:

Mayor ~~William~~ Burr
PO Box 314
Broken Bow, NE
68822

with copy to:


Fraser Stryker PC LLO
409 S. 17th Street
Omaha, NE 68102
Attn: Mr. Robert Freeman

with copy to:

Section 14. Miscellaneous. This Agreement shall be construed and interpreted in accordance with, and shall be governed by the laws of the State of Nebraska. This Agreement constitutes all of the understandings and agreements between the Parties with respect to the content herein. This Agreement may be amended or modified only by a writing signed by parties. If any term, condition, covenant or obligation of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate, or render unenforceable any other term, condition, covenant, or obligation of this Agreement. This Agreement may be executed in one or more counterparts, and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Notwithstanding the termination or expiration of this Agreement, any rights and obligations of the Parties specifically identified herein as continuing, or any rights and obligations that by their nature continue, beyond the end of the Term shall remain in full force and effect for the relevant period of time.

Section 15. Fees. In all cases a charge of \$.75 per monthly bill, per customer, will be applied to the bill

BROKEN BOW UTILITIES

By 
Name (print) CECIL BUNT
Title MAYOR
Date 2/3/11

ENERGY PIONEER SOLUTIONS, INC.

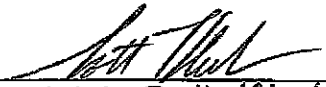
By 
Name (print) Scott Klee
Title President and CEO
Date Oct. 13, 2010

Exhibit "A"
Customer Agreement

[Attached]

ENERGY EFFICIENCY SERVICES AGREEMENT

THIS ENERGY EFFICIENCY SERVICES AGREEMENT ("Agreement") is made by and between Energy Pioneer Solutions, Inc., a Nebraska corporation (the "EPS"), and the undersigned, who is a resident of Nebraska (the "Owner"). EPS and Owner are sometimes collectively referred to herein as "Parties".

1. The Work. The Parties have determined that the Owner's property, located at the address set forth below in Adams County, Nebraska (the "Property"), would benefit from the receipt of certain energy efficiency services. For good and valuable consideration and the mutual promises set forth herein, Owner and EPS have agreed to that certain scope of energy efficiency services to be performed on the Property, which are specifically described in Exhibit "A" to this Agreement (the "Work"). Owner desires to utilize the services of EPS in order to complete the Work on the Property, upon the terms and conditions set forth in this Agreement.

2. Term. The term of this Agreement shall begin upon the Effective Date and shall terminate upon Owner's payment in full of the Services Fee and any additional amounts due and owing by Owner to EPS hereunder, in accordance with the terms of this Agreement.

3. Duties of EPS. EPS and its Service Provider shall perform the Work in accordance with the terms and conditions of this Agreement. The Work shall consist of certain consulting services and retro-fitting services, as those services are described in Exhibit "A". Owner acknowledges and agrees that EPS shall subcontract the performance of the retro-fitting services to a third party service provider (the "Service Provider").

4. Duties of Owner. Owner shall (i) allow EPS and the Service Provider access to the Property on weekdays, during the hours of 8:00 a.m. to 5:30 p.m., to perform the Work, (ii) provide EPS and Service Provider with any necessary and reasonably available information and documents, and (iii) take any such reasonable actions, related to the Property, requested by EPS or Service Provider, necessary for the performance and completion of the Work.

5. Broken Bow Utilities and EPS Relationship; Utility Bill Consent. Owner understands that Broken Bow Utilities is not affiliated with EPS and does not recommend or endorse EPS. Without limiting the generality of the foregoing, nor does Broken Bow Utilities recommend or endorse any opinion, recommendation or advice expressed or Work performed by EPS or its Service Provider and is solely a billing agent under this Agreement. Owner hereby authorizes EPS to obtain, as Owner's agent, copies of Owner's energy bills for the Property from Broken Bow Utilities for (a) the last thirty-six (36) months, and (b) the sixty (60) months immediately following the completion of the Work.

6. Costs and Expenses. Owner shall pay _____ Dollars (_____) (the "Services Fee") in _____ equal installments of _____ (_____) Dollars per month as compensation for EPS' performance of the Work. The Parties acknowledge and agree that the monthly payment of the Services Fee may be included as a line item on the Owner's local energy utility bill issued by

Broken Bow Utilities. Attached hereto as Exhibit B are more detailed financial disclosures regarding the Services Fee, as required by law. Owner hereby acknowledges receipt of Exhibit B.

7. Estimated Energy Savings. Owner acknowledges that EPS is using its own proprietary software and processes in order to estimate the energy savings that Owner will likely realize upon completion of the Work. EPS' estimate is based on past energy usage; therefore, any material change in Owner's energy usage will likely affect the amount of actual energy savings experienced by the Owner. EPS makes no warranty or representation, express or implied, regarding the actual energy savings Owner will experience upon completion of the Work. Owner recognizes that it remains solely responsible for payment of his or her entire energy utility bill issued by Broken Bow Utilities, including the Services Fee, regardless of the amount of energy savings actually realized by Owner after performance of the Work.

8. Limited Warranty. Work provided by the Service Provider has a ninety (90) day limited warranty (the "Limited Warranty"). The Limited Warranty is limited to the materials and Work that are shown to have not been completed in conformance with current industry standards for similar services. Owner shall direct any Limited Warranty deficiencies or requests directly to the Service Provider, who can be reached at _____ [GC's PHONE #]. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 7, EPS HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF ANY WORK, SERVICES OR MATERIALS FURNISHED HEREUNDER, ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR WORKMANSHIP IN SUCH WORK AND/OR SERVICES, THE AMOUNT OF ENERGY EFFICIENCY OR ENERGY SAVINGS FROM SUCH WORK OR SERVICES, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER AND EPS HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL SUCH WARRANTIES.

9. Owner's Continued Maintenance. Owner recognizes that certain materials, including but not limited to caulk and weather-stripping, used in completing the Work, require regular follow-up maintenance by the Owner. Owner understands that any energy efficiencies gained through the Work may be lost if these materials are not properly maintained. The Owner, and not EPS, is responsible for completing any follow-up or continuing maintenance on any such materials.

10. Release; Limitation of Liability. EPS' sole liability and Owner's sole remedy for damages arising out of the furnishing or failure to furnish the Work (including, but not limited to, mistakes, omission, delays, errors or other defects)

is limited to the Limited Warranty. EPS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF ANTICIPATED SAVINGS OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF EPS EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER OWNER HAS BEEN INFORMED OF THE POSSIBILITY OR THE LIKELIHOOD OF SUCH LOSSES. IN ADDITION, NOTWITHSTANDING ANYTHING TO THE CONTRARY, EPS' MAXIMUM LIABILITY TO OWNER UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF THE SERVICES FEE PAID BY OWNER TO EPS AT THE TIME THE RELEVANT CLAIM ARISES.

11. Indemnification. Owner shall indemnify and hold EPS and the Service Provider harmless from any claims by third parties and expenses (including legal fees and court costs) respecting damage to tangible property, personal injury or death to the extent caused by Owner's negligence or willful misconduct. EPS agrees to promptly provide Owner with notice of any claim which may result in an indemnification obligation hereunder. Owner may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of EPS, which consent shall not be unreasonably withheld or delayed.

12. Memorandum of Understanding. EPS may file of record in the property records in the county in which the Property is located a Memorandum of Understanding which sets forth the names and addresses of EPS and Owner, the legal description of the Property, the duration of the Term of this Agreement, the total Services Fee due as of the Effective Date and the monthly installment payment amount to be paid by Owner hereunder.

13. Sale of the Property. Owner acknowledges and agrees that the obligations set forth in this Agreement are obligations that run with the land and shall be binding upon Owner and his or her heirs, successors and assigns. As a result, on or before a closing for the sale of the Property by Owner, Owner agrees to do one of the following at or before closing: (i) pay EPS the entire then-current outstanding balance of the Services Fee, or (ii) deliver to EPS an executed assignment and assumption by the buyer of the Property, whereby the buyer agrees to assume the obligations set forth in this Agreement. EPS may notify any prospective buyer of the Property, and any other person involved in a prospective sale of the Property, of the obligations set forth in this Agreement.

14. Miscellaneous. This Agreement shall be construed and interpreted in accordance with, and shall be governed by the laws of the State of Nebraska. This Agreement constitutes all of the understandings and agreements between the Parties with respect to the Work on the Property. EPS may assign this Agreement and in the event of such an assignment, EPS shall provide notice to

Owner of same. This Agreement may be amended or modified only by a writing signed by parties. If any term, condition, covenant or obligation of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate, or render unenforceable any other term, condition, covenant, or obligation of this Agreement. Notwithstanding the termination or expiration of this Agreement, any rights and obligations of the Parties specifically identified herein as continuing, or any rights and obligations that by their nature continue, beyond the end of the Term shall remain in full force and effect for the relevant period of time.

15. Effective Date: The Effective Date of this Agreement shall be _____, 2010.

CONSULTANT: SOLUTIONS, INC.	ENERGY PIONEER	OWNER: _____
BY: _____	BY: _____	Property Address: _____
ITS: _____		_____

Exhibit A – Scope of Work

Exhibit B – Financial Disclosures

Exhibit A

Scope of Work

1. Consulting Services. The following consulting services shall be performed as part of the Work:

a) EPS shall conduct various tests (the "Energy Efficiency Tests") on the Property in order to calculate the estimated monthly energy savings the Owner is anticipated to realize on his or her energy utility bills due to the completion of the Work; and

b) provide a report to Owner, upon completion of the Energy Efficiency Tests, describing the calculation of such estimated savings.

2. Retro-Fitting Services. The Service Provider shall perform the following retro-fitting services upon the Property:

[to be filled in upon completion of energy efficiency audit].

Exhibit B

Financial Disclosures

Creditor Name Energy Pioneer Solutions, Inc.	Annual Percentage Rate	Finance Charge
Amount Financed	Total of Payments	Total Sale Price
Number of Payments 60	Amount of Payments	When Payments are Due Monthly beginning / /
Late Payment Charges None by EPS. Utility late fees still apply, if any.	Prepayment There are neither prepayment penalties, nor prepayment rebates/discounts.	
Explanation of Terms: See the terms of the Agreement for any additional information about non-payment, default and other applicable terms and conditions.		

You have the right to receive at this time an itemization of the Amount Financed (please check one below):

_____ I want an itemization. _____ I do not want an itemization.

EPS Initials: _____

Owner Initials: _____

Exhibit "B"
Consent Form



YES!! I want to be an Energy Pioneer!

I hereby authorize Energy Pioneer Solutions to access historical energy usage and billing information (including whether I participate in any government energy assistance programs) from my local utility provider(s) for my property and/or residence. I understand this information will be held in confidence by Energy Pioneer Solutions and will be used solely for the purpose of conducting a FREE energy audit on this property and for calculating potential savings from proposed energy-efficient upgrades.

Please complete and return this form to the address below -- and we'll contact you to schedule your FREE energy audit.

Energy Pioneer Solutions
605 2nd Street, Second Floor
Hastings, NE 68022

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

MARK ALL THAT APPLY.

☐ I am the owner of this property

☐ I am the manager of this property

☐ I am a tenant at this property

☐ I am a tenant at this property

DAYTIME PHONE _____

EVENING PHONE _____

CELL PHONE _____

BIRTH _____

SIGNATURE _____

TODAY'S DATE _____

Exhibit "C"

Notice of the provision of Efficiency Services

Customer Ratepayer Information:

Name: _____

Address: _____

Monthly EPS Service Fee: \$ _____

Billing Term: ____ months

The Customer Ratepayer set forth above entered into the attached Customer Agreement for the provision of Efficiency Services by Energy Pioneer Solutions, Inc. ("EPS").

Pursuant to Section 6 of the Agreement between EPS and Broken Bow Utilities, this Notice of Provision of Efficiency Services shall serve as the required notice from EPS in order to authorize Hastings Utilities to: (i) bill the Customer Ratepayer set forth above the Monthly EPS Service Fee delineated herein as a line item on the Broken Bow Utilities' standard billing invoice for the Billing Term indicated above, and (ii) provide EPS with the electric and gas usage and cost information for such Ratepayer Customer in accordance with the Agreement.

Dated: _____

Energy Pioneer Solutions, Inc.

By: _____

Name: _____

Its: _____



**Amendment to Utilities Contract
Between Broken Bow Utilities
and Energy Pioneer Solutions**

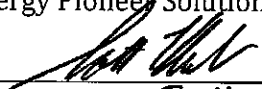
June 18, 2012

Energy Pioneer Solutions hereby waives the 6 month written notice prior to the next renewal term statement located in the contract page 2, Section 3, line 3 under heading Term.

Broken Bow Utilities

By _____
Name (print) _____
Title _____
Date _____

Energy Pioneer Solutions, Inc.

By  _____
Name (print) Scott Klee
Title President + CEO
Date June 18, 2012