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December 8, 2006

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RECEIVED  
2006 DEC -8 AM 11:45  
R.A. DOCKET ROOM

Ms. Darlene Standley, Chief  
Utilities Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

RE: Application of Community Initiative for a CCN to Provide Natural Gas Services in Certain Areas of Macon County, TN (Including within the City of Red Boiling Springs); to Approve the Transfer of Certain Assets and Customers of RBS Gas Utility Inc.; to Approve Franchise from the City of Red Boiling Springs; to Confirm Cancellation of Special Contract of RBS Utility Inc. and to Set Rates and Approve Tariff

Docket No. 06-00281

Dear Ms. Standley:

In response to your data request of December 6, 2006, enclosed are the following responses and documents from Community Initiative ("CI"):

1. Please complete the following table for each of the five years included in the projected income statement:

	As Reported on CI Income Statement	Portion Paid Directly by AUI from \$250,000 Management Fee
Operating Expenses	2007	2007
Salaries and Wages	\$191,615	
Depreciation Expense	\$24,000	

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Office Expense	\$21,120	
Repair and Maintenance Expense	\$3,116	
Professional Services	\$50,000	
Insurance Expense	\$25,000	
Licenses & Permits	\$2,715	

RESPONSE: We believe that the entire \$250,000 management fee paid by CI to AUI is not relevant to this docket. Whether certain costs are initially paid directly by AUI (and then ultimately reimbursed by CI as part of the management fee that it pays) should make no difference. Instead, we believe that the total projected underlying operating costs that were identified on the CI income statement should be the main focus of the TRA's consideration.

As to the costs listed in the first column in the table above, all of the costs will generally be paid directly by AUI out of the management fee that it receives, except for depreciation, which is a non-cash expense. Generally, from the management fee, AUI will pay the costs and expenses associated with operating the gas utility, except for capital expenditures, gas costs, and those expenditures funded by CI's loans, such as those: to acquire the RBS assets needed to create the utility, to map and test the utility's facilities (as described in CI's Application), and to expand the utility and/or its service area at a later date (if and when proper approval of such expansion is obtained). However, all costs associated with the utility will ultimately be borne by CI, whether as an out-of-pocket cost (for those matters stated just above) or as covered by the management fee that it pays. CI did not use the \$250,000 management fee in determining the proposed rates, but used the underlying expenses that will be paid out from such management fee.

2. Please provide a copy of the contract with R.W. Beck.

RESPONSE: Neither CI nor AUI has yet entered into a formal, written contract with either R. W. Beck [R. W. Beck, Inc.] or Rod Walker (who is employed by R.W. Beck, Inc.). However, AUI anticipates entering into a written contract with R.W. Beck, Inc. if and when the TRA approves the transfer of assets to, and the tariff of, CI, and the natural gas franchise is granted to it by Red Boiling Springs. However, attached is a copy of the proposed contract (Professional Services Agreement) that has been presented to AUI by R. W. Beck, Inc.

3. Will the fees and expenses incurred by R.W. Beck, Hal Novak, and Earl Burton be paid out of the management fee paid to AUI, or paid independently by CI? Please identify these costs in the five year Operations Expenses projection (e.g. Salaries and Wages, Professional Services, etc.)?

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RESPONSE: These fees, which we have classified as Professional Services, will generally be paid by AUI out of the management fee. However, all such fees will ultimately be borne by CI, since they will be covered by such management fee that it pays. Also, please see CI's response to Item #5 below. With respect to such five-year Operations Expenses projection, please see CI's response to Item #1 of this data request.

4. Please itemize the \$120,000 management labor expense included in the 2007 Salaries and Wages.

RESPONSE: Please refer to CI's response to Item #3 of the TRA Staff's second data request. (Such response was filed on December 4, 2006.) Specifically, CI does not have a list of itemized labor expenses included in the 2007 Salary and Wage projection on the pro forma income statement. The five-year income statement forecast previously submitted was prepared at a very high level without any detail supporting calculations.

5. Please itemize the \$50,000 Professional Services expense.

RESPONSE: Please refer to the CI's response to Item #3 of the TRA Staff's second data request. (Such response was filed on December 4, 2006.) Specifically, CI does not have a list of itemized Professional Services expenses included on the five-year pro forma income statement. The five-year income statement forecast previously submitted was prepared at a very high level without any detail supporting calculations.

6. Please identify taxes in the five year Operation Expenses projection.

RESPONSE: CI is a Section 501(c)(3) non-profit, public benefit entity, and generally does not pay state or federal income taxes.

7. Explain why costs are allocated to acquiring and running other systems included in the Management Agreement for RBS? (See response to Data Response #2, Question #13.)

RESPONSE: The cost for "acquiring and running other systems" has not been included in the cost of running the RBS gas distribution system.

The first-year total salary and wage cost for the RBS gas system reflects certain incremental management costs that will be necessary initially to set the policy and procedures of running the day-to-day operations of the RBS system. In addition to the RBS gas system, CI and AUI are reviewing acquisition possibilities of other small natural gas utilities which can be acquired without extensively adding other personnel. If and when other utilities are acquired by CI – such as in the second year – because of efficient use of personnel and the fact that a lot of additional management personnel will likely not need to be hired as part of any such acquisition(s), the management costs during the first year (reflected in the first-year total salary

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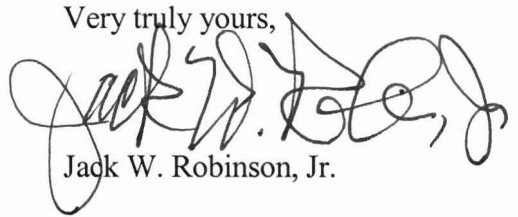
and wage cost for the RBS system) could be reduced by shifting them away from the RBS gas system and spread to the other utilities that are acquired.

8. Please provide all supporting rationale and assumptions for the 10% depreciation rate.

RESPONSE: The original life of the utility property was 30 years when it was first placed in service in 1990. However, it is CI and AUI's understanding that the utility plant has been poorly maintained, thereby accelerating its deterioration. Given that the plant had an expected remaining physical life of approximately 14 years based on the original depreciation rates, we decided to use a 10% depreciation rate to recognize the accelerated deterioration.

Should you have any additional questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack W. Robinson, Jr.", with a stylized, cursive script.

Jack W. Robinson, Jr.

JWRjr:plw  
Enclosure

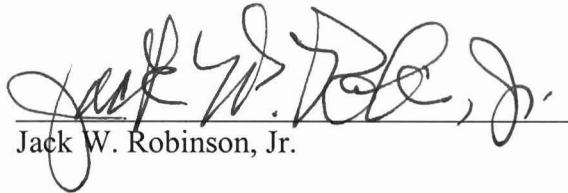
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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon the City of Red Boiling Springs, Tennessee, c/o Jon A. Wells, Esq., city attorney, 206 Court Square, P. O. Box 116, Lafayette, Tennessee 37083-0116; Macon County, Tennessee, c/o County Mayor Glen H. Donoho, Room 201 Macon County Courthouse, Lafayette, Tennessee 37083; the City of Lafayette, Tennessee, c/o Jon A. Wells, Esq., city attorney, 206 Court Square, P. O. Box 116, Lafayette, Tennessee 37083-0116; the Consumer Advocate Division, Tennessee Attorney General's Office, Attn.: Timothy Phillips, Esq., Senior Counsel, 425 Fifth Avenue North, Nashville, Tennessee 37243-0491; J. Graham Matherne, Esq., attorney for Receiver of RBS Gas Utility, Inc., Wyatt, Tarrant & Combs LLP, Suite 1500, 2525 West End Avenue, Nashville, Tennessee 37203-1423 and John A. Gupton III, Esq., attorney for Nestle Waters North America, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., 211 Commerce Suite, Suite 1000, Commerce Center, Nashville, TN 37201, by depositing a copy of the same in the United States mail, first class mail, postage prepaid, this 8<sup>th</sup> day of December, 2006.

  
Jack W. Robinson, Jr.

# PROFESSIONAL SERVICES AGREEMENT

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This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is dated December 4, 2006, by and between **R. W. Beck, Inc.** (Consultant), with offices at 400 Professional Park Drive, Suite 100, Goodlettsville, TN 37072, 2100 and **AUI, LLC** (Client), with offices at 222 West Spring Street, Cookeville, TN 38501.

**NOW, THEREFORE** in consideration of the promises herein and for other good and valuable consideration, the parties agree as follows:

1. **Scope of Services:** Consultant and Client agree Consultant will perform consulting and engineering services as requested by Client from time to time. The services to be provided by Consultant shall be agreed to by the parties and authorized in a Task Authorization to this Agreement which sets forth the scope of services, schedule, budget, payment provisions and other special provisions, if any, related to the Scope of Services. Task Authorizations shall be incorporated into this Agreement and subject to its terms.
2. **Independent Contractor:** Consultant is an independent contractor and is not an employee of Client. Services performed by Consultant under this Agreement are solely for the benefit of Client. Nothing contained in this Agreement creates any duties on the part of Consultant toward any person not a party to this Agreement.
3. **Standard of Care:** Consultant will perform services under this Agreement with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar services. No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.
4. **Changes/Amendments:** This Agreement and its exhibits constitute the entire agreement between the Parties and together with its exhibits supersede any prior written or oral agreements. This Agreement may not be changed except by written amendment signed by both Parties. The estimate of the level of effort, schedule and payment required to complete the Scope of Services, as Consultant understands it, is reflected herein. Services not expressly set forth in this Agreement or its exhibits are excluded. Consultant shall promptly notify Client if changes to the Scope of Services affect the schedule, level of effort or payment to Consultant and the schedule and payment shall be equitably adjusted. If Consultant is delayed in performing its services due to an event beyond its control, including but not limited to fire, flood, earthquake, explosion, strike, transportation or equipment delays, act of war, or act of God, then the schedule or payment under the Agreement shall be equitably adjusted, if necessary, to compensate Consultant for any additional costs due to the delay.



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5. **Fee for Services:** The fee for the services under this Agreement will be based on the actual hours of services furnished multiplied by Consultant's Billing Rates as of the date of its monthly invoice plus all reasonable expenses directly related to the services furnished under this Agreement. (See Exhibit A for current billing rates.)
6. **Payment:** Client shall pay Consultant for services furnished under this Agreement upon submission of monthly invoices in an amount equal to actual hours of services furnished multiplied by the Billing Rates attached. Additionally, Client shall reimburse Consultant monthly for reasonable expenses at cost plus 10% for the services of any Subconsultant.

Client shall pay Consultant in U.S. dollars within thirty (30) days of receipt of invoices less any disputed amounts. If Client disputes any portion of the invoice, the undisputed portion will be paid and Consultant will be notified in writing, within ten (10) days of receipt of the invoice of the exceptions taken. Consultant and Client will attempt to resolve the payment dispute within sixty (60) days or the matter may be submitted to arbitration as provided below. Additional charges for interest shall become due and payable at a rate of one and one-half percent (1-1/2%) per month (or the maximum percentage allowed by law, whichever is lower) on the unpaid, undisputed invoiced amounts. Any interest charges due from Client on past due invoices are outside any amounts otherwise due under this Agreement. If Client fails to pay undisputed invoiced amounts within sixty (60) days after delivery of invoice, Consultant, at its sole discretion, may suspend services hereunder or may initiate collections proceedings, including mandatory binding arbitration, without incurring any liability or waiving any right established hereunder or by law.

7. **Indemnity:** To the extent permitted by law, Consultant agrees to indemnify, defend and hold harmless Client and its directors, officers, shareholders and employees from and against any liability (including without limitation, reasonable costs and attorneys' fees) incurred by Client to the extent caused by Consultant's negligent acts, errors or omissions, including judgments in favor of any third party.

To the extent permitted by law, Client agrees to indemnify, defend and hold harmless Consultant and its directors, officers, shareholders, employees and subconsultants from and against any liability (including, without limitation, reasonable costs and attorney's fees) incurred by Consultant to the extent caused by Client's negligent acts, errors or omissions, including judgments in favor of any third party.

Each party (the "First Party") specifically and expressly waives its immunity under applicable worker's compensation and industrial insurance laws regarding liability against the other party (the "Second Party") for actions brought by any of the First Party's employees against the Second Party, to the extent the liability is caused by the First Party's negligent acts, errors or omissions.



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8. **Reperformance of Services:** If Client believes any of the services provided under this Agreement do not comply with the terms of this Agreement, Client shall promptly notify Consultant to permit Consultant an opportunity to investigate. If the services do not meet the applicable standard of care, it will promptly reperform the services at no additional cost to Client, including assisting Client in selecting remedial actions. If Client fails to provide Consultant with prompt notice of non-compliance and an opportunity to investigate and reperform its services, Consultant's total obligation to Client will be limited to the costs Consultant would have incurred to reperform the services.

9. Section Intentionally Left Blank.

10. **Insurance:** Consultant shall maintain insurance with the following required coverages and limits and upon request, will provide insurance certificates to Client:

Worker's Compensation	Statutory
Employer's Liability	U.S. \$1,000,000
Commercial General Liability	U.S. \$1,000,000 per occurrence
	U.S. \$1,000,000 aggregate
Comprehensive General Automobile	U.S. \$1,000,000 combined single limit
Professional Liability	U.S. \$1,000,000 per claim and in the aggregate

11. **Work Product:** Client shall have the unrestricted right to use the documents, analyses and other data prepared by Consultant under this Agreement ('Work Products'); provided, however Client shall not rely on or use the Work Products for any purpose other than the purposes under this Agreement and the Work Products shall not be changed without the prior written approval of Consultant. If Client releases the Work Products to a third party without Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder, (a) Client does so at its sole risk and discretion, (b) Consultant shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products and (c) Client shall indemnify, defend and hold Consultant harmless from any and all claims or damages related to the release, change or third party use.

12. **Limitation of Liability:** No employee of Consultant shall have individual liability to Client. To the extent permitted by law, the total aggregate liability of Consultant, its officers, directors, shareholders, employees and subconsultants for any and all claims arising out of this Agreement, including attorneys' fees, and whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed the revenue received by Consultant under this Agreement or one hundred fifty thousand dollars (U.S. \$150,000.00), whichever is greater.

13. **No Consequential Damages:** In no event and under no circumstances shall Consultant be liable to Client for any principal, interest, loss of anticipated revenues, earnings, profits, increased expense of operation or construction, loss by reason of shutdown or



# PROFESSIONAL SERVICES AGREEMENT

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non-operation due to late completion or otherwise or for any other economic, consequential, indirect or special damages.

14. **Information Provided by Others:** Client shall provide to Consultant in a timely manner any information Consultant indicates is needed to perform the services hereunder. Consultant may rely on the accuracy of information provided by Client and its representatives.
15. **Opinions of Cost:** Consultant does not control the cost of labor, materials, equipment or services furnished by others, nor does it control pricing factors used by others to accommodate inflation, competitive bidding or market conditions. Consultant estimates of operation expenses or construction costs represent its best judgment as an experienced and qualified professional and are not a guarantee of cost. This section does not apply to the cost of Consultant performing the Scope of Services.
16. **Safety and Security:** Consultant has established and maintains programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, Consultant specifically disclaims any authority or responsibility for job site safety and safety of persons other than Consultant's employees. Consultant shall not provide any such services and disclaims any responsibility under this Agreement related to site security or the assessment, evaluation, review, testing, maintenance, operation or safety practices or procedures related to security.
17. Section Intentionally Left Blank.
18. **Termination:** Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Client shall pay Consultant for all services rendered to the date of termination plus reasonable expenses for winding down the services. If either party defaults in its obligations hereunder, the non-defaulting party, after giving seven (7) days written notice of its intention to terminate or suspend performance under this Agreement, may, if cure of the default is not commenced and diligently continued, terminate this Agreement or suspend performance under this Agreement.
19. **Dispute Resolution:** Consultant and Client shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator (except for payment disputes which may be submitted directly to arbitration). If mediation does not settle any dispute or action which arises under this Agreement or which relates in any way to this Agreement or the subject matter of this Agreement within ninety (90) days after either requests mediation, the dispute or conflict shall be subject to arbitration in English under the Construction Industry Arbitration Rules as promulgated by the American Arbitration Association and arbitrability shall be subject to the Federal Arbitration Act.
20. Section Intentionally Left Blank.

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21. **Litigation Expenses:** Client will be responsible for payment of all expenses and costs associated with Consultant's compliance with a subpoena or Client request to produce documents, data or testimony relating to any proceeding relating to any information pertaining to Client's project or to the work Consultant performed for Client, excluding any litigation or proceeding between Client and Consultant. These costs will include hourly charges for persons involved in responding to a subpoena or Client request, travel and reproduction expenses, advice and participation of counsel in responding to a subpoena and other request and other reasonable expenses. Consultant will endeavor to confer with Client prior to responding to any subpoena or request covered by this paragraph.

22. **Section Intentionally Left Blank.**

23. **Miscellaneous:**

- a. This Agreement is binding upon and will inure to the benefit of Client and Consultant and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.
- b. Any notice required or permitted by this Agreement to be given shall be deemed to have been duly given if in writing and delivered personally or five (5) days after mailing by first-class, registered, or certified mail, return receipt requested, postage prepaid and addressed as follows:

Client: AUI, LLC  
Attention: Jeffrey A. Callahan  
Address: 222 West Spring Street  
Cookeville, TN 38501

Consultant: R. W. Beck, Inc.  
Attention: James W. Baxter  
Vice President, Utility Engineering  
Address: 400 Professional Park Drive, Suite 100  
Goodlettsville, TN 37072

With a copy to:  
Lin Ross (which will not be considered notice)  
1001 Fourth Avenue, Suite 2500 Seattle  
Washington 98154-1004  
USA

## PROFESSIONAL SERVICES AGREEMENT

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- c. Client expressly agrees that all provisions of the Agreement, including the clause limiting the liability of Consultant, were mutually negotiated and that but for the inclusion of the limitation of liability clause in the Agreement, Consultant's compensation for services would otherwise be greater and/or Consultant would not have entered into the Agreement.
- d. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to other circumstances.
- e. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.
- f. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover, as part of its judgment, reasonable attorneys' fees and costs from the other party.
- g. This Agreement shall not be construed against Consultant only on the basis that Consultant drafted the Agreement.
- h. Notwithstanding any statute to the contrary, the Parties agree that any action to enforce or interpret this Agreement shall be initiated within two (2) years from the time the party knew or should have known of the fact giving rise to its action, and shall not in any case be initiated later than six (6) years after Consultant completes its Scope of Services under this Agreement.
- i. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.

**IN WITNESS WHEREOF**, the Parties have signed this Agreement the date first written above.

**AUI, LLC**

**R. W. BECK, INC.**

Signature \_\_\_\_\_

Signature James W. Baxter

Name \_\_\_\_\_

Name James W. Baxter

Title \_\_\_\_\_

Title Vice President, Utility Engineering

Date \_\_\_\_\_

Date December 4, 2006

EXHIBIT A  
GAS RATE SCHEDULE

R. W. Beck, Inc.  
Hourly Billing Rates  
Effective January 1, 2006 through December 31, 2006  
(Amounts in U.S. Dollars)

Role	Hourly Billing Rate
Project Manager	\$150
Gas Consultant/Senior Engineer	\$130
Sr. Field Technician	\$110
Project Engineer	\$110
CADD Design	\$70
Project Assistance/Administrative	\$60

