

Matilda Sanders

130130-60

From: Ann Bassett <abassett@lawfla.com>
Sent: Wednesday, May 01, 2013 2:24 PM
To: Filings@psc.state.fl.us
Cc: Doc Horton; Jerry Melendy (jmelendy@floridasbestgas.com)
Subject: Petition of Sebring Gas System, Inc. for Approval of a Special Contract
Attachments: 2013-05-01, Sebring Gas Petition for Approval of Special Contract.pdf

The person responsible for this electronic filing is:

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Sebring Gas System, Inc.'s Petition for Approval of a Special Contract

This is being filed on behalf of Sebring Gas System, Inc.

Total Number of Pages is 31

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Attorneys At Law
Strategically Positioned in Florida's Capital

May 1, 2013

BY ELECTRONIC FILING

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

130130-GJ

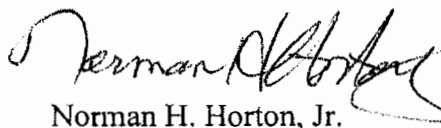
Re: *Petition of Sebring Gas System, Inc. for Approval of a Special Contract*

Dear Ms. Cole:

Enclosed for filing on behalf of Sebring Gas System, Inc. is Sebring Gas System, Inc.'s Petition for Approval of a Special Contract.

Thank you for your assistance in this matter.

Sincerely,


Norman H. Horton, Jr.

NHH:amb
Enclosure

cc: Mr. Jerry H. Melendy, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sebring Gas System, Inc.)
for Approval of a Special Contract with the)
Florida Department of Correction – DeSoto)
Correctional Institution)
_____)

Docket No.: 130130-GV
Date Filed: May 1, 2013

PETITION FOR APPROVAL OF SPECIAL CONTRACT

Sebring Gas System, Inc., (“Sebring”), by and through its undersigned counsel, and pursuant to Section 366.06, Florida Statutes, hereby petitions the Commission for approval of a Special Contract with the Florida Department of Corrections (“DC”), and in support thereof states as follows:

1. The name, address and telephone number of the petitioner are:

Sebring Gas System, Inc.
3515 US Highway 27 South
Sebring, Florida 33870
(772) 597-2168

2. The name, address and telephone and fax numbers of the person to whom notices, orders and correspondence regarding this petition are to be sent is:

Norman H. Horton, Jr.,
Messer Caparello, P. A.
Post Office Box 15579
Tallahassee, FL 32317
(850) 222-0720
(850) 224-4359

Jerry Melendy
Sebring Gas System, Inc.
3515 U.S. Highway 27, South
Sebring, FL 33870-5452

Attorneys for Sebring Gas System, Inc.

3. Sebring is a natural gas distribution utility subject to the regulatory jurisdiction of this Commission as prescribed in Chapter 366, Florida Statutes. Its substantial interest will be affected by the Commission’s disposition of this petition in that such disposition will

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FPSC-COMMISSION CLERK

determine whether Sebring will be permitted to provide gas transportation service on terms agreeable to Sebring and DC.

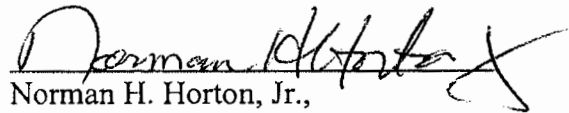
4. The DC currently operates the DeSoto Correctional Institution located east of Arcadia in DeSoto County (the "Facility"). The Facility currently uses propane to provide heat, hot water, cooking and laundry services to the Facility but desires to convert to natural gas. The Facility is located in a rural, sparsely populated area and there is no existing natural gas service within the vicinity of the facility. The Agreement between the parties would be by a Special Contract as that is described as a Service Option at Sheet 19 of the tariff of Sebring.
5. Sebring and DC have entered into an Agreement whereby Sebring will transport natural gas on DC's account from a delivery point on the Florida Gas Transmission ("FGT") pipeline. The natural gas which the State purchases through a contract with Infinite Energy will be transported by Sebring through Sebring's distribution system and redelivered at the DeSoto facility subject to the terms of the Agreement. A copy of the Special Contract is appended hereto as Exhibit "A."
6. In order to provide natural gas transportation service to the DeSoto facility. Sebring will interconnect with FGT and install the necessary natural gas distribution facilities up to the custody transfer point between Sebring and the Facility. In order to provide transportation service to the Facility, Sebring shall enter into an Interconnection Agreement with FGT. The interconnection with FGT will be on the State's property thus no easement or permits will be required. In addition to transport, the Agreement also provides for Sebring to convert existing propane equipment to natural gas.

7. Sebring shall finance the entire cost of the project through a new debt issuance obtained from its financial institution. The interest rate on the long term (15 year) debt is 6.25%. Therefore, the Cost of Service Study, attached hereto as Exhibit "B", reflects such financing terms and conditions.
8. As was established in Sebring's previous general rate increase filing (see page 12 of Commission Order PSC-04-1260-PAA-GU in Docket 040270-GU), Sebring is still not incurring any state or federal income taxes, due to significant net operating loss carry forwards that remain available for Sebring. Sebring does not anticipate that these net operating loss carry forwards will be fully used for several years. Therefore, the income tax factor used in the Cost of Service Study (Exhibit "B") has been omitted and the income tax expense is zero.
9. The Special Contract between the parties has an initial term of fifteen (15) years and, during the initial term of the Agreement, DC would pay to Sebring a rate of \$11,667 per month, escalated by 1.5% per year, beginning July 1, 2015. Consistent with Sebring's tariff, the rate and terms and conditions may be revised, amended or superceded from time to time subject to the approval of the Commission.
10. The annual transportation revenues derived from the contract would enable Sebring to more than recover the fully allocated cost of serving the facility. The Cost of Service Study (Exhibit "B") demonstrates this. As is shown in the study, the projected \$119,277 in total annual operating costs will be fully recovered and will provide a return on Sebring's net investment through the initial annual revenues of \$140,004. The Agreement clearly generates revenues in excess of the cost to service, thereby providing benefits to the general body of ratepayers.

11. Rule 25-9.034(1), Florida Administrative Code, requires Commission approval of special contracts and Sebring requests that the Commission approve the Special Contract as described herein. Upon approval, Sebring will modify its tariff to reflect service to the Correctional Facility.
12. Sebring is not aware of any disputed issues of material fact.

WHEREFORE, Sebring Gas System, Inc. requests that the Commission approve the Special Contract with the Florida Department of Corrections at the earliest opportunity.

Respectfully submitted,



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Post Office Box 15579
Tallahassee, FL 32317
(850) 222-0720
(850) 224-4359
nhorton@lawfla.com

Attorneys for Petitioner
Sebring Gas System, Inc.

SPECIAL CONTRACT

MADE AND ENTERED INTO BETWEEN

SEBRING GAS SYSTEM, INC.

AND

FLORIDA DEPARTMENT OF CORRECTIONS

SPECIAL CONTRACT

THIS AGREEMENT, entered into by and between Sebring Gas System, Inc., a Florida corporation, and hereinafter referred to as ("Company") and Florida Department of Corrections hereinafter referred to as ("DC").

WITNESSETH:

WHEREAS, Company operates facilities for the distribution of natural gas in the State of Florida; and

WHEREAS, DC has requested that Company receive from transporter certain quantities of gas for DC's account, transport such quantities on Company's distribution system, and redeliver same to DC's Facility located at DeSoto Correctional Institution ("DeSoto"), and Company agrees to provide such service in accordance with the terms hereof; and

WHEREAS, this agreement is entered into pursuant to Rule 60A-1.002(4)(a), Florida Administrative Code, which authorizes services provided by regulated utilities and government franchised services to be provided without receipt of sealed competitive bids or sealed competitive proposals; and

WHEREAS, the Department leases land from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (BTITF), located in DeSoto County, Florida, on which the DeSoto Correctional Institution ("Institution") is located.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE I **Definitions**

Unless another definition is expressly stated, the following terms and abbreviations, when used in this Agreement and in all exhibits, recitals, and appendices contained or attached to this Agreement are intended to and will mean as follows:

- 1.1 "Btu" means the amount of heat required to raise the temperature of one pound of water from 59 degrees Fahrenheit to 60 degrees Fahrenheit at a constant pressure of 14.73 p.s.i.a.
- 1.2 "Day" means a period of 24 consecutive hours beginning and ending at 9:00 a.m. Central Clock Time ("CCT"); provided that, in the event of a change in the definition of the corresponding term in the tariff of Gulfstream Natural Gas System ("Gulfstream") on file with the Federal Energy Regulatory Commission ("FERC"), this definition shall be deemed to be amended automatically so that it is identical at all times to the definition of the corresponding term in said tariff.

- 1.3 “DC” means the party that has contracted with Transporter for transportation service.
- 1.4 “Dekatherm” or “Dt” means 1,000,000 Btu’s or ten (10) Therms.
- 1.5 “Delivery Point” means the point at the connection of the facilities of an upstream party and a downstream party’s facility at which the gas leaves the outlet side of the measuring equipment of the upstream party and enters the downstream party’s facility.
- 1.6 “FPSC” means the Florida Public Service Commission.
- 1.7 “Gas” means natural gas that is in conformance with the quality specifications of the Transporter.
- 1.8 “Maximum Daily Transportation Quantity” or “MDTQ” means the largest quantity of gas, expressed in Dts, that Company is obligated to transport and make available for delivery to DC under this Agreement.
- 1.9 “Month” means a period beginning at 9:00 a.m. CCT on the first day of a calendar month and ending at 9:00 a.m. CCT on the first day of the next succeeding calendar month; provided that, in the event of a change in the definition of the corresponding term in the tariff of Gulfstream on file with the FERC, this definition shall be deemed to be amended automatically so that it is identical at all times to the definition of the corresponding term in said tariff.
- 1.10 “p.s.i.a.” means pounds per square inch absolute.
- 1.11 “p.s.i.g.” means pounds per square inch gauge.
- 1.12 “Receipt Point” means the point at which Transporter receives Gas into Transporter’s system from an upstream service or facility.
- 1.13 “Therm” means a unit of heat equal to 100,000 Btu’s.
- 1.14 “Transporter” means any third party pipeline or pipelines utilized to effect delivery of Gas to DeSoto Facility.

ARTICLE II
POINTS OF DELIVERY AND REDELIVERY

- 2.1 DC shall cause the Transporter to deliver to Company at the Delivery Point on the Transporter’s system, (which specified delivery point is hereinafter referred to as “Transporter’s Delivery Point”), the quantities of Gas to be transported by Company hereunder. Company shall have no responsibility for transportation of DC’s Gas prior to receipt of such Gas from the Transporter at Transporter’s Delivery Point. Company shall deliver such quantities of Gas received from the Transporter at Transporter’s Delivery Point for DC’s account to Company’s Delivery Point at the DC’s Facility (hereinafter referred to as “Company’s Delivery Point” or “DC’s Facility”).

ARTICLE III
QUANTITIES

- 3.1 Subject to the terms and conditions of this Agreement, Company agrees to receive from the Transporter, at Transporter's Delivery Point, on a daily basis, a quantity of Gas up to DC's MDTQ, and Company agrees to transport and deliver equivalent quantities to DC at Company's Delivery Point located at DC's Facility. DC's MDTQ under this Agreement shall be the quantity of Gas per day as shown in Exhibit A to this Agreement, which is incorporated herein by reference and made a part hereof.

ARTICLE IV
SCHEDULING AND BALANCING

- 4.1 DC shall be responsible for nominating quantities of Gas to be delivered by the Transporter to Transporter's Delivery Point and delivered by Company to DC's Facility. DC shall promptly provide notice to Company of all such nominations. Such notices shall be provided to Company by facsimile, by email, or other such other electronic transmissions that both parties agree to. Imbalances between quantities (i) scheduled for delivery by the Transporter to Company and/or delivery by Company to DC's Facility, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company's FPSC Natural Gas Tariff, as such provisions may be amended from time to time, subject to approval by the FPSC.
- 4.2 The Parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to DC's Facility over each 24-hour period and each Day throughout each Month. Therefore, Company agrees to receive from the Transporter for DC's account at Transporter's Delivery Point and deliver to Company's Delivery Point up to the MDTQ as described in Exhibit A attached hereto, subject to any restrictions imposed by the Transporter and to the provisions of Articles V and IX of this Agreement, and DC agrees to use reasonable efforts to regulate its deliveries from Company's distribution system at a daily rate of flow not to exceed the applicable nomination in place, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Article V of this Agreement.

ARTICLE V
TITLE, CONTROL AND INDEMNIFICATION

- 5.1 DC warrants that it will have good and merchantable title to all Gas delivered by the Transporter to Company for DC's account at Transporter's Delivery Point, and that such Gas will be free and clear of all liens, encumbrances, and claims whatsoever. In the event any adverse claim in respect to said Gas is asserted, or DC breaches its warranty herein, Company shall not be required to perform its obligations to transport and deliver said Gas to DC's Facility, subject to receipt of any necessary regulatory authorization, to continue service hereunder for DC until such claim has been finally determined; provided, however, that DC may receive service if (i) in the case of an adverse claim, DC furnishes a bond to Company, conditioned for the protection of Company with

respect to such claim; or (ii) in the case of a breach of warranty, DC promptly furnishes evidence, satisfactory to Company, of DC's title to said Gas.

5.2 DC shall be deemed to be in control and possession of the Gas prior to delivery to Transporter's Delivery Point; and Company shall be deemed to be in control and possession of the Gas to be transported by it upon delivery of such Gas by Transporter to Transporter's Delivery Point, and until it shall have been delivered to Company's Delivery Point. The Company, while deemed to be in control and possession of such Gas, shall be responsible for, and shall indemnify and hold DC harmless from any and all claims, actions, suits, including attorneys' fees, arising out of or relating in any way to custody and control of such Gas.

(a) The parties recognize that the Florida Legislature has waived sovereign immunity for liability for torts, but only to the extent specified in Section 768.28, F.S. Nothing herein shall be construed as waiving the sovereign immunity of the State of Florida.

(b) For value received and to induce DC to enter into this Agreement, Company agrees to protect, defend (at Company's expense), indemnify, and save and hold harmless DC, its officers, directors, shareholders, employees, agents, successors and assigns, from and against all direct or indirect costs, expenses, damages, losses, obligations, lawsuits, appeals, claims, or liabilities of any kind or nature (whether or not such claim is ultimately defeated), including in each instance, but not limited to, all costs and expenses of investigating and defending any claim at any time arising and any final judgments, compromises, settlements, and court costs and attorneys' fees, whether foreseen or unforeseen (including all such expenses, court costs, and attorneys' fees in the enforcement of DC's rights hereunder), incurred by DC in connection with or arising out of or resulting from or relating to or incident to:

1. Any breach of any of the representations, warranties, or covenants of Company contained in this Agreement or in any Exhibit, Schedule, or other document attached hereto and/or incorporated by reference herein, specifically including but not limited to:
 - a. any breach by Company of warranty of title to Gas and related obligations, pursuant to Sections 5.1 and 5.2 of this Agreement;
2. Any claim by a creditor of Company as a result of any transaction pursuant to or contemplated by this Agreement; and,
3. Any claim against DC relating to any obligation or liability of Company, or its affiliates.

In the event that any claim or demand for which Company would be liable to DC hereunder is asserted against or sought to be collected from DC by a third party, DC shall promptly notify Company of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof, if determination of an estimate is then feasible (which estimate shall not be conclusive of the final amount of

such claim or demand). Company shall have twenty (20) days, or such shorter period as the circumstances may require if litigation is involved, from the personal delivery or mailing of the Claim Notice to notify DC:

1. whether or not it disputes its liability to DC hereunder with respect to such claim or demand; and,
2. Whether or not it desires, at its sole cost and expense, to defend DC against such claim or demand.

In the event that Company notifies DC within the Notice Period that it desires to defend DC against such claim or demand and except as hereinafter provided, Company shall have the right to defend DC by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by Company to a final conclusion in any manner as to avoid any risk of DC becoming subject to any liability for such claim or demand or for any other matter. If DC desires to participate in, but not control, any defense or settlement, it may do so at its sole cost and expense. If Company elects not to defend DC against such claim or demand, whether by not giving DC timely notice as provided above or otherwise, then the amount of any such claim or demand, or, if the same is contested by Company or by DC (DC having no obligation to contest any such claim or demand), then that portion thereof as to which such defense is unsuccessful, shall be conclusively deemed to be a liability of Company and subject to indemnification as provided hereinabove.

(c) The foregoing indemnification and hold harmless agreement shall survive the termination of this Agreement.

ARTICLE VI RATE

- 6.1 The rate to be charged each month for transportation service provided by Company shall be as set forth in Exhibit A to this Agreement, which is incorporated herein by reference and made a part hereof. The rates, as set forth in Exhibit A, have been negotiated between the parties and include only Company's delivery charge per month for Gas transported and redelivered under this Agreement and do not include any charges for transportation service by Florida Gas Transmission or any other upstream pipeline transporter transporting DC's Gas prior to delivery to Company at the Transporter's Delivery Point.
- 6.2 The rates provided in Exhibit A are subject to the continuing jurisdiction of the FPSC and may be adjusted during the term of this Agreement, as provided herein. Any proposal for increasing the rate to be charged DC shall be in writing, specifically setting forth the justification for the proposed increase, and furnished to the Contract Manager, Contract Administrator, and the Warden, per Article XI. **The actual effective date of any such increase shall be the date specified in a written amendment to the Contract setting forth the new rate(s).** The Company's rates shall not be discriminating; they shall be based on reasonable costs for providing service; and will

be adjusted solely by the Company to the extent that the same percentage change will be applied to all customers. DC shall never be charged more than other similar customers.

- 6.3 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase any present tax or levy any additional tax, relating to the service provided by Company under this Agreement, any such additional tax required by law to be paid by Company shall, in Company's discretion, insofar as such discretion is provided for under applicable law, be separately stated in the bill. If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should decrease or eliminate any tax relating to the service provided by Company under this Agreement, the reduction in such tax required to be paid by Company shall be separately stated as a reduction in the amount of the bill.
- 6.4 Tax Exemption: The Department agrees to pay for contracted service according to the conditions of this Contract. The State of Florida does not pay federal excise taxes and sales tax on direct purchases of services.

ARTICLE VII TERM

- 7.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution by both parties and shall continue in full force and effect for an initial period of fifteen (15) years from the first day of the Month subsequent to the date that Company begins delivery of Gas to DC, and shall thereafter be extended for additional periods of five (5) years each.
- 7.2 This Agreement may be terminated at any time upon the mutual, written consent of both parties. This Agreement may be terminated unilaterally without cause by either party upon giving no less than one hundred and eighty (180) days written notice to the other party, prior to the expiration of the initial or any subsequent term. The written notice shall be delivered by certified mail, return receipt requested, by other method of delivery whereby an original signature is obtained, or in person with proof of delivery.
- 7.3 Either Party may terminate this Agreement for cause if the other Party shall fail to timely comply with any of the terms or conditions of this Agreement or shall default in any of its obligations under this Agreement and shall fail to cure such default or noncompliance within thirty (30) calendar days after receipt of written notice thereof. The aforementioned notice and opportunity to cure shall not relieve the breaching party of liability to the non-breaching Party under this Agreement.
- 7.4 If, upon notice and opportunity to cure, either Party fails to perform in a timely and proper manner, its obligations under this Agreement, the non-breaching Party shall have the right to immediately terminate this Agreement, in accordance with Florida law.

- 7.5 Annual Appropriation. The Department's performances and obligations to pay for services under this Agreement are contingent upon an annual appropriation by the Legislature. In the event of non-appropriation or insufficient appropriation by the Legislature for the charges contemplated herein, the Department shall notify the Company of such non-appropriation or insufficient appropriation within 5 days of the Legislature's action. In the event that the Department provides notification to the Company that the Legislature has not provided sufficient appropriation to pay the charges for utility services contemplated in this Agreement, either party shall have the right to suspend or terminate utility services contemplated herein.

ARTICLE VIII
COMPANY'S TARIFF PROVISIONS

- 8.1 All applicable sections of Company's Natural Gas Tariff approved by the FPSC, including any amendments thereto approved by the FPSC during the term of this Agreement, are hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between said provisions of Company's FPSC Natural Gas Tariff and specific provisions of this Agreement, the latter shall prevail.

ARTICLE IX
SAFE DESIGN AND OPERATION

- 9.1 Company shall maintain its distribution system in accordance with the Federal Department of Transportation Regulations, Section 191 and 192 and Chapter 25-12 of the FPSC, which has statutory powers granted to establish rules and standards for safe design, installation, operation and maintenance of natural gas systems. Company shall maintain, repair and replace equipment to assure the safety and good working order of the Company natural gas system at no cost to DC for the term of this agreement. Upon execution of this agreement and completion of the construction of all pipelines, and in accordance with Section 253.02(2)(b), Florida Statutes, the Company shall complete an Easement Application and submit to the Florida Department of Environmental Protection, Division of State Lands, for an easement under, over, and across DC's real property for natural gas facilities.
- 9.2 It shall be the responsibility of DC to maintain all DC-owned equipment, starting from the outlet side of the measurement equipment at the Company's Delivery Point.

ARTICLE X
CONTRACT MANAGEMENT

- 10.1 Department's Contract Management
The Contract Manager for this Contract will be:
Mr. Stephen Grizzard, Chief

Bureau of Facility Services
Florida Department of DC
501 South Calhoun Street
Tallahassee, FL 32399-2500
(850) 717-3920 (telephone);
(850) 922-0027 (facsimile)
Email: grizzard.stephen@mail.dc.state.fl.us

The Contract Manager will perform the following functions:

1. Serve as the liaison between the Department and the Company;
2. Direct the Contract Administrator to process all amendments, renewals and terminations of this Contract; and
3. Evaluate Company performance upon completion of the overall Contract. This evaluation will be placed on file and will be considered if the Contract is subsequently used as a reference in future procurements.

10.2 Institution's Contract Management

The Local Contract Coordinator for this Contract will be:
Maintenance Superintendent
DeSoto Correctional Institution

The Local Contract Coordinator will perform the following functions:

1. Verify receipt of deliverables;
2. Monitor progress;
3. Evaluate performance; and
4. Review, verify, and approve invoices.

10.3 Department's Contract Administrator

The Contract Administrator for this Contract will be:
Bureau of Procurement & Supply
Florida Department of DC
501 South Calhoun Street
Tallahassee, FL 32399-2500
(850) 717-3694 (telephone);
(850) 488-7189 (facsimile)

The Contract Administrator will perform the following functions:

1. Maintain the official Contract file;
2. Process all Contract amendments, renewals, and termination of the Contract; and
3. Maintain the official records of all correspondence between the Department and the Company.

10.4 Company's Representative

The name, title, address, and telephone number of the Company's representative responsible for administration and performance under this Contract is:

Company: Sebring Gas System, Inc.
3515 US Highway 27 South

Sebring, Florida 33870
Attention: Vice President
Phone: (863) 385-0194
Facsimile: (863) 385-3423

With copy to:

Company: Wauchula State Bank
106 East Main Street
Wauchula, FL 33873
Attention: Senior Loan Officer for Sebring Gas System
Phone: 863-773-4151
Facsimile: 863-773-4453

ARTICLE XI

COMPANY'S STAFF REQUIREMENTS

- 11.1 Staff Conduct. Company employees who perform work on-site at the Center shall adhere to the standards of conduct prescribed in Chapter 33-208, Florida Administrative Code, and as prescribed in the Department's personnel policy and procedure guidelines, particularly rules of conduct, employee uniform and clothing requirements (as applicable), security procedures, and any other applicable rules, regulations, policies and procedures of the Department. For purposes of this Agreement, "on-site" shall mean within structures or enclosed areas of the Center.
- 11.2 In addition, the Company shall ensure that all employees who perform work on-site adheres at the Center adhere to the following requirements:
1. The Company's staff shall not display favoritism to, or preferential treatment of, one inmate or group of inmates over another.
 2. The Company's staff shall not deal with any inmate except in a relationship that supports services under this Agreement. Specifically, staff members must never accept for themselves or any member of their family, any personal (tangible or intangible) gift, favor, or service from an inmate or an inmate's family or close associate, no matter how trivial the gift or service may seem. The Company shall report to the Contract Manager any violations or attempted violation of these restrictions. In addition, no staff member shall give any gifts, favors or services to inmates, their family or close associates.
 3. The Company's staff shall not enter into any business relationship with inmates or their families (example – selling, buying or trading personal property), or personally employ them in any capacity.
 4. The Company's staff shall not have outside contact (other than incidental contact) with an inmate being served or their family or close associates, except for those activities that are to be rendered under the Agreement.
 5. The Company's staff shall not engage in any conduct which is criminal in nature or which would bring discredit upon the Company or the State. In providing services pursuant to this Agreement, the Company shall ensure that its employees avoid both misconduct and the appearance of misconduct.
 6. Any violation or attempted violation of the restrictions referred to in this section regarding employee conduct shall be reported by phone and in writing to the Contract

Manager or their designee, including proposed action to be taken by the Company. Any failure to report a violation or take appropriate disciplinary action against the offending party or parties shall subject the Company to appropriate action, up to and including termination of this Agreement.

7. The Company shall report any incident described above, or requiring investigation by the Company, in writing, to the Contract Manager or their designee within twenty-four (24) hours, of the Company's knowledge of the incident.

8. The Company and all persons performing work on-site at the Center under this Agreement shall abide by the Security Guidelines attached hereto and incorporated herein, as Exhibit "B" and by this reference made a part hereof.

9. Condition of Employment (Background Checks)

- a. The Contractors' staff assigned to this Contract shall be subject, at the Department's discretion and expense, to a Florida Department of Law Enforcement (FDLE) Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) background/criminal records check. This background check will be conducted by the Department and may occur or re-occur at any time during the Contract period. The Department has full discretion to require the Contractor to disqualify, prevent, or remove any staff from any work under the Contract. The use of criminal history records and information derived from such records checks are restricted pursuant to Section 943.054, F.S. The Department shall not disclose any information regarding the records check findings or criteria for disqualification or removal to the Contractor. The Department shall not confirm to the Contractor the existence or nonexistence of any criminal history record information. In order to carry out this records check, the Contractor shall provide, (prior to commencing services upon institution property) OR (prior to contract execution) OR (upon request), the following data for any individual Contractor or subcontractor's staff assigned to the Contract: Full Name, Race, Gender, Date of Birth, Social Security Number, Driver's License Number and State of Issue. If requested, the Contractor's staff shall submit to fingerprinting by the Department of Corrections for submission to the Federal Bureau of Investigation (FBI). The Contractor shall not consider new employees to be on permanent status until a favorable report is received by the Department from the FBI.
- b. The Company shall ensure that the Contract Manager or designee is provided the information needed to have the NCIC/FCIC background check conducted prior to any new Company staff being hired or assigned to work on site at the Center under the Agreement. The Company shall not offer employment to any individual or assign any individual to work under the Agreement, who has not had an NCIC/FCIC background check conducted.
- c. No person who has been barred from any Department institution or other facility shall provide services under this Agreement.
- d. The Company shall not permit any individual to provide services on site at the Center under this Agreement who is under supervision or jurisdiction of any parole, probation or correctional authority. Persons under any such supervision may work for other elements of the Company's agency that are independent of the contracted services.

- e. Note that a felony or first-degree misdemeanor conviction, a plea of guilty or nolo contendere to a felony or first-degree misdemeanor crime, or adjudication of guilt withheld to a felony or first-degree misdemeanor crime does not automatically bar the Company from hiring a proposed employee to perform work under this Agreement. However, the Department reserves the right to prior approval in such cases. Generally, two (2) years with no criminal history is preferred. The Company shall make full written report to the Contract Manager within three (3) calendar days whenever it becomes aware that one of its employees who performs services under this Agreement has a criminal charge filed against them or receives a Notice to Appear for violation of any criminal law involving a misdemeanor or felony, or ordinance (except minor violations for which the fine or bond forfeiture is two hundred dollars (\$200) or less), or when the Company has knowledge of any violation of the laws, rules, directives or procedures of the Department.
- f. No provision within this Agreement shall prevent or otherwise limit the Company's hiring practices and procedures as the same relate to Company staff and employees who will not be assigned to provide services on site at the Center under this Agreement.

ARTICLE XII **MISCELLANEOUS PROVISIONS**

- 12.1 Headings. All article headings, section headings and subheadings in this Agreement are inserted only for the convenience of the Parties in identification of the provisions hereof and shall not affect any construction or interpretation of this Agreement.
- 12.2 Entire Agreement. This Agreement, including the Exhibits attached hereto, sets forth the full and complete understanding of the parties as of the date of its execution by both parties, and it supersedes any and all prior negotiations, agreements and understandings with respect to the subject matter hereof. No party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.
- 12.3 Amendments. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by both Parties. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 11.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 11.1 of this Agreement. Further, the Parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments which are necessary to comply with the requirements of, or are otherwise approved by FPSC or its successor agency or authority.
- 12.4 Contract Management Changes. After execution of this Contract, any changes in the information contained in Section XI, Contract Management, will be provided to the other

party in writing and a copy of the written notification shall be maintained in the official Contract record.

- 12.5 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.
- 12.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 12.7 Independent Parties. Company and DC shall perform hereunder as independent parties and neither Company or DC is in any way or for any purpose, by virtue of this Agreement or otherwise, a partner, joint venture, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.
- 12.8 Assignment. Neither this Agreement nor the rights and obligations of the Parties set forth herein, may be assigned without a mutual written agreement by the Parties; provided, however, neither Party shall unreasonably deny or delay approval of a requested assignment. Company may, without DC's prior written consent, assign, pledge or otherwise encumber this Agreement to any lender or financial institution as collateral security for any financing of the Company's facilities required to serve the DC Facility at DeSoto.
- 12.9 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and DC shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or DC will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each party shall proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In addition to the foregoing, Company shall file within twenty (20) business days an appropriate petition with the FPSC seeking approval of the Special Contract. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any such law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the FPSC over this Agreement or

any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 11.10, Company shall continue to transport and DC shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance is precluded.

- 12.10 Law Governing Agreement; Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.
- 12.11 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.
- 12.12 Permits. Each Party shall be responsible for obtaining all permits and approvals associated with any infrastructure for which that Party is responsible to furnish, operate, or maintain.
- 12.13 Equipment Conversion. All gas consuming equipment must be converted from propane to natural gas at DeSoto Correctional Institution. The Company agrees to make all necessary conversions from propane to natural gas at its expense. A list of necessary conversions is contained in Attachment C to this contract. If other equipment is discovered that is not listed in Attachment C, the Company will make these additional conversions, even if discovered after completion of the original conversion work. The Company will provide initial startup, verification of proper operations, and operational instructions as part of the conversion. DC will provide the Company access to all the equipment to be converted at a time that is acceptable to both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates stated below.

FLORIDA DEPARTMENT OF CORRECTIONS

ATTEST: Judy Burman

BY: [Signature]

NAME: MICHAEL D. CREWS

DATE: 3/13/13

TITLE: SECRETARY

APPROVED AS TO FORM AND LEGALITY

SIGNED BY: [Signature]

NAME: ^{sc} JENNIFER PARKER

TITLE: GENERAL COUNSEL

FLORIDA DEPARTMENT OF CORRECTIONS

DATE: 3/7/13

SEBRING GAS SYSTEM, INC.

ATTEST: Kathleen S. [Signature] BY: [Signature]
NAME: ERRY A. MELENDY, JR
DATE: 3/15/2013 TITLE: PRESIDENT

EXHIBIT A
TO
SPECIAL CONTRACT
BETWEEN
SEBRING GAS SYSTEM, INC.
AND
FLORIDA DEPARTMENT OF CORRECTIONS

Transporter's Delivery Points:	To Be Determined
MDTQ (Jan. through Dec.):	100 Dt/Day
Company's Delivery Points:	The outlet side of the measuring equipment of the distribution facilities at the DC's Facility.
Transportation Rate:	\$11,667 per Month; Transportation Rate shall be increased by 1.5% per year, beginning on July 1, 2015.
Delivery Pressure:	25 p.s.i.g.

IN WITNESS WHEREOF, the parties hereto have executed this Exhibit A with their duly authorized officers as of the date first above written.

FLORIDA DEPARTMENT OF CORRECTIONS

ATTEST: Judy Burson BY: [Signature]

NAME: MICHAEL D. CREWS

DATE: 3/13/13 TITLE: SECRETARY

APPROVED AS TO FORM AND LEGALITY

SIGNED BY: [Signature]
NAME: ^{SR} JENNIFER PARKER
TITLE: GENERAL COUNSEL
FLORIDA DEPARTMENT OF CORRECTIONS
DATE: 3/7/13

SEBRING GAS SYSTEM, INC.

ATTEST: Kathleen Snyder BY: [Signature]
DATE: 3/15/2013 NAME: JERRY N. McLENDY, Jr
TITLE: PRESIDENT

ATTACHMENT "B"
DEPARTMENT OF CORRECTIONS
SECURITY REQUIREMENTS FOR CONTRACTORS

- (1) FS 944.47: Except through regular channels as authorized by the officer-in-charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send there from any of the following articles, which are hereby declared to be contraband.
 - (a) Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
 - (b) Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
 - (c) Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
 - (d) Any controlled substance or any prescription or nonprescription drug having a hypnotic, stimulating or depressing effect.
 - (e) Any firearm or weapon of any kind or any explosive substance. (This includes any weapons left in vehicles)

A person who violates any provision of this section as it pertains to an article of contraband described in subsections (1)a & (1)b is guilty of a felony of the third degree. In all other cases, a violation of a provision of this section constitutes a felony of the second degree.

- (2) Do not leave keys in ignition locks of motor vehicles. All vehicles must be locked and windows rolled up when parked on state property. Wheel locking devices may also be required.
- (3) Keep all keys in your pockets.
- (4) Confirm with the Institutional Warden where construction vehicles should be parked.
- (5) Obtain formal identification (driver's license or non-driver's license obtained from the Department of Highway Safety and Motor Vehicles). This identification must be presented each time you enter or depart the Institution and at the request of Departmental Staff.
- (6) Absolutely no transactions between contract personnel and inmates are permitted. This includes, but is not limited to, giving or receiving cigarettes, stamps, or letters.
- (7) No communication with inmates, verbal or otherwise, is permitted without the authorization of the officer-in-charge.
- (8) Strict tool control will be enforced at all times. Tools within the correctional institution are classified as AA, A, or B. Class AA tools are defined as any tool that can be utilized to cut chain link fence fiber or razor wire in a rapid and effective manner. Class A tools are defined as those tools which, in their present form, are most likely to be used in an escape

or to do bodily harm to staff or inmates. Class B tools are defined as tools of a less hazardous nature. Every tool is to be geographically controlled and accounted for at all times. At the end of the workday, toolboxes will be removed from the compound or to a secure area as directed by security staff. You must have two copies of the correct inventory with each toolbox, one copy will be used and retained by security staff who will search and ensure a proper inventory of tools each time the toolbox is brought into the facility, the other copy will remain with the toolbox at times. Tools should be kept to a minimum (only those tools necessary to complete your job). All lost tools must be reported to the Chief of Security (Colonel or Major) **immediately**. No inmate will be allowed to leave the area until the lost tool is recovered.

- (9) Prior approval must be obtained from the Chief of Security prior to bringing any powder-activated tools onto the compound. Strict accountability of all powder loads and spent cartridges is required.
- (10) All persons and deliveries to be on Departmental lands will enter and exit by only one designated route to be determined by the Department and subject to security checks at any time. As the security check of vehicles is an intensive and time consuming (10-15 minutes) process, the Contractor is requested to minimize the number of deliveries.
- (11) Establish materials storage and working areas with the Warden and/or Chief of Security.
- (12) Control end-of-day construction materials and debris. Construction materials and debris can be used as weapons or as a means of escape. Construction material will be stored in locations agreed to by security staff and debris will be removed to a designated location. Arrange for security staff to inspect the project area before construction personnel leave. This will aid you in assuring that necessary security measures are accomplished.
- (13) Coordinate with the Warden and Chief of Security regarding any shutdown of existing systems (gas, water, electricity, electronics, sewage, etc.). Obtain institutional approval prior to shutting down any existing utility system. Arrange for alternative service (if required) and expeditious re-establishment of the shutdown system.
- (14) All staff and equipment will maintain a minimum distance of 100 feet from all perimeter fencing.
- (15) With the intent of maintaining security upon the Institution's grounds, a background check will be made upon all persons employed by the Contractor or who work on the project. **The Department, represented by Institution's Warden, reserves the right to reject any person whom it determines may be a threat to the security of the Institution.**

EXHIBIT C
LIST OF EQUIPMENT
TO BE CONVERTED

<u>Location</u>	<u>Appliance</u>	<u>Description</u>
Laundry	DonLee Boiler	Steam Boiler
Laundry	(4) Transcon	Gas Fired Space Heaters
Laundry	(2) Small Transcon	Small Space Heaters NOT IN USE
Laundry	Huebsch Originators	Gas Dryer
Laundry	American Laundry	Gas Dryer
Medical	Lochinvar	Gas Fired Water Heater
Votech	(4) Beacon Morris	Gas Fired Space Heaters
Annex Kitchen	Lochinvar	Gas Fired Water Heater
Annex Kitchen	(6) Duke Ovens	Double Stack Ovens
Annex Kitchen	(3) Flat Top Cooker	Gas Fired Flat Top
Annex Kitchen	(4) Legion Kettles	Gas Fired Kettle
Annex Kitchen	Burner Stove	Gas Fired Burner
Annex Kitchen	(4) Modine Heater	Gas Fired Space Heaters
A Dorm	AO Smith	Gas Fired Water Heater
A Dorm	(3) Trane XE 90	A/C Heat Unit Gas Fired Water Heater UNIT IS CRACKED
B Dorm	AO Smith	A/C Heat Unit
B Dorm	(3) Trane XE 90	A/C Heat Unit
C Dorm	AO Smith	Gas Fired Water heater
C Dorm	(3) Trane XE 90	A/C Heat Unit
D Dorm	AO Smith	Gas Fired Water Heater
D Dorm	(3) Trane XE 90	A/C Heat Unit
E Dorm	Lochinvar	Gas Fired Water Heater
E Dorm	(3) Trane XE 90	A/C Heat Unit
F Dorm	(3)AO Smith	Gas Fired Water Heater
F Dorm	(9) Carrier	Weather Maker 9200 Large
F Dorm	(3) Carrier	Weather Maker 9200 Small
F Dorm	(3) RE Verber Ray	Gas Fired Heater
G Dorm	(3)AO Smith	Gas Fired Water Heater
G Dorm	(9) Carrier	Weather Maker 9200 Large
G Dorm	(3) Carrier	Weather Maker 9200 Small
G Dorm	(3) RE Verber Ray	Gas Fired Heater
H Dorm	(3)AO Smith	Gas Fired Water Heater
H Dorm	(9) Carrier	Weather Maker 9200 Large
H Dorm	(3) Carrier	Weather Maker 9200 Small
H Dorm	(3) RE Verber Ray	Gas Fired Heater
M Dorm	AO Smith	Gas Fired Water Heater

Main Warehouse	RE Verber Ray	Gas Fired Heater
Work Camp Kitchen	Sterling QV2	NOT IN SERVICE
Work Camp Kitchen	AO Smiith	Gas Fired Water Heater
Work Camp Kitchen	Legion	Gas fired Cook Pot
Work Camp Kitchen	Garland	Gas Fired Cook Top
Work Camp Kitchen	(2) Duke Oven	Double Stack Oven
Work Camp Kitchen	Flat top	Gas Fired Flat Top
Work Camp Kitchen	Legion Skillet	Gas fired Skillet
Work Camp Kitchen	Sterling QV2	Gas Fired Space Heater
Work Camp J Dorm	AO Smiith	Gas Fired Water Heater
Work Camp J Dorm	Lochinvar	Gas Fired Water Heater
Work Camp K Dorm	Bradford White	Gas Fired Water Heater
Work Camp K Dorm	AO Smiith	Gas Fired Water Heater

**Sebring Gas System, Inc.
Cost of Service Study
DeSoto Correctional Institution**

Exhibit "B"

Page 1 of 3

Rate Base Assumptions:	Projected Rate Base
City Gate Station (Acct 379)	\$583,000
Mains - Plastic (Acct 376.2)	\$220,000
Meters (Acct 381)	\$6,000
	<u>\$809,000</u>

Rate Base and Return Requirements

Projected Investment in Plant - 13 Month Average	\$809,000
Accumulated Depreciation - 13 Month Average	<u>(\$14,749)</u>
13 Month Average Rate Base	\$794,251
Return on Rate Base (Sebring Dec 31, 2012 ESR)	<u>9.25%</u>
Return Requirements	\$73,468
Less: Interest Expense	<u>\$49,641</u>
Net Income after Taxes and Interest	\$23,828
Divide by (1 - Tax Rate)	<u>100.00%</u>
Taxable Income	<u>\$23,828</u>
Income Taxes (due to Net Operating Loss Carryforwards used)	\$0

Sebring Gas System, Inc.
Cost of Service Study
DeSoto Correctional Institution

Exhibit "B"

Page 2 of 3

Project Financing

Debt	100.00%
Equity, Zero Cap	0.00%
	<u>100.00%</u>

Interest Rate of Debt Issued	6.25%
13 Month Average Rate Base	\$794,251
Interest Expense	<u>\$49,641</u>

Taxes Other Than Income (TOTI)

Property Taxes	\$13,899
Reg Assess Fee	\$625
Total TOTI	<u>\$14,524</u>

Cost of Service

Projected Operation & Maintenance	\$6,000
Depreciation	\$25,284
TOTI	\$14,524
Income Taxes	\$0
Return Requirements	\$73,468
Total Cost of Service	<u>\$119,277</u>

Monthly Rate per Special Contract	\$11,667
Annual Revenues	<u>\$140,004</u>

Annual Revenue Excess (Deficiency)	<u>\$20,727</u>
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Sebring Gas System, Inc.
Cost of Service Study
DeSoto Correctional Institution

Exhibit "B"

Page 3 of 3

Gate Station (Acct : Depreciation Expense / Accumulated Depreciation

Depr Rate	1	2	3	4	5	6	7	8	9	10	11	12	13
3.20%	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555	\$1,555
A/D	\$1,555	\$3,110	\$4,665	\$6,220	\$7,775	\$9,330	\$10,885	\$12,440	\$13,995	\$15,550	\$17,105	\$18,660	\$20,215

ins - Plastic (Acct 37 Depreciation Expense / Accumulated Depreciation

Depr Rate	1	2	3	4	5	6	7	8	9	10	11	12	13
2.90%	\$532	\$532	\$532	\$532	\$532	\$532	\$532	\$532	\$532	\$532	\$532	\$532	\$532
A/D	\$532	\$1,064	\$1,596	\$2,128	\$2,660	\$3,192	\$3,724	\$4,256	\$4,788	\$5,320	\$5,852	\$6,384	\$6,916

Meters (Acct 381) Depreciation Expense / Accumulated Depreciation

Depr Rate	1	2	3	4	5	6	7	8	9	10	11	12	13
4.00%	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20	\$20
A/D	\$20	\$40	\$60	\$80	\$100	\$120	\$140	\$160	\$180	\$200	\$220	\$240	\$260

Total Depreciation Expense / Accumulated Depreciation

	1	2	3	4	5	6	7	8	9	10	11	12	13
Depr Exp	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107	\$2,107
A/D	\$2,107	\$4,214	\$6,321	\$8,428	\$10,535	\$12,642	\$14,749	\$16,856	\$18,963	\$21,070	\$23,177	\$25,284	\$27,391