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April 3, 2017

**E-PORTAL FILING**

Ms. Carlotta Stauffer, Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 170036-GU – Joint petition for approval of territorial agreement in DeSoto County by Florida Division of Chesapeake Utilities Corporation and Sebring Gas System, Inc.**

Dear Ms. Stauffer:

Attached for filing on behalf of the Sebring Gas System, Inc. and the Florida Division of Chesapeake Utilities Corporation, please find the Amended Joint Petition Requesting Approval of Territorial Agreement in the above-referenced docket.

As always, please don't hesitate to let me know if you have any questions. Thank you for your assistance with this filing.

Kind regards,



Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

cc:/ Sue Ollila (PSC – Division of Economics)  
Wesley Taylor (PSC –GC)  
Paula Sparkman, Esquire (Messer)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint petition for approval of territorial agreement in DeSoto County by Florida Division of Chesapeake Utilities Corporation and Sebring Gas System, Inc.	DOCKET NO. 170036-GU FILED: April 3, 2017
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**AMENDED JOINT PETITION REQUESTING APPROVAL OF TERRITORIAL AGREEMENT**

The Florida Division of Chesapeake Utilities Corporation (“Chesapeake” or “CFG”) and the Sebring Gas System, Inc. (“Sebring”) (collectively, “Petitioners”), by and through their respective counsel, hereby submit this amended petition the Florida Public Service Commission (“Commission”), pursuant to Section 366.04(3)(a), Florida Statutes, and Rule 25-7.0471, Florida Administrative Code, seeking approval of a territorial agreement between the Petitioners covering Desoto County (“Desoto County Territorial Agreement” or “Agreement”). The referenced agreement is attached hereto as Exhibit A, and incorporated herein by reference. This Amended Petition is submitted to correct an error identified by the parties as it relates to the extent of Sebring’s service within Desoto County. As a result of this determination, the parties have entered into a “Corrected” Territorial Agreement, which the parties submit herewith and ask the Commission consider as a full replacement for the agreement originally submitted in this Docket on February 16, 2017. For purposes of clarity, the only changes from the original petition submitted in this proceeding are to paragraphs 4 and 5, which are set forth in bold typeface, and to replace Attachments A and B to the original petition. In support of this amended request, Petitioners state as follows:

1. The names and mailing addresses of the joint petitioners are:

Florida Division of Chesapeake Utilities Corporation 1750 S 14th Street, Suite 200 Fernandina Beach FL 32034	Sebring Gas System, Inc. 3515 Highway 27 South Sebring, FL 33870
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Joint Petition for Approval of Territorial Agreement

2. The names and mailing addresses of the persons authorized to receive notices and communications with respect to this joint petition are:

Beth Keating, Esq.  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301-1839  
(850) 521-1706  
bkeating@gunster.com

Mike Cassel  
Director, Regulatory and Governmental Affairs  
Florida Public Utilities Company/Chesapeake  
Utilities Corporation  
1750 S 14<sup>th</sup> St., Suite 200  
Fernandina Beach, FL 32034  
[mcassel@chpk.com](mailto:mcassel@chpk.com)

Jerry Melendy  
Sebring Gas System, Inc.  
3515 Highway 27 South  
Sebring, FL 33870

Paula M. Sparkman, Esq.  
Messer Caparello, P.A.  
2618 Centennial Place  
Tallahassee, Florida 32308

BACKGROUND

3. Chesapeake and Sebring each own and operate natural gas distribution facilities in Florida. Both are public utilities, as defined in Section 366.02(1), Florida Statutes, and therefore, subject to the Commission's regulatory jurisdiction under Chapter 366, Florida Statutes. Likewise, both meet the definition of a "natural gas utility" as defined in Section 366.04(3)(c), Florida Statutes. The Commission is therefore vested with jurisdiction to resolve territorial disputes and to approve territorial agreements involving both companies in accordance with Section 366.04(3), Florida Statutes. The Petitioners are unaware of any material facts in dispute in this regard. This is a Petition representing an initial request to the Commission, which is the affected agency located at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

4. Over the past year, Sebring and Chesapeake have independently pursued business plans to extend service to customers in Desoto County, namely customers in and around the City of Arcadia ("Arcadia"). At present, neither Sebring nor Chesapeake has facilities in Desoto

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County capable of serving Arcadia, although Chesapeake does currently serve customers in the County, **as does Sebring**. Both Sebring and Chesapeake have entered into service agreements to provide natural gas service to new customers in Desoto County, but it has become clear that independent pursuit by the Petitioners of their expansion plans could have resulted in a territorial dispute. As such, the Petitioners have entered into a territorial agreement that will ensure that as many customers as possible in Desoto County can receive natural gas service in an efficient and expeditious manner, while avoiding uneconomic duplication of facilities, as well as a costly territorial dispute. The Petitioners therefore ask that the Commission approve this territorial agreement as it is consistent with the standards for approval in Rule 25-7.0471(2), Florida Administrative Code, and is in the public interest.

TERRITORIAL AGREEMENT

5. As set forth in the Desoto County Territorial Agreement, the Petitioners have agreed that, for purposes of service in Desoto County, Chesapeake's service territory will be defined as including all of Desoto County with the exception of service lines serving customers within the municipal boundaries of the City of Arcadia **and two specifically identified customers located in the County and just outside the Arcadia municipal limits, which are currently served by Sebring**. Sebring's service area will include the service lines serving customers in Arcadia, as well as Highlands County, where it currently serves, **and the two specifically identified customers noted above**.

6. The territorial agreement provides for no transfers of existing customers between the Petitioners. A description of the agreed service rights is included in Sections II, III and IV

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of the Desoto County Territorial Agreement.

7. The Agreement also includes a provision addressing a “Right of First Refusal”. Given Chesapeake’s historical service in Desoto County, the Agreement provides that Chesapeake shall have a right of first refusal should Sebring decide at any point to sell any portion of its natural gas or propane facilities. The right of first refusal will not apply to facilities that are already the subject of active negotiations with another entity, any facility that would present a material technical, logistical, or engineering difficulty for Chesapeake to operate, or any facility or segment, which, if acquired by Chesapeake, would represent a breach of any then-existing territorial agreement between Chesapeake and another natural gas utility.

8. The Desoto County Territorial Agreement will enable as many residential and business customers in Desoto County as possible to receive economical and reliable natural gas service. Absent the Desoto County Territorial Agreement, the Petitioners’ pursuit of their individual natural gas extension plans would likely result in the uneconomic duplication of facilities. In addition to ensuring that new customers in Desoto County are able to obtain service in the most efficient and expeditious manner possible, the Desoto County Territorial Agreement will avoid the need for the parties to incur the additional expense (and delay) associated with litigating an otherwise inevitable territorial dispute. A map depicting the boundary defined as the Petitioners’ respective territories in Desoto County is attached to this joint petition as Exhibit B. As set forth in the Territorial Agreement and reflected on the map included in Exhibit B, the parties have agreed that the boundary that will set apart the companies’ respective territories will be the municipal city limits of the City of Arcadia with Sebring providing service within the city limits and Chesapeake providing service outside the city limits.

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**Requested Relief**

9. Sebring and Chesapeake seek Commission approval of the Desoto County Territorial Agreement, which stipulates that approval by the Commission is a condition precedent to the Agreement's effectiveness. As set forth in Section 4 of the Agreement, any modification to the territorial descriptions set forth in the Agreement must be reviewed and/or approved by the Commission. Prior to the second anniversary of the Commission's approval of the Agreement, and no more frequently than every five years thereafter, Sebring and Chesapeake will meet to review the status of the agreement and provide a written status report to the Commission.

10. Sebring and Chesapeake represent that approval and implementation of the Desoto County Territorial Agreement will not cause a decrease in the availability or reliability of natural gas service provided by either entity, or to the existing or future ratepayers of either entity, and that the Commission's approval of the agreement will be consistent with the standards set forth in Section 366.04, Florida Statutes, and Rule 25-7.0471, Florida Administrative Code.

11. The Petitioners further attest that the Desoto County Territorial Agreement is in the public interest, will not adversely impact any customers, and will not result in the transfer of any customers. The Agreement will, in fact, facilitate expansion to serve new customers in the County by clarifying the Petitioners' respective service areas and thus, facilitating service to new customers and areas in an efficient manner.

WHEREFORE, the Florida Division of Chesapeake Utilities Corporation and Sebring Gas System, Inc. respectfully request that the Commission enter its order approving the Desoto

Joint Petition for Approval of Territorial Agreement

County Territorial Agreement.

3rd April 11  
Respectfully submitted this 31st day of March, 2017,



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Tallahassee, Florida 32308  
(850) 222-0720  
[psparkman@lawfla.com](mailto:psparkman@lawfla.com)  
*Attorneys for Sebring Gas Systems, Inc.*



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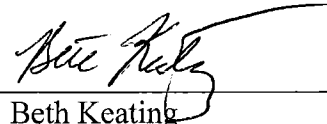
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Tallahassee, Florida 32301-1839  
(850) 521-1706  
[BKeating@gunster.com](mailto:BKeating@gunster.com)  
*Attorneys for the Florida Division of  
Chesapeake Utilities Corporation*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by Electronic Mail this 3rd day of April, 2017:

Wesley Taylor Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 wtaylor@psc.state.fl.us	
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By: \_\_\_\_\_



Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706



**ATTACHMENT A**

**[CORRECTED]**  
**DESOTO COUNTY TERRITORIAL AGREEMENT**

THIS CORRECTED DESOTO COUNTY TERRITORIAL AGREEMENT (this "Corrected Agreement") is made and entered into this 29<sup>th</sup> day of March, 2017, by and between Chesapeake Utilities Corporation, a Delaware corporation, doing business in Florida as Central Florida Gas, and hereinafter referred to as ("CUC,") and Sebring Gas System, Inc. ("SEBRING"), a corporation of the State of Florida and an investor-owned natural gas local distribution utility as defined in Section 366.02(1), Florida Statutes. Sebring and CUC are hereinafter sometimes referred to singularly as a "party" and collectively as the "parties."

**WITNESSETH:**

WHEREAS, CUC and SEBRING are natural gas utilities subject to the regulatory jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, *Florida Statutes*; and

WHEREAS, as pertinent to this Corrected Agreement, both CUC and SEBRING have been independently pursuing their intentions to extend their respective distribution systems to provide service to customers in Desoto County; and

WHEREAS, CUC and SEBRING entered into the original Desoto County Territorial Agreement on October 31, 2016 ("October Agreement"); and

WHEREAS, CUC and SEBRING submitted the October Agreement to the Florida Public Service Commission on February 16, 2017, for approval, consistent with Section 6 of the October Agreement; and

WHEREAS, the Florida Public Service Commission has opened Docket No. 170036-GU for the purpose of reviewing the October Agreement, but has not yet issued an order approving the agreement; and

WHEREAS, the October Agreement is therefore not yet effective in accordance with Section 6 of the October Agreement; and

WHEREAS, CUC and SEBRING wish to correct an inaccuracy contained within the October Agreement, which is limited to a correction of the definition of the SEBRING Service Area; and

WHEREAS, CUC and SEBRING desire that this Corrected Agreement supersede and replace the October Agreement in its entirety; and

WHEREAS, CUC currently provides service to customers in Desoto County, Florida, which county is included within CUC's service territory; and

WHEREAS, neither SEBRING nor CUC currently own or operate facilities capable of providing service to customers in and around the City of Arcadia in Desoto County, Florida; and

WHEREAS, independent pursuit by each of the parties of their respective Desoto County expansion plans would have inevitably led to a territorial dispute between the parties; and

WHEREAS, SEBRING and CUC have entered into separate service agreements which will facilitate the provision of natural gas service to customers in Desoto County; and

WHEREAS, in order to enable as many persons and businesses as possible within Desoto and Highlands Counties to receive economical and reliable natural gas service, SEBRING and CUC have entered into this Agreement to avoid any unnecessary or uneconomic duplication of natural gas facilities which would be contrary to Commission policies and detrimental to the interests of their respective customers and the general public, and to more rapidly expand the availability of natural gas service to potential customers in Desoto County by avoiding a lengthy and expensive territorial dispute; and

WHEREAS, SEBRING and CUC agree that, given CUC's historical service in and around the SEBRING system, CUC should have the right of first refusal for the acquisition, upon reasonable terms and to the extent allowed by Florida law, of SEBRING facilities should SEBRING decide to divest itself of any or all of its facilities; and

WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to Section 366.04(3)(a), *Florida Statutes*, to approve and supervise territorial agreements between and among natural gas utilities;

NOW, THEREFORE, in fulfillment of the purposes aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties, subject to and upon the terms and conditions herein set forth, agree as follows:

**Section 1.**

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below:

“CUC Service Area” means all of Desoto County except those areas thereof included in the SEBRING Service Area.

“SEBRING Service Area” means (i) Highlands County; (ii) service lines serving customers within the municipal boundaries of the City of Arcadia located in Desoto County, Florida; and (iii) service lines to SEBRING's two existing transportation service customers located at the following addresses: 13617 SE Highway 70, Arcadia, FL 34266 and 13619 SE Highway 70, Arcadia, FL 34266.

**Section 2.**

(a) The service area reserved hereunder for SEBRING shall consist of the SEBRING Service Area. As between the parties, SEBRING shall have the authority to serve all customers within said area.

(b) The service area reserved hereunder for CUC shall consist of the CUC Service Area.

As between the parties, CUC shall have the authority to serve all customers within said area.

(c) Except as specifically otherwise provided herein, each party agrees that it will not provide or offer to provide natural gas service to existing or potential customers within the service area herein reserved to the other party.

(d) Except as specifically otherwise provided herein, nothing in this Agreement is intended to affect the gate stations, regulators, or gas mains of one party which are now or which may in the future be located in the service area of the other party, and any problems between the parties involving these types of facilities shall be settled at the general office level of the parties. No such facilities shall be used by one party to provide natural gas service to customers located in the service area reserved hereunder to the other party.

(e) This Agreement shall have no effect on the boundaries of the respective service areas of the parties hereto as the same may now or hereafter exist except as specifically provided herein.

**Section 3.** Notwithstanding the provisions of Section 2, either party may request that the other party provide natural gas service to potential customers within the service area reserved hereunder to the requesting party. The party receiving the request may elect to provide service to such potential customers in its sole discretion subject to the approval of the Commission.

**Section 4.** If a party determines, in a specific instance, that good engineering practices or economic constraints on that party indicate that any small service area and/or future natural gas customer within that party's service area under Section 2 hereof should not be served by that party, such party shall notify the other party and request the other party to serve such small service area and/or potential customer. If the parties reach agreement thereon, the parties shall jointly and expeditiously seek approval of the Commission for modification of this Corrected Agreement in order to permit the appropriate party to provide such service to such small service area and/or future natural gas customer.

**Section 5. Right of First Refusal.** If, at any point, Sebring decides to sell any portion or all of its Natural Gas System and Facilities or its Propane System and Facilities (jointly herein "Service Facilities"), CUC shall have a right of first refusal (the "Right of First Refusal") on Sebring's offering for sale of such Service Facilities. In such event, Sebring shall provide notice to CUC with details regarding the terms of any proposed offer or proposed purchase agreement. If CUC so elects, Sebring shall thereafter enter into negotiations with CUC for an agreement on terms for acquisition of any or all of the Service Facilities. If CUC does not elect to enter into negotiations for the purchase of the Service Facilities, Sebring shall thereafter be free to sell its Service Facilities to any other Person at any time during the following 2-year period. In the event Sebring does not sell its Service Facilities, Sebring shall be obligated at the conclusion of the referenced 2-year period to provide CUC with the Right of First Refusal for any proposed sale of the natural gas system and facilities. This Right of First Refusal shall not apply with regard to:

- i. Service Facilities already the subject of active negotiations or otherwise under a contract for sale to another entity as of the effective date set forth below; or

- ii. any portion or segment of the Natural Gas System and Facilities, which if purchased by CUC would violate or otherwise conflict with an existing territorial agreement between CUC and another natural gas utility; or
- iii. any portion or segment of the Natural Gas System and Facilities, which if purchased by CUC would present a material technical, logistical, or engineering difficulty for CUC to acquire and operate.

**Section 6.** This Corrected Agreement, after execution by the parties, shall be submitted jointly by the parties to the Commission for approval. It shall become effective on the date that a Commission order approving it becomes final and effective (the "Effective Date"), and continue in effect until termination or modification shall be mutually agreed upon by the parties and approved by the Commission, or until termination or modification shall be mandated by a governmental entity or court with appropriate jurisdiction. In the event that the Commission declines to approve this Corrected Agreement, the same shall be of no force or effect, and neither party shall have any claim against the other arising out of this Corrected Agreement.

**Section 7.** Prior to the second anniversary of the Effective Date and no more than every fifth anniversary thereafter, the Parties shall meet to review the status of this Corrected Agreement and shall submit a joint status report to the Commission (or any successor agency with power to consider approval or modification hereof).

**Section 8.** As soon as practicable after the Effective Date, each party agrees to file any revisions to its tariffs on file with the Commission which may be required as a result of the Commission's approval of this Corrected Agreement, and shall provide a copy of any such tariff revisions to the other party upon their filing with the Commission.

**Section 9.** The failure of either party to enforce any provision of this Corrected Agreement in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

**Section 10.** This Corrected Agreement shall become void and unenforceable if the Commission's jurisdiction with respect to approval and supervision of territorial agreements between natural gas utilities is terminated by statute or ruled invalid by a court of final appellate jurisdiction.

**Section 11.** This Corrected Agreement shall be governed by the laws of the State of Florida.

**Section 12.** This Corrected Agreement does not provide for the transfer of any existing customers or facilities.

**Section 13.** All notices under this Corrected Agreement shall be in writing and may be sent by facsimile, a nationally recognized overnight courier service, first class mail, or hand delivery, to the parties at the addresses and facsimile numbers set forth below:

CORRECTED DESOTO COUNTY TERRITORIAL AGREEMENT - SEBRING GAS SYSTEM

To SEBRING:

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

To CUC:

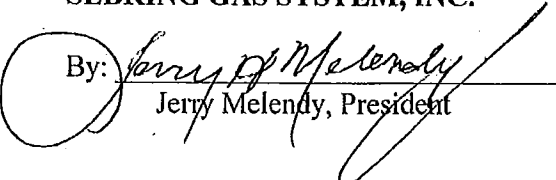
Vice President/Business Development and Gas  
Operations  
Florida Division of Chesapeake Utilities  
Corporation  
1750 S 14th Street  
Suite 200  
Fernandina Beach, FL 32034

Notices shall be deemed given when received on a business day by the addressee. In the absence of proof of the actual receipt date, the following presumptions shall apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a business day or, the receipt is after 5:00 p.m. on a business day, then such facsimile shall be deemed to have been received on the next succeeding business day. Notice by overnight mail or courier shall be deemed to have been received on the next business day after it was sent or such earlier time as is confirmed by the receiving party. Notice by first class mail shall be deemed to have been received on the third business day following deposit in the mail. A party may from time to time change the address to which notice hereunder is to be sent by providing notice to the other party pursuant to this section.

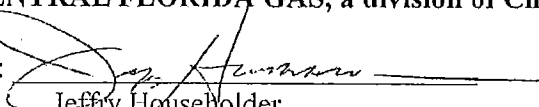
**Section 14.** This Corrected Agreement, on and after the Effective Date, shall be binding in accordance with its terms upon the parties hereto and their respective successors and assigns with regard to the retail distribution of natural gas and shall supersede any and all prior territorial agreements between the parties regarding Desoto County, including the October Agreement. This Agreement shall not affect or bind affiliates or subsidiaries of SEBRING and CUC.

IN WITNESS WHEREOF, the parties hereto have caused this Corrected Agreement to be executed by their duly authorized officers as of the date and year first above stated.

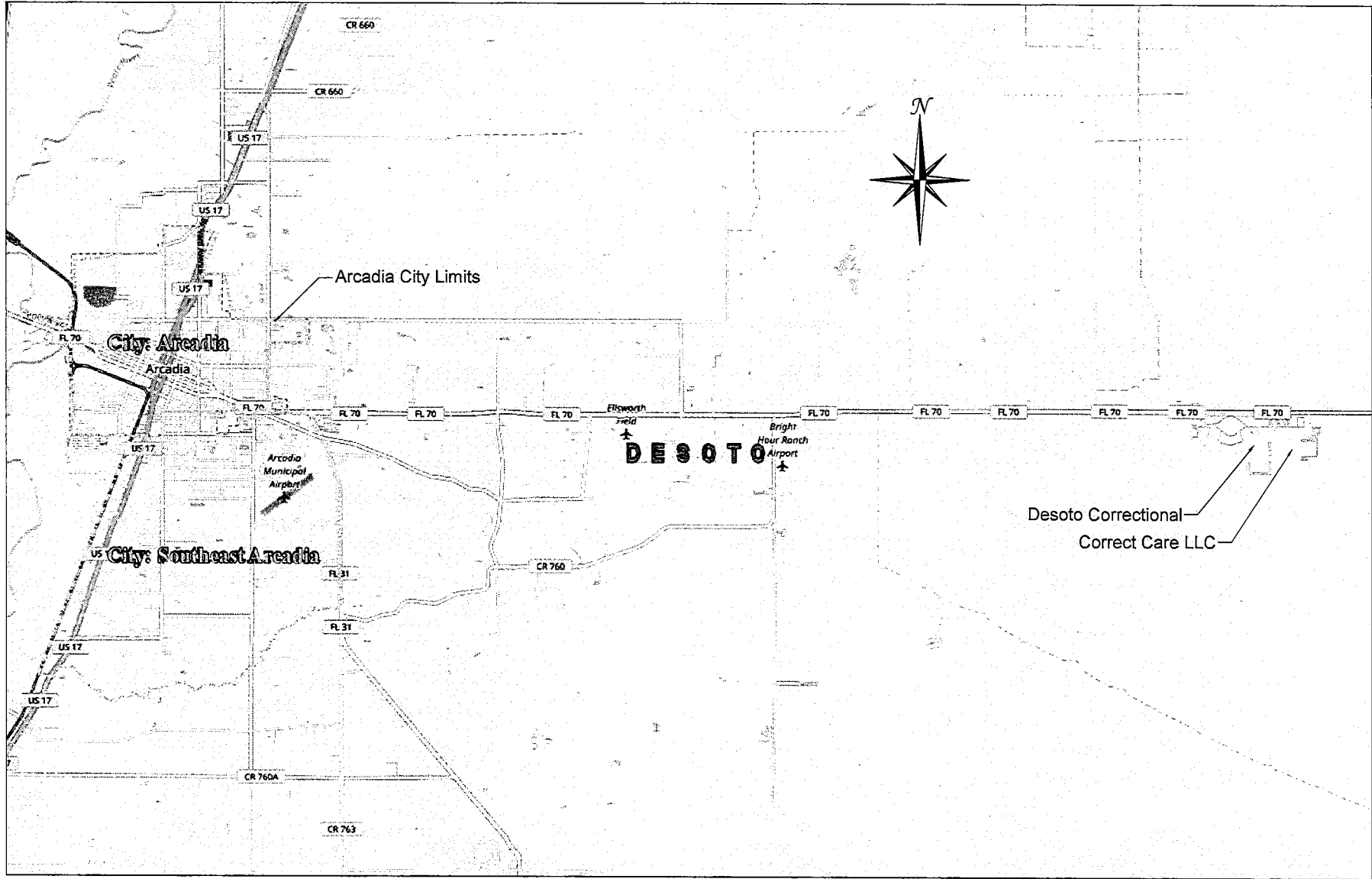
**SEBRING GAS SYSTEM, INC.**

By:   
Jerry Melendy, President

**CENTRAL FLORIDA GAS, a division of Chesapeake Utilities Corporation**

By:   
Jeffry Householder  
President

**ATTACHMENT B**



Arcadia City Limits

City: Arcadia

City: Southeast Arcadia

DESOTO

Desoto Correctional

Correct Care LLC