

PSC NO: 12 GAS LEAF: 427.62
COMPANY: THE BROOKLYN UNION GAS COMPANY REVISION: 0
INITIAL EFFECTIVE DATE: 11/03/06 SUPERSEDING REVISION:
STAMPS:

Form of Facilities Construction and Reimbursement Agreement
For Electric Generation – Third Party (continued)

Article 13
Credit Assurances

- 13.1 Letter of Credit or Other Assurance. Prior to commencement of its obligations under this Agreement, KeySpan shall conduct a review of Customer's credit. If KeySpan determines, in its sole judgment, and after consultation with authorized representatives of Customer, that Customer's credit is unsatisfactory, then KeySpan shall have the right to request, and Customer shall: (a) obtain and furnish to KeySpan an irrevocable and unconditional letter of credit from a responsible financial institution acceptable to KeySpan, securing the full payment of forty-five percent (45%) of the Estimated Cost; or (b) deposit funds equal to said 45% of the Estimated Cost with an escrow agent acceptable to KeySpan on terms and conditions that assure timely application of the funds so deposited to discharge Customer's payment obligations under this Agreement.

Article 14
Miscellaneous

- 14.1 Governmental Authorizations. Unless otherwise provided herein, each Party shall be responsible for obtaining all necessary governmental authorizations and permits applicable to the construction performed hereunder by such Party.
- 14.2 Independent Contractor. At all times during the term of this Agreement, each Party shall be considered an independent contractor.
- 14.3 Choice of Law, Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of law provisions thereof. Each of the Parties hereby agrees to submit to the nonexclusive jurisdiction of the United States District Court for the Eastern District of New York and/or any New York State Court sitting in Kings County, New York or Nassau County, New York for the purposes of all legal proceedings arising out of or relating to this Agreement. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by law, any objection to the selection of this venue and any claim that any proceeding brought in such a court has been brought in any inconvenient forum. Each of the Parties further irrevocably waives, to the fullest extent permitted by law, any and all rights to a trial by jury with regard to any matter or dispute arising out of or in connection with this Agreement.

Issued by: John J. Bishar, Jr., Executive Vice President, General Counsel, and Secretary, Brooklyn, NY