

EXHIBIT F
POTABLE WATER OPTION AGREEMENT

POTABLE WATER OPTION AGREEMENT

This Option Agreement (this "Agreement"), dated as of July 3, 2008, is between **FALLBROOK PUBLIC UTILITY DISTRICT**, a public utility district, with offices and principal place of business located at 990 East Mission Road, Fallbrook, California 92088 ("Optionor"), and **ORANGE GROVE ENERGY, L.P.**, a Delaware limited partnership, with offices and a principal place of business located at 1900 East Golf Road, Suite 1030, Schaumburg, Illinois 60173 ("Optionee"). Optionor and Optionee shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

- A. Optionee is a Delaware limited partnership that currently is developing a power plant project (the "Project") outside of the District's service area. As part of this Project, Orange Grove requires potable water for cooling water, and other activities within the boundary of the Project.
- B. Optionor is a public agency treating and serving water, potable water and wastewater within a 28,000 acre service area in northwestern San Diego County. Optionor owns and operates a Water Reclamation Facility which treats wastewater and serves tertiary treated recycled water ("Recycled Water") within the Optionor's service area and by contract to customers outside the district.
- C. Orange Grove has requested to purchase up to 62 acre-feet per year of potable water from the District with supply to Orange Grove provided trucks at the District's Potable Water Filling Station site ("Delivery Site") near the intersection of Mission Road and Live Oak Park Road for a term of 25 years and 2 months. The 62 acre-feet of potable water allows for an adequate supply of potable water for the Project.
- D. Optionor has agreed to grant to Optionee, and Optionee has agreed to acquire from Optionor, an exclusive option to purchase Potable Water on the terms and conditions set forth in the Potable Water Agreement attached as Exhibit A (the "Potable Water Agreement") for the purpose of constructing, operating, using and maintaining the Project (the "Option"), on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby agree as follows:

1. Definitions. The following terms, as used in this Agreement, shall have the definitions set forth below:

"*Agreement*" shall have the meaning set forth in the preamble to this Agreement.

"*Applicable Laws*" shall mean any and all applicable laws, ordinances, codes, statutes, rules, regulations, orders, decisions, decrees, edicts, directives, permits and approvals issued by any Governmental Authority.

"*Business Day*" shall mean any day other than (a) a Saturday or Sunday, or (b) a day on which banking and savings and loan institutions in San Diego, California are authorized or obligated by law or executive order to be closed.

"*Commencement Date*" shall have the meaning set forth in Section 6(a) of this Agreement.

"*Delivery Site*" shall have the meaning set forth in Recital C of this Agreement

"*Effective Date*" shall have the meaning set forth in Section 2 of this Agreement.

"*Exercise Date*" shall have the meaning set forth in Section 7(a) of this Agreement.

"*Option*" shall have the meaning set forth in Recital D of this Agreement.

"*Option Consideration*" shall have the meaning set forth in Section 4(a) of this Agreement.

"*Optionee*" shall have the meaning set forth in the preamble to this Agreement.

"*Optionee Default*" shall have the meaning set forth in Section 14(a) of this Agreement.

"*Optionor*" shall have the meaning set forth in the preamble to this Agreement.

"*Optionor Default*" shall have the meaning set forth in Section 13(a) of this Agreement.

"*Party*" or "*Parties*" shall have the meaning set forth in the preamble to this Agreement.

"*Project*" shall have the meaning set forth in Recital A of this Agreement.

"*Potable Water Agreement*" shall have the meaning set forth in Recital D of this Agreement.

"*Term*" shall have the meaning set forth in Section 6(a) of this Agreement.

2. Effectiveness of Agreement. This Agreement shall be effective as of the time that this Agreement shall have been duly executed by both Optionor and Optionee. The date that this Agreement shall have become effective in accordance with this Section 2 shall be referred to herein as the "Effective Date".
3. Grant of Option.
 - (a) Optionor hereby grants to Optionee, and Optionee hereby acquires from Optionor, the Option, on the terms and conditions set forth in this Agreement.
 - (b) Upon Optionee's exercise of the Option in accordance with this Agreement, Optionor and Optionee shall execute the Potable Water Agreement.
4. Option Consideration.

- (a) Optionee shall pay to Optionor the sum of [REDACTED] No/100 Dollars [REDACTED] in immediately available funds (the "Option Consideration"), as consideration for the Option.
- (b) All Option Consideration paid to or for the benefit of Optionor shall be refunded by Optionor to Optionee in the event of an Optionor Default, as defined in Section 13.

5. Deposit of Option Consideration into Optionor's Account. No later than five (5) Business Days after the Effective Date, Optionee shall deposit the Option Consideration into the following Optionor's account:

Account Name Fallbrook Public Utility District Depository Account
Account Number #: [REDACTED]
Routing Number #: [REDACTED]
Attention: [REDACTED]

6. Term of Option.

- (a) The term of the Option ("Term") shall commence as of the date that Optionor receives the Option Consideration. The date upon which the Term actually commences shall be referred to herein as the "Commencement Date".
- (b) The Term shall expire as of 5:00 p.m. Pacific time on the date that is one (1) year after the Commencement Date (the "Expiration Date", as may be extended pursuant to Section 6(c)), provided, however, that before the Expiration Date, the Term shall terminate immediately upon the occurrence of any of the following: (i) Optionee's exercise of the Option in accordance with this Agreement, (ii) the occurrence of any Optionee Default, or (iii) Optionee's delivery of written notice to Optionor that Optionee is declining to exercise the Option. In the event that the Expiration Date occurs as a result of the event set forth in this Section 6(b)(iii), Optionee's sole liability to Optionor shall be the forfeit of the Option Consideration.
- (c) At Optionee's election, the Term may be extended for one additional one (1) year period upon the payment of an additional [REDACTED] and No/100 Dollars [REDACTED] in immediately available funds by Optionee to Optionor at any time prior to the one year anniversary of the Commencement Date.

7. Exercise of Option.

- (a) Optionee shall be conclusively deemed to have irrevocably exercised the Option, without condition or qualification, upon the occurrence of all of the following (the "Exercise Date"):

- (i) Optionee shall have delivered to Optionor written notice of Optionee's exercise of the Option which notice shall be effective on a date set forth therein and no later than the Expiration Date; and
- (ii) Optionee shall have delivered to Optionor a signed copy of the Potable Water Agreement for Optionor's execution.

8. Optionee Covenants. Optionee agrees for the benefit of Optionor that:

- (a) It shall not seek to obtain Potable Water from any other third party during the Term; and
- (b) [It agrees to submit the Potable Water Agreement and description of the facilities contained therein in its Application for Certification to the California Energy Commission].

9. Optionor Covenants. Optionor agrees for the benefit of Optionee that:

- (a) It shall reserve the capability to provide Potable Water or if Potable Water is unavailable, recycled water to Optionee in the amounts and pursuant to the conditions contemplated under the Potable Water Agreement for the term contemplated under the Potable Water Agreement; and
- (b) Upon exercise of the Option by the Optionee, it shall execute the Potable Water Agreement within three (3) Business Days after the Exercise Date.

10. Optionor's Representations and Warranties. Optionor hereby represents and warrants, as of the Effective Date and the Exercise Date:

- (a) Organization; Standing; Power; Authority. Optionor is a public utility district, duly organized and existing in the State of California, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement and to consummate the transactions contemplated in the Agreement. Optionor has taken all corporate action necessary to authorize the execution, delivery and performance of the terms and conditions of the Agreement. The individual executing the Agreement has been duly authorized to do so. The performance by Optionor of Optionor's obligations and responsibilities under the Agreement will not violate or constitute a default under the terms and provisions of Optionor's bylaws or any material agreement, document or instrument to which Optionor is a party or by which Optionor. All proceedings required to be taken by or on behalf of Optionor to authorize Optionor to execute, deliver and perform the terms and conditions of the Agreement have been duly and properly taken. No further consent of any person or entity, except the San Diego Regional Water Quality Control Board, is required in connection with the execution and delivery of, or performance by Optionor of its obligations under the Agreement

(b) Enforceability. The Agreement constitute or shall constitute the valid and binding obligation of Optionor, enforceable against Optionor in accordance with their terms, except as such enforcement may be limited by (i) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other Applicable Laws affecting or relating to the rights of creditors generally, or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

11. Optionee's Representations and Warranties. Optionee hereby represents and warrants, as of the Effective Date and the Exercise Date:

(a) Organization; Standing; Power; Authority. Optionee is a Delaware limited partnership duly organized and existing in the State of Delaware, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement, and to consummate the transactions contemplated in this Agreement. Optionee has taken all corporate action necessary to authorize the execution, delivery and performance of the terms and conditions of the Agreement. The individual executing the Agreement has been duly authorized to do so. The performance by Optionee of Optionee's obligations and responsibilities under the Agreement will not violate or constitute a default under the terms and provisions of Optionee's partnership agreement or any material agreement, document or instrument to which Optionee is a party or by which Optionee is bound or affected. All proceedings required to be taken by or on behalf of Optionee to authorize Optionee to execute, deliver and perform the terms and conditions of the Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Optionee of its obligations under the Agreement.

(b) Enforceability. The Agreement constitute or shall constitute the valid and binding obligation of Optionee, enforceable against Optionee in accordance with their terms, except as such enforcement may be limited by (i) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other Applicable Laws affecting or relating to the rights of creditors generally, or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

12. Conditions Precedent to Exercise of Option. All of the following shall be conditions precedent to Optionee's exercise of the Option in accordance with this Agreement (any of which conditions Optionor may waive in its sole discretion):

(a) Optionor shall have received the Option Consideration; and

- (b) No Optionee Default shall have occurred, and Optionee shall have performed, in all material respects, all covenants and obligations to be performed by Optionee under this Agreement.

13. Optionor Default.

- (a) The occurrence of any of the following shall constitute an "Optionor Default" under this Agreement:
 - (i) The failure to perform any obligation or responsibility of Optionor set forth in this Agreement, provided that Optionor does not cure such failure within thirty (30) days after delivery of written notice of such failure to Optionor or, if such failure is not capable of being cured within said thirty (30) day period, then Optionor does not commence to cure such failure within thirty (30) days after delivery of written notice of such failure to Optionor or thereafter does not diligently prosecute such cure to completion.
 - (b) Upon the occurrence of any Optionor Default, Optionee shall have the right to pursue any and all remedies at law or in equity that are available to Optionee as a result of such Optionor Default, including but not limited to the right to pursue injunctive relief or specific performance of this Agreement and the Potable Water Agreement.

14. Optionee Default.

- (a) The occurrence of any of the following shall constitute an "Optionee Default" under this Agreement:
 - (i) The failure to pay the Option Consideration when due; or
 - (ii) The failure to perform any other obligation or responsibility of Optionee set forth in this Agreement, provided that Optionee does not cure such failure within thirty (30) days after delivery of written notice of such failure to Optionee or, if such failure is not capable of being cured within said thirty (30) day period, then Optionee does not commence to cure such failure within thirty (30) days after delivery of written notice of such failure to Optionee or thereafter does not diligently prosecute such cure to completion.
- (b) Upon the occurrence of any Optionee Default, Optionor shall have the right to pursue any and all remedies at law or in equity that are available to Optionor as a result of such Optionee Default.

15. Assignment. Except as otherwise permitted herein, neither Party shall assign any right, title, interest or obligation under this Agreement to any person without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. In connection with Optionee's collateral assignment of this Agreement to

Optionee's financing parties, Optionor agrees to execute a consent to collateral assignment and provide legal opinions in form and substance reasonably satisfactory to Optionor, Optionee and Optionee's financing parties.

16. Waiver of Performance. Either Party may waive the satisfaction or performance of any terms or conditions of this Agreement that have been included in this Agreement for its benefit, so long as such waiver is in writing, specifies the waived term or condition and delivered to the other Party.
17. Notices. All notices under this Agreement shall be in writing and shall be effective upon actual receipt whether delivered by personal delivery, legible facsimile or reputable overnight courier or sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties as follows:

If to Optionor: Fallbrook Public Utility District
P.O. Box 2290
Fallbrook, California 92088-2290
Attention: General Manager
Telephone: [REDACTED]
Facsimile: [REDACTED] 3

If to Optionee: Orange Grove Energy, L.P.
1900 East Golf Road, Suite 1030
Schaumburg, Illinois 60173
Attention: Vice President of Asset Management
Telephone: [REDACTED]
Facsimile: [REDACTED]

With a copy to: Morgan, Lewis & Bockius LLP
300 South Grand Avenue, Suite 220
Attention: [REDACTED]
Telephone: [REDACTED]
Facsimile: [REDACTED]

18. Amendments. This Agreement may be amended only by written agreement signed by both of the Parties.
19. Time of the Essence. Time and each of the terms and conditions of this Agreement are hereby expressly made of the essence.
20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
21. Governing Law and Venue. This Agreement shall be governed by the laws of the State of California, without reference to its choice of law provisions. By execution and

delivery of this Agreement, each of Optionor and Optionee hereby irrevocably and unconditionally accepts and submits to the personal jurisdiction of said courts.

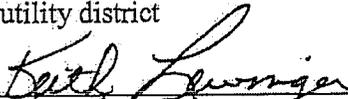
22. Attorneys' Fees and Costs. In any action between the Parties seeking the enforcement of any of the terms or conditions of this Agreement, the prevailing Party in such action shall be awarded, in addition to any damages or equitable relief, its reasonable attorney's fees and costs.
23. Prior Agreements. This Agreement supersedes any and all oral or written agreements between the Parties which are prior in time to this Agreement. Neither Optionor nor Optionee shall be bound by any prior understanding, agreement, promise, representation or stipulation, express or implied, not specified herein.
24. Further Assurance. Optionee and Optionor agree to execute all documents and instruments reasonably required in order to consummate the transactions contemplated in this Agreement.
25. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.
26. Severability. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. In the event any such provision of this Agreement is so held unenforceable, the Parties shall promptly renegotiate in good faith new provisions to restore this Agreement as near as possible to its original intent and effect.
27. Construction of Agreement. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against either of the Parties. The language of this Agreement and all documents and instruments referred to in this Agreement have been prepared, examined, negotiated and revised by each Party and its legal counsel, and no implication shall be drawn and no provision shall be construed against any Party by virtue of the purported identity of the drafter of this Agreement. The section headings of this Agreement are for purposes of reference only and shall not be used for limiting or interpreting the meaning of any section of this Agreement. When required by the context, whenever the singular is used in this Agreement, the same shall include the plural, and the plural shall include the singular, the masculine gender shall include the feminine and neuter genders, and vice versa. As used in this Agreement, the term "Optionor" shall include the respective successors and assigns of Optionor, and the term "Optionee" shall include the successors and permitted assigns of Optionee.
28. No Partnership or Joint Venture. Optionor and Optionee shall not be partners or joint venturers with each other and nothing in this Agreement shall create or be deemed to create any partnership or joint venture between Optionor and Optionee.

[Signatures appear on following page.]

IN WITNESS WHEREOF, Optionor and Optionee hereby execute this Agreement as of the date first above written.

OPTIONOR

FALLBROOK PUBLIC UTILITY DISTRICT,
a public utility district

By: 
Name: Keith Lewinger
Title: G.M.

OPTIONEE

ORANGE GROVE ENERGY, L.P., a Delaware limited partnership

By: 
Name: Stephen T. Thome
Title: Vice President

**EXHIBIT A TO OPTION AGREEMENT
POTABLE WATER AGREEMENT**

[See attached.]

ORANGE GROVE ENERGY, L.P. POTABLE WATER AGREEMENT

This Potable Water Agreement (this "Agreement") is entered into by and between the **FALLBROOK PUBLIC UTILITY DISTRICT**, a public utility district organized and operating pursuant to California Public Utility Code §15501 et seq. (hereinafter "District") and **ORANGE GROVE ENERGY** (hereinafter referred to as "Orange Grove"). This Agreement shall become effective execution by the parties.

R-E-C-I-T-A-L-S

- A. Orange Grove is a limited partnership that currently is developing a power plant project (the "Project") outside of the District's service area. As part of this Project, Orange Grove requires potable water for equipment operation, and other activities within the boundary of the Project.
- B. The District is a public agency treating and serving water, potable water and wastewater within a 28,000 acre service area in northwestern San Diego County. The District owns and operates a Water Reclamation Facility which treats wastewater and serves tertiary treated water within the District's service area and by contract to customers outside the District.
- C. Orange Grove has requested to purchase up to 62 acre-feet per year of potable water from the District via trucks provided by Orange Grove at the District's Water Filling Station (Primary Delivery Site) near the intersection of Mission Rd. and Live Oak Park Road in Fallbrook. The 62 acre-feet of potable water will provide an adequate supply of potable water for the Project.
- D. Orange Grove and the District are parties to an existing agreement for the purchase and sale of 45 acre-ft of tertiary treated recycled water from the District's waste water treatment facility (the "Recycled Water Supply Agreement").
- E. The District has agreed to sell potable water to Orange Grove in accordance with all terms of this Agreement.
- F. Orange Grove has agreed to purchase the potable water from the District in accordance with all terms of this Agreement.
- G. The term of this Agreement is twenty-five (25) years from the Agreement Start Date (as defined below).

C-O-V-E-N-A-N-T-S

1. Sale of Potable Water by District. The District agrees to sell and Orange Grove agrees to purchase, commencing on the Agreement Start Date, up to 62 acre feet per year of potable water for a term of 25 years and 2 months. The District shall bill Orange Grove on a monthly basis for actual water used, plus monthly fixed charges. A late charge equivalent to one and one half percent (1½ %) per month shall be levied for each day invoiced amounts are not paid following the due date.
2. Fees Paid to District and the Price For Potable Water and Future Price Increases. The commodity price for the potable water sold by the District to Orange Grove shall be at the published rate for construction meters set by the District Board of Directors from time to time, in its sole discretion. The construction rate for customers inside the District as of June 23rd, 2008 is \$2.95 per thousand gallons. The District makes no guarantee about future price increases and intends to sell potable water to Orange Grove at a rate established for customers inside the District's formal boundaries. The potable water commodity rate to be paid by Orange Grove shall include a capacity charge/premium charge for payment to acquire new capacity equal to [REDACTED] of the commodity rate for customers inside the District. Orange Grove's total commodity rate shall therefore be [REDACTED] of the commodity rate paid by customers with construction meters inside the District's boundaries. Orange Grove will also pay a monthly system access charge for the meter which is set for their use at the Delivery Site, currently \$373.50 per month for a 6-inch meter. This monthly system access charge is subject to increases in the future and shall be at the rate set by the District Board of Directors, in its sole discretion and is payable regardless of the quantity of potable water delivered. The monthly system access fee shall be paid in advance on the date of execution of this agreement and invoiced on a monthly basis thereafter. A late charge equivalent to one and one half percent (1½ %) per month shall be levied for each day (pro rated) the fee is paid following the due date.

In addition to the price for the potable water set by the District, an additional monthly independent fixed fee equal to Orange Grove's cost for [REDACTED] gallons ([REDACTED] x construction rate x [REDACTED]) shall be paid by Orange Grove to the District above and beyond the rate charged for the potable water. Both parties agree that this monthly fee is an independent fee paid to District for the guarantee of a long term supply and is payable upon execution of this agreement and on a monthly basis thereafter. This payment shall be paid upon execution of this agreement and invoiced monthly thereafter by the District. A late charge equivalent to one and one half percent (1½ %) per month shall be levied for each day (pro rated) the fee is paid following the due date.

3. Responsibility and Indemnity for Potable Water after Delivery. Orange Grove recognizes that by entering into this Agreement, Orange Grove is solely

responsible for the use and transportation of all potable water once it is supplied to Orange Grove at the Point of Delivery, which is defined as Orange Grove water trucks at the District's Potable Water Filling Station site near the intersection of Mission Rd. and Live Oak Park Rd. Once the potable water is delivered at the Point of Delivery, the District shall have no liability for the transportation and use of the potable water by Orange Grove. All liability for the transportation and use of the potable water after receipt at the Delivery Site shall be assumed by Orange Grove. Orange Grove agrees to indemnify and hold the District harmless and defend the District and its directors, officers, employees, agents, and representatives from and against any and all claims, causes of action, suits, actions, damages, losses, costs, fees, expenses, fines, and penalties, of whatever type or nature, including all costs of defense and attorney fees, caused in whole or in part, or claimed to be caused in whole or in part by the action, inaction, passive or active negligence, or intentional misconduct of Orange Grove in the receipt, use and transportation of the potable water after receipt at the Delivery Site.

For acts in the exclusive control of the District and occurring prior to delivery to Orange Grove, the District agrees to indemnify and hold Orange Grove harmless and defend Orange Grove and its directors, officers, employees, agents, and representatives from and against any and all claims, causes of action, suits, actions, damages, losses, costs, fees, expenses, fines, and penalties, of whatever type or nature, including all costs of defense and attorney fees, caused in whole or in part, or claimed to be caused in whole or in part by the action, inaction, passive or active negligence, or intentional misconduct of the District with respect to the District's obligations under this Agreement.

4. Term of Agreement and Termination. Unless either of the parties is in breach of any term or provision of this Agreement, this Agreement shall remain in full force and effect for a term of 25 years and 2 months after the Agreement Start Date. "Agreement Start Date" shall commence after the completion of the facilities or four months after the execution of this agreement, whichever occurs last. Orange Grove's obligations to purchase the potable water under this Agreement shall commence on the Agreement Start Date and continue for a period of 25 years and 2 months thereafter. Regardless of whether Orange Grove takes delivery of any potable water in a given month, Orange Grove must still pay the system access fees and the independent monthly fee and any and all fees owed for potable water used in that year by Orange Grove. Orange Grove's choosing not to take delivery of potable water for any period of time whatsoever, does not terminate the agreement nor the obligation to pay the monthly service charges nor the independent fee each month for the full 25 years and 2 months of the term of this agreement. Failure to pay the independent monthly fee within 45 calendar days of being invoiced shall be construed as a breach of this agreement by Orange Grove and subject the agreement to cancellation by the District in its sole discretion, as well as remedies for breach in paragraph 6 below.

5. Drought, Water supply shortage, water emergency and Incremental Recycled Water Reservation. In the event a drought, a water supply shortage or a water emergency [as determined by the District in its reasonable discretion] limits the District's ability to deliver potable water, the District may prohibit access to the potable water Point of Delivery. At any time that the District prohibits annexations to the District due to water supply concerns, the District will prohibit access to the potable water Point of Delivery. The District shall notify Orange Grove of any restrictions at least 24 hours in advance of their taking effect. For every day or partial day that the District restricts potable water access, Orange Grove shall receive an incremental increase in the reservation of tertiary treated recycled water under its Recycled Water Supply Agreement. The incremental increase in the reservation of tertiary treated recycled water shall be 62 acre-ft less the amount of potable water that has already been delivered in a calendar year.
6. Remedies for Breach. In the event of a breach of any term or provision of this Agreement by either party, both parties shall have all rights and remedies granted by California law. Nothing contained in this Agreement shall be construed as limiting any of the rights and remedies of either parties upon any breach of a term or provision of this Agreement.
7. Installation of Improvements, Priority of Use. As a material term of this Agreement, Orange Grove shall pay for all new capital facilities that will be necessary to fill Orange Grove's trucks at the Delivery Site. These improvements include at a minimum, but are not limited to approximately 200' feet of 14' wide asphalt road way, water handling facilities including 6-inch meter necessary to fill the trucks, concrete loading pad, and other ancillary appurtenances as may be required by the District in its sole discretion (collectively, the "New Facilities"). It is anticipated that the 14' wide road would provide sufficient width for trucks transporting the potable water for Orange Grove. These improvements are currently estimated to cost _____ dollars (\$_____), however in no case are the costs for the improvements limited to this amount. The District shall be responsible for constructing the New Facilities. The District shall construct the New Facilities within four (4) months after the date of this Agreement. All improvements determined necessary by the District must be completed prior to commencing deliveries, and no hauling will be allowed until all necessary regulatory permits (if any) are acquired by Orange Grove. Orange Grove shall deposit the engineer's estimate of the aforementioned facilities within 90 days in advance of construction of the facilities. Such deposits shall solely be used for the costs of constructing the New Facilities. Upon completion of construction of the New Facilities, any amounts remaining will be returned to Orange Grove within thirty (30) days after the completion of construction and payment of all invoices relating to construction. If construction costs exceed the amount deposited by Orange Grove, Orange Grove shall pay such additional costs after being notified by the District of any such additional costs. Orange Grove shall have exclusive use of the water filling station and meter and

acknowledges and agrees that the District shall be entitled to use the New Facilities. The District agrees that no third party shall have any right to use such New Facilities if such use would interfere in any way with Orange Grove's access. The District shall notify Orange Grove of any proposed third party use and obtain Orange Grove's acknowledgment and agreement that the proposed use will not interfere with Orange Grove's access. Such agreement shall not be unreasonably withheld. The Parties agree that the District shall own the New Facilities and the District agrees to pay for on-going maintenance and any further improvements of the New Facilities. The District shall construct the New Facilities and the Delivery Site to include a meter and secure access to the spigot.

8. Completion of CEQA Review and Other Permits. Orange Grove shall be solely responsible for complying with all California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA) requirements necessary for Orange Grove's receipt, use and transportation of the potable water under this agreement, if applicable. Orange Grove shall also be solely responsible for any and all permits required under any state, federal or local law for its receipt, use and transportation of potable water under this agreement. No potable water will be delivered to Orange Grove until all CEQA and NEPA certifications are complete and all necessary permits have been obtained by Orange Grove.

9. District's Representations and Warranties. District hereby represents and warrants, as of the Effective Date and the Exercise Date:

(a) Organization; Standing; Power; Authority. District is a public utility district, duly organized and existing in the State of California, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement and to consummate the transactions contemplated in the Agreement. District has taken all corporate action necessary to authorize the execution, delivery and performance of the terms and conditions of the Agreement. The individual executing the Agreement has been duly authorized to do so. The performance by District of District's obligations and responsibilities under the Agreement will not violate or constitute a default under the terms and provisions of District's bylaws or any material agreement, document or instrument to which District is a party or by which District. All proceedings required to be taken by or on behalf of District to authorize District to execute, deliver and perform the terms and conditions of the Agreement have been duly and properly taken. No further consent of any person or entity, except the San Diego Regional Water Quality Control Board, is required in connection with the execution and delivery of, or performance by District of its obligations under the Agreement.

(b) Enforceability. The Agreement constitute or shall constitute the valid and binding obligation of District, enforceable against District in accordance with their terms, except as such enforcement may be limited by (i) the effect of bankruptcy,

insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other Applicable Laws affecting or relating to the rights of creditors generally, or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

10. Orange Grove's Representations and Warranties. Orange Grove hereby represents and warrants, as of the Effective Date and the Exercise Date:
- (a) Organization; Standing; Power; Authority. Orange Grove is a Delaware limited partnership duly organized and existing in the State of Delaware, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement, and to consummate the transactions contemplated in this Agreement. Orange Grove has qualified to do business in the state of California with the California Secretary of State and is in good standing with the California Corporation's Commission. Orange Grove will provide to District a copy of its current qualification letter. Orange Grove has taken all corporate action necessary to authorize the execution, delivery and performance of the terms and conditions of the Agreement. The individual executing the Agreement has been duly authorized to do so. The performance by Orange Grove of Orange Grove's obligations and responsibilities under the Agreement will not violate or constitute a default under the terms and provisions of Orange Grove's partnership agreement or any material agreement, document or instrument to which Orange Grove is a party or by which Orange Grove is bound or affected. All proceedings required to be taken by or on behalf of Orange Grove to authorize Orange Grove to execute, deliver and perform the terms and conditions of the Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Orange Grove of its obligations under the Agreement.
- (b) Enforceability. The Agreement constitute or shall constitute the valid and binding obligation of Orange Grove, enforceable against Orange Grove in accordance with their terms, except as such enforcement may be limited by (i) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other Applicable Laws affecting or relating to the rights of creditors generally, or (ii) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.
11. Miscellaneous Provisions.
- A. California Law. California law shall govern all terms of this Agreement.
- B. Venue. In the event any arbitration or litigation is commenced to enforce, interpret or invalidate any terms or provisions of this Agreement, the parties

agree that venue shall lie only in the Superior Court for the North County Judicial District, County of San Diego, State of California.

- C. Modification. This Agreement may not be altered in whole or in part except by a modification, in writing, executed by all the parties to this Agreement.
- D. Attorney's Fees. In the event of any arbitration or legal or equitable proceeding to invalidate, enforce, challenge, or interpret any terms of this Agreement, the prevailing party shall be entitled to all attorney's fees and costs in addition to any other relief granted by law. The prevailing party shall also be entitled to recover all such fees and costs during any appeals and during any bankruptcy proceedings.
- E. Entire Agreement. This Agreement, together with all exhibits attached to this Agreement contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda, or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its exhibits. The parties mutually declare there are no oral understandings or promises not contained in this Agreement which contains the complete, integrated, and final agreement between the parties.
- F. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective purchasers, successors, heirs, and assigns.
- G. Unenforceable Provisions. The terms and conditions and covenants of this Agreement shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Agreement, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.
- H. Representation of Capacity to Contract. Each party to this Agreement represents and warrants that he or she has the authority to execute this Agreement on behalf of the entity represented by that individual and that this Agreement is final and binding upon both parties.
- I. Opportunity to be Represented by Independent Counsel. Each of the parties to this Agreement warrant and represent that they have been advised to consult independent legal counsel of their own choosing and have done so prior to executing this Agreement.
- J. No Waiver. The failure of either party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be

construed as a waiver of either party's right to enforce this, or any other term, covenant, or condition of this Agreement. No waiver shall occur unless the waiver is stated expressly in writing and signed by the party waiving the right. No oral waivers shall be effective for any purpose.

- K. Effective Date. The effective date of this Agreement executed in counterparts within the North County Judicial District, County of San Diego, State of California, is _____.
- L. Counterparts and Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be permitted and shall be treated as original signatures for all purposes.
- M. Assignment. Neither party shall assign its rights to this Agreement without the prior written consent of the other party; provided that Orange Grove shall be permitted to collaterally assign its rights under this Agreement to the lenders providing financing to Orange Grove with respect to the Project and District shall execute consents to collateral assignment as may be reasonably requested by Orange Grove's lenders.
- N. Further Documents and Acts, Financing Cooperation. Each of the parties hereto agrees to cooperate in good faith with each other, and to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement. The District agrees that such cooperation to execute further documents hereunder includes executing consents to collateral assignment and providing opinions of counsel as may be requested by the lenders providing financing to Orange Grove with respect to the Project.

Dated: _____, 2008

FALLBROOK PUBLIC UTILITY DISTRICT,
a Public Utility District

By: _____
Keith Lewinger, General Manager

Dated: _____, 2008

ORANGE GROVE ENERGY, L.P.,
a Delaware limited partnership

By: _____
Stephen Thome, Vice President

**Orange Grove Energy Potable Water Agreement
List of Exhibits**

1. Exhibit "A" Map of Orange Grove Energy "Project" Site.
2. Exhibit "B" Plot of Location of the Proposed Birdcage Tank Truck Filling Site,
(Primary Delivery Site)