

MEMORANDUM OF UNDERSTANDING BETWEEN COUNTY OF TULARE AND
SELF HELP ENTERPRISES, INC. REGARDING TRANSITION OF EMERGENCY
DROUGHT RELIEF EFFORTS

This Memorandum of Understanding (“MOU” or “Agreement”) is entered into by the County of Tulare (hereinafter referred to as “COUNTY”) and Self Help Enterprises, a California non-profit corporation (hereinafter referred to as “SHE”), effective upon signature of all parties or July 1, 2017 (whichever is earlier), through June 30, 2018.

WHEREAS, COUNTY proclaimed a Local Emergency due to Drought on February 4, 2014, and such Local Emergency continues to exist as of June 2017; and

WHEREAS, the Governor proclaimed a State of Emergency for Drought for all 58 California Counties on January 31, 2014, and such State of Emergency was continued on April 7, 2017 by Governor’s Executive Order B-40-17 for the Counties of Tulare, Kings, Fresno, and Tuolumne; and

WHEREAS, the Governor’s Executive Order B-26-14 of September 19, 2014, authorized California Disaster Assistance Act (CDAA) funding for drought relief efforts, but Executive Order B-40-17 subsequently terminated such funding as of June 30, 2017; and

WHEREAS, COUNTY partnered with SHE, Community Services Employment Training (CSET), and United Way of Tulare County (UWTC) in late 2014 to develop a Household Tank Program (“HHTP”) to provide drought relief to local affected populations utilizing CDAA funding; and

WHEREAS, the HHTP has been implemented using Mission/Task Requests as prescribed within the Standardized Emergency Management System, California Disaster Assistance Act, and Non-Profit Organizations Assistance Program, with CDAA reimbursement for eligible program activities provided to COUNTY and directly to each partner organization by the Governor’s Office of Emergency Services (“CalOES”); and

WHEREAS, the HHTP was officially launched in January, 2015, and has served several hundred participants since that time, with approximately 440 tank systems remaining in service as of June, 2017; and

WHEREAS, current responsibilities within the HHTP include:

- a. COUNTY – program administration, site assessments, building permits, sourcing and contracting for potable water, and storage of unused / removed components
- b. SHE – tank and pump equipment purchase and inventory, participant leases / renewals of tanks and equipment, regular water quality sampling, monitoring of long-term solution progress

- c. CSET – tank installation / removal, preventative maintenance, troubleshooting/ repair of installed systems, and storage of removed/unused components
- d. UWTC – customer service, water hauler contracting and dispatching, leaning/sealing of removed tanks prior to re-deployment

WHEREAS, COUNTY and local partners determined in April, 2017, that if CDAA funding were discontinued on June 30, 2017, per the Governor’s Executive Order, continuing the HHTP solely with local funding would not be financially feasible or sustainable, and that the existing HHTP would need to be terminated on or before CDAA funding terminated, despite the fact that certain communities in Tulare County continue to lack reliable access to potable domestic water; and

WHEREAS, on May 9, 2017, the Director of CalOES notified COUNTY that although CDAA funding is ending, additional funding for temporary, emergency water deliveries would likely be available for up to 12 months after CDAA funding ends, beginning July 1, 2017, as a grant program; and

WHEREAS, on June 8, 2017, CalOES released information regarding the Emergency Water Tank Continuation Program, for which SHE is an eligible applicant.

WHEREAS, SHE has indicated a willingness to assume full responsibility for providing temporary emergency water assistance past June 30, 2017 under the CalOES proposed grant program; and

WHEREAS, CalOES determined that SHE owns all of the tanks and pumping equipment purchased by SHE and reimbursed with CDAA funds for use with the HHTP; and

WHEREAS, on May 23, 2017, COUNTY Board of Supervisors voted to terminate the HHTP as of June 30, 2017, and to work to transition the current HHTP to a potential successor program; and

WHEREAS, on May 26, 2017, CalOES provided formal guidance allowing CDAA recipients to seek reimbursement “for costs for retrieving and removing the tanks through July 31, 2017;” and

WHEREAS, if not for SHE’s desire to leave their tanks on HHTP participants’ property and to assume responsibility for emergency water deliveries past June 30, 2017, COUNTY would demobilize and remove all tanks installed with respect to the HHTP prior to expiration of CDAA funding; and

WHEREAS, the Board finds and determines that, given the continued drought; the potential health, safety, and welfare problems that face households and communities with no access to domestic potable water; and the limited affordable housing options in Tulare County,

working with SHE to transition the current HHTP program to a potential successor program, including allowing SHE access to County's current potable water sources to the extent feasible and allowing SHE time to transition HHTP equipment off County property, would be in the public interest and would serve several public purposes, including (1) protecting the health, safety, and welfare of the public by reducing the possibility of public nuisances or homelessness caused by lack of domestic water supplies; and (2) allowing additional time for communities to organize and investigate potential permanent solutions to the lack of potable water.

NOW, THEREFORE, the parties agree as follows:

1. **SUCCESSOR PROGRAM GRANT APPLICATION:** SHE will apply for the Emergency Water Tank Continuation Program grant funding offered by CalOES to implement a successor water delivery program (referred to herein as the "successor program") to the current HHTP being offered in Tulare County. SHE's successor program will begin service on July 1, 2017, to clients who are currently enrolled and participating in the current HHTP on June 30, 2017, with the express understanding that the CalOES grant performance period begins on July 1, 2017, but a grant award and subsequent reimbursement is not anticipated prior to late July, 2017. Should SHE's grant award be delayed, suspended, or terminated for any reason, SHE will be responsible for notifying the successor program participants of issues related to implementation or sustainment of the program.

2. **SUCCESSOR PROGRAM ACTIVITIES:** SHE's successor program will provide potable, appropriately-treated water deliveries to clients of its successor program, unless precluded from providing such water by terms of the grant from CalOES. Furthermore, SHE will continue and/or assume responsibility for all current activities of the HHTP, except those expressly enumerated below:

- a. Regular water quality sampling, which SHE desires to discontinue;
- b. Any activity ineligible for funding under the terms of the CalOES grant, such as the installation of new tanks after July 1, 2017;
- c. Building permit-related activities which cannot be delegated by COUNTY.

SHE shall have sole discretion as to how the successor program activities are implemented, to include contracting activities.

3. INDEPENDENT CONTRACTOR STATUS:

This Agreement is entered into by both parties with the express understanding that SHE will fulfill all of the duties and obligations outlined by this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute SHE or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

SHE agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria

contained in this Agreement, SHE shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over SHE as to how the services will be performed. As SHE is not COUNTY's employee, SHE is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- a. Withhold FICA (Social Security) from SHE's payments.
- b. Make state or federal unemployment insurance contributions on SHE'S behalf.
- c. Withhold state or federal income tax from payments to SHE.
- d. Make disability insurance contributions on behalf of SHE.
- e. Obtain unemployment compensation insurance on behalf of SHE.

4. **GENERAL LIABILITY, INDEMNITY, HOLD HARMLESS:** SHE assumes and accepts all responsibility and liability, and COUNTY disclaims all liability or responsibility, for SHE's successor program activities, including any activities required to comply with CalOES or any other grant funding requirements. In exchange for COUNTY's commitments in this MOU, SHE shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, SHE's successor program activities, including, but not limited to, SHE's decision to utilize any COUNTY water source (in accordance with Paragraph 11 below) or COUNTY's sponsorship of SHE's CalOES application for the successor program. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this MOU, and any claims made against COUNTY alleging civil rights violations by SHE under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for SHE's failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this MOU as to any acts or omissions occurring under this MOU or any extension of this MOU.

5. **OWNERSHIP OF TANKS:** Neither COUNTY nor SHE believe COUNTY has any ownership interest in any of the tanks, pumps, or other materials purchased by SHE and reimbursed with CDAA funds for the HHTP. However, to the extent COUNTY has any ownership interest in any of the tanks, pumps, or other materials purchased by SHE for the HHTP, all such ownership rights and interests are hereby conveyed and transferred to SHE. In the event that a conveyance and/or transfer occurs pursuant to this paragraph, the Board of Supervisors finds that such a conveyance and/or transfer serves several important public purposes, including protecting the health, welfare, and safety of the public and minimizing potential public nuisances by providing domestic water to households and communities that continue to be adversely impacted by a lack of domestic water supply.

Any property so conveyed and/or transferred is provided to SHE on an "As Is" Basis, and COUNTY does not make any warranty or representations regarding the condition, location, or usefulness of the property so conveyed and/or transferred. Any proceeds related to or derived from the ultimate sale or disposition of any tanks, pumps, or other materials which SHE purchased for the HHTP and for which SHE was reimbursed with CDAA funds, shall be handled between SHE and CalOES, in accordance with State guidelines. Furthermore, to the extent that any ownership rights or interests are herein conveyed and/or transferred, SHE specifically agrees to hold harmless, defend and indemnify the State of California, CalOES, and the COUNTY, including their respective agents, officers and employees, from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, SHE's use and SHE's ultimate disposition of the tanks, pumps, and other related materials.

6. **POST-CDAA RELEASE OF LIABILITY AND HOLD HARMLESS:** The parties expressly acknowledge that CDAA funding would have been available to remove household tanks from participants' properties and storage locations, if tank removal and transport had been completed before CDAA funding was terminated, or before June 30, 2017, whichever date is later. SHE assumes all risk in, and releases COUNTY from all liability for, not removing tank systems from HHTP participants' properties prior to the termination of CDAA funding. Moreover, SHE shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, SHE's determination to allow homeowners to maintain tanks on their property after the HHTP terminates. SHE further acknowledges that if SHE allows any homeowners to keep the tanks after the HHTP and/or the successor program have terminated, CalOES requires all such homeowners to execute a hold harmless and release of liability agreement, in favor of the State of California, CalOES, and COUNTY, which form must be approved by CalOES and COUNTY.

7. **ADMINISTRATION OF PROGRAM:** SHE will be responsible for all aspects of administration and implementation of any successor program, including, but not limited to, determining whether participants are eligible for SHE's successor program, and determining what sort of documentation SHE needs from current HHTP Participants to enroll in the SHE successor program and to comply with CalOES requirements.

8. **NEW PROGRAM DOCUMENTATION:** At the earliest practicable opportunity, and no later than July 31, 2017, SHE will obtain new program documentation from successor program participants, including any necessary applications, agreements or right of entry forms. SHE agrees to remove from its current documents, and refrain from including in future

documents, any reference to either the COUNTY or other HHTP partners providing any specific good or service with respect to the SHE successor program, unless such parties specifically agree in writing to provide additional goods or services in relation to the successor program.

9. **PARTICIPANT CONTACT INFORMATION:** COUNTY will continue to work with SHE and other HHTP partners to keep contact information for current HHTP participants up-to-date, through June 30, 2017. COUNTY and SHE may exchange participant information after June 30, 2017, as necessary for both parties to fulfill CalOES reporting requirements and the terms of this MOU, or to better serve the interests of the public.

10. **BUILDING PERMITS:** With respect to the temporary building permits issued in relation to the installation and inspection of household tanks for the current HHTP, and which remain open on June 30, 2017, COUNTY will allow such temporary building permits to remain open for any participants who reenroll in SHE's successor program by July 31, 2017. Furthermore, during the term of SHE's successor program, COUNTY will perpetually renew such temporary permits for households that continue to participate in SHE's successor program, provided that such permits will not be allowed to remain open past June 30, 2018. Furthermore, SHE will be responsible for ensuring that COUNTY is notified of all tank system removals occurring between July 1, 2017 and June 30, 2018, so that COUNTY may conduct inspections and close the building permits. Prior to the expiration of this agreement, or within a period after such expiration as mutually agreed upon by SHE and COUNTY's Building Official (in writing and in advance of this MOU's expiration), all tank systems must be removed from service and/or brought into conformance with all relevant requirements and regulations, including but not limited to plumbing and electrical codes and standards, set-back requirements, and encroachments. As noted in Paragraphs 4, 5, and 6 above, COUNTY shall be held harmless from, and SHE assumes all responsibility and liability for, the cost of tank removal; and, if SHE determines to allow homeowners to keep the tanks once the successor program ends, SHE will ensure that the homeowner completes all subsequent modifications required to conform such tanks and installations to the relevant land use requirements prior to June 30, 2018.

11. WATER SOURCES:

a. SHE agrees to pursue agreements with potable water sources for purposes of its successor program.

b. To the extent permitted by its current contracts with its water suppliers, and only until such contracts expire, COUNTY agrees to cooperate with SHE in providing access to potable water sources to which COUNTY has access for purposes of the HHTP, through whatever mechanism COUNTY deems feasible and appropriate, including but not limited to assignment of contracts or a reimbursement arrangement as specified in paragraph (d) below. SHE shall not be obligated to utilize COUNTY's water sources for its successor program.

Furthermore, COUNTY will not provide SHE with any water for the successor program, unless and until all of the provisions of Paragraph 11 are satisfied.

c. Should SHE opt to utilize or access any of COUNTY's water sources, SHE hereby agrees to be responsible for one hundred percent (100%) of the costs of the successor program obtaining or utilizing water from any of COUNTY's sources after June 30, 2017. This includes paying for any continuing equipment or use fees beyond June 30, 2017. Furthermore, SHE shall assume all liability for and indemnify and hold COUNTY harmless against all liabilities that might arise from SHE's access or use of the water pursuant to those source agreements, including, but not limited to, water quality, damage to equipment, or loss of use. Before SHE begins accessing any of COUNTY's water sources, SHE further agrees to reimburse COUNTY for any applicable deposits COUNTY made pursuant to such source agreements, such as meter deposits, which COUNTY would have otherwise recovered as part of its termination and unwinding of the current HHTP, as described above in the recitals.

d. If COUNTY determines to allow SHE to access COUNTY's water sources through a reimbursement arrangement:

i. SHE's Executive Director will notify COUNTY Health and Human Services Agency (HHS) Director and Office of Emergency Services (OES) Manager in writing of any COUNTY water sources which SHE would like to utilize or access for the successor program.

ii. COUNTY HHS Director will notify SHE in writing of whether and when SHE can begin accessing or utilizing such water sources, including whether there are any specific conditions or limitations related to accessing or utilizing such water; provided that under no circumstances will any conditions imposed by COUNTY HHS Director be interpreted to modify, amend, or supersede any provisions of this agreement. SHE's Executive Director must accept in writing any conditions imposed by COUNTY HHS Director, and must also confirm in writing when SHE will begin using the COUNTY's source water pursuant to this paragraph.

iii. COUNTY will invoice SHE for the amount of water and other fees incurred by COUNTY for the successor program's use or access of COUNTY's source water, pursuant to its agreements with its suppliers.

iv. SHE shall make full and complete payment to COUNTY for all invoices within thirty (30) days of COUNTY's transmission of the invoice to SHE at the address provided in the "Notices" section below.

v. SHE agrees to maintain complete and accurate records with respect to the costs incurred and/or water obtained for the successor program from the COUNTY's water source suppliers. In addition, SHE shall maintain complete and accurate records with respect to any payments to employees or subcontractors for any water obtained or costs incurred, pursuant to the COUNTY's water source agreements. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, SHE shall make such records available within Tulare COUNTY to the Auditor of Tulare COUNTY and to his/her agents and representatives, for the

purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

e. Except as otherwise provided by separate agreement, COUNTY reserves the right to suspend and/or terminate SHE's access to any of COUNTY's water source(s) at any time. COUNTY will endeavor to provide SHE with as much advance notice of termination or suspension as possible. In the case of a reimbursement arrangement as authorized herein, COUNTY will suspend and potentially terminate SHE's access to COUNTY's water source(s) if SHE does not make timely payment of invoices.

12. **STORAGE OF EQUIPMENT:** SHE shall have until September 30, 2017, to remove all tank, pump, or other materials associated with the current HHTP or SHE successor program from COUNTY's properties. SHE shall be responsible for the cost of removing such tanks and other equipment. SHE shall not bring additional materials onto COUNTY's property for storage after July 1, 2017. In the event materials remain on COUNTY's property after September 30, 2017, COUNTY may charge SHE rent for the actual space occupied at current fair market value, and/or dispose of the materials and invoice SHE for the cost of disposal.

13. **NOTICES:** Except as may be otherwise required by law, any notice to be given pursuant to this agreement shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare COUNTY
Attn: OES Manager
5957 S. Mooney Blvd.
Visalia, CA 93277
TELEPHONE (559) 624-7495
FACSIMILE (559) 624-7499
EMAIL ALockman@tularehhsa.org

With a copy to:

Tulare COUNTY
Attn: HHSACONTRACTS Unit
5957 S. Mooney Blvd.
Visalia, CA 93277
(559) 624-8000
HHSACONTRACTS@tularehhsa.org

SELF HELP ENTERPRISES:

Self Help Enterprises
Attn: Susan Atkins
PO Box 6520
Visalia, CA 93291
TELEPHONE (559) 802-1630
FACSIMILE (559) 651-3634
EMAIL SusanA@selfhelpenterprises.org

Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fourth (4th) day after the date of mailing. Courtesy copies may be provided by email. Either party may change the above address by giving written notice pursuant to this paragraph.

14. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and for legal purposes shall be deemed to be performed in Tulare County, California.

15. **AMENDMENT:** This Agreement and its provisions herein shall not be amended or modified, except upon mutual agreement of the parties. Only the Board of Supervisors of Tulare County is authorized to amend or modify these provisions on behalf of the COUNTY.

16. **ASSIGNMENT:** Unless otherwise provided in this Agreement, no part of this Agreement may be assigned without the prior written consent of COUNTY.

17. **NO THIRD PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

18. **RECITALS AND EXHIBITS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

19. **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

20. **CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

21. **CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY:** This Agreement is subject to and shall be interpreted in accordance with all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void and severed from the remaining provisions.

22. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

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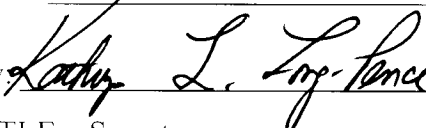
THE PARTIES, have read and considered the above provisions, and indicate their agreement and intent to be legally bound to such provisions by their authorized signatures below.

SELF HELP ENTERPRISES

Date: 6-19-17

By: 
TITLE: President/CEO

Date: 6-19-17

By: 
TITLE: Secretary

Unless this contract is accompanied by a certified copy of the corporation's Board of Director's resolution authorizing the execution of the contract, the County requires that, pursuant to Corporations Code section 313, contracts with a corporation be signed by two individuals, one from each of the following lists of officers: (1) chairman of the Board of Directors, the president, or any vice-president; and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer.

COUNTY OF TULARE

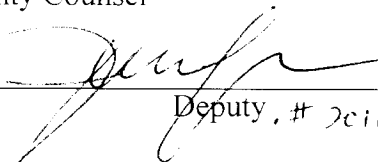
Date: _____

By: _____
Chairman, Board of Supervisors

ATTEST:
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By: _____
Deputy Clerk

Approved as to Form
County Counsel

By: 
Deputy, # 20161922