RESOLUTION - ACTION REQUESTED 2015-87

MEETING: February 24, 2015
TO: The Board of Supervisors
FROM: Robert Ryder, Health Officer
RE: MOU with Self-Help Enterprises

RECOMMENDATION AND JUSTIFICATION:
Approve a Memorandum of Understanding (MOU) with Self-Help Enterprises (SHE) to Provide Emergency Water to Eligible Mariposa County Private Citizens for Sanitation Purposes through the California Disaster Assistance Act (CDAA) Program, and Authorize the Board of Supervisors Chair to Sign the MOU.

The County applied for and was successful in obtaining CDAA funding. The CDAA program provides funding for emergency water to eligible private citizens. This funding is one-hundred percent reimbursable if managed through a private non-profit (PNP) organization. If the program were managed through the County, then the County would be responsible for twenty-five percent (25%) of the costs.

SHE will oversee the program and contract with private contractors for the installation of 1,500 - 3,000 gallon water tanks for use by the private citizen whose well has gone dry because of the drought situation. SHE has operated similar programs in Fresno and Tulare counties, and the Health Department is recommending that the Board approve this as a sole-source vendor as staff was unable to identify another local PNP that has the necessary level of expertise and knowledge to manage this program. Please see the attached memorandum regarding staff’s recommendation on a sole-source vendor.

The following provides information on SHE.

Organization Mission: To improve the lives of low-income residents in the San Joaquin Valley through housing and related programs and services.

Activities: Self-Help Enterprises, recognized by HUD as a Community Housing Development Organization (CHDO), has been assisting low-income residents of the San Joaquin Valley to improve their living conditions since 1965. With the guiding philosophy of helping people to help themselves, SHE utilizes a comprehensive approach to meeting low-income housing needs. Four Divisions focus on different aspects of unmet rural housing needs: the Community Development Division staff assists low-income communities in securing basic services such as water and sewer systems; the Multi-Family Housing Division develops affordable rental housing units; the New Homes Division helps more than 100 families per year to build their own
homes; and the Partner Services Division assists 15 to 20 Valley jurisdictions each year with grant administration; implementation of Housing Rehabilitation and Homebuyer programs; and Loan Portfolio Management. SHE also currently provides Homeownership Counseling and Education in English and Spanish.

**Annual operating budget:** $6,528,823

**How the Self Help is currently serving those affected by the drought:** SHE has secured grant funds through USDA’s Household Water Well Grant and Housing Preservation Grant that are being used to assist those affected by the drought with repair or replacement of dry wells. SHE has also committed approximately $45,000 in recaptured funds to assist with drought efforts and is collaborating with USDA and local government agencies to secure other funding resources available to assist those in need of a permanent solution. SHE currently has an MOU with Tulare County OES to provide drought related services and is working with Fresno County to provide similar services.

Attached is the process that SHE will follow as well as the estimated cost of this program.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**
On December 16, 2014, the Board approved Applying for the California Disaster Assistant Act (CDAA) Program to provide emergency drinking water to private citizens in the county.

On February 10, 2015, the Board approved the Plan for Implementing the California Disaster Assistant Act (CDAA) Program with Resolution 2015-74. The Board directed Health Department staff to research the sole source issue with other local government agencies and the State OES to ensure we would not be violating procurement requirements.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**
Do not approve Sole Source of Private Non-Profit to Self-Help Enterprises. Look for alternative Private Non-Profit agencies to manage this program.

**ATTACHMENTS:**
*Memo to Dr. Ryder Re Sole Source Provider - Self Help Enterprises 2-11-2015 (PDF)*
*MEMORANDUM OF UNDERSTANDING BY AND BETWEEN SELF HELP ENTERPRISES AND THE COUNTY OF MARIPOSA (DOCX)*
*CDAA - Self Help Enterprise Process (PDF)*
*Mariposa County-SelfHelpEnterprises CAL OES Cost Breakdown Summary (PDF)*

**CAO RECOMMENDATION**
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, John Carrier
EXCUSED: Kevin Cann
MEMORANDUM OF UNDERSTANDING BY AND BETWEEN SELF HELP ENTERPRISES AND THE COUNTY OF MARIPOSA

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 24th day of February 2015, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Self-Help Enterprises ("SHE"), a California Non Profit Public Benefit Corporation, hereinafter the Parties, pursuant to the following terms and conditions.

1. SUBJECT

This Memorandum of Understanding concerns the provision of emergency water supplies for sanitation related to the drought pursuant to the California Disaster Assistance Act, California Government Code section 8600 et seq., California Code of Regulations, Title 19, section 2900 et seq. and Executive Order B-26-14 issued on September 19, 2014, for which funding is available to local agencies or to State Private Non-Profits.

2. PURPOSE

This MOU establishes policies and procedures that will guide the parties hereto in implementing the provision of emergency water supplies for drinking and/or sanitation pursuant to the Executive Order B-26-14 and the other laws and regulations listed above. As required under the California Disaster Assistance Act and its implementing regulations, the County may seek a private non-profit to provide emergency water supply services. The County has determined SHE has the ability, capacity and is in the best situation to provide these services. The County as the local agency has requested SHE as the private non-profit to provide essential community services including emergency water supply to households without water for drinking and/or sanitation purposes ("emergency services") related to the drought. SHE has agreed to provide the emergency services. This shall be known as the "emergency water supply program" or "program" as set forth in this MOU.

3. ROLES AND RESPONSIBILITIES

a. County Responsibilities:

The County agrees to accept all complaints by households that are without water for drinking and/or sanitation purposes. The County agrees it will determine eligibility for these emergency services by verifying whether or not the household is without water for drinking and/or sanitation purposes related to the drought. If the County determines the household is eligible for these emergency services, it will refer the household to SHE. The County agrees to provide other necessary assistance and consultation to SHE in an effort to ensure emergency services are provided to those eligible for this program.

b. SHE Responsibilities:

Other than certification of eligibility of a household and referral of a household to SHE, SHE agrees to be responsible for all other administrative functions and requirements of the program, including but not limited to, delivery of emergency services to the household on a temporary basis and to continue to provide emergency services under this
program until it is determined by the Governor and/or the State of California, Office of Emergency Services this program is no longer in effect and submittal of claims for reimbursement of eligible activities.

4. FUNDING

There shall be no exchange of funds between the parties to this MOU. SHE may apply directly with the State of California, Office of Emergency Services to seek reimbursement for eligible costs of implementing and carrying out this program.

5. DURATION

This MOU shall be in effect from the date of execution. This MOU can be terminated upon a thirty (30) day advice written notice of the termination by either party. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. PNP obligations such as record retention and other continuing requirements in state law and regulation related to this program shall survive termination of this MOU.

6. MODIFICATIONS OF THIS MOU

This MOU is the complete agreement by and between the parties related to this program and it may be modified by mutual written consent of the parties.

7. LIABILITY

The parties shall not be liable for any claim based on the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a state or local agency or any employee of the state or its political subdivisions in carrying out the provisions of the California Disaster Assistance Act (CDAA).

8. RELATIONSHIP OF PARTIES

This MOU shall not be construed to create a relationship of partners, employees, or servants or as agents between the parties.

9. ASSIGNMENT

This MOU may not be assigned to any other party without the express written permission by the County and as approved by the California Office of Emergency Services.

10. NOTICE

Any and all notices, reports or other communications to be given to County or PNP shall be given to the persons representing the respective parties at the following addresses:
11. CONTROLLING LAW

The validity, interpretation and performance of this MOU shall be controlled by and construed under the laws of the State of California and venue shall be Mariposa County.

12. COMPLIANCE WITH THE LAW

SHE shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to SHE’s performance under this MOU, including, but not limited to, laws related to prevailing wages, and state and federal civil rights laws that prohibit discrimination, and the First Amendment to the United States Constitution with regard to the use of the public funds for religious activities.

13. RECORDS RETENTION

SHE shall retain all financial and program records and supporting documentation, reasonably considered as pertinent to the program for three (3) years from the starting date of the retention period as verified by notification from the State.

14. ENTIRE AGREEMENT

This MOU and any exhibits or written amendments attached hereto and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements.

15. AUTHORITY

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this MOU in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the MOU shall comply with all requirements of law, including capacity and authority to amend or modify the MOU.

16. INSURANCE

a. SHE shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County as may be required by the Risk Manager of the County. SHE’s insurance policy(ies) shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The Policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy,
notices of same shall be given to the Risk Manager of the County by registered mail, return receipt requested, for all of the following stated insurance policies:

1. **Workers' Compensation Coverage** - Workers' Compensation Insurance and Employer's Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized sub-contractor to obtain such insurance for its employees).

2. **General Liability Coverage** - Commercial general liability insurance with a minimum liability limit per occurrence of one million dollars ($1,000,000) for bodily injury and one hundred thousand dollars ($100,000) for property damage. If a commercial general liability insurance form or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this MOU or the general aggregate limit shall be at least twice the required occurrence limit. Coverage shall be included for premises, operations and broad form contractual.

3. **Automobile Liability** insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage. This insurance shall cover for bodily injury and property damage, owned, hired and non-owned vehicles.

b. **Policy Endorsements:** Each general liability and automobile liability insurance policy shall be endorsed with the following specific provisions:

1. The County, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds ("County additional insureds").

2. This policy shall be considered, and include a provision it is, primary as respects the County additional insureds, and shall not include any special limitations to coverage provided to the County additional insureds. Any insurance maintained by the County, including any self-insured retention the County may have, shall be considered excess insurance only and shall not contribute with it.

3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

4. The insurer waives all rights of subrogation against the County additional insureds.

5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County additional insureds.

c. **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the County's option, SHE shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
d. Unsatisfactory Policies: If at any time any of the policies or endorsements be deemed to be unsatisfactory as to form or substance by the Risk Manager, or if an issuing company shall be deemed to be unsatisfactory by the Risk Manager, a new policy or endorsement shall be promptly obtained and evidence submitted to the Risk Manager for approval.

e. Failure to Comply: Upon failure to comply with any of these insurance requirements, this MOU may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this MOU, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

17. HOLD HARMLESS INDEMNIFICATION

SHE shall indemnify, defend, save, protect and hold harmless County, its elected and appointed officials, officers, employees, agents and volunteers (collectively, "County") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of SHE, its officers, employees, agents, consultants, or any person under its direction or control and shall make good to and reimburse County for any expenditures, including reasonable attorney's fees, the County may make by reason of such matters and, if requested by County, shall defend any such suits at the sole cost and expense of SHE. SHE's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that SHE shall not be required to indemnify County for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the County. This indemnification clause shall survive the termination or expiration of this MOU.

County shall indemnify, defend, save, protect and hold harmless SHE, its officers, employees, representatives and from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of County, its governing body, officers, employees, agents, consultants, volunteers or any person under its direction or control and will make good to and reimburse SHE for any expenditures, including reasonable attorney's fees, that SHE may make by reason of such matters and, if requested by SHE, will defend any such suits at the sole cost and expense of County. County's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of SHE or any other person; provided, however, that County shall not be required to indemnify SHE for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of SHE.

18. DISPUTES
Should it become necessary for a party to this MOU to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

IN WITNESS WHEREOF, the parties have executed this MOU as of the day and year first written above.

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<th>COUNTY OF MARIPOSA</th>
<th>SELF-HELP ENTERPRISES</th>
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<tr>
<td>By: [Signature]</td>
<td>By: Thomas J. Collishaw</td>
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<td>Chairman, Board of</td>
<td>President/CEO</td>
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APPROVED AS TO LEGAL FORM:

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<td>County Counsel</td>
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