

**MEMORANDUM OF UNDERSTANDING NUMBER:**

**Between**

**THE STATE OF MICHIGAN**

**MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**And**

PARTNER / ENTITY NAME Capital Area Community Services, Inc.	PRIMARY CONTACT Miguel Rodriguez
EMAIL Miguel@cacsmi.org	TELEPHONE 517-482-6281

**And**

PARTNER / ENTITY NAME	PRIMARY CONTACT
EMAIL	TELEPHONE - -

MDHHS CONTACT	NAME Ben Gulker	TELEPHONE 517-285-8053	EMAIL MDHHS-LIHWAP@michigan.gov
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**MEMORANDUM OF UNDERSTANDING SUMMARY**

BRIEF DESCRIPTION OF PURPOSE	Agreement between the water/wastewater provider, Community Action Agency and MDHHS for participation in the Low Income Household Water Assistance Program.
BEGIN DATE	END DATE September 30, 2023

The individual or officer signing this agreement certifies by his or her signature that he or she is authorized to sign this agreement on behalf of the responsible governing board, official or agency.

Capital Area Community Services, Inc.

Michigan Department of Health and Human Services

Signature of Authorized Designee

Signature of Director or Authorized Designee

Print Name / Title

Jeanette Hensler  
Director-Grants Division, Bureau of Grants and Purchasing  
Print Name / Title

Date

Date

\_\_\_\_\_

Signature of Authorized Designee

Print Name / Title

Date

## Memorandum of Understanding Number:

This Memorandum of Understanding (MOU) establishes the responsibilities and procedures for the Michigan Department of Health and Human Services (MDHHS), Capital Area Community Services, Inc. (Capital Area Community Services, Inc. [CACCS]), and ( \_\_\_\_\_ ) for the purpose described below.

### **1. Background**

Access to safe and affordable drinking water and wastewater services is a fundamental element of health, safety, and well-being for households across America. Yet water affordability is a significant and growing concern in communities across the country, and many communities have faced significant challenges related to water safety, aging water infrastructure, and even water shortages due to drought. Moreover, water affordability concerns and the growing crisis of household indebtedness disproportionately impacting low-income individuals and communities of color can be related to multiple adverse household impacts in terms of service disconnections and lien sales, leading to home foreclosures and evictions.

For many low-income households across America, water affordability needs have been significantly exacerbated by the COVID-19 public health crisis, and while water is required to follow the federal guidance from the Centers for Disease Control and Prevention (CDC) advising washing hands frequently in order to reduce the transmission of Covid-19, the pandemic has made it significantly more difficult for individuals and families to pay their home drinking water and wastewater bills.

While water costs and accessibility vary significantly from state to state, the Low Income Household Water Assistance Program (LIHWAP) provides critical nationwide emergency support on behalf of low-income households so that these households are not forced to choose between paying for water services and other necessities like housing, food, and medicine.

### **2. Purpose**

As recommended in Information Memorandum LIHPWAP-IM-2021-02 issued from the US Department of Health and Human Services, agreements are to be put into place between participating parties of the Low Income Household Water Assistance Program (LIHWAP) to ensure payments made on behalf of low-income households are processed efficiently and in the best interest of the household. Participating parties include MDHHS, the Community Action Agency (CAA) and Water/Wastewater Utility (Utility) referenced on Page 1 of this agreement.

### **3. Period of Agreement**

This MOU becomes effective on the date signed by all parties through September 30, 2023.

**4. Work Statement of Each Party**

- a. The utility, MDHHS and the CAA will:
  - 1) Follow Low-Income Water Assistance Program (LIHWAP) policies and procedures in the Community Services Policy Manual 1405.
  - 2) Agree to not release any private data, to any third party without written authorization from the subject of the data.
  - 3) Collaborate to ensure continuation or reconnection of service to households determined eligible for LIHWAP benefits.
  - 4) Establish a dispute resolution process to resolve issues arising during the term of this agreement.
  - 5) Encourage regular payments from the household.
  - 6) Work together to ensure LIHWAP payments are appropriately applied to accounts and used for LIHWAP services as designated by the CAA.
  
- b. The MDHHS and CAA will:
  - 1) Determine customer eligibility.
  - 2) Issue payment directly to the utility on behalf of the customer to resolve the arrearage and ensure continuation or reconnection of service.
  
- c. The utility will:
  - 1) Ensure LIHWAP eligible households are not treated adversely compared to other households.
  - 2) Not disconnect services for 90 days after payment is received on behalf of a customer. If the account is in arrears after 90 days, a new disconnection notice must be issued if applicable.
  - 3) Not charge the eligible household any more than the difference between the normal charge for the service and the payment amount received or expected from the Michigan Department of Health and Human Services (MDHHS) or Community Action Agency (CAA).
  - 4) Supply account number format to the CAA.
  - 5) Timely provide at the request of the customer, the CAA or MDHHS, information on applicant households' home water costs, bill payment history, or arrearage history. This information will be provided in the format requested.
  - 6) Register with the MDHHS in [SIGMA Vendor Self Service](#) to receive LIHWAP SER payments if not a currently registered vendor.
  - 7) Use the warrant or EFT date as the LIHWAP payment date.
  - 8) Apply all LIHWAP payments to the household's account within 5 business days of receipt of payment.
  - 9) Apply the assistance payments to arrears and applicable fees with reconnection services only. Payments resulting in a credit on the customer's account balance are not allowable.
  - 10) Process and refund any refunds requested by the CAA or MDHHS within 60 business days. The refund must include the client's name, service address, and the MDHHS case number, if available.
  - 11) Not charge an eligible household, the MDHHS, or CAA any administrative fees for providing services.

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- 12) Accept all customer payments.
- 13) Use LIHWAP funds to pay for home water and sewer costs, as designated by the CAA and MDHHS.
- 14) Continue or reconnect service to households as negotiated by the CAA on behalf of the household.
- 15) When addressing household water emergencies, accept early notification authorization by telephone, fax, or electronic communication.
- 16) Notify the CAA or MDHHS if there is reason to believe LIHWAP funds have been misused.
- 17) Comply with the provisions of Act 453, PA 1976, which prohibits discrimination on the basis of race, color, religion, national origin, age, sex, height, weight, or marital status.

Each party shall furnish all labor, equipment, materials, and supplies necessary for the performance of the MOU activities, and meet operational standards, unless otherwise specified above.

**5. Termination & Amendments**

A party may terminate this MOU at any time by giving 30 days prior written notice to the other parties. This MOU may be amended upon written approval of all parties at any time.

This MOU contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this MOU will be deemed to exist or to bind any of the parties.

**6. Notices**

All notices and other communications required or permitted under this MOU must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to MDHHS: <i>Ben Gulker</i> <i>MEAP Specialist</i> <i>MDHHS-LIHWAP@michigan.gov</i>	If to Capital Area Community Services, Inc.: <i>Miguel Rodriguez</i> <i>Executive Director</i> <i>Miguel@cacsmi.org</i> <i>517-482-6281, x675</i>
If to _____:	
<i>[Name]</i>	
<i>[Title]</i>	
<i>[Email]</i>	
<i>[Phone]</i>	

**7. Reserved**

**8. MDHHS Data**

All data and information provided to CACS and/or [REDACTED] by or on behalf of MDHHS, and all data and information derived therefrom, is the exclusive property of MDHHS (“MDHHS Data”); this definition is to be construed as broadly as possible. Upon request, CACS and/or [REDACTED] must provide to MDHHS, or a third party designated by MDHHS, all MDHHS Data within 10 calendar days of the request and in the format requested by MDHHS. CACS and/or [REDACTED] will assume all costs incurred in compiling and supplying MDHHS Data. No MDHHS Data may be used for any marketing purposes.

CACS and [REDACTED] shall comply with all MDHHS physical and IT security policies and standards which will be made available upon request.

**9. Non-Disclosure of Confidential Information**

The parties acknowledge that each party may be exposed to or acquire communication or data of the other parties that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this MOU.

- a. Meaning of Confidential Information. For the purposes of this MOU, the term “Confidential Information” means all information and documentation of the other parties that:
- 1) Has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party;
  - 2) If disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning;
  - 3) Should reasonably be recognized as confidential information of the disclosing party;
  - 4) Is unpublished or not available to the general public; or
  - 5) Is designated by law as confidential.

The term “Confidential Information” does not include any information or documentation that was:

- 1) Subject to disclosure under the Michigan Freedom of Information Act (FOIA);
- 2) Already in the possession of the receiving party without an obligation of confidentiality;
- 3) Developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights;

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- 4) Obtained from a source other than the disclosing party without an obligation of confidentiality;
- 5) Publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party).

For purposes of this MOU, in all cases and for all matters, MDHHS Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree that they will use Confidential Information solely for the purposes of this MOU. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this MOU or to use such Confidential Information for any purposes whatsoever other than the performance of this MOU. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible when all of the following are met:

- 1) Use of a subcontractor is authorized under this MOU;
- 2) The disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and
- 3) CACS and/or ██████████ obligates the subcontractor in a written contract to maintain MDHHS's Confidential Information in confidence.

At MDHHS's request, any employee of Capital Area Community Services, Inc. [CACS] and/or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other parties in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Each party must notify the other parties within one business day after discovering any unauthorized use or disclosure of Confidential Information. Each party will cooperate with the other parties to regain possession of Confidential Information, to prevent further unauthorized use or disclosure of Confidential information, and to notify any appropriate person of the unauthorized use or disclosure of Confidential Information. In addition, each party must advise the other parties immediately in the event the party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this MOU and each party will cooperate with the other parties in seeking injunctive or other equitable relief against any such person.

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- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other parties, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of MDHHS, at the sole election of MDHHS, the immediate termination, without liability to MDHHS, of this MOU or any Statement of Work corresponding to the breach or threatened breach.
  
- e. Surrender of Confidential Information upon Termination. Upon termination of this MOU or a Statement of Work, in whole or in part, each party must, within five calendar days from the date of termination, return to the other parties any and all Confidential Information received from the other parties, or created or received by a party on behalf of the other parties, which are in such party's possession, custody, or control; provided, however, that Capital Area Community Services, Inc. [CACCS] and/or \_\_\_\_\_ must return MDHHS Data to MDHHS following the timeframe and procedure described further in this MOU. Should Capital Area Community Services, Inc. [CACCS], \_\_\_\_\_, or MDHHS determine that the return of any non-MDHHS Data Confidential Information is not feasible, such party must destroy the non-MDHHS Data Confidential Information and must certify the same in writing within five calendar days from the date of termination to the other parties.

**10. Compliance with Laws**

CACCS and \_\_\_\_\_ must comply with all applicable federal, state, and local laws, administrative rules and regulations.

**11. Nondiscrimination**

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Capital Area Community Services, Inc. [CACCS], \_\_\_\_\_, and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status or mental or physical disability. Breach of this covenant is a material breach of this MOU.

**12. Unfair Labor Practice**

Under MCL 423.324, MDHHS may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

**13. Governing Law**

This MOU is exclusively governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this MOU are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this MOU must be resolved in Michigan Court of Claims. Capital Area Community Services, Inc. [CACCS] and \_\_\_\_\_ consent to venue in the Michigan Court of Claims, and waive any objections, such as lack of personal jurisdiction or forum non conveniens. Capital Area Community Services, Inc. [CACCS] and \_\_\_\_\_ must appoint agents in Michigan to receive service of process.

**14. Force Majeure**

A party will not be in breach of this MOU because of any failure arising from any disaster or acts of God that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Capital Area Community Services, Inc. [CACCS] and \_\_\_\_\_ will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, MDHHS may immediately contract with a third party.

**15. Dispute Resolution**

The parties will endeavor to resolve any MOU dispute in accordance with this provision. The dispute will be referred to the parties' respective Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' respective senior executive, and either senior executive concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit MDHHS's right to terminate the MOU.

**16. Media Releases**



News releases (including promotional literature and commercial advertisements) pertaining to the MOU or project to which it relates must not be made without prior written MDHHS approval, and then only in accordance with the explicit written instructions of MDHHS.

**17. Website Incorporation**

MDHHS is not bound by any content on the other parties' websites unless expressly incorporated directly into this MOU. MDHHS is not bound by any end user license agreement or terms of use unless specifically incorporated into this MOU or any other agreement signed by MDHHS.

**18. Severability**

If any part of this MOU is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this MOU and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining MOU will continue in full force and effect.

**19. Waiver**

Failure to enforce any provision of this MOU will not constitute a waiver.

**20. Survival**

The provisions of this MOU that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this MOU.

**21. Entire MOU**

This MOU is the entire agreement and replaces all previous agreements between the parties for the MOU Activities.