

DATE SUBMITTED 12/09/2024  
 SUBMITTED BY Kristen Smith  
 DATE ACTION REQUIRED 12/18/2024

COUNCIL ACTION (X)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION ( )  
 ORDINANCE 1<sup>ST</sup> READING ( )  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS ( )

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: 1. Approval and execution of Memorandum of Understanding between Options for All, Inc. and City of Imperial.	
DEPARTMENT INVOLVED: Human Resources	
BACKGROUND/SUMMARY: The City of Imperial is requesting the Council's consideration for approval to move forward with the execution of the memorandum of understanding (MOU) between Options for All, Inc. and City of Imperial.  With this executed MOU the City of Imperial will be an integrated worksite for Options for All which supports individuals with disabilities by providing them with the opportunity to complete their Adult Work Experience program at an approved integrated worksite. The Department of Rehabilitation funds the Adult Work Experience program and covers of the cost of individuals being employed through Options for All during this program.	
FISCAL IMPACT: NOT TO EXCEED There is no fiscal impact associated with this action.	FINANCE INITIALS <u>JMS</u>
STAFF RECOMMENDATION: Recommendation to approve the execution of the Memorandum of Understanding between Options for All, Inc. and the City of Imperial.	DEPT. INITIALS <u>KWS</u>
MANAGER'S RECOMMENDATION: Approve Staff Recommendation	CITY MANAGER'S INITIALS <u>JHM</u>
MOTION:	
SECONDED: AYES: NAYES: ABSENT:	APPROVED ( )      REJECTED ( ) DISAPPROVED ( )      DEFERRED ( )  REFERRED TO:

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is between Options for All, Inc. (hereafter "OFA") with the principal place of business at 4250 Pacific Hwy. Ste 125, San Diego CA, 92110 and City of Imperial (hereafter "CLIENT"), with the principal place of business at 420 S. Imperial Ave., Imperial, CA 92251.

WHEREAS, OFA supports adults with Disabilities, and this includes identifying Adult Work Experience (AWE) opportunities at Integrated Worksites, and supporting individuals in obtaining and completing their AWE; and

WHEREAS, CLIENT desires to serve as an Integrated Worksite for an OFA supported AWE participant; and

NOW, THEREFORE, in consideration of the promises, and of the mutual covenants hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

### **I. THE ADULT WORK EXPERIENCE PROGRAM.**

The Adult Work Experience program is funded by the California Department of Rehabilitation (DOR). As an approved vendor of the Department of Rehabilitation (DOR), OFA is authorized to identify, place and support participants in Adult Work Experience opportunities at Integrated Worksites.

The AWE allows individuals with Disabilities to gain valuable work experience and skills at Integrated Worksites, while supported and employed by OFA, a vendorized service provider, with the goal of helping AWE participants achieve long-term, competitively paid employment in their chosen field.

CLIENT incurs no employment costs for AWE participants placed at their worksite(s). AWE participants are hired as a non-exempt employee by OFA, and are authorized to work at the Integrated Worksite up to a maximum of 100 hours or three (3) months, whichever occurs first.

The AWE ends when the CLIENT or AWE participants wishes to terminate the work experience, at the end of three (3) months, or when the AWE participants reaches their maximum of 100 hours at the Integrated Worksite, whichever is first.

### **II. PARTY RESPONSIBILITIES**

#### **1. As the Integrated Worksite CLIENT is Responsible For:**

- a. Providing all necessary rules, policies, procedures, training materials and/or job orientation information to the AWE participants or their OFA Job Coach;
- b. Designating a Responsible Employee ("Supervisor") for the AWE Participant, and ensuring Supervisor(s) understand the CLIENT's responsibilities as set forth in this MOU;
- c. Providing the AWE Participant any forms, waivers, or other documents required by CLIENT specific to the Integrated Worksite, and not included in the standard new hire paperwork provided to all OFA employees;

- d. Ensuring placed AWE Participant doesn't work more than forty (40) hours per workweek (defined as Sunday at 12:01 a.m. through the following Saturday at midnight (12:00 a.m.) or eight (8) hours in a single workday;
  - e. Ensuring placed AWE Participant doesn't work a "split shift" (defined as a daily work schedule interrupted by non-paid and non-working time periods);
  - f. Ensuring AWE Participant receives all legally required rest break and meal breaks as required by California law;
  - g. Generally supervising, directing, and controlling the day-to-day work and/or tasks performed by AWE Participant in accordance with CLIENT's rules, policies and procedures;
  - h. Furnishing placed AWE Participant a safe work environment, providing appropriate safety and hazardous materials trainings, and all tools and other materials, including protective devices, wearing apparel, instruments and/or other material, required to perform their duties in compliance with all local, state and federal employment, safety, health and environmental laws and regulations;
  - i. Cooperating with any investigation and/or claim involving a placed AWE Participant, including, but not limited to claims filed with OFA's workers' compensation provider. OFA will timely notify CLIENT if OFA becomes aware of any possible claim or investigation in which CLIENT's cooperation may be needed;
  - j. Informing OFA if CLIENT wishes to terminate an AWE Participant early; and
  - k. Informing OFA if CLIENT wishes to hire AWE Participant as a direct employee.
2. **As the Authorized AWE Service Provider OFA is Responsible For:**
- a. Billing the Department of Rehabilitation(s) for all AWE associated costs;
  - b. Tracking AWE Participant's total number of hours worked and providing CLIENT reasonable notice when AWE Participant will exhaust their allotted work experience hours;
  - c. Obtaining and maintaining its status as a vendorized service provider with the relevant Department of Rehabilitation(s), and for obtaining and maintaining any and all necessary license(s) or permit(s) needed to conduct business in the state in which Services are provided;
  - d. Obtaining and maintaining at its expense commercial general liability insurance.
3. **As the AWE Participant "Employer of Record" OFA is Responsible For:**

- a. All aspects of onboarding the AWE Participant placed with CLIENT, except for any steps required be performed by CLIENT. This includes complying with all standard, legally required pre-employment steps;
- b. All aspects of the AWE Participant's employment including managing timekeeping, paying, withholding, and transmitting payroll taxes; making unemployment contributions, providing legally required leave, and handling any unemployment and/or workers' compensation claims involving the AWE Participant placed with CLIENT.
- c. Obtaining and maintaining at its own expense Workers' Compensation insurance, which provides coverage for all employees of OFA, including AWE Participants, as required by applicable law;
- d. Handling all aspects of employee separation when AWE concludes, regardless of reason.

**4. As the AWE Participant's Job Coach OFA is Responsible For:**

- a. Determining with CLIENT and AWE participant the amount of on-site job coaching required for each the AWE Participant placed with CLIENT;
- b. Having a job coach available for consultation as needed by CLIENT;
- c. Ensuring assigned job coaches attend any and all trainings and/or orientations provided by the CLIENT for the AWE Participant.
- d. Providing performance feedback or corrective action if requested by CLIENT.

**III. EEO COMPLIANCE**

1. CLIENT and OFA affirm and agree that they are equal employment opportunity employers and are in full compliance with any and all applicable anti-discrimination laws, rules, and regulations.
2. In the event of any complaint of unlawful discrimination, harassment, or retaliation by an the AWE Participant placed with CLIENT, the complaint will be received by OFA, and CLIENT and OFA agree to cooperate in the prompt investigation and resolution of such complaint.

**IV. RELATIONSHIP BETWEEN THE PARTIES**

None of the provisions of this MOU is intended to create, nor shall be deemed or construed to create, any relationship between CLIENT and OFA other than that of independent parties contracting with each other for the purpose of effecting the provisions of this MOU. The parties are not and shall not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party shall have the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except as is explicitly provided for in this MOU.

**V. MUTUAL INDEMNIFICATION**

1. The parties agree to indemnify, defend, and hold each other harmless against any loss, cost, damage, liability, action, claims, cause of action, allegation, order, judgment, settlement, obligation, civil monetary penalties or expense (including court costs, attorney's and Auctioneer's fees) incurred because of the negligent and/or intentional acts or omissions of the other party, its employees, agents, trustees and/or representatives. This provision shall survive termination of this MOU.
2. Notwithstanding anything to the contrary, each party's indemnification responsibilities in this MOU shall not extend to any claim or loss or any portion thereof to the extent arising as a result of the negligent acts or omissions or willful misconduct of the other party. CLIENT and OFA agree to proportionate responsibility according to their respective duties and obligations under this MOU and applicable law.
3. As a condition precedent to indemnification hereunder, the parties each agree to notify the other within ten (10) business days of its receipt of any claim, demand, or notice for which indemnification hereunder may be sought, and to cooperate in the investigation and defense of any such claim, demand, or notice.

**VI. GOVERNING LAW**

This MOU and the rights and obligations of the parties hereunder shall in all respects be governed and construed by the laws of the State of California, without reference to any conflicts of law principles thereof. Venue for any action or dispute will be brought and heard solely and exclusively in the federal or state courts of competent jurisdiction located in Imperial County, California. In the event that litigation results from or arises out of this MOU or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

**VII. SUCCESSORS AND ASSIGNS**

This MOU shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but neither this MOU nor any rights hereunder shall be assignable by either party without the express written approval of the other party.

**VIII. SURVIVAL OF CERTAIN PROVISIONS**

Those provisions of this MOU which by their terms extend beyond the termination or non-renewal of this MOU shall remain in full force and effect and survive such termination or non-renewal.

**IX. AMENDMENTS**

No provision of this MOU may be amended or waived unless such amendment or waiver is agreed to in writing and signed by the parties.

**X. SEVERABILITY**

Each provision of this MOU shall be considered severable such that if any one provision or clause conflicts with existing or future applicable law, or may not be given full effect because of such law, this shall not affect any other provision which can be given effect without the conflicting provision or clause.

**XI. NO IMPLIED WAIVER**

The failure of a party to enforce the provisions of this MOU shall not be construed as a waiver of any provision or the right of such party thereafter to enforce each and every provision of this MOU.

**XII. TRANSFERABILITY**

CLIENT shall not transfer or assign this MOU without the written consent of OFA, which shall not be unreasonably withheld. OFA shall have the right to transfer or assign this MOU to any affiliate or subsidiary upon the consent of CLIENT, which will not be unreasonably withheld.

**XIII. ENTIRE AGREEMENT**

This MOU, the exhibits attached hereto, contain the entire understanding between the parties hereto, and supersede all prior MOUs and understandings relating to the subject matter hereof.

**XIV. HEADINGS**

The headings of the paragraphs of this MOU are inserted solely for the convenience of reference. They shall in no way define, limit, extend, or aid in the construction of the scope, extent, or intent of this MOU.

**XV. TERM OF AGREEMENT**

This MOU shall remain in effect for one (1) year from the date of signing by both parties, unless terminated earlier in accordance with the provisions herein.

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**SIGNATURES**

CLIENT

Options For All, Inc.

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Signature

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Signature

Dennis Mortia

Tiana Mineo

City Manager

Area Manager- Employment Services

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Date

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Date