

The DST Streets Teams' Model

Downtown Streets, Inc. (DST) is a California Nonprofit Corporation formed in 2005. The DST mission is to eliminate homelessness. Its flagship program (Streets Teams), is a volunteer work-experience program that seeks to build teams that restore dignity, inspire hope, and provide a pathway to recover from homelessness through participants (typically unhoused individuals) **volunteering** on teams to better themselves and their communities. These teams are known as "Streets Teams," and Team Members are recognized by their bright yellow shirts. At DST, "Team Member" is always a proper noun spelled with initial caps, to emphasize the importance of a Team Member's role in taking ownership of their life, participating as a stakeholder in DST programs, and changing the perception of homelessness in their community.

Team Members volunteer to engage in street beautification and other clean up efforts in public parks, neighborhoods and other public spaces. Team Members are free to stop volunteering at any time and can return to the Streets Teams' program at any time after dropping out. **At the outset, each Team Member signs a participation agreement and other documents acknowledging their volunteer status.**

While participating as a volunteer, a Team Member receives employment, medical and housing case management, as needed, and also receives a stipend (in the form of a gift card) for use on basic necessities. Essential to the momentum of the volunteer work-experience program is attending weekly Success Meetings where Team Members are able to share successes, challenges, support, resources, and a warm meal.

In addition to the City of San Francisco, DST contracts with and provides services to approximately fifteen other communities in the Bay Area, including San Jose and Oakland. DST's model has been named one of only five "Evidence-Based Best Practices in Ending Homelessness" in the State of California, according to the 2018 Homelessness Task Force Report released by the League of California Cities and the California State Association of Counties.

The volunteer model is known to all relevant parties going into the various relationships; Team Members and DST, and the City and its affiliated agencies and districts. **If the SF OLSE's preliminary position that Team Members are employees is sustained, DST will be forced to discontinue services in SF and all other communities and enter some form of insolvency.**

The City of San Francisco was Fully Aware of DST's Volunteer Model when it Began Contracting with DST and as it has Renewed Contracts

The City of San Francisco was fully aware of the volunteer model used by DST when it began contracting with DST as early as 2017 and that model is acknowledged in the initial contract between DST and the City of San Francisco, and all subsequent amendments. In fact, **as recently as October, 2022**, DST and the City of San Francisco signed an amendment for DST to continue providing services in the City of San Francisco. Nowhere in the contract(s) are Team Members referred to as employees and, in fact, one of the DST deliverables is to provide a “[m]inimum of 5 photos of Team Members volunteering...” [emphasis supplied].

In addition, the funding level of the contract and each amendment is predicated on the well-known model of Team Members as volunteers. Even with robust private fundraising, the contract funding level would not support paying Team Members as employees while they participate in the flagship work-experience program.

Finally, in contracting with DST, the City acknowledges the difference between DST's “flagship work experience program (the Streets Teams)” and DST's more recently developed “social enterprise workforce program aimed at providing homeless adults with employment” referred to by DST as Streets Team Enterprises (STE). The City of San Francisco's contract terms for the STE program reference “employees” and payment of a “living wage”, consistent with the STE program model of employment. In contrast, the City's contract terms for the Streets Teams' program references volunteers, removal of barriers to housing or employment, hours of training provided and placement of Team Members into employment with other entities consistent with the well-established volunteer model of Streets Teams.

Under California law, the Key Issue in Determining whether an Individual is a Volunteer or an Employee is the Intent of the Parties (in this case, DST and each Team Member)

Under California law, the key issue in determining whether someone has volunteered to perform work (as opposed to being employed) is the intent of the parties. As the California Supreme Court has explained, the employment relationship is “fundamentally contractual, meaning it is governed in the first

instance by the mutual promises made between employer and employee. The promise to pay money in return for services rendered lies at the heart of this relationship." (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1148.)

It is well-established that nonprofit organizations are entitled to use volunteers. In the 2021 California Court of Appeal case of *Woods v. American Film Institute*, 72 Cal.App.5th 1022, the Court rejected plaintiff's claim that she and other volunteers at the American Film Institute (AFI) film festival were entitled to employee remedies under the Labor Code, such as meal and rest breaks, minimum wages and overtime pay. The plaintiff and other potential class members worked 12-14 hour days for AFI in exchange for free admission to its film festival. The Court held that under established California law a non-profit such as AFI is allowed to use volunteers. The Court held that "volunteers for nonprofit entities are not employees" if the parties intend to create a volunteer relationship. The *Woods* case cites to a number of legal precedents and compelling legal authorities to support its ruling, including a California Supreme Court case (*Voris v. Lampert* (2019)), a 1988 opinion letter issued by the Division of Labor Standards Enforcement (DLSE O.L. 1988.10.27), the IWC Wage Orders, and various provisions of the California Labor Code and Government Code.

The *Woods* and *Voris* cases are controlling legal precedent, and compel the same result for DST. DST presents the opportunity to join a team as a **volunteer opportunity** in all its discussions with potential Team Members. It is made clear to potential Team Members that the Team Member role is not employment and that as a Team Member they **will not receive wages** for the hours they volunteer. As part of the orientation process, a Team Member signs several intake agreements acknowledging their status as a volunteer and specifically disclaiming any employment relationship or entitlement to wages.

No California government entity, including but not limited to, the Division of Labor Standards Enforcement, the Employment Development Department (unemployment insurance), or the Department of Industrial Relations (workers' compensation), have concluded that DST Team Members are employees not volunteers. The SF OLSE would be the first government entity to do so.

DST and its Team Members Intended to, and Did, Create a Volunteer Relationship

The DST Streets Teams program is well known and established in the California Bay Area. DST promotes the Streets Teams program to potential Team Members, potential donors, public entities such as the City of San Francisco, its Community Benefits Districts, and other non-profits as a program that provides an opportunity for individuals to volunteer within a community in clean-up and beautification efforts in exchange for basic needs stipends, medical, employment and housing case management services, and a potential pathway out of homelessness.

DST Team Members receive a “Welcome to the Team!” Packet (“Welcome Packet”) and sign several intake agreements acknowledging their status as volunteers and disclaiming any employment relationship.

The Welcome Packet states prominently:

“Please note: You are a **volunteer** Team Member rather than an employee. DST is a stepping-stone rather than a permanent solution. One of our primary goals is to help you find a living wage employment opportunity, or benefits if you are not able to work.” (**Boldface** emphasis in original.)

The Welcome Packet further describes the DST mission, program benefits, stipends, participation and Team shirt requirements, and other important items regarding street safety and keys-to- success.

Each Team Member also signs a document titled **DST Voluntary Release, Indemnification and Assumption of Risk**, which states in relevant part:

“As a condition to, and in consideration for, permitting me to participate in the Downtown Streets Team Program (“Program”), I, on behalf of myself and my personal representatives, next of kin, spouse, estate, heirs and assigns, **DO HEREBY VOLUNTARILY:**

8. **UNDERSTAND AND ACKNOWLEDGE** that I am not an employee, contractor or agent of Downtown Streets, Inc. or of any sponsor of this Program and am simply a participant in this Program on a voluntary basis. As this is not an employment relationship, I understand that Downtown Streets, Inc. is not providing or does not intend to provide Workman's Compensation to me. I understand that I am a voluntary participant of this program and as a result waive my right to claim Worker's Compensation. In addition, I acknowledge and

agree that I shall not be entitled to any form of compensation for my voluntary participation in the program.” (**Boldface** emphasis in original.)

Each Team Member also signs a **DST Participation Agreement**, which states in relevant part:

“As a condition to, and in consideration for, permitting me to participate in the Downtown Streets Team ("DST") Program ("Program"), **I DO HEREBY VOLUNTARILY AGREE AND ACKNOWLEDGE THAT:**

1. I have fully and accurately completed the **PROGRAM APPLICATION**.
2. I have read and understood the **Orientation Packet** and understand that failure to adhere to terms stated in the document may result in penalties, including my disqualification from the Program.

.....

5. DST hereby accepts my services, and I hereby accept and agree to provide services as a volunteer. I affirm that my intent in entering into this Agreement is to donate my services to the DST for public service and humanitarian objectives without contemplation of pay.

6. I understand and acknowledge that I will not be paid for my services, that I will not be covered by any medical or other insurance coverage provided by DST, and that I will not be eligible for any Workers' Compensation benefits.

8. **UNDERSTAND AND ACKNOWLEDGE** that I am not an employee, contractor or agent of Downtown Streets, Inc. or of any sponsor of this Program and am simply a participant in this Community Program on a voluntary basis. As this is not an employment relationship, I understand that Downtown Streets, Inc. is not providing or does not intend to provide Workman's Compensation to me. I understand that I am a voluntary participant of the Program and as a result waive my right to claim Worker's Compensation. In addition, I acknowledge and agree that I shall not be entitled to any form of compensation for my voluntary participation in the Program.” (**Boldface** emphasis in original.)

Conclusion

The OLSE concedes it is applying the California state definition of employee, which is, according to the DLSE glossary:

“Employee

Any person employed by an employer. Independent contractors and volunteers are not employees.”

The case law emphasizes the intent of the parties. Here, all evidence points to the fact that the parties intended a volunteer relationship and never intended an employment relationship.