



Office of the City Manager

CONSENT CALENDAR
May 6, 2025

To: Honorable Mayor and Members of the City Council
 From: Paul Buddenhagen, City Manager
 Submitted by: David Sprague, Fire Chief
 Subject: Contract: Diablo Fire Safe Council for Home Hardening Donations

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Diablo Fire Safe Council (DFSC) to serve as the fiscal sponsor for donations that support home hardening work in Berkeley, particularly in its Fire Hazard Severity Zones, for a term of five years.

FISCAL IMPACTS OF RECOMMENDATION

There is no impact to the City's General Fund. Administrative fees for the DFSC will be deducted from the donated funds as follows - over the life of the agreement, 10% on the first \$100,000 received, 7% on the next \$150,000 (up to \$250,000 total), and 5% on any amount above \$250,000. These fees will be used by DFSC to administer the fund and process disbursements.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Fire Department has launched the EMBER (Effective Measures for Berkeley's Ember Resilience) initiative to reduce wildfire ignition risk. A key part of this initiative is supporting residents with costs associated with home hardening — retrofitting homes to meet standards in Chapter 7A of the California Building Code.

By partnering with the DFSC, a well-established and qualified 501(c)(3) nonprofit, the City will be able to encourage and accept charitable contributions that will directly support residents conducting home hardening work.

This is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

BACKGROUND

The DFSC has extensive experience administering cost-share and matching fund programs to support wildfire prevention and mitigation. Under this agreement, DFSC will serve as the fiduciary agent for donations made to support home hardening projects through the City's Resident Assistance Program (RAP). DFSC will manage the funds in

a dedicated subaccount, issue payments according to City direction, and ensure compliance with all nonprofit fiscal regulations.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Home hardening is a proven strategy to reduce wildfire spread and ignition in the built environment. Facilitating this work supports the City's climate adaptation goals and strengthens community resilience.

RATIONALE FOR RECOMMENDATION

This partnership provides a transparent and legally compliant method to accept and distribute donations in support of wildfire safety, while reducing administrative burden on the City. DFSC's existing infrastructure and nonprofit status make them well-suited to serve in this role.

ALTERNATIVE ACTIONS CONSIDERED

The City considered creating its own donation management program but determined that partnering with an experienced nonprofit fiscal sponsor would be more efficient and cost-effective.

CONTACT PERSON

David Sprague, Fire Chief, (510) 981-3473

Attachments:

1: Resolution

Exhibit A: Diablo Fire Safe and City of Berkeley Agreement

RESOLUTION NO. ##,###-N.S.

CONTRACT: DIABLO FIRE SAFE COUNCIL TO SERVE AS THE FISCAL SPONSOR FOR DONATIONS THAT SUPPORT HOME HARDENING WORK IN BERKELEY

WHEREAS, the City of Berkeley faces elevated wildfire risk, particularly in hillside and wildland-urban interface (WUI) areas; and

WHEREAS, the City has established the EMBER (Effective Measures for Berkeley's Ember Resilience) initiative to reduce wildfire ignition risk through community-level prevention strategies, including home hardening; and

WHEREAS, the City desires to provide financial assistance to residents conducting home hardening work to bring their properties into compliance with Chapter 7A of the California Building Code; and

WHEREAS, the City lacks an existing mechanism to receive and manage private donations for this purpose; and

WHEREAS, Diablo Fire Safe Council (DFSC) is a nonprofit 501(c)(3) organization with experience administering cost-share wildfire mitigation programs and is qualified to serve as a fiscal sponsor for private donations; and

WHEREAS, DFSC will receive, manage, and disburse private funds according to the City's direction for the benefit of residents participating in the City's Resident Assistance Program (RAP), supporting the EMBER initiative's goals.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with the Diablo Fire Safe Council for a term of five years to serve as the City's fiscal sponsor for private donations supporting home hardening in Berkeley's fire zones.

BE IT FURTHER RESOLVED that all disbursements from DFSC to residents shall be made in accordance with City-approved eligibility criteria, and DFSC shall maintain detailed financial records and provide regular reporting to the City.

Exhibits

A: Diablo Fire Safe and City of Berkeley Agreement

AGREEMENT BETWEEN DIABLO FIRE SAFE COUNCIL AND THE CITY OF BERKELEY FOR THE PROVISION OF FISCAL SPONSORSHIP FOR HOME HARDENING PROGRAMS

THIS AGREEMENT (the “Agreement”) is entered into on 3/26/25, 2025 (the “Effective Date”) between the Diablo Firesafe Council, a 501(c) non-profit, (“DFSC”) and the City of Berkeley, a municipal corporation (“City”) (together sometimes referred to as the “Parties”). DFSC is a California, USA nonprofit public benefit corporation located in Oakland, California, USA which has received recognition of exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code (IRC) and classification as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

WHEREAS, the City operates a program to encourage home owners to conduct home hardening which reduces the risk of ignition during a wildfire, and

WHEREAS, DFSC operates a cost-share matching program that distributes funds to residents engaging in similar types of projects; and

WHEREAS, City desires to have the DFSC receive external donations of funds on behalf of the City and distribute them per the City’s instructions, and the DFSC is willing to provide such support in the form of a nonprofit fiscal sponsorship in accordance with nonprofit laws

WHEREAS, DFSC’s Board of Directors has approved the establishment of a fund to receive donations of cash earmarked for support of the project in this agreement and to make disbursements in furtherance of the project’s mission (the “Fiscal Sponsorship”).

NOW, THEREFORE, the City and the DFSC hereby agree as follows:

Section 1. SERVICES.

In accordance with the terms and conditions set forth in this Agreement, the DFSC agrees to perform all services (the “Services”):

- A. Shall be the fiduciary agent for donations made for the purposes of funding work related to the City’s Home Hardening Resident Assistance Program (RAP).
- B. Shall notify the City of receipt of any donation aggregating more than \$1,000 from a single source, and shall not disburse funds from such donation until the Berkeley City Council has disclosed and approved such donation pursuant to Berkeley Municipal Code section 2.06.150.
- C. Shall maintain a proper accounting of funds including and state and federal tax filings. This will include keeping books for all funds received under this agreement in a separate sub account for this purpose only DFSC will

submit regular reports to the City for the funds received and processed under this agreement.

- D. Shall disperse the funds per the City's instructions upon receipt of an invoice for payment, W-9, and/or a receipt for reimbursement of funds, with 1099s being issued for all homeowner payments issued under this agreement. Processing of invoices will commence upon receipts of invoice but may take up to 30 days for the check to be mailed.
- E. Shall provide a letter of acknowledgement to all donors and funders contributing \$75 or more to this fund, for their tax purposes, stating that no goods or services were received in exchange for their charitable donations.

The City agrees to:

- A. Accept RAP applications, review, prioritize and provide the DFSC a list of approved applicants to receive checks. The City will provide an invoice and a W-9 for all recipients.
 - 1.1 **Term of Services.** This Agreement shall begin on the Effective Date and shall end five (5) years from the date this Agreement was signed by DFSC, unless the term of the Agreement is otherwise terminated or modified, as provided for herein.
 - 1.2 **Standard of Performance.** DFSC, and representatives, shall diligently perform all services required in connection with this Agreement in the manner and according to the standards required by the City.
 - 1.3 **Assignment of Personnel.** DFSC shall assign only competent personnel to perform services in connection with this Agreement.
 - 1.4 **Termination.** Either Party may cancel this Agreement at any time and without cause upon written notification to the other Party.

Section 2. COMPENSATION.

In exchange for the Services by the DFSC, the City hereby agrees the DFSC may retain for itself an administrative fee from all funds received using the following formula:

- Ten-percent (10%) up to \$100,000 ,
- Five-percent (7%) up to \$250,000 ,
- Three-percent (5 %) for anything over \$250,000 .

The fund totals shown above are cumulative over the lifetime of the agreement.

The City shall not be responsible for any payment to DFSC and shall have no obligation to reimburse or otherwise compensate DFSC for any expenses it may incur in providing the services. The DFSC's sole compensation under this Agreement shall be from the amounts retained according to the foregoing formula. The DFSC is solely responsible for

the payment of all applicable federal and state taxes incurred under this Agreement. As a 501(c)3 nonprofit organization, DFSC will not be obligated to pay taxes on these funds.

Section 3. INSURANCE REQUIREMENTS.

Each Party shall, at its sole cost and expense, carry insurance or self-insure its activities in connection with this Agreement, and obtain and keep in force insurance or equivalent programs of self-insurance, for general liability, professional liability, workers' compensation, and business automobile liability adequate to cover its potential liabilities hereunder. The City's general liability insurance shall name DFSC as an additional insured.

Section 4. INDEMNIFICATION.

Each Party shall defend, indemnify, and hold harmless the other Parties, and their officials, officers, employees, agents and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, to the extent such is caused in whole or in part by the negligent or intentional acts or omissions of the indemnifying Party's respective officials, officers, employees, agents or volunteers.

It is the intention of each Party that the provisions of this paragraph be interpreted to impose on each Party responsibility to the other Party for the negligent or intentional acts and omissions of each Party's respective officials, officers, employees, agents and volunteers. It is also the intention of the Parties that each Party shall bear the proportionate cost of any damage attributable to the fault of that Party, its officials, officers, employees, agents and volunteers. The obligations in this section shall survive the termination or expiration of the Agreement.

Section 7. INDEPENDENT PARTIES.

For purposes of this Agreement, each Party will each act in an independent capacity and not as officers, employees or agents of the other. No Party shall have the right to control the other, except as expressly referenced in this Agreement. Nothing in this Agreement establishes, constitutes or shall be construed to establish or constitute a partnership, agency or employment relationship between the Parties. Persons providing services under this Agreement will remain the employees of their respective agencies, and will not be employees of the other.

Section 8. LEGAL REQUIREMENTS.

- 8.1 Governing Law.** The laws of the State of California shall govern this Agreement along with all IRS regulations governing 501(c)3 nonprofit organizations
- 8.2 Compliance with Applicable Laws.** The DFSC and any subcontractors shall comply with all laws and City ordinances applicable to the performance of the work in connection with this Agreement.

- 8.3 **Project Fund Management / Performance of Charitable Purposes.** All of the assets received by DFSC under the terms of this Agreement shall be devoted to the purposes of the Project, within the tax-exempt purposes of DFSC. The Signatories agree not to use its funds or operate in any way which would jeopardize the tax-exempt status of DFSC. No item of revenue shall be earmarked for use in any attempt to influence legislation within the meaning of IRC Section 501(c)(3) and no agreement, oral or written, to that effect shall be made between DFSC and any revenue source. DFSC shall not use any portion of the assets to participate or intervene in any political campaign on behalf or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3).
- 8.4 **Licenses and Permits.** The DFSC represents and warrants to the City that its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
- 8.5 **Nondiscrimination and Equal Opportunity.** In compliance with federal, state and local laws, the DFSC shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by DFSC under this Agreement.

Section 9. MODIFICATION.

- 9.1 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 9.2 **Assignment.** The DFSC may not assign this Agreement or any interest therein without the prior written approval of the City, which approval shall not be unreasonably withheld.
- 9.3 **Subcontracting.** The DFSC shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City. Where written approval is granted by the City, the DFSC shall supervise all work subcontracted by DFSC in performing the Services; shall be responsible for all work performed by a subcontractor if DFSC itself had performed such work; the subcontracting of any work to subcontractors shall not relieve DFSC from any of its obligations under this Agreement with respect to the Services; and DFSC is obligated to ensure that any and all subcontractors performing any Services shall be fully

insured in all respects and to the same extent as set forth under Section 3, to the City's satisfaction.

- 9.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between the DFSC and the City shall survive the termination of this Agreement.

Section 10. KEEPING AND STATUS OF RECORDS.

- 10.1 Records Created as Part of the City's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that the DFSC prepares or obtains in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the City.

- 10.2 Confidential Information and Disclosure.** During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. The DFSC understands that the City is a public agency and is subject to the laws that may compel it to disclose information about DFSC's business.

Section 11. NON-DISCRIMINATION.

- 11.1** The DFSC shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
- 11.2** The DFSC shall permit City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of City, are necessary to monitor compliance with this non-discrimination provision. In addition, DFSC shall fill-out, in a timely fashion, forms supplied by City to monitor this non-discrimination provision.

Section 12. MISCELLANEOUS PROVISIONS.

- 12.1 Attorneys' Fees.** If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 12.2 Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 12.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect.
- 12.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 12.5 Contract Administration.** This Agreement shall be administered by the Berkeley Fire Chief. All correspondence shall be directed to or through the representative.
- 12.6 Notices.** Any written notice to City shall be sent to:
- City of Berkeley
2100 Martin Luther King Jr Way, 2nd Floor
Berkeley, California 94704
Attention: Fire Chief
- With a copy to
- City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: City Attorney
- Any written notice to the DFSC shall be sent to:
- Diablo Firesafe Council
4200 Park Boulevard, #544
Oakland, CA 94602
Attn: Holly Million
- 12.7 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between the DFSC and the City and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 12.8 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, the DFSC and the City agree to resolve the dispute in accordance with the following:

Each Party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, et. seq.

12.9 Audit. Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of DFSC's financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. In the event of such audit, DFSC agrees to provide the City Auditor with reasonable access to Company's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide DFSC an opportunity to discuss and respond to any findings before a final audit report is filed.

12.10 Business License. DFSC has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, DFSC is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. **DFSC certifies under penalty of perjury that its taxpayer identification number is 31-1661233,**

12.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES PAGE

The Parties have executed this Agreement as of the Effective Date.

DIABLO FIRESAFE COUNCIL

CITY OF BERKELEY

Holly Million, DFSC Executive Director

Paul Buddenhagen, City Manager

Attest:

Attest:

Ra Criscatello, DFSC Board Secretary

Mark Numainville, City Clerk

Approved as to Form:

Approved as to Form:

Rosemary Chang
DFSC Board Treasurer

Farimah Faiz Brown
City Attorney

