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DATE: April 3, 2023

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Ray Atkinson, Senior Transit Planner and DBE Liaison Officer, Public Works & Utilities (PW&U)  
Jared Hall, Transit Manager, PW&U  
Christopher J. Bolt, MPA, PE, CPM, ICMA-CM – Director, PW&U

SUBJECT: Resolution Adopting the 2023 Disadvantaged Business Enterprise (DBE) Program and Goal for Petaluma Transit, and Finding This Item is Exempt from CEQA Pursuant to CEQA Guidelines Section 15378 and 15061(b)(3)

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### **RECOMMENDATION**

It is recommended that the City Council adopt the attached Resolution adopting the 2023 Disadvantaged Business Enterprise (DBE) program and goal for Petaluma Transit, and finding this item is exempt from CEQA pursuant to CEQA Guidelines Sections 15378 and 15061(b)(3).

### **BACKGROUND**

In 2008, Petaluma became an eligible Federal Transit Administration (FTA) grant recipient. The City of Petaluma has utilized these funds to purchase numerous vehicles and various Transit-related capital projects since that time. The financial viability of Petaluma Transit has improved significantly with access to this robust funding source for public transportation.

As Per 49 Code of Federal Regulations (CFR) Part 26, all FTA recipients who receive \$250,000 or more in FTA planning, capital, and/or operating assistance in a Federal fiscal year, and who let DOT-assisted contracts, are required to have a DBE Program meeting the requirements of 49 CFR part 26. Accordingly, Petaluma Transit has created its first DBE Program in order to remain in compliance with this requirement and continue to remain eligible for receipt of FTA funds in future years.

The DBE Program ensures that federally assisted contracts for highway, transit, and aviation projects are made available for small business concerns owned and controlled by socially and economically disadvantaged individuals. Every three years, transit agencies are required to set an overall DBE goal that they must either meet or, show that they used good faith efforts to meet, annually; this goal is in the form of a percentage of federal contracts issued and is calculated based

upon the relative availability of DBE firms as compared to all firms in the relevant geographic market area. Agencies that do not meet their goal in any given year must submit documentation to the FTA identifying and analyzing the reasons why the goal was not met and create specific steps to adjust the DBE goal or program in order to attempt to attain compliance in future years.

A DBE Program creates a level playing field on which disadvantaged businesses can compete fairly. The program ensures that qualified businesses have an equal opportunity to compete for, and participate in, the performance of all DOT-funded contracts and subcontracts. It also assures that all contracts and procurements will be administered without discrimination based on race, color, sex or national origin, or any other protected class and that all businesses can compete fairly for contracts and subcontracts relating to Petaluma Transit's construction, procurement, and professional services activities.

The City is required to submit a new plan every three years for approval by the FTA. This plan will be the first DBE plan created for Petaluma Transit as the U.S. Department of Transportation requires. A new plan would be due to the FTA for review by June 30, 2026.

## **DISCUSSION**

The DBE Program seeks to ensure that all services related to Petaluma Transit are equitable and serve the community in a manner compliant with the requirements and meets the needs of the community. Topic areas covered within the plan include but are not limited to community outreach, ensuring transparent processes, creating formalized complaint procedures, and defining public feedback channels.

The objectives of the DBE Program are:

- To ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts.
- To remove barriers to DBE participation in the bidding, award, and administration of Petaluma Transit contracts.
- To assist DBEs in developing and competing successfully outside of the program.
- To ensure that the program is narrowly tailored in accordance with 49 CFR Part 26.
- To ensure that only DBEs meeting the eligibility requirements are permitted to participate as DBEs.
- To identify business enterprises that are eligible as DBEs to provide Petaluma Transit with required materials, equipment, supplies, and services; and to develop a good rapport with the owners, managers, and sales representatives of those enterprises.
- To develop communication programs and procedures that will acquaint prospective DBEs with Petaluma Transit's contract procedures, activities, and requirements and allow DBEs to provide Petaluma Transit with feedback on existing barriers to participation and effective procedures to eliminate those barriers.
- To administer the program in close coordination with various managers and staff within Petaluma Transit to facilitate the successful implementation of this program.
- To continuously research and make available to DBEs any resources and/or tools that may increase the possibility of participation, such as bonding or insurance assistance programs, technological tools, education resources, and contractor match-making opportunities.

Using the methodology outlined in the DBE goal document, Petaluma Transit created a DBE goal of 6.16% for FFY 2023-2025. Over this period, contractors will be asked to comply with this DBE goal as part of their project submission documentation. Contractors will need to meet the goal or show a “good faith effort” to have done so to be eligible for a project award.

Any contracts awarded will include language about the selected vendor providing relevant documentation to the City of Petaluma to ensure successful compliance with the DBE goal identified in their contract. Petaluma Transit staff will monitor the compliance of its contractors throughout the life of the contract and may impose such contract remedies as are available under federal, state, and local laws and regulations for non-compliance. Such remedies may include but are not limited to, withholding of progress payments and contract retentions, imposition of liquidated damages, and termination of the contract in whole or in part. Staff will continue to monitor compliance with the DBE goal and adjust it over time as needed via the methodology outlined in the DBE goal document.

### **PUBLIC OUTREACH**

The DBE Program and DBE goal were posted in English and Spanish on the Petaluma Transit website on Thursday, January 26, 2023. No public comments on the DBE Program were received per the federally-required, 30-day public posting period. This item was discussed at the February 9, 2023, Transit Advisory Committee meeting at which a recommendation in support of adopting this resolution was passed unanimously. This agenda item appeared on the City’s tentative agenda document on March 20, 2023, which was a publicly noticed meeting.

### **COUNCIL GOAL ALIGNMENT**

The proposed action supports the following City Council Goals, Objectives, and Workplan Items:

#### **A SAFE COMMUNITY THAT WORKS FOR EVERYONE**

- Workplan item # 97 – “Leverage local, regional, and state programs and resources to maximize city revenues.”

### **CLIMATE ACTION/SUSTAINABILITY EFFORTS**

Adopting the DBE Program and receiving FTA 5307 funding will help Petaluma Transit continue with its regular operations and advance work on the Capital Improvement Plan; most notably, to continue the transition of the existing Petaluma Transit fleet from carbon-based fuel vehicles to zero-emission vehicles on the current timeline. A delay in the process would extend the lifespan of carbon-burning vehicles and their subsequent replacement by zero-emission buses. This transition will help to reduce greenhouse gas emissions by the Petaluma Transit bus fleet and for the City of Petaluma overall.

### **ENVIRONMENTAL REVIEW**

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378, in that the adoption of the DBE Program does not meet CEQA's definition of a "project," because the action does not have the potential for resulting either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. Relatedly, the proposed action is exempt under the common-sense exemption, CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed action could have a significant impact on the environment.

### **FINANCIAL IMPACTS**

There is no financial impact associated with the recommended action. Failure to submit the FTA-required DBE Program would jeopardize critical federal transit funding.

### **ALTERNATIVES**

Adopting the DBE Program is required to ensure Petaluma Transit continues receipt of FTA 5307 funds, the primary capital project funding source for Petaluma Transit. Failure to adopt the program could delay or inhibit the City's ability to receive these funds and progress on planned capital projects as outlined in the Capital Improvement Plan.

### **ATTACHMENTS**

1. Resolution with Exhibits:
  - a. DBE Program
  - b. DBE Goal